

BioMed Realty Trust Inc  
 Form 424B5  
 August 28, 2015  
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**Filed Pursuant to Rule 424(b)(5)  
 Registration Statement No. 333-206646**

**CALCULATION OF REGISTRATION FEE**

<b>Title of Each Class of Securities to be Registered</b>	<b>Proposed Maximum Aggregate Offering Price(1)</b>	<b>Amount of Registration Fee(2)</b>
Common Stock, \$0.01 par value per share	\$300,000,000	\$23,636

- (1) Amount includes shares of common stock having an aggregate offering price of up to \$96,592,190 offered pursuant to a Registration Statement on Form S-3 (File No. 333-183669) filed on August 31, 2012 (as amended, the Prior Registration Statement ) by means of a prospectus supplement dated August 31, 2012, which were not sold thereunder.
- (2) Calculated in accordance with Rule 457(o) under the Securities Act, based on the proposed maximum aggregate offering price, and Rule 457(r) under the Securities Act. The \$300,000,000 of securities registered hereunder includes \$96,592,190 of securities (the Unsold Securities ) initially registered pursuant to a Registration Statement on Form S-3 (File No. 333-161751) filed on September 4, 2009, which was terminated effective upon the filing of the Prior Registration Statement, and subsequently registered on the Prior Registration Statement. Pursuant to Rule 415(a)(6) under the Securities Act, the allocable filing fee of \$5,389 for the Unsold Securities was previously paid to the Securities and Exchange Commission on September 4, 2009 and will continue to be applied to such Unsold Securities. The Prior Registration Statement terminated effective upon the filing of the registration statement of which the accompanying prospectus is a part. In accordance with Rules 456(b) and 457(r) under the Securities Act, the registrant initially deferred payment of the registration fee for Registration Statement No. 333-206646.

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**PROSPECTUS SUPPLEMENT**

**(To Prospectus dated August 28, 2015)**

**\$300,000,000**

**BioMed Realty Trust, Inc.**

**Common Stock**

We have entered into separate equity distribution agreements with each of Raymond James & Associates, Inc., UBS Securities LLC and Mizuho Securities USA Inc., which we refer to individually as a sales agent and together as the sales agents, relating to the shares of our common stock offered by this prospectus supplement and the accompanying prospectus. In accordance with the terms of the equity distribution agreements, we may offer and sell shares of our common stock having an aggregate offering price of up to \$300,000,000 from time to time through the sales agents.

Our common stock is traded on the New York Stock Exchange under the symbol BMR. The last reported sale price of our common stock on the New York Stock Exchange on August 27, 2015 was \$19.00 per share.

Sales of the common stock, if any, under this prospectus supplement and the accompanying prospectus, will be made in negotiated transactions or transactions that are deemed to be at the market offerings as defined in Rule 415 under the Securities Act of 1933, as amended, or the Securities Act, including sales made directly on the New York Stock Exchange or sales made to or through a market maker other than on an exchange. The sales agents are not required to sell any specific number or dollar amount of our common stock, but each sales agent will make all sales on a best efforts basis using its commercially reasonable efforts consistent with its normal trading and sales practices, on mutually agreed terms between each applicable sales agent and us.

Each sales agent will receive from us a commission of up to 2.0% of the gross sales price of all shares sold through it as sales agent under the applicable equity distribution agreement. In connection with the sale of the common stock on our behalf, the sales agents each may be deemed to be an underwriter within the meaning of the Securities Act, and the compensation of the sales agents may be deemed to be underwriting commissions or discounts.

We are organized and conduct our operations to qualify as a real estate investment trust, or REIT, for U.S. federal income tax purposes. To assist us in complying with certain federal income tax requirements applicable to REITs, among other purposes, our charter contains certain restrictions relating to the ownership and transfer of our stock, including an ownership limit of 9.8% on our common stock. See **Restrictions on Ownership and Transfer** beginning on page 23 of the accompanying prospectus.

**You should consider the risks that we have described in **Risk Factors** beginning on page S-4 of this prospectus supplement and page 1 of the accompanying prospectus, as well as those described in our most recent Annual Report on Form 10-K and subsequent Quarterly Reports on Form 10-Q, before buying shares of our common stock.**

**Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or determined if this prospectus supplement or the accompanying prospectus is truthful or complete. Any representation to the contrary is a criminal offense.**

**Raymond James**

**UBS Investment Bank**

**Mizuho Securities**

**The date of this prospectus supplement is August 28, 2015.**

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**You should rely only on the information contained in or incorporated by reference into this prospectus supplement and the accompanying prospectus. We have not, and the sales agents have not, authorized anyone to provide you with information that is different from that contained in this prospectus supplement and the accompanying prospectus. If anyone provides you with different or inconsistent information, you should not rely on it. We are offering to sell shares of common stock and seeking offers to buy shares of common stock only in jurisdictions where offers and sales are permitted. You should assume that the information appearing in this prospectus supplement and the accompanying prospectus, as well as information we previously filed with the Securities and Exchange Commission and incorporated herein by reference, is accurate only as of their respective dates or on other dates which are specified in those documents, regardless of the time of delivery of this prospectus supplement or of any sale of the common stock. Our business, financial condition, results of operations and prospects may have changed since those dates.**

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**FORWARD-LOOKING STATEMENTS**

This prospectus supplement, the accompanying prospectus and the documents that we incorporate by reference in each contain forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995 (set forth in Section 27A of the Securities Act, and Section 21E of the Securities Exchange Act of 1934, as amended, or the Exchange Act). Also, documents we subsequently file with the Securities and Exchange Commission and incorporate by reference will contain forward-looking statements. In particular, statements pertaining to our capital resources, portfolio performance and results of operations contain forward-looking statements. Forward-looking statements involve numerous risks and uncertainties, and you should not rely on them as predictions of future events. Forward-looking statements depend on assumptions, data or methods which may be incorrect or imprecise, and we may not be able to realize them. We do not guarantee that the transactions and events described will happen as described (or that they will happen at all). You can identify forward-looking statements by the use of forward-looking terminology such as believes, expects, may, will, should, seeks, approximately, intends, plans, anticipates or the negative of these words and phrases or similar words or phrases. You can also identify forward-looking statements by discussions of strategy, plans or intentions. The following factors, among others, could cause actual results and future events to differ materially from those set forth or contemplated in the forward-looking statements:

adverse economic or real estate developments in the life science industry or in our target markets, including the inability of our tenants to obtain funding to run their businesses,

our dependence upon significant tenants,

our failure to obtain necessary outside financing on favorable terms or at all, including the continued availability of our unsecured line of credit,

general economic conditions, including downturns in foreign, domestic and local economies,

changes in interest rates and foreign currency exchange rates,

volatility in financial and securities markets,

defaults on or non-renewal of leases by tenants,

our inability to compete effectively,

increased operating costs,

our inability to successfully complete real estate acquisitions, developments and dispositions,

risks and uncertainties affecting property development and construction,

risks associated with tax credits, grants and other subsidies to fund development activities,

our failure to manage effectively our growth and expansion into new markets or to successfully operate acquired properties and operations,

our ownership of properties outside of the United States that subject us to different and potentially greater risks than those associated with our domestic operations,

risks associated with our investments in loans, including borrower defaults and potential principal losses,

reductions in asset valuations and related impairment charges,

the loss of services of one or more of our executive officers,

our failure to qualify or continue to qualify as a REIT,

our failure to maintain our investment grade credit ratings or a downgrade in our investment grade corporate credit ratings from one or more of the rating agencies,

government approvals, actions and initiatives, including the need for compliance with environmental requirements,

the effects of earthquakes and other natural disasters,

lack of or insufficient amounts of insurance,

risks associated with security breaches and other disruptions to our information technology networks and related systems, and

changes in real estate, zoning and other laws and increases in real property tax rates.

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While forward-looking statements reflect our good faith beliefs, they are not guarantees of future performance. We disclaim any intention or obligation to update or revise any forward-looking statements, whether as a result of new information, future events or otherwise. For a further discussion of these and other factors that could impact our future results, performance or transactions, see the section below entitled Risk Factors, including the risks incorporated therein from our most recent Annual Report on Form 10-K and subsequent Quarterly Reports on Form 10-Q, as updated by our future filings.

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Securities USA Inc., as sales agents using commercially reasonable efforts. See Plan of Distribution.

Use of proceeds

We intend to contribute the net proceeds from any sale of shares of our common stock pursuant to this prospectus supplement to our operating partnership. Our operating partnership intends to subsequently use the net proceeds to potentially acquire or develop additional properties and for general corporate purposes, which may include the repayment of existing indebtedness and improvements to the properties in our portfolio. See Use of Proceeds.

New York Stock Exchange symbol

BMR

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Risk factors See Risk Factors included in this prospectus supplement, in our most recent Annual Report on Form 10-K and subsequent Quarterly Reports on Form 10-Q, as well as other information included in this prospectus supplement and the accompanying prospectus for a discussion of factors you should carefully consider before deciding to invest in shares of our common stock.

**RISK FACTORS**

*Investment in the shares offered pursuant to this prospectus supplement and the accompanying prospectus involves risks. In addition to the information presented in this prospectus supplement and the accompanying prospectus and the risk factors in our most recent Annual Report on Form 10-K, our subsequent Quarterly Reports on Form 10-Q and other filings under the Exchange Act that are incorporated by reference in this prospectus supplement and the accompanying prospectus, you should consider carefully the following risk factors before deciding to purchase these shares.*

**Risks Related to this Offering**

***The number of shares of our common stock available for future sale could adversely affect the market price of our common stock.***

We cannot predict whether future issuances of shares of our common stock or the availability of shares for resale in the open market will decrease the market price per share of our common stock. We may sell shares of our common stock under this prospectus supplement with an aggregate gross offering price of up to \$300,000,000. As of August 27, 2015, we had 203,567,695 shares of our common stock outstanding, as well as our operating partnership units and long-term incentive plan, or LTIP, units which may be exchanged for 5,083,400 and 314,824 shares of our common stock, respectively. In addition, as of August 27, 2015, we had reserved an additional 6,180,744 shares of common stock for future issuance under our incentive award plan. Sales of substantial amounts of shares of our common stock in the public market, or upon exchange of operating partnership units or LTIP units, or the perception that such sales might occur, could adversely affect the market price of our common stock.

Furthermore, as a well-known seasoned issuer under Rule 405 of the Securities Act, we are permitted to file an automatic shelf registration statement that will be immediately effective upon filing. On August 28, 2015, we filed such an automatic shelf registration statement, which may permit us, from time to time, to offer and sell debt securities, common stock, preferred stock, warrants and other securities to the extent necessary or advisable to meet our liquidity needs.

Any of the following could have an adverse effect on the market price of our common stock:

the sale of shares of our common stock from time to time under this prospectus supplement,

the exchange of operating partnership units or LTIP units for common stock,

additional grants of LTIP units, restricted stock or other securities to our directors, officers and other employees under our incentive award plan,

issuances of exchangeable notes or other exchangeable securities,

issuances of preferred stock with liquidation or distribution preferences, and

other issuances of our common stock.

Additionally, the existence of operating partnership units or LTIP units and shares of our common stock reserved for issuance upon exchange of operating partnership units or LTIP units and under our incentive award plan may adversely affect the terms upon which we may be able to obtain additional capital through the sale of equity securities. In addition, the sale of shares in this offering and future sales of shares of our common stock may be dilutive to existing stockholders.

From time to time we also may issue shares of our common stock or operating partnership units in connection with property, portfolio or business acquisitions. We may grant additional demand or piggyback registration rights in connection with these issuances. Sales of substantial amounts of our common stock, or the perception that these sales could occur, may adversely affect the prevailing market price of our common stock or may adversely affect the terms upon which we may be able to obtain additional capital through the sale of equity securities.

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***Our business operations may not generate the cash needed to make distributions on our capital stock or to service our indebtedness.***

Our ability to make distributions on our common stock and payments on our indebtedness and to fund planned capital expenditures will depend on our ability to generate cash in the future. We cannot assure you that our business will generate sufficient cash flow from operations or that future borrowings will be available to us in an amount sufficient to enable us to make distributions on our common stock, to pay our indebtedness or to fund our other liquidity needs.

***Holders of any future outstanding shares of our preferred stock will have liquidation, dividend and other rights that are senior to the rights of the holders of our common stock.***

Our board of directors has the authority to designate and issue preferred stock with liquidation, dividend and other rights that are senior to those of our common stock. Any shares of preferred stock that may be issued in the future would receive, upon our voluntary or involuntary liquidation, dissolution or winding up, before any payment is made to holders of our common stock, their liquidation preferences as well as any accrued and unpaid distributions. These payments would reduce the remaining amount of our assets, if any, available for distribution to holders of our common stock.

***The sales agents may have conflicts of interest that arise out of contractual relationships they or their affiliates have with us.***

If we sell shares of our common stock under this prospectus supplement, we intend to use the net proceeds to potentially acquire or develop additional properties and for general corporate purposes, which may include the repayment of existing indebtedness and improvements to the properties in our portfolio. This may include repaying a portion of the outstanding indebtedness under our \$900.0 million unsecured line of credit. The line of credit includes lenders who are affiliates of each of our sales agents. As a result, a portion of the net proceeds of any sale of shares of our common stock under this prospectus supplement may be received by these affiliates. Because they may receive a portion of the net proceeds of any of these sales, each of our sales agents and their respective affiliates have an interest in these sales beyond the customary commissions received by our sales agents. This could result in a conflict of interest and cause them to act in a manner that is not in the best interests of us or our investors in connection with any sale of shares of our common stock under this prospectus supplement.

## **USE OF PROCEEDS**

We intend to contribute the net proceeds from any sale of shares of our common stock pursuant to this prospectus supplement to our operating partnership. Our operating partnership intends to subsequently use the net proceeds to potentially acquire or develop additional properties and for general corporate purposes, which may include the repayment of existing indebtedness and improvements to the properties in our portfolio. Pending application of cash proceeds, we will invest the net proceeds in interest-bearing accounts and short-term, interest-bearing securities that are consistent with our intention to continue to qualify as a REIT for federal income tax purposes.

As of June 30, 2015, we had \$369.0 million outstanding under our unsecured line of credit, with a weighted-average interest rate of 1.3%. The unsecured line of credit matures on March 24, 2018 and bears interest at a floating rate equal to, at our option, either (1) reserve-adjusted LIBOR plus a spread which ranges from 92.5 to 170 basis points, depending on our credit ratings, or (2) the highest of (a) the prime rate then in effect plus a spread which ranges from 0 to 70 basis points, (b) the federal funds rate then in effect plus a spread which ranges from 50 to 120 basis points or (c) the one-month LIBOR plus a spread which ranges from 92.5 to 170 basis points, in each case, depending on our credit ratings. In addition, a facility fee is payable on the total \$900.0 million capacity of the unsecured line of credit,

which ranges from 12.5 to 30 basis points, depending on our credit ratings. We may, in our sole discretion, extend the maturity of the unsecured line of credit to September 24, 2018 after satisfying certain conditions and paying an extension fee.

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Affiliates of each of the sales agents are lenders under our unsecured line of credit. A portion of any sale of shares of our common stock under this prospectus supplement may be received by these affiliates because we may use the net proceeds to repay borrowings under our unsecured line of credit.

### **PLAN OF DISTRIBUTION**

Upon written instruction from us, Raymond James & Associates, Inc., UBS Securities LLC or Mizuho Securities USA Inc., as applicable, will use its commercially reasonable efforts consistent with its sales and trading practices to solicit offers to purchase shares of our common stock over time and from time to time, under the terms and subject to the conditions set forth in the equity distribution agreements. We will instruct each of Raymond James & Associates, Inc., UBS Securities LLC or Mizuho Securities USA Inc. as to the amount of common stock to be sold by it. We may instruct Raymond James & Associates, Inc., UBS Securities LLC and Mizuho Securities USA Inc. not to sell common stock if the sales cannot be effected at or above the price designated by us in any instruction. We or any of Raymond James & Associates, Inc., UBS Securities LLC or Mizuho Securities USA Inc. may suspend the offering of common stock upon proper notice and subject to other conditions.

Raymond James & Associates, Inc., UBS Securities LLC and Mizuho Securities USA Inc. will provide written confirmation to us no later than the opening of the trading day on the New York Stock Exchange following the trading day in which shares of our common stock are sold under the applicable equity distribution agreement. Each confirmation will include the number of shares sold on the preceding day, the net proceeds to us and the compensation payable by us to Raymond James & Associates, Inc., UBS Securities LLC or Mizuho Securities USA Inc. in connection with the sales.

We will pay Raymond James & Associates, Inc., UBS Securities LLC and Mizuho Securities USA Inc. commissions for their services in acting as agent and/or principal in the sale of our common stock. Raymond James & Associates, Inc., UBS Securities LLC and Mizuho Securities USA Inc. will be entitled to compensation of up to 2.0% of the gross sales price of all shares of our common stock sold through it under the applicable equity distribution agreement. We have agreed to reimburse Raymond James & Associates, Inc., UBS Securities LLC and Mizuho Securities USA Inc. for certain of their legal expenses under the circumstances described in the equity distribution agreements. We estimate that the total expenses for the offering, excluding compensation payable to Raymond James & Associates, Inc., UBS Securities LLC and Mizuho Securities USA Inc. under the terms of the equity distribution agreements, will be approximately \$300,000.

Settlement for sales of common stock will occur on the third business day following the date on which any sales are made, or on some other date that is agreed upon by us and Raymond James & Associates, Inc., UBS Securities LLC or Mizuho Securities USA Inc., as applicable, in connection with a particular transaction, in return for payment of the net proceeds to us. There is no arrangement for funds to be received in an escrow, trust or similar arrangement.

We will report at least quarterly the number of shares of common stock sold through Raymond James & Associates, Inc., UBS Securities LLC and Mizuho Securities USA Inc., as agent, under the equity distribution agreements.

Raymond James & Associates, Inc., UBS Securities LLC and Mizuho Securities USA Inc. and their affiliates have provided, and may in the future provide, various investment banking, commercial banking, fiduciary and advisory services for us and certain of our officers and directors from time to time for which they have received, and may in the future receive, customary fees and expenses. Raymond James & Associates, Inc., UBS Securities LLC and Mizuho Securities USA Inc. and their affiliates may, from time to time, engage in other transactions with and perform services for us in the ordinary course of their business. As described under Use of Proceeds, we intend to use the net proceeds from this offering to potentially acquire or develop additional properties and for general corporate purposes, which

may include the repayment of existing indebtedness. Because affiliates of Raymond James & Associates, Inc., UBS Securities LLC and Mizuho Securities USA Inc. are lenders under our \$900.0 million unsecured line of credit, those affiliates may receive a portion of the net proceeds from this offering through the repayment of those borrowings.

In connection with the sale of the common stock on our behalf, Raymond James & Associates, Inc., UBS Securities LLC and Mizuho Securities USA Inc. may, and will with respect to sales effected in an at the market offering, be deemed to be an underwriter within the meaning of the Securities Act and the compensation of

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Raymond James & Associates, Inc., UBS Securities LLC and Mizuho Securities USA Inc. may be deemed to be underwriting commissions or discounts. We have agreed to indemnify Raymond James & Associates, Inc., UBS Securities LLC and Mizuho Securities USA Inc. against specified liabilities, including liabilities under the Securities Act, or to contribute to payments that Raymond James & Associates, Inc., UBS Securities LLC and Mizuho Securities USA Inc. may be required to make because of those liabilities.

The offering of shares of our common stock pursuant to the equity distribution agreements will terminate upon the earlier of (1) the sale of all shares of our common stock subject to the equity distribution agreements or (2) the termination of the equity distribution agreements. The equity distribution agreements may be terminated by Raymond James & Associates, Inc., UBS Securities LLC or Mizuho Securities USA Inc., as applicable, or us at any time upon ten days' notice, and by Raymond James & Associates, Inc., UBS Securities LLC or Mizuho Securities USA Inc., as applicable, at any time in certain circumstances, including our failure to maintain the listing of our common stock on the New York Stock Exchange or the occurrence of a material adverse change in our company.

## **LEGAL MATTERS**

Certain legal matters will be passed upon for us by Latham & Watkins LLP, San Diego, California, and for the sales agents by DLA Piper LLP (US), Raleigh, North Carolina. Certain matters of Maryland law, including the validity of the common stock offered by this prospectus supplement, will be passed upon for us by Venable LLP, Baltimore, Maryland.

## **EXPERTS**

The consolidated balance sheets of BioMed Realty Trust, Inc. and subsidiaries as of December 31, 2014 and 2013, and the related consolidated statements of operations, comprehensive income, equity and cash flows for each of the years in the three-year period ended December 31, 2014 and the accompanying financial statement schedule III, and management's assessment of the effectiveness of internal control over financial reporting as of December 31, 2014 have been incorporated by reference herein in reliance upon the reports of KPMG LLP, independent registered public accounting firm incorporated by reference herein, and upon the authority of said firm as experts in accounting and auditing.

The consolidated balance sheets of BioMed Realty, L.P. and subsidiaries as of December 31, 2014 and 2013, and the related consolidated statements of operations, comprehensive income, capital and cash flows for each of the years in the three-year period ended December 31, 2014 and the accompanying financial statement schedule III, have been incorporated by reference herein in reliance upon the report of KPMG LLP, independent registered public accounting firm incorporated by reference herein, and upon the authority of said firm as experts in accounting and auditing.

The audit reports covering the December 31, 2014 consolidated financial statements of BioMed Realty Trust, Inc. and BioMed Realty, L.P. refer to a change in the method for accounting for discontinued operations upon the adoption of FASB Accounting Standards Update No. 2014-08, *Presentation of Financial Statements (Topic 205) and Property, Plant, and Equipment (Topic 360): Reporting Discontinued Operations and Disclosures of Disposals of Components of an Entity*.



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**PROSPECTUS**

**BioMed Realty Trust, Inc.**

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**BioMed Realty, L.P.**

**Debt Securities**

We may from time to time offer, in one or more classes or series, separately or together, and in amounts, at prices and on terms to be set forth in one or more supplements to this prospectus, the following securities:

debt securities of BioMed Realty Trust, Inc., which may consist of debentures, notes or other types of debt,

debt securities of BioMed Realty, L.P., which may be fully and unconditionally guaranteed by BioMed Realty Trust, Inc. and may consist of debentures, notes or other types of debt,

shares of BioMed Realty Trust, Inc. s common stock,

shares of BioMed Realty Trust, Inc. s preferred stock,

shares of BioMed Realty Trust, Inc. s preferred stock represented by depository shares,

warrants to purchase BioMed Realty Trust, Inc.'s debt securities, shares of preferred stock, shares of common stock or depositary shares,

rights to purchase shares of BioMed Realty Trust, Inc.'s common stock, and

units consisting of two or more of the foregoing.

We refer to the debt securities, guarantees, common stock, preferred stock, depositary shares, warrants, rights and units registered hereunder collectively as the securities in this prospectus.

The specific terms of each series or class of the securities will be set forth in the applicable prospectus supplement and will include, where applicable:

in the case of debt securities, and as applicable, related guarantees, the specific title, aggregate principal amount, currency, form (which may be certificated or global), authorized denominations, maturity, rate (or manner of calculating the rate) and time of payment of interest, terms for redemption at our option or repayment at the holder's option, terms for sinking fund payments, terms for conversion into shares of BioMed Realty Trust, Inc.'s common stock or preferred stock, covenants and any initial public offering price of the debt securities and specific terms of related guarantees,

in the case of preferred stock, the specific designation, preferences, conversion and other rights, voting powers, restrictions, limitations as to transferability, dividends and other distributions, qualifications, terms and conditions of redemption and any initial public offering price,

in the case of depositary shares, the fractional share of preferred stock represented by each such depositary share,

in the case of warrants or rights, the duration, offering price, exercise price and detachability, and

in the case of units, the constituent securities comprising the units, the offering price and detachability.

In addition, the specific terms may include limitations on actual or constructive ownership and restrictions on transfer of the securities, in each case as may be appropriate, among other purposes, to preserve the status of BioMed Realty Trust, Inc. as a real estate investment trust, or REIT, for United States federal income tax purposes.

The applicable prospectus supplement will also contain information, where applicable, about certain United States federal income tax consequences relating to, and any listing on a securities exchange of, the securities covered by such prospectus supplement.

The securities may be offered directly by BioMed Realty Trust, Inc., BioMed Realty, L.P., or any selling security holder from time to time, through agents designated by BioMed Realty Trust, Inc. or BioMed Realty, L.P., or to or through underwriters or dealers. If any agents, dealers or underwriters are involved in the sale of any of the securities, their names, and any applicable purchase price, fee, commission or discount arrangement between or among them will be set forth, or will be calculable from the information set forth, in the applicable prospectus supplement. See the sections entitled Plan of Distribution and About This Prospectus for more information. No securities may be sold

without delivery of this prospectus and the applicable prospectus supplement describing the method and terms of the offering of such series of securities.

BioMed Realty Trust, Inc.'s common stock currently trades on the New York Stock Exchange, or NYSE, under the symbol BMR. On August 27, 2015, the last reported sale price of BioMed Realty Trust, Inc.'s common stock was \$19.00 per share.

**You should consider the risks that we have described in Risk Factors on page 1 before investing in our securities.**

**Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.**

**The date of this prospectus August 28, 2015.**

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<u>Experts</u>	57

References in this prospectus to the Company or the guarantor refer to BioMed Realty Trust, Inc., a Maryland corporation. References in this prospectus to we, our and us refer to the Company, together with its consolidated subsidiaries, including BioMed Realty, L.P. Unless otherwise indicated or unless the context requires otherwise, all references in this prospectus to our operating partnership or the operating partnership refer to BioMed Realty, L.P., a Maryland limited partnership, together with its consolidated subsidiaries. References to common stock refer to the common stock, \$.01 par value per share, of BioMed Realty Trust, Inc.

You should rely only on the information contained in this prospectus, in an accompanying prospectus supplement or incorporated by reference herein or therein. We have not authorized anyone to provide you with information or make any representation that is different. If anyone provides you with different or inconsistent information, you should not rely on it. This prospectus and any accompanying prospectus supplement do not constitute an offer to sell or a solicitation of an offer to buy any securities other than the registered securities to which they relate, and this prospectus and any accompanying prospectus supplement do not constitute an offer to sell or the solicitation of an offer to buy securities in any jurisdiction where, or to any person to whom, it is unlawful to make such an offer or solicitation. You should not assume that the information contained in this prospectus and any accompanying prospectus supplement is correct on any date after the respective dates of the prospectus and such prospectus supplement or supplements, as applicable, even though this prospectus and such prospectus supplement or supplements are delivered or shares are sold pursuant to the prospectus and such prospectus supplement or supplements at a later date. Since the respective dates of the prospectus contained in this registration statement and any accompanying prospectus supplement, our business, financial condition, results of operations and prospects may have changed. We may only use this prospectus to sell the

**securities if it is accompanied by a prospectus supplement.**

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**OUR COMPANY**

BioMed Realty Trust, Inc., a Maryland corporation, and BioMed Realty, L.P., a Maryland limited partnership, were formed on April 30, 2004. We commenced operations on August 11, 2004 after the Company completed its initial public offering. The Company operates as a fully integrated, self-administered and self-managed real estate investment trust, or REIT, focused on acquiring, developing, owning, leasing and managing laboratory and office space for the life science industry. We conduct our business and own our assets principally through our operating partnership. Our tenants primarily include biotechnology and pharmaceutical companies, scientific research institutions, government agencies and other entities involved in the life science industry. Our properties are generally located in markets with well-established reputations as centers for scientific research, including Boston, San Francisco, San Diego, Maryland, New York/New Jersey, Pennsylvania, North Carolina, Seattle and Cambridge (United Kingdom) and research parks located near or adjacent to universities and their related medical systems. At June 30, 2015, we owned or had interests in a property portfolio with an aggregate of approximately 18.4 million rentable square feet.

Our senior management team has significant experience in the real estate industry, principally focusing on properties designed for life science tenants. As of June 30, 2015, we had 247 employees.

Our principal offices are located at 17190 Bernardo Center Drive, San Diego, California 92128. Our telephone number at that location is (858) 485-9840. Our website is located at [www.biomedrealty.com](http://www.biomedrealty.com). The information found on, or otherwise accessible through, our website is not incorporated into, and does not form a part of, this prospectus or any other report or document we file with or furnish to the Securities and Exchange Commission.

**RISK FACTORS**

*Investment in any securities offered pursuant to this prospectus involves risks. You should carefully consider the risk factors incorporated by reference to BioMed Realty Trust, Inc.'s and BioMed Realty, L.P.'s most recent Annual Report on Form 10-K and subsequent Quarterly Reports on Form 10-Q, and the other information contained in this prospectus, as updated by subsequent filings of BioMed Realty Trust, Inc. and BioMed Realty, L.P. under the Securities Exchange Act of 1934, as amended, or the Exchange Act, and the risk factors and other information contained in the applicable prospectus supplement before acquiring any of such securities. The occurrence of any of these risks might cause you to lose all or part of your investment in the offered securities. Please also refer to the section below entitled "Forward-Looking Statements."*

**ABOUT THIS PROSPECTUS**

This prospectus is part of an automatic shelf registration statement that we filed with the Securities and Exchange Commission using a shelf registration process, with BioMed Realty Trust, Inc. as a well-known seasoned issuer as defined in Rule 405 under the Securities Act of 1933, as amended, or the Securities Act. Under this process, the Company may sell debt securities (including related guarantees), common stock, preferred stock, depository shares, warrants, rights and units, and our operating partnership may sell debt securities, in each case in one or more offerings. In addition, selling security holders to be named in a prospectus supplement may sell certain of our securities from time to time. This prospectus provides you with a general description of the securities the Company, our operating partnership or any selling security holder may offer. Each time the Company, our operating partnership or any selling security holder sells securities, the Company, our operating partnership or the selling security holder will provide a prospectus supplement containing specific information about the terms of the applicable offering. Such prospectus supplement may add, update or change information contained in this prospectus. You should read this prospectus and the applicable prospectus supplement together with additional information described below under the

heading Where You Can Find More Information.

The Company, our operating partnership or any selling security holder may offer the securities directly, through agents, or to or through underwriters or dealers. The applicable prospectus supplement will describe the terms of the plan of distribution and set forth the names of any agents, underwriters or dealers involved in the sale of the securities. See Plan of Distribution for more information on this topic. No securities may be sold without delivery of a prospectus supplement describing the method and terms of the offering of those securities.

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**WHERE YOU CAN FIND MORE INFORMATION**

The Company and our operating partnership file annual, quarterly and current reports, proxy statements and other information with the Securities and Exchange Commission. You may read and copy any document we file with the Securities and Exchange Commission at the public reference room of the Securities and Exchange Commission, 100 F Street, N.E., Washington, D.C. 20549. Information about the operation of the public reference room may be obtained by calling the Securities and Exchange Commission at 1-800-SEC-0330. Our Securities and Exchange Commission filings, including our registration statement, are also available to you on the Securities and Exchange Commission's website at <http://www.sec.gov>.

We have filed with the Securities and Exchange Commission a registration statement on Form S-3, of which this prospectus is a part, including exhibits, schedules and amendments filed with, or incorporated by reference in, this registration statement, under the Securities Act with respect to the securities registered hereby. This prospectus and any accompanying prospectus supplement do not contain all of the information set forth in the registration statement and exhibits and schedules to the registration statement. For further information with respect to our Company and the securities registered hereby, reference is made to the registration statement, including the exhibits to the registration statement. Statements contained in this prospectus and any accompanying prospectus supplement as to the contents of any contract or other document referred to in, or incorporated by reference in, this prospectus and any accompanying prospectus supplement are not necessarily complete and, where that contract or other document is an exhibit to the registration statement, each statement is qualified in all respects by the exhibit to which the reference relates. Copies of the registration statement, including the exhibits and schedules to the registration statement, may be examined without charge at the public reference room of the Securities and Exchange Commission, 100 F Street, N.E., Washington, D.C. 20549. Information about the operation of the public reference room may be obtained by calling the Securities and Exchange Commission at 1-800-SEC-0330. Copies of all or a portion of the registration statement can be obtained from the public reference room of the Securities and Exchange Commission upon payment of prescribed fees.

**INCORPORATION OF CERTAIN DOCUMENTS BY REFERENCE**

The Securities and Exchange Commission allows us to incorporate by reference the information we file with the Securities and Exchange Commission, which means that we can disclose important information to you by referring to those documents. The information incorporated by reference is an important part of this prospectus. The incorporated documents contain significant information about us, our business and our finances. Any information contained in this prospectus or in any document incorporated or deemed to be incorporated by reference in this prospectus will be deemed to have been modified or superseded to the extent that a statement contained in this prospectus, in any other document we subsequently file with the Securities and Exchange Commission that also is incorporated or deemed to be incorporated by reference in this prospectus or in the applicable prospectus supplement modifies or supersedes the original statement. Any statement so modified or superseded will not be deemed, except as so modified or superseded, to be a part of this prospectus. We incorporate by reference the following documents we filed with the Securities and Exchange Commission:

BioMed Realty Trust, Inc.'s and BioMed Realty, L.P.'s Annual Report on Form 10-K for the year ended December 31, 2014,



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BioMed Realty Trust, Inc. s and BioMed Realty, L.P. s Quarterly Report on Form 10-Q for the quarter ended March 31, 2015,

BioMed Realty Trust, Inc. s and BioMed Realty, L.P. s Quarterly Report on Form 10-Q for the quarter ended June 30, 2015,

BioMed Realty Trust, Inc. s and BioMed Realty, L.P. s Current Report on Form 8-K filed with the Securities and Exchange Commission on January 2, 2015,

BioMed Realty Trust, Inc. s Current Report on Form 8-K filed with the Securities and Exchange Commission on January 23, 2015,

BioMed Realty Trust, Inc. s and BioMed Realty, L.P. s Current Report on Form 8-K filed with the Securities and Exchange Commission on February 25, 2015,

BioMed Realty Trust, Inc. s Current Report on Form 8-K filed with the Securities and Exchange Commission on May 28, 2015,

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BioMed Realty Trust, Inc. s and BioMed Realty, L.P. s Current Report on Form 8-K filed with the Securities and Exchange Commission on May 29, 2015,

BioMed Realty Trust, Inc. s Current Report on Form 8-K filed with the Securities and Exchange Commission on August 28, 2015,

the description of BioMed Realty Trust, Inc. s common stock included in our registration statement on Form 8-A filed with the Securities and Exchange Commission on July 30, 2004, and

all documents filed by BioMed Realty Trust, Inc. and BioMed Realty, L.P. with the Securities and Exchange Commission pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act after the date of this prospectus and prior to the termination of the offering of the underlying securities.

To the extent that any information contained in any current report on Form 8-K, or any exhibit thereto, was furnished to, rather than filed with, the Securities and Exchange Commission, such information or exhibit is specifically not incorporated by reference in this prospectus.

We will provide without charge to each person, including any beneficial owner, to whom a prospectus is delivered, on written or oral request of that person, a copy of any or all of the documents we are incorporating by reference into this prospectus, other than exhibits to those documents unless those exhibits are specifically incorporated by reference into those documents. A request should be addressed to BioMed Realty Trust, Inc., 17190 Bernardo Center Drive, San Diego, California 92128, Attention: Secretary or by telephone at (858) 485-9840.

**FORWARD-LOOKING STATEMENTS**

This prospectus, any accompanying prospectus supplement and the documents that we incorporate by reference in each contain forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995 (set forth in Section 27A of the Securities Act and Section 21E of the Exchange Act). Also, documents we subsequently file with the Securities and Exchange Commission and incorporate by reference will contain forward-looking statements. In particular, statements pertaining to our capital resources, portfolio performance and results of operations contain forward-looking statements. Forward-looking statements involve numerous risks and uncertainties, and you should not rely on them as predictions of future events. Forward-looking statements depend on assumptions, data or methods which may be incorrect or imprecise, and we may not be able to realize them. We do not guarantee that the transactions and events described will happen as described (or that they will happen at all). You can identify forward-looking statements by the use of forward-looking terminology such as believes, expects, may, will, should, seeks, approximately, intends, plans, pro forma, estimates or anticipates or the negative and phrases or similar words or phrases. You can also identify forward-looking statements by discussions of strategy, plans or intentions. The following factors, among others, could cause actual results and future events to differ materially from those set forth or contemplated in the forward-looking statements:

adverse economic or real estate developments in the life science industry or in our target markets, including the inability of our tenants to obtain funding to run their businesses,

our dependence upon significant tenants,

our failure to obtain necessary outside financing on favorable terms or at all, including the continued availability of our unsecured line of credit,

general economic conditions, including downturns in foreign, domestic and local economies,

changes in interest rates and foreign currency exchange rates,

volatility in financial and securities markets,

defaults on or non-renewal of leases by tenants,

our inability to compete effectively,

increased operating costs,

our inability to successfully complete real estate acquisitions, developments and dispositions,

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risks and uncertainties affecting property development and construction,

risks associated with tax credits, grants and other subsidies to fund development activities,

our failure to manage effectively our growth and expansion into new markets or to successfully operate acquired properties and operations,

our ownership of properties outside of the United States that subject us to different and potentially greater risks than those associated with our domestic operations,

risks associated with our investments in loans, including borrower defaults and potential principal losses,

reductions in asset valuations and related impairment charges,

the loss of services of one or more of our executive officers,

BioMed Realty Trust, Inc.'s failure to qualify or continue to qualify as a REIT,

our failure to maintain our investment grade credit ratings or a downgrade in our investment grade corporate credit ratings from one or more of the rating agencies,

government approvals, actions and initiatives, including the need for compliance with environmental requirements,

the effects of earthquakes and other natural disasters,

lack of or insufficient amounts of insurance,

risks associated with security breaches and other disruptions to our information technology networks and related systems, and

changes in real estate, zoning and other laws and increases in real property tax rates.

While forward-looking statements reflect our good faith beliefs, they are not guarantees of future performance. We disclaim any intention or obligation to update or revise any forward-looking statements, whether as a result of new information, future events or otherwise. For a further discussion of these and other factors that could impact our future

results, performance or transactions, see the section of this prospectus above entitled Risk Factors, including the risks incorporated therein from our most recent Annual Report on Form 10-K and subsequent Quarterly Reports on Form 10-Q, as updated by our future filings.

### USE OF PROCEEDS

Unless we indicate otherwise in the applicable prospectus supplement, the Company intends to contribute the net proceeds from any sale of its securities pursuant to this prospectus to our operating partnership. Our operating partnership intends to subsequently use the net proceeds contributed by the Company, as well as any net proceeds from the sale of its debt securities pursuant to this prospectus, to potentially acquire or develop additional properties and for general corporate purposes, which may include the repayment of existing indebtedness and improvements to the properties in our portfolio. Pending application of cash proceeds, we will invest the net proceeds in interest-bearing accounts and short-term, interest-bearing securities which are consistent with the Company's intention to continue to qualify as a REIT for federal income tax purposes. Further details regarding the use of the net proceeds from the sale of a specific series or class of the securities will be set forth in the applicable prospectus supplement.

If a prospectus supplement includes an offering by selling security holders, we will not receive any proceeds from such sales.

### RATIOS OF EARNINGS TO FIXED CHARGES

The following table sets forth the Company's ratios of earnings to fixed charges and earnings to combined fixed charges and preferred stock dividends for the periods shown:

	<b>Six Months Ended June 30, 2015</b>	<b>Year Ended December 31,</b>				
	<b>2015</b>	<b>2014</b>	<b>2013</b>	<b>2012</b>	<b>2011</b>	<b>2010</b>
Ratio of earnings to fixed charges	1.8	2.6	1.3	1.1	1.5	1.4
Ratio of earnings to combined fixed charges and preferred stock dividends	1.8	2.6	1.3	1.0	1.2	1.2

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The following table sets forth our operating partnership's ratios of earnings to fixed charges and earnings to combined fixed charges and preferred unit distributions for the periods shown:

	<b>Six Months Ended June 30, 2015</b>	<b>2014</b>	<b>2013</b>	<b>2012</b>	<b>2011</b>	<b>2010</b>
Ratio of earnings to fixed charges	1.8	2.6	1.3	1.1	1.5	1.4
Ratio of earnings to combined fixed charges and preferred unit distributions	1.8	2.6	1.3	1.0	1.2	1.2

The ratios of earnings to fixed charges are computed by dividing earnings by fixed charges. The ratios of earnings to combined fixed charges and preferred stock dividends or preferred unit distributions, as applicable, are computed by dividing earnings by combined fixed charges and preferred stock dividends or preferred unit distributions, as applicable. Earnings consist of income from continuing operations before noncontrolling interests and loss from unconsolidated joint ventures, and fixed charges consist of interest expense, capitalized interest and amortization of deferred financing fees, whether expensed or capitalized, and preferred stock dividends or preferred unit distributions, as applicable, consist of the amount of pre-tax earnings required to pay dividends or distributions on BioMed Realty Trust, Inc.'s previously outstanding 7.375% Series A cumulative redeemable preferred stock or BioMed Realty, L.P.'s previously outstanding Series A preferred units, as applicable.

### **DESCRIPTION OF DEBT SECURITIES AND RELATED GUARANTEES**

This prospectus describes the general terms and provisions of our debt securities and related guarantees, if any. When BioMed Realty Trust, Inc. or BioMed Realty, L.P. offers to sell a particular series of debt securities, we will describe the specific terms of the series in a supplement to this prospectus, including the terms of any related guarantees. We will also indicate in the prospectus supplement whether the general terms and provisions described in this prospectus apply to a particular series of debt securities. To the extent the information contained in the prospectus supplement differs from this summary description, you should rely on the information in the prospectus supplement.

The debt securities may be offered in the form of either senior debt securities or subordinated debt securities. Unless otherwise specified in a prospectus supplement, the debt securities will be the direct, unsecured obligations of either BioMed Realty Trust, Inc. or BioMed Realty, L.P., and will rank equally with all of BioMed Realty Trust, Inc. or BioMed Realty, L.P.'s other unsecured and unsubordinated indebtedness.

The debt securities will be issued under an indenture between us and a trustee. We have summarized select portions of the indenture below. The summary is not complete. The form of the indenture has been filed as an exhibit to the registration statement, and you should read the indenture and our debt securities carefully for provisions that may be important to you. Capitalized terms used in the summary and not defined in this prospectus have the meaning specified in the indenture.

#### **General**

The terms of each series of debt securities will be established by or pursuant to a resolution of the Company's board of directors and set forth or determined in the manner provided in an officer's certificate or by a supplemental indenture. The particular terms of each series of debt securities will be described in a prospectus supplement relating to such series, including any pricing supplement.

Each indenture will provide that we may, but need not, designate more than one trustee for the indenture, each with respect to one or more series of our debt securities. Any trustee under an indenture may resign or be removed with respect to one or more series of our debt securities, and a successor trustee may be appointed to act with respect to that series. If two or more persons are acting as trustee to different series of our debt securities, each trustee shall be a trustee of a trust under the applicable indenture separate and apart from the trust administered by any other trustee and, except as otherwise indicated in this prospectus, any action taken by a trustee may be taken by that trustee with respect to, and only with respect to, the one or more series of debt securities for which it is trustee under the applicable indenture.

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Unless otherwise specified in a supplement to this prospectus, the debt securities will be our direct, unsecured obligations and will rank equally with all of our other unsecured and unsubordinated indebtedness, and, if the debt securities are issued by our operating partnership, they may be fully and unconditionally guaranteed by the Company. We can issue an unlimited amount of debt securities under the indenture that may be in one or more series with the same or various maturities, at par, at a premium, or at a discount. We will set forth in a prospectus supplement, including any pricing supplement, relating to any series of debt securities being offered, the aggregate principal amount and the following terms of the debt securities, to the extent applicable:

the title of the debt securities,

the price or prices (expressed as a percentage of the principal amount) at which we will sell the debt securities,

any limit on the aggregate principal amount of the debt securities,

the date or dates on which we will pay the principal on the debt securities,

the rate or rates (which may be fixed or variable) per annum or the method used to determine the rate or rates (including any commodity, commodity index, stock exchange index or financial index) at which the debt securities will bear interest, the date or dates from which interest will accrue, the date or dates on which interest will commence and be payable and any regular record date for the interest payable on any interest payment date,

the place or places where principal of, premium and interest on the debt securities will be payable, where debt securities may be surrendered for registration of transfer or exchange and where notices or demands to or upon us relating to debt securities and the indenture may be served,

the terms and conditions upon which we may redeem the debt securities,

any obligation we have to redeem or purchase the debt securities pursuant to any sinking fund or analogous provisions or at the option of a holder of debt securities,

the dates on which and the price or prices at which we will repurchase debt securities at the option of the holders of debt securities and other detailed terms and provisions of these repurchase obligations,

the denominations in which the debt securities will be issued, if other than denominations of \$1,000 and any integral multiple thereof,



whether the debt securities will be issued in the form of certificated debt securities or global debt securities,

the portion of the principal amount of the debt securities payable upon declaration of acceleration of the maturity date, if other than the principal amount,

the currency of denomination of the debt securities,

the designation of the currency, currencies or currency units in which payment of principal of, and premium and interest on, the debt securities will be made,

if payments of principal of, and premium and interest on, the debt securities will be made in one or more currencies or currency units other than that or those in which the debt securities are denominated, the manner in which the exchange rate with respect to these payments will be determined,

the manner in which the amounts of payment of principal of, premium or interest on the debt securities will be determined, if these amounts may be determined by reference to an index based on a currency or currencies other than that in which the debt securities are denominated or designated to be payable or by reference to a commodity, commodity index, stock exchange index or financial index,

any provisions relating to any security provided for the debt securities,

any addition to or change in the events of default described in this prospectus or in the indenture with respect to the debt securities and any change in the acceleration provisions described in this prospectus or in the indenture with respect to the debt securities,

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any addition to or change in the covenants described in this prospectus or in the indenture with respect to the debt securities,

any other terms of the debt securities that may supplement, modify or delete any provision of the indenture as it applies to that series,

any depositaries, interest rate calculation agents, exchange rate calculation agents or other agents with respect to the debt securities,

any provisions relating to conversion of any debt securities, including if applicable, the conversion price, the conversion period, provisions as to whether conversion will be mandatory, at the option of the holders thereof or at our option, the events requiring an adjustment of the conversion price and provisions affecting conversion if such debt securities are redeemed,

whether the debt securities will be senior debt securities or subordinated debt securities and, if applicable, a description of the subordination terms thereof,

whether the debt securities are entitled to the benefits of the guarantee of any guarantor, and whether any such guarantee is made on a senior or subordinated basis and, if applicable, a description of the subordination terms of any such guarantee, and

a discussion of any material United States federal income tax consequences applicable to an investment in such debt securities.

In addition, the indenture does not limit our ability to issue convertible or subordinated debt securities. Any conversion or subordination provisions of a particular series of debt securities will be set forth in the officer's certificate or supplemental indenture related to that series of debt securities and will be described in the relevant prospectus supplement. Such terms may include provisions for conversion, either mandatory, at the option of the holder or at our option, in which case the number of shares of common stock, cash or other securities to be received by the holders of debt securities would be calculated as of a time and in the manner stated in the prospectus supplement.

We may issue debt securities that provide for an amount less than their stated principal amount to be due and payable upon declaration of acceleration of their maturity pursuant to the terms of the indenture. We will provide you with information on the other special considerations applicable to any of these debt securities in the applicable prospectus supplement.

If we denominate the purchase price of any of the debt securities in a foreign currency or currencies or a foreign currency unit or units, or if the principal of and any premium and interest on any series of debt securities is payable in a foreign currency or currencies or a foreign currency unit or units, we will provide you with information on the restrictions, elections, specific terms and other information with respect to that issue of debt securities and such foreign currency or currencies or foreign currency unit or units in the applicable prospectus supplement.

## **Transfer and Exchange**

Each debt security will be represented by either one or more global securities registered in the name of The Depository Trust Company, as depositary, or a nominee (we will refer to any debt security represented by a global debt security as a book-entry debt security ), or a certificate issued in definitive registered form (we will refer to any debt security represented by a certificated security as a certificated debt security ) as set forth in the applicable prospectus supplement. Except as set forth under the heading Global Debt Securities and Book-Entry System below, book-entry debt securities will not be issuable in certificated form.

*Certificated Debt Securities.* You may transfer or exchange certificated debt securities at any office we maintain for this purpose in accordance with the terms of the indenture. No service charge will be made for any transfer or exchange of certificated debt securities, but we may require payment of a sum sufficient to cover any tax or other governmental charge payable in connection with a transfer or exchange.

You may effect the transfer of certificated debt securities and the right to receive the principal of, and premium and interest on, certificated debt securities only by surrendering the certificate representing those certificated debt securities and either reissuance by us or the trustee of the certificate to the new holder or the issuance by us or the trustee of a new certificate to the new holder.

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*Global Debt Securities and Book-Entry System.* Each global debt security representing book-entry debt securities will be deposited with, or on behalf of, the depositary, and registered in the name of the depositary or a nominee of the depositary.

We will require the depositary to agree to follow the following procedures with respect to book-entry debt securities.

Ownership of beneficial interests in book-entry debt securities will be limited to persons who have accounts with the depositary for the related global debt security, which we refer to as participants, or persons who may hold interests through participants. Upon the issuance of a global debt security, the depositary will credit, on its book-entry registration and transfer system, the participants' accounts with the respective principal amounts of the book-entry debt securities represented by such global debt security beneficially owned by such participants. The accounts to be credited will be designated by any dealers, underwriters or agents participating in the distribution of the book-entry debt securities. Ownership of book-entry debt securities will be shown on, and the transfer of such ownership interests will be effected only through, records maintained by the depositary for the related global debt security (with respect to interests of participants) and on the records of participants (with respect to interests of persons holding through participants). The laws of some states may require that certain purchasers of securities take physical delivery of such securities in definitive form. These laws may impair the ability to own, transfer or pledge beneficial interests in book-entry debt securities.

So long as the depositary for a global debt security, or its nominee, is the registered owner of that global debt security, the depositary or its nominee, as the case may be, will be considered the sole owner or holder of the book-entry debt securities represented by such global debt security for all purposes under the indenture. Except as described below, beneficial owners of book-entry debt securities will not be entitled to have securities registered in their names, will not receive or be entitled to receive physical delivery of a certificate in definitive form representing securities and will not be considered the owners or holders of those securities under the indenture. Accordingly, each person beneficially owning book-entry debt securities must rely on the procedures of the depositary for the related global debt security and, if such person is not a participant, on the procedures of the participant through which such person owns its interest, to exercise any rights of a holder under the indenture.

We understand, however, that under existing industry practice, the depositary will authorize the persons on whose behalf it holds a global debt security to exercise certain rights of holders of debt securities, and the indenture provides that we, the trustee and our respective agents will treat as the holder of a debt security the persons specified in a written statement of the depositary with respect to that global debt security for purposes of obtaining any consents or directions required to be given by holders of the debt securities pursuant to the indenture.

We will make payments of principal of, and premium and interest on, book-entry debt securities to the depositary or its nominee, as the case may be, as the registered holder of the related global debt security. We, the trustee and any other agent of ours or agent of the trustee will not have any responsibility or liability for any aspect of the records relating to or payments made on account of beneficial ownership interests in a global debt security or for maintaining, supervising or reviewing any records relating to beneficial ownership interests.

We expect that the depositary, upon receipt of any payment of principal of, and premium or interest on, a global debt security, will immediately credit participants' accounts with payments in amounts proportionate to the respective amounts of book-entry debt securities held by each participant as shown on the records of such depositary. We also expect that payments by participants to owners of beneficial interests in book-entry debt securities held through those participants will be governed by standing customer instructions and customary practices, as is now the case with the securities held for the accounts of customers registered in street name, and will be the responsibility of those participants.

We will issue certificated debt securities in exchange for each global debt security if the depositary is at any time unwilling or unable to continue as depositary or ceases to be a clearing agency registered under the Exchange Act and a successor depositary registered as a clearing agency under the Exchange Act is not appointed by us within 90 days. In addition, we may at any time and in our sole discretion determine not to have the book-entry debt securities of any series represented by one or more global debt securities and, in that event, will issue certificated debt securities in exchange for the global debt securities of that series. Any certificated debt securities issued in exchange for a global debt security will be registered in such name or names as the depositary shall instruct the trustee. We expect that such instructions will be based upon directions received by the depositary from participants with respect to ownership of book-entry debt securities relating to such global debt security.

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We have obtained the foregoing information concerning the depositary and the depositary's book-entry system from sources we believe to be reliable, but we take no responsibility for the accuracy of this information.

### **No Protection in the Event of a Change of Control**

Unless we state otherwise in the applicable prospectus supplement, the debt securities will not contain any provisions that may afford holders of the debt securities protection in the event we have a change in control or in the event of a highly leveraged transaction (whether or not such transaction results in a change in control) that could adversely affect holders of debt securities.

### **Covenants**

We will set forth in the applicable prospectus supplement any restrictive covenants applicable to any issue of debt securities.

### **Consolidation, Merger and Sale of Assets**

We, and any guarantor, may not consolidate with or merge with or into, or convey, transfer or lease all or substantially all of our properties and assets to, any person, which we refer to as a successor person, unless:

we are, or the applicable guarantor is, the surviving entity or the successor person (if other than us or the guarantor) is a corporation organized and validly existing under the laws of any U.S. domestic jurisdiction and expressly assumes our or the guarantor's obligations on the debt securities or any applicable guarantee and under the indenture,

immediately after giving effect to the transaction, no event of default, and no event which, after notice or lapse of time, or both, would become an event of default, shall have occurred and be continuing under the indenture, and

certain other conditions are met.

### **Events of Default**

Event of default means, with respect to any series of debt securities, any of the following:

default in the payment of any interest upon any debt security of that series when it becomes due and payable, and continuance of that default for a period of 30 days (unless the entire amount of the payment is deposited by us with the trustee or with a paying agent prior to the expiration of the 30-day period),

default in the payment of principal of or premium on any debt security of that series when due and payable,

default in the performance or breach of any other covenant or warranty by us in the indenture (other than a covenant or warranty that has been included in the indenture solely for the benefit of a series of debt securities other than that series), which default continues uncured for a period of 60 days after we receive written notice from the trustee or we and the trustee receive written notice from the holders of not less than a majority in principal amount of the outstanding debt securities of that series as provided in the indenture,

certain events of bankruptcy, insolvency or reorganization of our Company, and

any other event of default provided with respect to debt securities of that series that is described in the applicable prospectus supplement accompanying this prospectus.

No event of default with respect to a particular series of debt securities (except as to certain events of bankruptcy, insolvency or reorganization) necessarily constitutes an event of default with respect to any other series of debt securities. The occurrence of an event of default may constitute an event of default under our bank credit agreements in existence from time to time. In addition, the occurrence of certain events of default or an acceleration under the indenture may constitute an event of default under certain of our other indebtedness outstanding from time to time.

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If an event of default with respect to debt securities of any series at the time outstanding occurs and is continuing, then the trustee or the holders of not less than a majority in principal amount of the outstanding debt securities of that series may, by a notice in writing to us (and to the trustee if given by the holders), declare to be due and payable immediately the principal (or, if the debt securities of that series are discount securities, that portion of the principal amount as may be specified in the terms of that series) of, and accrued and unpaid interest, if any, on all debt securities of that series. In the case of an event of default resulting from certain events of bankruptcy, insolvency or reorganization, the principal (or such specified amount) of and accrued and unpaid interest, if any, on all outstanding debt securities will become and be immediately due and payable without any declaration or other act on the part of the trustee or any holder of outstanding debt securities. At any time after a declaration of acceleration with respect to debt securities of any series has been made, but before a judgment or decree for payment of the money due has been obtained by the trustee, the holders of a majority in principal amount of the outstanding debt securities of that series may rescind and annul the acceleration if all events of default, other than the non-payment of accelerated principal and interest, if any, with respect to debt securities of that series, have been cured or waived as provided in the indenture. We refer you to the prospectus supplement relating to any series of debt securities that are discount securities for the particular provisions relating to acceleration of a portion of the principal amount of such discount securities upon the occurrence of an event of default.

The indenture provides that the trustee will be under no obligation to exercise any of its rights or powers under the indenture at the request of any holder of outstanding debt securities, unless the trustee receives indemnity satisfactory to it against any loss, liability or expense. Subject to certain rights of the trustee, the holders of a majority in principal amount of the outstanding debt securities of any series will have the right to direct the time, method and place of conducting any proceeding for any remedy available to the trustee or exercising any trust or power conferred on the trustee with respect to the debt securities of that series.

No holder of any debt security of any series will have any right to institute any proceeding, judicial or otherwise, with respect to the indenture or for the appointment of a receiver or trustee, or for any remedy under the indenture, unless:

that holder has previously given to the trustee written notice of a continuing event of default with respect to debt securities of that series, and

the holders of at least a majority in principal amount of the outstanding debt securities of that series have made written request, and offered reasonable indemnity, to the trustee to institute the proceeding as trustee, and the trustee has not received from the holders of a majority in principal amount of the outstanding debt securities of that series a direction inconsistent with that request and has failed to institute the proceeding within 60 days.

Notwithstanding the foregoing, the holder of any debt security will have an absolute and unconditional right to receive payment of the principal of, premium and any interest on that debt security on or after the due dates expressed in that debt security and to institute suit for the enforcement of payment.

The indenture requires us, within 120 days after the end of our fiscal year, to furnish to the trustee a statement as to compliance with the indenture. The indenture provides that the trustee may withhold notice to the holders of debt securities of any series of any default or event of default (except in payment on any debt securities of that series) with respect to debt securities of that series if it in good faith determines that withholding notice is in the interest of the holders of those debt securities.



**Modification and Waiver**

We may modify and amend the indenture with the consent of the holders of at least a majority in principal amount of the outstanding debt securities of each series affected by the modifications or amendments. We may not make any modification or amendment without the consent of the holders of each affected debt security then outstanding if that amendment will:

reduce the amount of debt securities whose holders must consent to an amendment or waiver,

reduce the rate of or extend the time for payment of interest (including default interest) on any debt security,

reduce the principal of or premium on or change the fixed maturity of any debt security or reduce the amount of, or postpone the date fixed for, the payment of any sinking fund or analogous obligation with respect to any series of debt securities,

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reduce the principal amount of discount securities payable upon acceleration of maturity,

waive a default in the payment of the principal of, premium or interest on any debt security (except a rescission of acceleration of the debt securities of any series by the holders of at least a majority in aggregate principal amount of the then outstanding debt securities of that series and a waiver of the payment default that resulted from such acceleration),

make the principal of or premium or interest on any debt security payable in currency other than that stated in the debt security,

make any change to certain provisions of the indenture relating to, among other things, the right of holders of debt securities to receive payment of the principal of, premium and interest on those debt securities and to institute suit for the enforcement of any such payment and to waivers or amendments, or

waive a redemption payment with respect to any debt security.

Except for certain specified provisions, the holders of at least a majority in principal amount of the outstanding debt securities of any series may on behalf of the holders of all debt securities of that series waive our compliance with provisions of the indenture. The holders of a majority in principal amount of the outstanding debt securities of any series may on behalf of the holders of all the debt securities of such series waive any past default under the indenture with respect to that series and its consequences, except a default in the payment of the principal of, or premium or any interest on, any debt security of that series; *provided, however*, that the holders of a majority in principal amount of the outstanding debt securities of any series may rescind an acceleration and its consequences, including any related payment default that resulted from the acceleration.

**Defeasance of Debt Securities and Certain Covenants in Certain Circumstances**

*Legal Defeasance.* The indenture provides that, unless otherwise provided by the terms of the applicable series of debt securities, we may be discharged from any and all obligations in respect of the debt securities of any series (except for certain obligations to register the transfer or exchange of debt securities of such series, to replace stolen, lost or mutilated debt securities of such series, and to maintain paying agencies and certain provisions relating to the treatment of funds held by paying agents). We will be so discharged upon the deposit with the trustee, in trust, of money and/or U.S. government obligations or, in the case of debt securities denominated in a single currency other than U.S. dollars, foreign government obligations, that, through the payment of interest and principal in accordance with their terms, will provide money in an amount sufficient in the opinion of a nationally recognized firm of independent public accountants to pay and discharge each installment of principal, premium and interest on and any mandatory sinking fund payments in respect of the debt securities of that series on the stated maturity of those payments in accordance with the terms of the indenture and those debt securities.

This discharge may occur only if, among other things, we have delivered to the trustee an opinion of counsel stating that we have received from, or there has been published by, the United States Internal Revenue Service, or IRS, a ruling or, since the date of execution of the indenture, there has been a change in the applicable United States federal income tax law, in either case to the effect that, and based thereon such opinion shall confirm that, the holders of the debt securities of that series will not recognize income, gain or loss for United States federal income tax purposes as a result of the deposit, defeasance and discharge and will be subject to United States federal income tax on the same

amounts and in the same manner and at the same times as would have been the case if the deposit, defeasance and discharge had not occurred.

*Defeasance of Certain Covenants.* The indenture provides that, unless otherwise provided by the terms of the applicable series of debt securities, upon compliance with certain conditions:

we may omit to comply with the covenant described under the heading Consolidation, Merger and Sale of Assets and certain other covenants set forth in the indenture, as well as any additional covenants that may be set forth in the applicable prospectus supplement, and

any omission to comply with those covenants will not constitute a default or an event of default with respect to the debt securities of that series, or covenant defeasance.

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The conditions include:

depositing with the trustee money and/or U.S. government obligations or, in the case of debt securities denominated in a single currency other than U.S. dollars, foreign government obligations, that, through the payment of interest and principal in accordance with their terms, will provide money in an amount sufficient in the opinion of a nationally recognized firm of independent public accountants to pay and discharge each installment of principal of, premium and interest on and any mandatory sinking fund payments in respect of the debt securities of that series on the stated maturity of those payments in accordance with the terms of the indenture and those debt securities, and

delivering to the trustee an opinion of counsel to the effect that the holders of the debt securities of that series will not recognize income, gain or loss for United States federal income tax purposes as a result of the deposit and related covenant defeasance and will be subject to United States federal income tax on the same amounts and in the same manner and at the same times as would have been the case if the deposit and related covenant defeasance had not occurred.

*Covenant Defeasance and Events of Default.* In the event we exercise our option to effect covenant defeasance with respect to any series of debt securities and the debt securities of that series are declared due and payable because of the occurrence of any event of default, the amount of money and/or U.S. government obligations or foreign government obligations on deposit with the trustee will be sufficient to pay amounts due on the debt securities of that series at the time of their stated maturity but may not be sufficient to pay amounts due on the debt securities of that series at the time of the acceleration resulting from the event of default. In such a case, we would remain liable for those payments.

*Foreign Government Obligations* means, with respect to debt securities of any series that are denominated in a currency other than U.S. dollars:

direct obligations of the government that issued or caused to be issued such currency for the payment of which obligations its full faith and credit is pledged which are not callable or redeemable at the option of the issuer thereof, or

obligations of a person controlled or supervised by or acting as an agency or instrumentality of that government the timely payment of which is unconditionally guaranteed as a full faith and credit obligation by that government which are not callable or redeemable at the option of the issuer thereof.

## **Governing Law**

The indenture and the debt securities will be governed by, and construed in accordance with, the internal laws of the State of New York.

## **DESCRIPTION OF COMMON STOCK**

### **General**

This prospectus describes the general terms of the Company's common stock. For a more detailed description of these securities, you should read the applicable provisions of the Maryland General Corporation Law, or MGCL, and the Company's charter and bylaws, as amended and supplemented from time to time. Copies of the Company's existing charter and bylaws are filed with the Securities and Exchange Commission and are incorporated by reference as exhibits to the registration statement, of which this prospectus is a part. See "Where You Can Find More Information and Incorporation of Certain Documents by Reference."

When the Company offers to sell shares of a particular class or series of stock, the Company will describe the specific terms of the class or series in a prospectus supplement. Accordingly, for a description of the terms of any class or series of stock, you must refer to both the prospectus supplement relating to that class or series and the description of stock in this prospectus. To the extent the information contained in the prospectus supplement differs from this summary description, you should rely on the information in the prospectus supplement.

The Company's charter provides that it may issue up to 300,000,000 shares of common stock, \$0.01 par value per share. The Company's charter authorizes the Company's board of directors to amend the Company's charter to increase or decrease the number of authorized shares of stock or the number of shares of stock of any class or series

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without stockholder approval. As of August 27, 2015, 203,567,695 shares of the Company's common stock were issued and outstanding. Under Maryland law, stockholders generally are not liable for the Company's debts or obligations.

All shares of the Company's common stock offered hereby will be duly authorized, fully paid and nonassessable. Subject to the preferential rights of any other class or series of stock and to the provisions of the Company's charter regarding the restrictions on transfer and ownership of stock, holders of shares of the Company's common stock are entitled to receive dividends on such stock if, as and when authorized by the board of directors out of assets legally available therefor and declared by the Company and to share ratably in the assets of the Company legally available for distribution to the Company's stockholders in the event of the Company's liquidation, dissolution or winding up, after payment of or adequate provision for all known debts and liabilities of the Company.

Subject to the provisions of the Company's charter regarding the restrictions on transfer and ownership of stock, each outstanding share of the Company's common stock entitles the holder to one vote on all matters submitted to a vote of stockholders, including the election of directors and, except as provided with respect to any other class or series of stock, the holders of such shares will possess the exclusive voting power. There is no cumulative voting in the election of the Company's directors, which means that the holders of a majority of the outstanding shares of the Company's common stock can elect all of the directors then standing for election and the holders of the remaining shares will not be able to elect any directors.

Holders of shares of the Company's common stock have no preference, conversion, exchange, sinking fund, redemption or appraisal rights and have no preemptive rights to subscribe for any of the Company's securities. Subject to the provisions of the Company's charter regarding the restrictions on transfer and ownership of stock, shares of the Company's common stock will have equal dividend, liquidation and other rights.

Under the MGCL, a Maryland corporation generally cannot dissolve, amend its charter, merge or consolidate with, or convert into, another entity, sell all or substantially all of its assets, engage in a share exchange or engage in similar transactions outside the ordinary course of business unless such action is advised by the board of directors and approved by the affirmative vote of stockholders entitled to cast at least two-thirds of the votes entitled to be cast on the matter unless a lesser percentage (but not less than a majority of all of the votes entitled to be cast on the matter) is set forth in the corporation's charter. The Company's charter provides, except with respect to an amendment to the section relating to the removal of directors and the corresponding reference in the general amendment provision, that the foregoing items may be approved by a majority of all the votes entitled to be cast on the matter. However, Maryland law permits a corporation to transfer all or substantially all of its assets without the approval of the stockholders of the corporation to one or more persons if all of the equity interests of the person or persons are owned, directly or indirectly, by the corporation. Because operating assets may be held by a corporation's subsidiaries, as in our situation, this may mean that our operating partnership or any other subsidiary can merge or transfer all of its assets without a vote of the Company's stockholders.

The Company's charter authorizes its board of directors to classify and reclassify any unissued shares of the Company's common stock into other classes or series of stock. Prior to issuance of shares of each class or series, the Company's board of directors is required by the MGCL and the Company's charter to set, subject to the provisions of its charter regarding the restrictions on transfer and ownership of stock, the terms, preferences, conversion or other rights, voting powers, restrictions, limitations as to dividends or other distributions, qualifications and terms and conditions of redemption for each such class or series.

## **Power to Increase Authorized Stock and Issue Additional Shares of the Company's Common Stock**

We believe that the power of the Company's board of directors to amend the Company's charter to increase the number of authorized shares of stock or the number of shares of any class or series of stock, to authorize the Company to issue additional authorized but unissued shares of the Company's common stock and to classify or reclassify unissued shares of the Company's common stock and thereafter to authorize the Company to issue such classified or reclassified shares of stock will provide us with increased flexibility in structuring possible future financings and acquisitions and in meeting other needs which might arise. The additional classes or series of stock, as well as the common stock, will be available for issuance without further action by the Company's stockholders, unless stockholder consent is required by applicable law or the rules of any stock exchange or automated quotation

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system on which our securities may be listed or traded. Although the Company's board of directors does not currently intend to do so, it could authorize the Company to issue a class or series of stock that could, depending upon the terms of the particular class or series, delay, defer or prevent a transaction or a change of control of the Company that might involve a premium price for the Company's stockholders or otherwise be in their best interest.

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

To assist us in complying with certain federal income tax requirements applicable to REITs, among other purposes, the Company has adopted certain restrictions relating to the ownership and transfer of the Company's stock. See [Restrictions on Ownership and Transfer](#).

### **Transfer Agent and Registrar**

The transfer agent and registrar for the Company's common stock is Computershare Shareowner Services LLC.

## **DESCRIPTION OF PREFERRED STOCK**

### **General**

This prospectus describes the general terms of the Company's preferred stock. For a more detailed description of these securities, you should read the applicable provisions of the MGCL and the Company's charter and bylaws, as amended and supplemented from time to time. Copies of the Company's existing charter and bylaws are filed with the Securities and Exchange Commission and are incorporated by reference as exhibits to the registration statement, of which this prospectus is a part. See [Where You Can Find More Information](#) and [Incorporation of Certain Documents by Reference](#).

When the Company offers to sell a particular class or series of stock, the Company will describe the specific terms of the series in a prospectus supplement. Accordingly, for a description of the terms of any class or series of stock, you must refer to both the prospectus supplement relating to that class or series and the description of stock in this prospectus. To the extent the information contained in the prospectus supplement differs from this summary description, you should rely on the information in the prospectus supplement.

The Company's charter provides that the Company may issue up to 15,000,000 shares of preferred stock, \$0.01 par value per share. The Company's charter authorizes its board of directors to amend the Company's charter to increase or decrease the number of authorized shares of stock or the number of shares of stock of any class or series without stockholder approval.

The Company's charter authorizes its board of directors to classify any unissued shares of preferred stock and to reclassify any previously classified but unissued shares of any class or series. Prior to issuance of shares of each class or series, the Company's board of directors is required by the MGCL and the Company's charter to set the terms, preferences, conversion or other rights, voting powers, restrictions, limitations as to dividends or other distributions, qualifications and terms and conditions of redemption for each such class or series.

The issuance of preferred stock could adversely affect the voting power, dividend rights and other rights of holders of the Company's common stock. Although the Company's board of directors does not have the intention at this present time, it could establish a series of preferred stock, that could, depending on the terms of the series, delay, defer or prevent a transaction or a change in control of the Company that might involve a premium price for the Company's common stock or otherwise be in the best interest of the holders thereof. Management believes that the availability of



preferred stock will provide the company with increased flexibility in structuring possible future financing and acquisitions and in meeting other needs that might arise.

Under Maryland law, stockholders generally are not liable for the corporation's debts or obligations.

The description of preferred stock in this prospectus and the description of the terms of a particular class or series of preferred stock set forth in the applicable prospectus supplement do not purport to be complete and are qualified in their entirety by reference to the articles supplementary relating to that class or series.

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The preferences and other terms of the preferred stock of each class or series will be fixed by the articles supplementary relating to such class or series. A prospectus supplement, relating to each class or series, will specify the terms of the preferred stock as follows:

the designation and stated value of the preferred stock,

the number of shares of the preferred stock offered, the liquidation preference per share and the offering price of the preferred stock,

the dividend rate(s), period(s), and/or payment date(s) or method(s) of calculation thereof applicable to the preferred stock,

whether the dividends on the preferred stock are cumulative or not and, if cumulative, the date from which dividends on the preferred stock shall accumulate,

the provision for a sinking fund, if any, for the preferred stock,

the provision for redemption, if applicable, of the preferred stock,

any listing of the preferred stock on any securities exchange,

preemptive rights, if any,

the terms and conditions, if applicable, upon which the preferred stock will be converted into the Company's common stock, including the conversion price (or manner of calculation thereof),

a discussion of any material United States federal income tax consequences applicable to an investment in the preferred stock,

any limitations on actual and constructive ownership and restrictions on transfer, in each case as may be appropriate to preserve the Company's status as a REIT,

the relative ranking and preferences of the preferred stock as to dividend rights and rights upon liquidation, dissolution or winding up of the affairs of the Company,

any limitations on issuance of any class or series of preferred stock ranking senior to or on a parity with such class or series of preferred stock as to dividend rights and rights upon liquidation, dissolution or winding up of the affairs of the Company,

voting rights, if any, of the preferred stock, and

any other specific terms, preferences, rights, limitations or restrictions of the preferred stock.

### **Rank**

Unless otherwise specified in the applicable prospectus supplement, the preferred stock will, with respect to dividend rights and rights upon liquidation, dissolution or winding up of our company, rank: (1) senior to all classes or series of the Company's common stock, and to any other class or series of the Company's stock expressly designated as ranking junior to the preferred stock, (2) on parity with any class or series of the Company's stock expressly designated as ranking on parity with the preferred stock and (3) junior to any other class or series of the Company's stock expressly designated as ranking senior to the preferred stock.

### **Conversion Rights**

The terms and conditions, if any, upon which any shares of any class or series of preferred stock are convertible into the Company's common stock will be set forth in the applicable prospectus supplement relating thereto. Such terms will include the number of shares of the Company's common stock into which the shares of preferred stock are convertible, the conversion price (or manner of calculation thereof), the conversion period, provisions as to whether conversion will be at the option of the holders of such class or series of preferred stock, the events requiring an adjustment of the conversion price and provisions affecting conversion in the event of the redemption of such class or series of preferred stock.

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### **Power to Increase Authorized Stock and Issue Additional Shares of the Company's Preferred Stock**

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

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

To assist us in complying with certain federal income tax requirements applicable to REITs, among other purposes, the Company has adopted certain restrictions relating to the ownership and transfer of the Company's stock. The Company expects to adopt similar restrictions with respect to any additional class or series of capital stock offered pursuant to this prospectus under the articles supplementary for each such class or series. The applicable prospectus supplement will specify any additional ownership limitation relating to such class or series. See "Restrictions on Ownership and Transfer."

### **Transfer Agent**

The transfer agent and registrar for the Company's preferred stock is Computershare Shareowner Services LLC.

## **DESCRIPTION OF DEPOSITARY SHARES**

We may, at our option, elect to offer depositary shares, which represent receipts for fractional interests in shares of the Company's preferred stock. Each depositary share will represent ownership of and entitlement to all rights and preferences of a fraction of a share of preferred stock of a specified series (including dividend, voting, redemption and liquidation rights). The applicable fraction will be specified in a prospectus supplement. The shares of the Company's preferred stock represented by the depositary shares will be deposited with a depositary named in the applicable prospectus supplement, under a deposit agreement, among the Company, the depositary and the holders of the certificates representing depositary shares, or depositary receipts. Depositary receipts will be delivered to those persons purchasing depositary shares in the offering. The depositary will be the transfer agent, registrar and dividend disbursing agent for the depositary shares. Holders of depositary receipts agree to be bound by the deposit agreement, which requires holders to take certain actions such as filing proof of residence and paying certain charges.

The summary of the terms of the depositary shares contained in this prospectus does not purport to be complete and is subject to, and qualified in its entirety by, the provisions of the deposit agreement, the Company's charter and the form of articles supplementary for the applicable class or series of preferred stock.

### **Dividends**

The depositary will distribute all cash dividends and other cash distributions received in respect of the series of the Company's preferred stock represented by the depositary shares to the record holders of depositary receipts in proportion to the number of depositary shares owned by such holders on the relevant record date, which will be the same date as the record date fixed by us for the applicable series of preferred stock. The depositary, however, will distribute only such amount as can be distributed without attributing to any depositary share a fraction of one cent, and any balance not so distributed will be added to and treated as part of the next sum received by the depositary for distribution to record holders of depositary receipts then outstanding.

In the event of a distribution other than in cash, the depositary will distribute property received by it to the record holders of depositary receipts entitled thereto, in proportion, as nearly as may be practicable, to the number of

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depository shares owned by such holders on the relevant record date, unless the depository determines (after consultation with us) that it is not feasible to make such distribution, in which case the depository may (with our approval) adopt any other method for such distribution as it deems equitable and appropriate, including the sale of such property (at such place or places and upon such terms as it may deem equitable and appropriate) and distribution of the net proceeds from such sale to such holders.

No distribution will be made in respect of any depository share to the extent that it represents any preferred stock transferred to a trust for the benefit of one or more charitable beneficiaries. See Restrictions on Ownership and Transfer.

## **Liquidation Preference**

In the event of the liquidation, dissolution or winding up of the affairs of the Company, whether voluntary or involuntary, the holders of each depository share will be entitled to the fraction of the liquidation preference accorded each share of the applicable series of preferred stock as set forth in the applicable prospectus supplement.

## **Redemption**

If the series of the Company's preferred stock represented by the applicable series of depository shares is redeemable, such depository shares will be redeemed from the proceeds received by the depository resulting from the redemption, in whole or in part, of the shares of preferred stock held by the depository. Whenever the Company redeems any preferred stock held by the depository, the depository will redeem as of the same redemption date the number of depository shares representing the preferred stock so redeemed. The depository will mail the notice of redemption promptly upon receipt of such notice from the Company and not less than 30 nor more than 60 days prior to the date fixed for redemption of the preferred stock and the depository shares to the record holders of the depository receipts.

## **Voting**

Promptly upon receipt of notice of any meeting at which the holders of the series of the Company's preferred stock represented by the applicable series of depository shares are entitled to vote, the depository will mail the information contained in such notice of meeting to the record holders of the depository receipts as of the record date for such meeting. Each such record holder of depository receipts will be entitled to instruct the depository as to the exercise of the voting rights pertaining to the number of shares of preferred stock represented by such record holder's depository shares. The depository will endeavor, insofar as practicable, to vote such preferred stock represented by such depository shares in accordance with such instructions, and the Company will agree to take all action which may be deemed necessary by the depository in order to enable the depository to do so. The depository will abstain from voting any of the preferred stock to the extent that it does not receive specific instructions from the holders of depository receipts.

## **Withdrawal of Preferred Stock**

Upon surrender of depository receipts at the principal office of the depository and payment of any unpaid amount due the depository, and subject to the terms of the deposit agreement, the owner of the depository shares represented thereby is entitled to delivery of the number of whole shares of preferred stock and all money and other property, if any, represented by such depository shares. Partial shares of preferred stock will not be issued. If the depository receipts delivered by the holder represent a number of depository shares in excess of the number of depository shares representing the number of whole shares of preferred stock to be withdrawn, the depository will deliver to such holder at the same time a new depository receipt representing such excess number of depository shares. Holders of preferred

stock thus withdrawn will not thereafter be entitled to deposit such shares under the deposit agreement or to receive depositary receipts representing depositary shares therefor.

**Amendment and Termination of Deposit Agreement**

The form of depositary receipt representing the depositary shares and any provision of the deposit agreement may at any time and from time to time be amended by agreement between us and the depositary. However, any amendment which materially and adversely alters the rights of the holders (other than any change in fees) of depositary shares will not be effective unless such amendment has been approved by at least a majority of the

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depository shares then outstanding. No such amendment may impair the right, subject to the terms of the deposit agreement, of any owner of any depository shares to surrender the depository receipt representing such depository shares with instructions to the depository to deliver to the holder of the preferred stock and all money and other property, if any, represented thereby, except in order to comply with mandatory provisions of applicable law.

The deposit agreement will be permitted to be terminated by the Company upon not less than 30 days' prior written notice to the applicable depository if (1) such termination is necessary to preserve the Company's status as a REIT or (2) a majority of each series of preferred stock affected by such termination consents to such termination, whereupon such depository will be required to deliver or make available to each holder of depository receipts, upon surrender of the depository receipts held by such holder, such number of whole or fractional shares of preferred stock as are represented by the depository shares represented by such depository receipts together with any other property held by such depository with respect to such depository receipts. We will agree that if the deposit agreement is terminated to preserve the Company's status as a REIT, then we will use our best efforts to list the Company's preferred stock issued upon surrender of the related depository shares on a national securities exchange. In addition, the deposit agreement will automatically terminate if (1) all outstanding depository shares thereunder shall have been redeemed, (2) there shall have been a final distribution in respect of the related preferred stock in connection with any liquidation, dissolution or winding-up of the Company and such distribution shall have been distributed to the holders of depository receipts representing the depository shares representing such preferred stock or (3) each share of the related preferred stock shall have been converted into stock of the Company not so represented by depository shares.

## **Charges of Depository**

We will pay all transfer and other taxes and governmental charges arising solely from the existence of the depository arrangements. We will pay charges of the depository in connection with the initial deposit of the preferred stock and initial issuance of the depository shares, and redemption of the preferred stock and all withdrawals of preferred stock by owners of depository shares. Holders of depository receipts will pay transfer, income and other taxes and governmental charges and certain other charges as are provided in the deposit agreement for their accounts. In certain circumstances, the depository may refuse to transfer depository shares, may withhold dividends and distributions and sell the depository shares represented by such depository receipt if such charges are not paid. The applicable prospectus supplement will include information with respect to fees and charges, if any, in connection with the deposit or substitution of the underlying securities, the receipt and distribution of dividends, the sale or exercise of rights, the withdrawal of the underlying security, and the transferring, splitting or grouping of receipts. The applicable prospectus supplement will also include information with respect to the right to collect the fees and charges, if any, against dividends received and deposited securities.

## **Miscellaneous**

The depository will forward to the holders of depository receipts all notices, reports and proxy soliciting material from us which are delivered to the depository and which we are required to furnish to the holders of the preferred stock. In addition, the depository will make available for inspection by holders of depository receipts at the principal office of the depository, and at such other places as it may from time to time deem advisable, any notices, reports and proxy soliciting material received from the Company which are received by the depository as the holder of preferred stock. The applicable prospectus supplement will include information about the rights, if any, of holders of receipts to inspect the transfer books of the depository and the list of holders of receipts.

Neither the depository nor the Company assumes any obligation or will be subject to any liability under the deposit agreement to holders of depository receipts other than for its negligence or willful misconduct. Neither the depository nor the Company will be liable if it is prevented or delayed by law or any circumstance beyond its control in



performing its obligations under the deposit agreement. The obligations of the Company and the depositary under the deposit agreement will be limited to performance in good faith of their duties thereunder, and they will not be obligated to prosecute or defend any legal proceeding in respect of any depositary shares or preferred stock unless satisfactory indemnity is furnished. The Company and the depositary may rely on written advice of counsel or accountants, on information provided by holders of the depositary receipts or other persons believed in good faith to be competent to give such information and on documents believed to be genuine and to have been signed or presented by the proper party or parties.

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In the event the depositary shall receive conflicting claims, requests or instructions from any holders of depositary receipts, on the one hand, and the Company, on the other hand, the depositary shall be entitled to act on such claims, requests or instructions received from the Company.

## **Resignation and Removal of Depositary**

The depositary may resign at any time by delivering to the Company notice of its election to do so, and the Company may at any time remove the depositary, any such resignation or removal to take effect upon the appointment of a successor depositary and its acceptance of such appointment. Such successor depositary must be appointed within 60 days after delivery of the notice for resignation or removal and must be a bank or trust company having its principal office in the United States and having a combined capital and surplus of at least \$150,000,000.

## **DESCRIPTION OF WARRANTS**

We may issue warrants for the purchase of the Company's debt securities, shares of common stock, shares of preferred stock or depositary shares and may issue warrants independently or together with debt securities, common stock, preferred stock or depositary shares or attached to or separate from such securities. We will issue each series of warrants under a separate warrant agreement between the Company and a bank or trust company as warrant agent, as specified in the applicable prospectus supplement.

The warrant agent will act solely as our agent in connection with the warrants and will not act for or on behalf of warrant holders. The following sets forth certain general terms and provisions of the warrants that may be offered under this registration statement. Further terms of the warrants and the applicable warrant agreement will be set forth in the applicable prospectus supplement.

### **Debt Warrants**

The applicable prospectus supplement will describe the terms of the debt warrants in respect of which this prospectus is being delivered, including, where applicable, the following:

the title of the debt warrants,

the aggregate number of the debt warrants outstanding,

the price or prices at which the debt warrants will be issued,

the designation, aggregate principal amount and terms of the Company's debt securities purchasable upon exercise of the debt warrants, and the procedures and conditions relating to the exercise of the debt warrants,

the designation and terms of any related debt securities with which the debt warrants are issued, and the number of the debt warrants issued with each security,

the date, if any, on and after which the debt warrants and the related securities will be separately transferable, including any limitations on ownership and transfer of such warrants as may be appropriate to preserve the Company's status as a REIT,

the principal amount of debt securities purchasable upon exercise of each debt warrant, and the price at which the debt securities may be purchased upon exercise,

the provisions, if any, for changes to or adjustments in the exercise price,

the date on which the right to exercise the debt warrants shall commence and the date on which such right shall expire,

the minimum or maximum amount of debt warrants that may be exercised at any one time,

information with respect to book-entry procedures, if any,

a discussion of material United States federal income tax considerations applicable to an investment in the debt warrants, and

any other terms of the debt warrants, including terms, procedures and limitations relating to the transferability, exercise and exchange of such warrants.

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Debt warrant certificates will be exchangeable for new debt warrant certificates of different denominations and debt warrants may be exercised at the corporate trust office of the warrant agent or any other office indicated in the applicable prospectus supplement. Prior to the exercise of their debt warrants, holders of debt warrants will not have any of the rights of holders, and will not be entitled to payments of principal, premium or interest on, the securities purchasable upon the exercise of debt warrants.

**Equity Warrants**

The applicable prospectus supplement will describe the terms of the warrants to purchase depository shares, common stock or preferred stock, or equity warrants, in respect of which this prospectus is being delivered, including, where applicable, the following:

the title of the equity warrants,

the aggregate number of the equity warrants outstanding,

the price or prices at which the equity warrants will be issued,

the type and number of securities purchasable upon exercise of the equity warrants,

the date, if any, on and after which the equity warrants and the related securities will be separately transferable, including any limitations on ownership and transfer of such warrants as may be appropriate to preserve the Company's status as a REIT,

the price at which each security purchasable upon exercise of the equity warrants may be purchased,

the provisions, if any, for changes to or adjustments in the exercise price,

the date on which the right to exercise the equity warrants shall commence and the date on which such right shall expire,

the minimum or maximum amount of equity warrants that may be exercised at any one time,

information with respect to book-entry procedures, if any,

any anti-dilution protection,

a discussion of material United States federal income tax considerations applicable to an investment in the equity warrants, and

any other terms of the equity warrants, including terms, procedures and limitations relating to the transferability, exercise and exchange of such warrants.

Equity warrant certificates will be exchangeable for new equity warrant certificates of different denominations and warrants may be exercised at the corporate trust office of the warrant agent or any other office indicated in the applicable prospectus supplement. Prior to the exercise of their equity warrants, holders of equity warrants will not have any of the rights of holders of the securities purchasable upon such exercise or to any dividend payments or voting rights as to which holders of the depositary shares, common stock or preferred stock purchasable upon such exercise may be entitled.

Except as provided in the applicable prospectus supplement, the exercise price and the number of depositary shares, shares of the Company's common stock or shares of the Company's preferred stock purchasable upon the exercise of each equity warrant will be subject to adjustment in certain events, including the issuance of a stock dividend to the holders of the underlying common stock or preferred stock or a stock split, reverse stock split, combination, subdivision or reclassification of the underlying common stock or preferred stock, as the case may be. In lieu of adjusting the number of shares purchasable upon exercise of each equity warrant, we may elect to adjust the number of equity warrants. Unless otherwise provided in the applicable prospectus supplement, no adjustments in the number of shares purchasable upon exercise of the equity warrants will be required until all cumulative adjustments require an adjustment of at least 1% thereof. We may, at our option, reduce the exercise price at any time. No fractional shares will be issued upon exercise of equity warrants, but we will pay the cash value of any fractional shares otherwise issuable. Notwithstanding the foregoing, except as otherwise provided in the applicable prospectus supplement, in case of any consolidation, merger or sale or conveyance of our property as an entirety or

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substantially as an entirety, the holder of each outstanding equity warrant will have the right to the kind and amount of shares of the Company's stock and other securities and property, including cash, receivable by a holder of the number of depositary shares, shares of the Company's common stock or shares of the Company's preferred stock into which each equity warrant was exercisable immediately prior to the particular triggering event.

### **Exercise of Warrants**

Each warrant will entitle the holder to purchase for cash such number of debt securities, depositary shares, shares of the Company's common stock or shares of the Company's preferred stock, at such exercise price as shall, in each case, be set forth in, or be determinable as set forth in, the applicable prospectus supplement relating to the warrants offered thereby. Unless otherwise specified in the applicable prospectus supplement, warrants may be exercised at any time up to 5:00 p.m., New York City time, on the expiration date set forth in applicable prospectus supplement. After 5:00 p.m., New York City time, on the expiration date, unexercised warrants will be void.

Warrants may be exercised as set forth in the applicable prospectus supplement relating to the warrants. Upon receipt of payment and the warrant certificate properly completed and duly executed at the corporate trust office of the warrant agent or any other office indicated in the applicable prospectus supplement, we will, as soon as practicable, forward the securities purchasable upon such exercise. If less than all of the warrants that are represented by such warrant certificate are exercised, a new warrant certificate will be issued for the remaining amount of warrants.

### **DESCRIPTION OF RIGHTS**

We may issue rights to the Company's stockholders to purchase shares of the Company's common stock. Each series of rights will be issued under a separate rights agreement to be entered into between the Company and a bank or trust company, as rights agent. The rights agent will act solely as the Company's agent in connection with the certificates relating to the rights of the series of certificates and will not assume any obligation or relationship of agency or trust for or with any holders of rights certificates or beneficial owners of rights. The statements made in this section relating to the rights are summaries only. These summaries are not complete. When the Company issues rights, the Company will provide the specific terms of the rights and the applicable rights agreement in a prospectus supplement. To the extent the information contained in the prospectus supplement differs from this summary description, you should rely on the information in the prospectus supplement. For more detail, we refer you to the applicable rights agreement itself, which we will file as an exhibit to, or incorporate by reference in, the registration statement.

The Company will provide in a prospectus supplement the following terms of the rights being issued:

the date of determining the stockholders entitled to the rights distribution,

the aggregate number of shares of the Company's common stock purchasable upon exercise of the rights,

the exercise price,

the aggregate number of rights issued,

the date, if any, on and after which the rights will be separately transferable, including any limitations on ownership and transfer of such rights as may be appropriate to preserve the Company's status as a REIT,

the date on which the right to exercise the rights will commence, and the date on which the right will expire,

a discussion of any material United States federal income tax considerations applicable to an investment in the rights, and

any other terms of the rights, including terms, procedures and limitations relating to the distribution, exchange and exercise of the rights.

**Exercise of Rights**

Each right will entitle the holder of rights to purchase for cash the principal amount of shares of the Company's common stock at the exercise price provided in the applicable prospectus supplement. Rights may be exercised at any time up to the close of business on the expiration date for the rights provided in the applicable prospectus supplement. After the close of business on the expiration date, all unexercised rights will be void.

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Holders may exercise rights as described in the applicable prospectus supplement. Upon receipt of payment and the rights certificate properly completed and duly executed at the corporate trust office of the rights agent or any other office indicated in the prospectus supplement, the Company will, as soon as practicable, forward the shares of common stock purchasable upon exercise of the rights. If less than all of the rights issued in any rights offering are exercised, the Company may offer any unsubscribed securities directly to persons other than stockholders, to or through agents, underwriters or dealers or through a combination of such methods, including pursuant to standby underwriting arrangements, as described in the applicable prospectus supplement.

**DESCRIPTION OF UNITS**

We may issue units consisting of two or more other constituent securities. These units may be issuable as, and for a specified period of time may be transferable only as a single security, rather than as the separate constituent securities comprising such units. The statements made in this section relating to the units are summaries only. These summaries are not complete. When we issue units, we will provide the specific terms of the units in a prospectus supplement. To the extent the information contained in the prospectus supplement differs from this summary description, you should rely on the information in the prospectus supplement.

When we issue units, we will provide in a prospectus supplement the following terms of the units being issued:

the title of any series of units,

identification and description of the separate constituent securities comprising the units,

the price or prices at which the units will be issued,

the date, if any, on and after which the constituent securities comprising the units will be separately transferable, including any limitations on ownership and transfer of such units as may be appropriate to preserve the Company's status as a REIT,

information with respect to any book-entry procedures,

a discussion of any material United States federal income tax considerations applicable to an investment in the units, and

any other terms of the units and their constituent securities.



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**RESTRICTIONS ON OWNERSHIP AND TRANSFER**

*The following summary with respect to restrictions on ownership and transfer of the Company's stock sets forth certain general terms and provisions of the Company's charter to which any prospectus supplement may relate. This summary does not purport to be complete and is subject to and qualified in its entirety by reference to the Company's charter. Copies of the Company's existing charter documents are filed with the Securities and Exchange Commission and are incorporated by reference as exhibits to the registration statement of which this prospectus is a part. Any amendment or supplement to the Company's charter relating to an issuance of securities pursuant to this prospectus shall be filed with the Securities and Exchange Commission and shall be incorporated by reference as an exhibit to the applicable prospectus supplement. See *Where You Can Find More Information* and *Incorporation of Certain Documents by Reference*.*

In order for the Company to qualify as a REIT under the Internal Revenue Code of 1986, as amended, or the Code, the Company's stock must be beneficially owned by 100 or more persons during at least 335 days of a taxable year of twelve months (other than the first year for which an election to be a REIT has been made) or during a proportionate part of a shorter taxable year. Also, not more than 50% of the value of the Company's outstanding shares of stock may be owned, directly or indirectly, by five or fewer individuals (as defined in the Code to include certain entities) during the last half of a taxable year (other than the first year for which an election to be a REIT has been made).

The Company's charter contains restrictions on the amount of shares of the Company's stock that a person may own. No person may acquire or hold, directly or indirectly, in excess of 9.8% in value of the aggregate of the Company's outstanding shares of capital stock. In addition, no person may acquire or hold, directly or indirectly, common stock in excess of 9.8% (in value or in number of shares, whichever is more restrictive) of the aggregate of the Company's outstanding shares of common stock.

The Company's charter further prohibits (1) any person from owning shares of the Company's stock that would result in the Company being "closely held" under Section 856(h) of the Code or otherwise cause the Company to fail to qualify as a REIT and (2) any person from transferring shares of the Company's stock if the transfer would result in the Company's stock being beneficially owned by fewer than 100 persons. Any person who acquires or attempts or intends to acquire shares of the Company's stock that may violate any of these restrictions, or who is the intended transferee of shares of the Company's stock which are transferred to a trust, as described below, is required to give the Company immediate written notice (or, in the case of a proposed or attempted transaction, at least 15 days' prior written notice) and provide the Company with such information as the Company may request in order to determine the effect of the transfer on the Company's status as a REIT. The above restrictions will not apply if the Company's board of directors determines that it is no longer in the Company's best interests to continue to qualify as a REIT.

The Company's board of directors may, in its sole discretion, waive the ownership limit with respect to a particular stockholder if it:

determines that such ownership will not cause any individual's beneficial or constructive ownership of shares of the Company's capital stock to result in the Company's being "closely held" under Section 856(h) of the Code or that any exemption from the ownership limit will not jeopardize the Company's status as a REIT, and

determines that such stockholder does not and will not own, actually or constructively, an interest in a tenant of the Company's (or a tenant of any entity owned in whole or in part by the Company) that would cause the Company to own, actually or constructively, more than a 9.9% interest (as set forth in Section 856(d)(2)(B) of the Code) in such tenant or that any such ownership would not cause the Company to fail to qualify as a REIT under the Code.

As a condition of the Company's waiver, the board of directors may require an opinion of counsel or an IRS ruling satisfactory to the board of directors, and/or representations or undertakings from the applicant with respect to preserving the Company's REIT status.

Any attempted transfer of the Company's stock which, if effective, would result in the Company's stock being owned by fewer than 100 persons will be null and void and the intended transferee will not acquire any rights in the

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shares of stock. Any attempted transfer of the Company's stock which, if effective, would result in violation of the ownership limits discussed above or in the Company being closely held under Section 856(h) of the Code or otherwise failing to qualify as a REIT, will cause the number of shares causing the violation (rounded up to the nearest whole share) to be automatically transferred to a trust for the exclusive benefit of one or more charitable beneficiaries, and the proposed transferee will not acquire any rights in the shares. The automatic transfer will be deemed to be effective as of the close of business on the business day prior to the date of the transfer. Shares of the Company's stock held in the trust will be issued and outstanding shares. The proposed transferee will not benefit economically from ownership of any shares of stock held in the trust, will have no rights to dividends, to vote the shares, or to any other rights attributable to the shares of stock held in the trust. The trustee of the trust will have all voting rights and rights to dividends or other distributions with respect to shares held in the trust. These rights will be exercised for the exclusive benefit of a charitable beneficiary. Any dividend or other distribution paid prior to our discovery that shares of stock have been transferred to the trust must be paid by the recipient to the trustee upon demand. Any dividend or other distribution authorized but unpaid will be paid when due to the trustee. Any dividend or distribution paid to the trustee will be held in trust for the charitable beneficiary. Subject to Maryland law, the trustee will have the authority (1) to rescind as void any vote cast by the proposed transferee prior to our discovery that the shares have been transferred to the trust and (2) to recast the vote in accordance with the desires of the trustee acting for the benefit of the charitable beneficiary. However, if the Company has already taken irreversible corporate action, then the trustee will not have the authority to rescind and recast the vote.

Within 20 days of receiving notice from the Company that shares of the Company's stock have been transferred to the trust, the trustee will sell the shares to a person designated by the trustee, whose ownership of the shares will not violate the above ownership limitations. Upon the sale, the interest of the charitable beneficiary in the shares sold will terminate and the trustee will distribute the net proceeds of the sale to the proposed transferee and to the charitable beneficiary as follows. The proposed transferee will receive the lesser of (1) the price paid by the proposed transferee for the shares or, if the proposed transferee did not give value for the shares in connection with the event causing the shares to be held in the trust (*e.g.*, a gift, devise or other similar transaction), the market price of the shares on the day of the event causing the shares to be held in the trust and (2) the price received by the trustee (net of any commissions and other expenses of the sale) from the sale or other disposition of the shares. The trustee may reduce the amount payable to the proposed transferee by the amount of dividends and distributions which have been paid to the proposed transferee and are owed to the trustee. Any net sales proceeds in excess of the amount payable to the proposed transferee will be paid immediately to the charitable beneficiary. If, prior to our discovery that shares of the Company's stock have been transferred to the trust, the shares are sold by the proposed transferee, then (1) the shares will be deemed to have been sold on behalf of the trust and (2) to the extent that the proposed transferee received an amount for the shares that exceeds the amount he was entitled to receive, the excess must be paid to the trustee upon demand.

In addition, shares of the Company's stock held in the trust will be deemed to have been offered for sale to the Company, or the Company's designee, at a price per share equal to the lesser of (1) the price per share in the transaction that resulted in the transfer to the trust (or, in the case of a devise or gift, the market price at the time of the devise or gift) and (2) the market price on the date the Company, or the Company's designee, accepts the offer. We will have the right to accept the offer until the trustee has sold the shares. Upon a sale to the Company, the interest of the charitable beneficiary in the shares sold will terminate and the trustee will distribute the net proceeds of the sale to the proposed transferee. The Company may reduce the amount payable to the proposed transferee by the amount of dividends and distributions which have been paid to the proposed transferee and are owed by the proposed transferee to the trustee.

If any shares of the Company's stock are represented by certificates, such certificates will bear a legend referring to the restrictions described above.

Every owner of 5% or more (or such lower percentage as required by the Code or the regulations promulgated thereunder) of the Company's stock, within 30 days after the end of each taxable year, is required to give the Company written notice, stating his name and address, the number of shares of each class and series of the Company's stock which he beneficially owns and a description of the manner in which the shares are held. Each such owner will provide the Company with such additional information as we may request in order to determine the effect, if any, of his or her beneficial ownership on the Company's status as a REIT and to ensure compliance with the ownership limits. In addition, each stockholder will, upon demand, be required to provide the Company with such information as the Company may request in good faith in order to determine the Company's status as a REIT and to comply with the requirements of any taxing authority or governmental authority or to determine such compliance.

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These ownership limits could delay, defer or prevent a transaction or a change in control that might involve a premium price for the Company's common stock or otherwise be in the best interest of the Company's stockholders.

### **DESCRIPTION OF THE PARTNERSHIP AGREEMENT OF BIOMED REALTY, L.P.**

*The material terms and provisions of the Agreement of Limited Partnership of BioMed Realty, L.P., as amended, which we refer to as the partnership agreement, are summarized below. For more detail, you should refer to the partnership agreement itself, which partnership agreement and any amendments are filed as exhibits to the registration statement of which this prospectus is a part. See [Where You Can Find More Information](#) and [Incorporation of Certain Documents by Reference](#).*

#### **Management of Our Operating Partnership**

Our operating partnership, BioMed Realty, L.P., is a Maryland limited partnership that was formed on April 30, 2004. The Company is the sole general partner of our operating partnership, and the Company conducts substantially all of our business in or through it. As sole general partner of our operating partnership, the Company exercises exclusive and complete responsibility and discretion in its day-to-day management and control. The Company can cause the operating partnership to enter into certain major transactions including acquisitions, dispositions and refinancings, subject to limited exceptions. The limited partners of the operating partnership may not transact business for, or participate in the management activities or decisions of, the operating partnership, except as provided in the partnership agreement and as required by applicable law. Some restrictions in the partnership agreement restrict our ability to engage in a business combination as more fully described in [Termination Transactions](#) below.

The limited partners of the operating partnership expressly acknowledged that the Company, as general partner of the operating partnership, is acting for the benefit of the operating partnership, the limited partners and the Company's stockholders collectively. The Company is under no obligation to give priority to the separate interests of the limited partners or the Company's stockholders in deciding whether to cause the operating partnership to take or decline to take any actions. If there is a conflict between the interests of the Company's stockholders on one hand and the limited partners on the other, the Company will endeavor in good faith to resolve the conflict in a manner not adverse to either the Company's stockholders or the limited partners; *provided, however*, that for so long as the Company owns a controlling interest in the operating partnership, any conflict that cannot be resolved in a manner not adverse to either the Company's stockholders or the limited partners will be resolved in favor of the Company's stockholders. The Company is not liable under the partnership agreement to the operating partnership or to any partner for monetary damages for losses sustained, liabilities incurred or benefits not derived by limited partners in connection with such decisions, so long as the Company has acted in good faith.

The partnership agreement provides that substantially all of the Company's business activities, including all activities pertaining to the acquisition and operation of properties, must be conducted through the operating partnership, and that the operating partnership must be operated in a manner that will enable the Company to satisfy the requirements for being classified as a REIT.

#### **Transferability of Interests**

Except in connection with a transaction described in [Termination Transactions](#) below, the Company, as general partner, may not voluntarily withdraw from the operating partnership, or transfer or assign all or any portion of the Company's interest in the operating partnership, without the consent of the holders of a majority of the limited partnership interests (including the Company's limited partnership interest therein) except for permitted transfers to its affiliates. Currently, any transfer of units by the limited partners, except to the Company, as general partner, to an

affiliate of the transferring limited partner, to other original limited partners, to immediate family members of the transferring limited partner, to a trust for the benefit of a charitable beneficiary, or to a lending institution as collateral for a bona fide loan, subject to specified limitations, will be subject to a right of first refusal by the Company and must be made only to accredited investors as defined under Rule 501 of the Securities Act.

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### **Capital Contributions**

The Company contributed to the operating partnership all of the net proceeds of the Company's IPO as the Company's initial capital contribution in exchange for a 91.5% partnership interest. Some of the Company's directors, executive officers and their affiliates contributed properties and assets to the operating partnership and became limited partners and, together with other limited partners, initially owned the remaining 8.5% limited partnership interest. As of August 27, 2015, the Company owned a 97.5% partnership interest and other limited partners, including some of the Company's directors, executive officers and their affiliates, owned the remaining 2.5% partnership interest (including long-term incentive plan units).

The partnership agreement provides that the Company, as general partner, may determine that the operating partnership requires additional funds for the acquisition of additional properties or for other purposes. Under the partnership agreement, the Company is obligated to contribute the proceeds of any offering of stock as additional capital to the operating partnership. The operating partnership is authorized to cause partnership interests to be issued for less than fair market value if the Company concludes in good faith that such issuance is in the best interests of the operating partnership.

The partnership agreement provides that the Company may make additional capital contributions, including properties, to the operating partnership in exchange for additional partnership units. If the Company contributes additional capital and receives additional partnership interests for the capital contribution, the Company's percentage interests will be increased on a proportionate basis based on the amount of the additional capital contributions and the value of the operating partnership at the time of the contributions. Conversely, the percentage interests of the other limited partners will be decreased on a proportionate basis. In addition, if the Company contributes additional capital and receives additional partnership interests for the capital contribution, the capital accounts of the partners may be adjusted upward or downward to reflect any unrealized gain or loss attributable to the properties as if there were an actual sale of the properties at the fair market value thereof. Limited partners have no preemptive right or obligation to make additional capital contributions.

The operating partnership could issue preferred partnership interests in connection with acquisitions of property or otherwise. Any such preferred partnership interests would have priority over common partnership interests with respect to distributions from the operating partnership, including the partnership interests that our wholly-owned subsidiaries own.

### **Amendments of the Partnership Agreement**

Amendments to the partnership agreement requiring the approval of the partners may be proposed by the Company, as general partner, or by limited partners holding at least 25% of the units held by limited partners.

Generally, the partnership agreement may be amended, modified or terminated only with the approval of partners holding at least 50% of all outstanding units (including the units held by the Company as general partner and as a limited partner). However, as general partner, the Company will have the power to unilaterally amend the partnership agreement without obtaining the consent of the limited partners as may be required to:

add to the Company's obligations as general partner or surrender any right or power granted to the Company as general partner for the benefit of the limited partners,

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reflect the issuance of additional units or the admission, substitution, termination or withdrawal of partners in accordance with the terms of the partnership agreement,

set forth or amend the designations, rights, powers, duties and preferences of the holders of any additional partnership interests issued by the operating partnership,

reflect a change of an inconsequential nature that does not adversely affect the limited partners in any material respect,

cure any ambiguity, correct or supplement any provision of the partnership agreement not inconsistent with law or with other provisions of the partnership agreement, or make other changes concerning matters under the partnership agreement that will not otherwise be inconsistent with the partnership agreement or law,

satisfy any requirements, conditions or guidelines of federal or state law,



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reflect changes that are reasonably necessary for the Company, as general partner, to maintain the Company's status as a REIT,

modify the manner in which capital accounts are computed, or

amend or modify any provision of the partnership agreement in connection with a termination transaction. Amendments that would convert a limited partner's interest into a general partner's interest (except as the result of the general partner acquiring such interest), modify the limited liability of a limited partner, alter a partner's right to receive any distributions or allocations of profits or losses or materially alter or modify the redemption rights described below (other than a change to reflect the seniority of any distribution or liquidation rights of any preferred units issued in accordance with the partnership agreement), and the corresponding references in the general amendment section, must be approved by each limited partner that would be adversely affected by such amendment; provided that any such amendment does not require the unanimous consent of all the partners who are adversely affected unless the amendment is to be effective against all adversely affected partners.

In addition, without the written consent of limited partners holding a majority of the units, the Company, as general partner, may not do any of the following:

take any action in contravention of an express prohibition or limitation contained in the partnership agreement,

enter into or conduct any business other than in connection with the Company's role as general partner of the operating partnership and the Company's operation as a public reporting company and as a REIT,

acquire an interest in real or personal property other than through the operating partnership or our subsidiary partnerships,

withdraw from the operating partnership or transfer any portion of the Company's general partnership interest, except to an affiliate, or

be relieved of the Company's obligations under the partnership agreement following any permitted transfer of the Company's general partnership interest.

**Redemption/Exchange Rights**

Limited partners have the right to require the operating partnership to redeem part or all of their units for cash based upon the fair market value of an equivalent number of shares of the Company's common stock at the time of the redemption. Alternatively, the Company may elect to acquire those units in exchange for shares of the Company's common stock. The Company's acquisition will be on a one-for-one basis, subject to adjustment in the event of stock splits, stock dividends, issuance of stock rights, specified extraordinary distributions and similar events. With each redemption or exchange, the Company increases the Company's percentage ownership interest in the operating

partnership. Subject to applicable lock-up restrictions, limited partners who hold units may exercise this redemption right from time to time, in whole or in part, except when, as a consequence of shares of the Company's common stock being issued, any person's actual or constructive stock ownership would exceed the Company's ownership limits, or violate any other restriction as provided in the Company's charter as described under the section entitled "Restrictions on Ownership and Transfer." In all cases, unless the Company agrees otherwise, no limited partner may exercise its redemption right for fewer than 1,000 units or, if a limited partner holds fewer than 1,000 units, all of the units held by such limited partner.

### **Issuance of Additional Units, Common Stock or Convertible Securities**

As sole general partner, the Company has the ability to cause the operating partnership to issue additional units representing general and limited partnership interests. These additional units may include preferred limited partnership units. In addition, the Company may issue additional shares of the Company's common stock or convertible securities, but only if the Company causes the operating partnership to issue to the Company partnership interests or rights, options, warrants or convertible or exchangeable securities of the operating partnership having parallel designations, preferences and other rights, so that the economic interests of the operating partnership's interests issued are substantially similar to the securities that the Company has issued.

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### **Tax Matters**

The Company is the tax matters partner of the operating partnership. The Company has the authority to make tax elections under the Code on behalf of the operating partnership.

### **Allocations of Net Income and Net Losses to Partners**

The net income or net loss of the operating partnership generally will be allocated to the Company, as the general partner, and to the limited partners in accordance with our respective percentage interests in the operating partnership. However, in some cases losses may be disproportionately allocated to partners who have guaranteed debt of the operating partnership. The allocations described above are subject to special allocations relating to depreciation deductions and to compliance with the provisions of Sections 704(b) and 704(c) of the Code and the associated Treasury regulations. See *Material United States Federal Income Tax Considerations – Tax Aspects of The Operating Partnership, the Subsidiary Partnerships and the Limited Liability Companies*.

### **Operations and Distributions**

The partnership agreement provides that the Company, as general partner, will determine and distribute the net operating cash revenues of the operating partnership, as well as the net sales and refinancing proceeds, in such amount as determined by the Company in the Company's sole discretion, quarterly, pro rata in accordance with the partners percentage interests.

The partnership agreement provides that the operating partnership will assume and pay when due, or reimburse the Company for payment of all costs and expenses relating to the operations of, or for the benefit of, the operating partnership.

### **Termination Transactions**

The partnership agreement provides that the Company may not engage in any merger, consolidation or other combination with or into another person, sale of all or substantially all of our assets or any reclassification or any recapitalization or change in our outstanding equity interests, each a termination transaction, unless in connection with a termination transaction either:

- (1) all limited partners will receive, or have the right to elect to receive, for each unit an amount of cash, securities, or other property equal to the product of:

the number of shares of the Company's common stock into which each unit is then exchangeable, and

the greatest amount of cash, securities or other property paid to the holder of one share of the Company's common stock in consideration of one share of the Company's common stock in the termination transaction,

provided that, if, in connection with a termination transaction, a purchase, tender or exchange offer is made to and accepted by the holders of more than 50% of the outstanding shares of the Company's common stock, each holder of units will receive, or will have the right to elect to receive, the greatest amount of cash, securities, or other property

which such holder would have received had it exercised its redemption right and received shares of the Company's common stock in exchange for its units immediately prior to the expiration of such purchase, tender or exchange offer and accepted such purchase, tender or exchange offer, or

(2) the following conditions are met:

substantially all of the assets of the surviving entity are held directly or indirectly by the operating partnership or another limited partnership or limited liability company that is the surviving entity of a merger, consolidation or combination of assets with the operating partnership,

the holders of units own a percentage interest of the surviving entity based on the relative fair market value of the net assets of the operating partnership and the other net assets of the surviving entity immediately prior to the consummation of the transaction,

the rights, preferences and privileges of such unit holders in the surviving entity are at least as favorable as those in effect immediately prior to the consummation of the transaction and as those applicable to any other limited partners or non-managing members of the surviving entity, and

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either (a) the limited partners may redeem their interests in the surviving entity for the consideration available to the common limited partners pursuant to the first paragraph in this section, or (b) the limited partners have the right to redeem their units (i) for cash on terms equivalent to those in effect with respect to their units immediately prior to the consummation of such transaction or (ii) if the ultimate controlling person of the surviving entity has publicly traded common equity securities, shares of those common equity securities, at an exchange ratio based on the relative fair market value of those securities and the Company's common stock.

## **Term**

The operating partnership will continue in full force and effect until December 31, 2104, or until sooner dissolved in accordance with the terms of the partnership agreement or as otherwise provided by law.

## **Indemnification and Limitation of Liability**

To the fullest extent permitted by applicable law, the partnership agreement requires the operating partnership to indemnify the Company, as general partner, and the Company's officers, directors and any other persons the Company may designate from and against any and all claims arising from operations of the operating partnership in which any indemnitee may be involved, or is threatened to be involved, as a party or otherwise, unless it is established that:

the act or omission of the indemnitee was material to the matter giving rise to the proceeding and either was committed in bad faith, fraud or was the result of active and deliberate dishonesty,

the indemnitee actually received an improper personal benefit in money, property or services, or

in the case of any criminal proceeding, the indemnitee had reasonable cause to believe that the act or omission was unlawful.

Similarly, the Company, as general partner of the operating partnership, and the Company's officers, directors, agents and employees, are not liable or accountable to the operating partnership for losses sustained, liabilities incurred or benefits not derived as a result of errors in judgment or mistakes of fact or law or any act or omission so long as the Company acted in good faith.

## **CERTAIN PROVISIONS OF MARYLAND LAW AND OF THE COMPANY'S CHARTER AND BYLAWS**

*The following is a summary of certain provisions of Maryland law and of the Company's charter and bylaws. This description is not complete and is subject to, and qualified in its entirety by reference to, Maryland law and the Company's charter and bylaws, copies of which are exhibits to the registration statement of which this prospectus is a part. See *Where You Can Find More Information* and *Incorporation of Certain Documents by Reference*.*

## **The Company's Board of Directors**

The Company's charter and bylaws provide that its board of directors may establish the number of directors of the Company as long as the number is not fewer than the minimum required under the MGCL nor, unless the Company's bylaws are amended, more than 15. Except as may be provided by the Company's board of directors in setting the terms of any class or series of preferred stock, any vacancy on the board of directors may be filled by a vote of a

majority of the remaining directors, even if the remaining directors do not constitute a quorum. Any director elected to fill a vacancy will serve for the remainder of the full term of the directorship in which the vacancy occurred and until a successor is elected and qualifies.

Pursuant to the Company's charter, each of the directors is elected by the Company's stockholders to serve until the next annual meeting and until his or her successor is duly elected and qualifies.

Directors in uncontested elections are elected upon the affirmative vote of a majority of the total votes cast for and against such nominee at a duly called meeting of stockholders, and directors in contested elections are elected by a plurality of all of the votes cast. In both uncontested and contested elections, holders of shares of the Company's common stock have no right to cumulative voting in the election of directors. Consequently, at each annual meeting of stockholders, the holders of a majority of the shares of the Company's common stock will be able to elect all of the Company's directors.

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### **Removal of Directors**

The Company's charter provides that, subject to the rights of holders of one or more classes or series of preferred stock, a director may be removed only by the affirmative vote of at least two-thirds of the votes entitled to be cast generally in the election of directors. This provision, when coupled with the provision in the Company's bylaws authorizing its board of directors to fill vacant directorships, may preclude stockholders from removing incumbent directors, except upon a substantial affirmative vote, and filling the vacancies created by such removal with their own nominees.

### **Business Combinations**

Maryland law prohibits business combinations between the Company and an interested stockholder or an affiliate of an interested stockholder for five years after the most recent date on which the interested stockholder becomes an interested stockholder. These business combinations include a merger, consolidation, share exchange or, in certain circumstances specified in the statute, an asset transfer or issuance or reclassification of equity securities. Maryland law defines an interested stockholder as:

any person who beneficially owns 10% or more of the voting power of the Company's outstanding voting stock, or

an affiliate or associate of the Company who, at any time within the two-year period immediately prior to the date in question, was the beneficial owner of 10% or more of the voting power of the Company's then-outstanding stock.

A person is not an interested stockholder if the Company's board of directors approved in advance the transaction by which the person otherwise would have become an interested stockholder. However, in approving a transaction, the Company's board of directors may provide that its approval is subject to compliance, at or after the time of approval, with any terms and conditions determined by the Company's board of directors.

After the five-year prohibition, any business combination between the Company and an interested stockholder or an affiliate of an interested stockholder generally must be recommended by the Company's board of directors and approved by the affirmative vote of at least:

80% of the votes entitled to be cast by holders of the Company's then-outstanding shares of voting stock, and

two-thirds of the votes entitled to be cast by holders of the Company's voting stock other than stock held by the interested stockholder with whom or with whose affiliate the business combination is to be effected or stock held by an affiliate or associate of the interested stockholder.

These super-majority vote requirements do not apply if the Company's common stockholders receive a minimum price, as defined under Maryland law, for their stock in the form of cash or other consideration in the same form as previously paid by the interested stockholder for its stock.

The statute permits various exemptions from its provisions, including business combinations that are approved or exempted by the board of directors before the time that the interested stockholder becomes an interested stockholder. The Company's board of directors has adopted a resolution exempting any business combination between the Company and any person from the business combination provisions of the MGCL, provided such business combination is first approved by the Company's board of directors (including a majority of the directors who are not affiliates or associates of such person). However, this resolution may be altered or repealed in whole or in part at any time.

The Company can provide no assurance that its board of directors will not amend or rescind this resolution in the future. If this resolution is repealed, or the Company's board of directors does not otherwise approve a business combination, the business combination statute may discourage others from trying to acquire control of the Company and increase the difficulty of consummating any offer.



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**Control Share Acquisitions**

The MGCL provides that holders of control shares of a Maryland corporation acquired in a control share acquisition have no voting rights except to the extent approved at a special meeting of stockholders by the affirmative vote of two-thirds of the votes entitled to be cast on the matter. Shares owned by the acquiring person, or by officers or by directors who are our employees, are excluded from shares entitled to vote on the matter. Control shares are voting shares of stock which, if aggregated with all other such shares of stock previously acquired by the acquiror or in respect of which the acquiror is able to exercise or direct the exercise of voting power (except solely by virtue of a revocable proxy), would entitle the acquiror to exercise voting power in electing directors within one of the following ranges of voting power:

one-tenth or more but less than one-third,

one-third or more but less than a majority, or

a majority or more of all voting power.

Control shares do not include shares the acquiring person is then entitled to vote as a result of having previously obtained stockholder approval. A control share acquisition means the acquisition of control shares, subject to certain exceptions.

A person who has made or proposes to make a control share acquisition, upon satisfaction of certain conditions (including an undertaking to pay expenses), may compel the Company's board of directors to call a special meeting of stockholders to be held within 50 days of demand to consider the voting rights of the shares. If no request for a meeting is made, the corporation may itself present the question at any stockholders meeting.

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

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

The Company's bylaws contain a provision exempting from the control share acquisition statute any and all acquisitions by any person of the Company's stock. The Company can provide no assurance that its board of directors will not amend or eliminate such provision in the future. Should this happen, the control share acquisition statute may discourage others from trying to acquire control of us and increase the difficulty of consummating any offer.

**Subtitle 8**

Subtitle 8 of Title 3 of the MGCL permits a Maryland corporation with a class of equity securities registered under the Exchange Act and with at least three independent directors to elect to be subject to any or all of five provisions:

a classified board,

a two-thirds vote requirement to remove a director,

a requirement that the number of directors be fixed only by the vote of the directors,

a requirement that a vacancy on the board be filled only by the remaining directors and for the remainder of the full term of the directorship in which the vacancy occurred, and

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a majority requirement for the calling of a special meeting of stockholders. A corporation can elect into this statute by provision in its charter or bylaws or by a resolution of its board of directors. Furthermore, a corporation can elect to be subject to the above provisions regardless of any contrary provisions in its charter or bylaws.

Through provisions in the Company's charter and bylaws unrelated to Subtitle 8:

the number of directors may be fixed only by the vote of the directors,

a two-thirds vote is required to remove any director from the board, and

unless called by the chairman of the board, chief executive officer, president or the board of directors, the written request of stockholders entitled to cast not less than a majority of all the votes entitled to be cast at such meeting is required to call a special meeting.

**Amendment to the Company's Charter and Bylaws**

The Company's charter may generally be amended only if declared advisable by the board of directors and approved by the affirmative vote of the stockholders entitled to cast at least a majority of all the votes entitled to be cast on the matter under consideration. However, the provision regarding director removal and the corresponding amendment provision may be amended only if advised by the board of directors and approved by the affirmative vote of the stockholders entitled to cast not less than two-thirds of all of the votes entitled to be cast on the matter. The Company's bylaws provide that only the board of directors may amend, alter or repeal the Company's bylaws or adopt new bylaws.

**Advance Notice of Director Nominations and New Business**

The Company's bylaws provide that with respect to an annual meeting of stockholders, nominations of individuals for election to the board of directors and the proposal of business to be considered by stockholders may be made only:

pursuant to the Company's notice of the meeting,

by or at the direction of the board of directors, or

by a stockholder who is a stockholder of record both at the time of giving the stockholder's notice required by the Company's bylaws and at the time of the meeting, who is entitled to vote at the meeting and who has complied with the advance notice procedures set forth in the Company's bylaws.

With respect to special meetings of stockholders, only the business specified in the Company's notice of meeting may be brought before the meeting of stockholders and nominations of individuals for election to the board of directors may be made only:

by or at the direction of the board of directors, or

if the meeting has been called for the purpose of electing directors, by a stockholder who is a stockholder of record both at the time of giving the stockholder's notice required by the Company's bylaws and at the time of the meeting, who is entitled to vote at the meeting and has complied with the advance notice provisions set forth in the Company's bylaws.

Generally, under the Company's bylaws, a stockholder seeking to nominate a director or bring other business before the Company's annual meeting of stockholders must deliver a notice to our secretary not later than the 5:00 p.m., Pacific Time, on the 120th day nor earlier than the 150th day prior to the first anniversary of the date of the proxy statement for the prior year's annual meeting. For a stockholder seeking to nominate a candidate for the Company's board of directors, the notice must describe various matters regarding the nominee, including name, address, occupation and number of shares held, and other specified matters. For a stockholder seeking to propose other business, the notice must include a description of the proposed business, the reasons for the proposal and other specified matters.

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**Anti-Takeover Effect of Certain Provisions of Maryland Law and of the Company's Charter and Bylaws**

The provisions of the Company's charter on removal of directors and the advance notice provisions of the bylaws could delay, defer or prevent a transaction or a change of control of the Company that might involve a premium price for the Company's common stockholders or otherwise be in their best interest. Likewise, if the Company's board of directors were to rescind the resolution exempting business combinations from the business combination provisions of the MGCL (or does not otherwise approve a business combination) or if the provision in the bylaws opting out of the control share acquisition provisions of the MGCL were rescinded, these provisions of the MGCL could have similar anti-takeover effects.

**Ownership Limit**

The Company's charter provides that no person or entity may actually or beneficially own, or be deemed to own by virtue of the applicable constructive ownership provisions of the Code, (1) more than 9.8% in value of the aggregate of the Company's outstanding shares of capital stock, or (2) more than 9.8% in value or number of shares, whichever is more restrictive, of the aggregate of the Company's outstanding shares of common stock. We refer to this restriction as the ownership limit. For a more detailed description of this restriction and the constructive ownership rules, see Restrictions on Ownership and Transfer.

**MATERIAL UNITED STATES FEDERAL INCOME TAX CONSIDERATIONS**

The following is a general summary of the material United States federal income tax considerations regarding our election to be taxed as a REIT and the acquisition, ownership and disposition of certain of the securities offered by this prospectus which are anticipated to be material to purchasers of such securities. The United States federal income tax considerations relevant to your ownership of the securities offered by this prospectus may be supplemented in the applicable prospectus supplement or other offering materials that relates to those securities. Your tax treatment will vary depending upon the terms of the specific securities you acquire, as well as your particular situation. Except as otherwise indicated and except for purposes of the section under the heading Taxation of Holders of Debt Securities Offered by BioMed Realty Trust, Inc. or BioMed Realty, L.P., for purposes of this section under the heading Material United States Federal Income Tax Considerations, references to BioMed, we, our, and us mean only BioMed Realty Trust, Inc., and not its subsidiaries, except as otherwise indicated. This summary is based on current law, is for general information only and is not tax advice.

The information in this summary is based on current law, including:

the Code,

current, temporary and proposed Treasury regulations promulgated under the Code,

the legislative history of the Code,

current administrative interpretations and practices of the IRS, and

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

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

**the acquisition, ownership, and/or sale or other disposition of the securities offered under this prospectus, including the federal, state, local, non-U.S. and other tax consequences,**

**our election to be taxed as a REIT for federal income tax purposes, and**

**potential changes in the applicable tax laws.**

**Taxation of Our Company**

*General.* We elected to be taxed as a REIT under Sections 856 through 860 of the Code, commencing with our taxable year ended December 31, 2004. We believe we have been organized and have operated in a manner which allows us to qualify for taxation as a REIT under the Code commencing with our taxable year ended December 31, 2004, and we intend to continue to be organized and operate in this manner. However, our qualification and taxation as a REIT depend upon our ability to meet the various qualification tests imposed under the Code, including through our actual annual operating results, asset composition, distribution levels and diversity of stock ownership. Accordingly, no assurance can be given that we have been organized and have operated, or will continue to be organized and operated, in a manner so as to qualify or remain qualified as a REIT. See Failure to Qualify.

Latham & Watkins LLP has acted as our tax counsel in connection with this prospectus and our election to be taxed as a REIT. Latham & Watkins LLP has rendered an opinion to us to the effect that, commencing with our taxable year ended December 31, 2004, we have been organized and have operated in conformity with the requirements for qualification as a REIT under the Code, and our proposed method of operation will enable us to continue to meet the requirements for qualification and taxation as a REIT under the Code. It must be emphasized that this opinion was based on various assumptions and representations as to factual matters, including representations made by us in a factual certificate provided by one of our officers. In addition, this opinion was based upon our factual representations set forth in this prospectus. Moreover, our qualification and taxation as a REIT depend upon our ability to meet the various qualification tests imposed under the Code which are discussed below, including through actual annual operating results, asset composition, distribution levels and diversity of stock ownership, the results of which have not been and will not be reviewed by Latham & Watkins LLP. Accordingly, no assurance can be given that our actual results of operation for any particular taxable year have satisfied or will satisfy those requirements. Latham & Watkins LLP has no obligation to update its opinion subsequent to its date. Further, the anticipated income tax treatment described in this summary may be changed, perhaps retroactively, by legislative, administrative or judicial action at any time. See Failure to Qualify.

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

We will be required to pay tax at regular corporate rates on any undistributed REIT taxable income, including undistributed net capital gains.

We may be required to pay the alternative minimum tax on our items of tax preference under some circumstances.

If we have (1) net income from the sale or other disposition of foreclosure property held primarily for sale to customers in the ordinary course of business or (2) other nonqualifying income from foreclosure property, we will be required to pay tax at the highest corporate rate on this income. To the extent that income from foreclosure property is otherwise qualifying income for purposes of the 75% gross income test, this tax is not applicable. Foreclosure property generally is defined as property we acquired through foreclosure or after a default on a loan secured by the property or a lease of the property and for which an election is in effect.



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We will be required to pay a 100% tax on any net income from prohibited transactions. Prohibited transactions are, in general, sales or other taxable dispositions of property, other than foreclosure property, held as inventory or 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, but have otherwise maintained our qualification as a REIT because certain other requirements are met, we will be required to pay a tax equal to (1) the greater of (a) the amount by which we fail to satisfy the 75% gross income test and (b) the amount by which we fail to satisfy the 95% gross income test, multiplied by (2) a fraction intended to reflect our profitability.

If we fail to satisfy any of the asset tests (other than a de minimis failure of the 5% or 10% asset tests), as described below, due to reasonable cause and not due to willful neglect, and we nonetheless maintain our REIT qualification because of specified cure provisions, we will be required to pay a tax equal to the greater of \$50,000 or the highest corporate tax rate multiplied by the net income generated by the nonqualifying assets that caused us to fail such test.

If we fail to satisfy any provision of the Code that would result in our failure to qualify as a REIT (other than a violation of the gross income tests or certain violations of the asset tests described below) and the violation is due to reasonable cause and not due to willful neglect, we may retain our REIT qualification but we will be required to pay a penalty of \$50,000 for each such failure.

We will be required to pay a 4% excise tax to the extent we fail to distribute during each calendar year at least the sum of (1) 85% of our ordinary income for the year, (2) 95% of our capital gain net income for the year, and (3) any undistributed taxable income from prior periods.

If we acquire any asset from a corporation that is or has been a C corporation in a transaction in which our tax basis in the asset is less than the fair market value of the asset, in each case determined as of the date on which we acquired the asset, and we subsequently recognize gain on the disposition of the asset during the ten-year period beginning on the date on which we acquired the asset, then we generally will be required to pay tax at the highest regular corporate tax rate on this gain to the extent of the excess of (1) the fair market value of the asset over (2) our tax basis in the asset, in each case determined as of the date on which we acquired the asset. The results described in this paragraph with respect to the recognition of gain assume that the C corporation will refrain from making an election to receive different treatment under applicable Treasury regulations on its tax return for the year in which we acquire the asset from the C corporation. Under applicable Treasury regulations, any gain from the sale of property we acquired in an exchange under Section 1031 (a like-kind exchange) or 1033 (an involuntary conversion) of the Code generally is excluded from the application of this built-in gains tax.

We will be required to pay a 100% tax on any redetermined rents, redetermined deductions or excess interest. In general, redetermined rents are rents from real property that are overstated as a result of services furnished to our tenants by a taxable REIT subsidiary of ours. Redetermined deductions and excess interest generally represent amounts that are deducted by our taxable REIT subsidiary for amounts paid to us that are

in excess of the amounts that would have been deducted based on arm's length negotiations. See Penalty Tax.

Certain of our subsidiaries that are C corporations, including our taxable REIT subsidiaries, generally will be required to pay United States federal corporate income tax on their earnings.

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

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If we fail to comply with the requirement to send annual letters to our stockholders requesting information regarding the actual ownership of our stock, and the failure is not due to reasonable cause or due to willful neglect, we will be subject to a \$25,000 penalty, or if the failure is intentional, a \$50,000 penalty.

We and our subsidiaries may be subject to a variety of taxes other than U.S. federal income tax, including payroll taxes and state and local income, property, sales and use, and other taxes on our assets and operations.

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

- (1) that is managed by one or more trustees or directors,
- (2) that issues transferable shares or transferable certificates to evidence its beneficial ownership,
- (3) that would be taxable as a domestic corporation, but for special Code provisions applicable to REITs,
- (4) that is not a financial institution or an insurance company within the meaning of the Code,
- (5) that is beneficially owned by 100 or more persons,
- (6) not more than 50% in value of the outstanding stock of which is owned, actually or constructively, by five or fewer individuals, including certain specified entities, during the last half of each taxable year, and
- (7) that meets other tests, described below, regarding the nature of its income and assets and the amount of its distributions.

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

We believe that we have been organized, have operated and have issued sufficient shares of capital stock with sufficient diversity of ownership to allow us to satisfy conditions (1) through (7) during the relevant time periods. In addition, our charter provides for restrictions regarding the ownership and transfer of our shares which are intended to assist us in continuing to satisfy the share ownership requirements described in conditions (5) and (6) above. These restrictions, however, may not ensure that we will, in all cases, be able to satisfy the share ownership requirements described in conditions (5) and (6) above. A description of the share ownership and transfer restrictions relating to our outstanding capital stock is contained in the discussion in this prospectus under the heading Restrictions on Ownership

and Transfer. If we fail to satisfy these share ownership requirements, except as provided in the next two sentences, our status as a REIT will terminate. If, however, we comply with the rules contained in applicable Treasury regulations that require us to ascertain the actual ownership of our shares and we do not know, or would not have known through the exercise of reasonable diligence, that we failed to meet the requirement described in condition (6) above, we will be treated as having met this requirement. Moreover, if our failure to satisfy the share ownership requirements is due to reasonable cause and not willful neglect, we may retain our REIT qualification but will be required to pay a penalty of \$50,000 for each such failure. See the section below entitled Failure to Qualify.

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

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*Ownership of Interests in Partnerships and Limited Liability Companies.* In the case of a REIT that is a partner in a partnership, Treasury regulations provide that the REIT will be deemed to own its proportionate share of the assets of the partnership based on its interest in partnership capital, subject to special rules relating to the 10% asset test described below. Also, the REIT will be deemed to be entitled to its proportionate share of the income of the partnership. The assets and gross income of the partnership retain the same character in the hands of the REIT, including for purposes of satisfying the gross income tests and the asset tests. Thus, our pro rata share of the assets and items of income of our operating partnership, including our operating partnership's share of these items of any partnership in which it owns an interest, is treated as our assets and items of income for purposes of applying the requirements described in this summary, including the gross income and asset tests described below. A brief summary of the rules governing the federal income taxation of partnerships and limited liability companies is set forth below in

Tax Aspects of Our Operating Partnership, the Subsidiary Partnerships and the Limited Liability Companies. The treatment described above also applies with respect to the ownership of interests in limited liability companies that are treated as partnerships for tax purposes.

We have control of our operating partnership and, through our operating partnership, most of the subsidiary partnerships and limited liability companies and intend to continue to operate them in a manner consistent with the requirements for our qualification as a REIT. We and our operating partnership are limited partners or non-managing members in other partnerships and limited liability companies. If such a partnership or limited liability company were 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 applicable entity 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. See Failure to Qualify.

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

*Ownership of Interests in Taxable REIT Subsidiaries.* A taxable REIT subsidiary is a corporation (or an entity treated as a corporation) other than a REIT in which a REIT directly or indirectly holds stock, and that has made a joint election with the REIT to be treated as a taxable REIT subsidiary. A taxable REIT subsidiary also includes any entity treated as a corporation, other than a REIT, with respect to which a taxable REIT subsidiary owns securities possessing more than 35% of the total voting power or value of the outstanding securities of such corporation. Other than some activities relating to lodging and health care facilities, a taxable REIT subsidiary may generally engage in any business, including the provision of customary or non-customary services to tenants of its parent REIT. A taxable REIT subsidiary is subject to federal income tax as a regular C corporation. In addition, a taxable REIT subsidiary may be prevented from deducting interest on debt funded directly or indirectly by its parent REIT if certain tests regarding the taxable REIT subsidiary's debt to equity ratio and interest expense are not satisfied. A REIT's ownership of securities of its taxable REIT subsidiaries will not be subject to the 10% or 5% asset tests described below. See

Asset Tests.

We currently hold interests in certain taxable REIT subsidiaries and may acquire securities in additional taxable REIT subsidiaries in the future.

*Income Tests.* We must satisfy two gross income requirements annually to maintain our qualification as a REIT. First, in each taxable year, we must derive directly or indirectly at least 75% of our gross income, excluding

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gross income from prohibited transactions, certain hedging transactions entered into after July 30, 2008, and certain foreign currency gains recognized after July 30, 2008, from (1) investments relating to real property or mortgages on real property, including rents from real property and, in certain circumstances, interest, or (2) some types of temporary investments. Second, in each taxable year, we must derive at least 95% of our gross income, excluding gross income from prohibited transactions, certain designated hedges of indebtedness, and certain foreign currency gains recognized after July 30, 2008, from the real property investments described above, dividends, interest and gain from the sale or disposition of stock or securities, or from any combination of the foregoing. For these purposes, the term interest generally does not include any amount received or accrued, directly or indirectly, if the determination of all or some of the amount depends in any way on the income or profits of any person. However, an amount received or accrued generally will not be excluded from the term interest solely by reason of being based on a fixed percentage or percentages of receipts or sales.

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

The amount of rent is not based in whole or in part on the income or profits of any person. However, an amount we receive or accrue generally will not be excluded from the term rents from real property solely because it is based on a fixed percentage or percentages of receipts or sales,

Neither we nor an actual or constructive owner of 10% or more of our capital stock actually or constructively owns 10% or more of the interests in the assets or net profits of a non-corporate tenant, or, if the tenant is a corporation, 10% or more of the total combined voting power of all classes of stock entitled to vote or 10% or more of the total value of all classes of stock of the tenant. Rents we receive from such a tenant that is also our taxable REIT subsidiary, however, will not be excluded from the definition of rents from real property as a result of this condition if at least 90% of the space at the property to which the rents relate is leased to third parties, and the rents paid by the taxable REIT subsidiary are substantially comparable to rents paid by our other tenants for comparable space. Whether rents paid by a taxable REIT subsidiary are substantially comparable to rents paid by other tenants is determined at the time the lease with the taxable REIT subsidiary is entered into, extended, and modified, if such modification increases the rents due under such lease. Notwithstanding the foregoing, however, if a lease with a controlled taxable REIT subsidiary is modified and such modification results in an increase in the rents payable by such taxable REIT subsidiary, any such increase will not qualify as rents from real property. For purposes of this rule, a controlled taxable REIT subsidiary is a taxable REIT subsidiary in which we own stock possessing more than 50% of the voting power or more than 50% of the total value of the outstanding stock of such taxable REIT subsidiary,

Rent attributable to personal property, leased in connection with a lease of real property, is not greater than 15% of the total rent received under the lease. If this requirement is not met, then the portion of the rent attributable to personal property will not qualify as rents from real property. To the extent that rent attributable to personal property leased in connection with a lease of real property exceeds 15% of the total rent received under the lease, we may transfer a portion of such personal property to a taxable REIT subsidiary; and

We generally do not operate or manage the property or furnish or render services to our tenants, subject to a 1% de minimis exception and except as provided below. We are permitted, however, to perform directly certain services that are usually or customarily rendered in connection with the rental of space for occupancy only and are not otherwise considered rendered to the occupant of the property. Examples of these permitted services include the provision of light, heat, or other utilities, trash removal and general maintenance of common areas. In addition, we are permitted to employ an independent contractor from whom we derive no revenue to provide customary services to our tenants, or a taxable REIT subsidiary, which may be wholly or partially owned by us, to provide both customary and non-customary services to our tenants, without causing the rent we receive from those tenants to fail to qualify as rents from real property. Any amounts we receive from a taxable REIT subsidiary with respect to the taxable REIT subsidiary's provision of non-customary services will, however, be nonqualifying income under the 75% gross income test and, except to the extent received through the payment of dividends, the 95% gross income test.



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We generally do not intend, and as a general partner of our operating partnership, do not intend to permit our operating partnership, to take actions we believe will cause us to fail to satisfy the rental conditions described above. However, we may intentionally fail to satisfy some of these conditions to the extent we conclude, based on the advice of our tax counsel, that the failure will not jeopardize our tax status as a REIT. In addition, with respect to the limitation on the rental of personal property, we have not obtained appraisals of the real property and personal property leased to tenants. Accordingly, there can be no assurance that the IRS will not disagree with our determinations of value of such property.

Income we receive that is attributable to the rental of parking spaces at the properties generally will constitute rents from real property for purposes of the gross income tests if certain services provided with respect to the parking facilities are performed by independent contractors from whom we derive no revenue, either directly or indirectly, or by a taxable REIT subsidiary, and certain other conditions are met. We believe that the income we receive that is attributable to parking facilities meets these tests and, accordingly, will constitute rents from real property for purposes of the gross income tests.

From time to time, we enter into hedging transactions with respect to one or more of our assets or liabilities. The term hedging transaction generally means any transaction we enter into in the normal course of our business primarily to manage risk of (1) interest rate changes or fluctuations with respect to borrowings made or to be made by us to acquire or carry real estate assets, or (2) for hedging transactions entered into after July 30, 2008, currency fluctuations with respect to an item of qualifying income under the 75% or 95% gross income test. Our hedging activities may include entering into interest rate swaps, caps, and floors, options to purchase these items, and futures and forward contracts. Income we derive from a hedging transaction, including gain from the sale or disposition thereof, that is clearly identified as a hedging transaction as specified in the Code will not constitute gross income and thus will be exempt from the 95% gross income test to the extent such a hedging transaction is entered into on or after January 1, 2005, and from the 75% gross income test to the extent such hedging transaction is entered into after July 30, 2008. Income and gain from a hedging transaction, including gain from the sale or disposition of such a transaction will be treated as nonqualifying income for purposes of the 75% gross income test if entered into on or prior to July 30, 2008 and will be treated as qualifying income for purposes of the 95% gross income test if entered into prior to January 1, 2005. To the extent that we do not properly identify such transactions as hedges, we hedge other risks or we hedge with other types of financial instruments, the income from those transactions is not likely to be treated as qualifying income for purposes of the gross income tests. We intend to structure our hedging transactions in a manner that does not jeopardize our status as a REIT.

To the extent our taxable REIT subsidiaries pay dividends, we generally will derive our allocable share of such dividend income through our interest in our operating partnership. Such dividend income will qualify under the 95%, but not the 75%, gross income test. We will monitor the amount of the dividend and other income from our taxable REIT subsidiaries and we will take actions intended to keep this income, and any other nonqualifying income, within the limitations of the gross income tests. Although we expect these actions will be sufficient to prevent a violation of the gross income tests, we cannot guarantee that such actions will in all cases prevent such a violation.

We believe that the aggregate amount of our nonqualifying income, from all sources, in any taxable year will not exceed the limit on nonqualifying income under the gross income tests. If we fail to satisfy one or both of the 75% or 95% gross income tests for any taxable year, we may nevertheless qualify as a REIT for the year if we are entitled to relief under certain provisions of the Code. Commencing with our taxable year beginning January 1, 2005, we generally may make use of the relief provisions if:

following our identification of the failure to meet the 75% or 95% gross income tests for any taxable year, we file a schedule with the IRS setting forth each item of our gross income for purposes of the 75% or 95% gross income tests for such taxable year in accordance with Treasury regulations to be issued, and

our failure to meet these tests was due to reasonable cause and not due to willful neglect.

It is not possible, however, to state whether in all circumstances we would be entitled to the benefit of these relief provisions. For example, if we fail to satisfy the gross income tests because nonqualifying income that we intentionally accrue or receive exceeds the limits on nonqualifying income, the IRS could conclude that our failure

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to satisfy the tests was not due to reasonable cause. If these relief provisions do not apply to a particular set of circumstances, we will not qualify as a REIT. As discussed above in Taxation of Our Company General, even if these relief provisions apply, and we retain our status as a REIT, a tax would be imposed with respect to our nonqualifying income. We may not always be able to comply with the gross income tests for REIT qualification despite our periodic monitoring of our income.

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

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

We believe that, in all instances in which our taxable REIT subsidiaries provide services to our tenants, the fees paid to our taxable REIT subsidiaries for such services at arm's-length rates, although the fees paid may not satisfy the safe harbor provisions described above. These determinations are inherently factual, and the IRS has broad discretion to assert that amounts paid between related parties should be reallocated to clearly reflect their respective incomes. If the IRS successfully made such an assertion, we would be required to pay a 100% penalty tax on the excess of an arm's-length fee for tenant services over the amount actually paid.

*Asset Tests.* At the close of each calendar quarter of our taxable year, we must also satisfy certain tests relating to the nature and diversification of our assets. First, at least 75% of the value of our total assets, including our allocable share of the assets held by our operating partnership, either directly or through its subsidiary partnerships and limited liability companies, must be represented by real estate assets, cash, cash items and U.S. government securities. For purposes of this test, the term real estate assets generally means real property (including interests in real property and interests in mortgages on real property) and shares (or transferable certificates of beneficial interest) in other REITs, as well as any stock or debt instrument attributable to the investment of the proceeds of a stock offering or a public offering of debt with a term of at least five years, but only for the one-year period beginning on the date we receive such proceeds.

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

Third, of the investments included in the 25% asset class, and except for investments in other REITs, our qualified REIT subsidiaries and our taxable REIT subsidiaries, the value of any one issuer's securities may not exceed 5% of the value of our total assets, and we may not own more than 10% of the total vote or value of the outstanding securities of any one issuer. Solely for purposes of the 10% value test, however, certain securities including, but not limited to straight debt securities having specified characteristics, loans to an individual or an estate, obligations to pay rents from real property and securities issued by a REIT, are disregarded as securities. In addition, commencing with our taxable year beginning January 1, 2005, solely for purposes of the 10% value test, the determination of our interest in the assets of a partnership or limited liability company in which we own an interest will be based on our proportionate interest in any securities issued by the partnership or limited liability company, excluding for this purpose certain securities described in the Code.

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Fourth, not more than 25% (20% for taxable years beginning before January 1, 2009) of the value of our total assets may be represented by the securities of one or more taxable REIT subsidiaries. We believe that the value of our taxable REIT subsidiary has not exceeded, and believe that in the future it will not exceed, the limitations set forth above. So long as this subsidiary qualifies as our taxable REIT subsidiary, we will not be subject to the 5% asset test, the 10% voting securities limitation or the 10% value limitation with respect to our ownership of the securities of this subsidiary. We may acquire securities in other taxable REIT subsidiaries in the future.

With respect to each issuer in which we currently own an interest that does not qualify as a REIT, a qualified REIT subsidiary or a taxable REIT subsidiary, we believe that our ownership of the securities of any such issuer has complied with the 25% value limitation, the 5% value limitation, the 10% voting securities limitation and the 10% value limitation. No independent appraisals have been obtained to support these conclusions. In addition, there can be no assurance that the IRS will not disagree with our determinations of value.

The asset tests described above must be satisfied at the close of each calendar quarter of our taxable year. After initially meeting the asset tests at the close of any quarter, we will not lose our status as a REIT for failure to satisfy the asset tests at the end of a later quarter solely by reason of changes in asset values unless we (directly or through our operating partnership or through our subsidiary partnerships and limited liability companies) acquire securities in the applicable issuer, increase our ownership of securities of such issuer (including as a result of increasing our interest in our operating partnership or other partnerships and limited liability companies which own such securities), or acquire other assets. For example, our indirect ownership of securities of each issuer will increase as a result of our capital contributions to our operating partnership or as limited partners exercise their redemption/exchange rights. If we fail to satisfy an asset test because we acquire securities or other property during a quarter, including as a result of an increase in our interest in our operating partnership, we may cure this failure by disposing of sufficient nonqualifying assets or acquiring sufficient qualifying assets within 30 days after the close of that quarter. We believe that we have maintained and intend to maintain adequate records of the value of our assets to ensure compliance with the asset tests. In addition, we intend to take such actions within the 30 days after the close of any calendar quarter as may be required to cure any noncompliance.

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

Although we believe that we have satisfied the asset tests described above and plan to take steps to ensure that we satisfy such tests for any calendar quarter with respect to which retesting is to occur, there can be no assurance that we will always be successful, or a reduction in our operating partnership's overall interest in an issuer (including a taxable REIT subsidiary) will not be required. If we fail to cure any noncompliance with the asset tests in a timely manner, and the relief provisions described above are not available, we would cease to qualify as a REIT. See Failure to Qualify below.

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

90% of our REIT taxable income, and

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90% of our after-tax net income, if any, from foreclosure property, minus

the excess of the sum of certain items of non-cash income over 5% of our REIT taxable income.

For these purposes, our REIT taxable income is computed without regard to the dividends paid deduction and our net capital gain. In addition, for purposes of this test, non-cash income means income attributable to leveled stepped rents, original issue discount on purchase money debt, cancellation of indebtedness, and any like-kind exchanges that are later determined to be taxable.

Also, our REIT taxable income will be reduced by any taxes that we are required to pay on any gain we recognize from the disposition of any asset we acquired from a corporation which is or has been a C corporation in a transaction in which our tax basis in the asset is less than the fair market value of the asset, in each case determined as of the date on which we acquired the asset, within the ten-year period following our acquisition of such asset. See Taxation of the Company General.

We generally must pay, or be treated as paying, the distributions described above in the taxable year to which they relate. At our election, a distribution will be treated as paid in a taxable year if it is declared before we timely file our tax return for such year and paid on or before the first regular dividend payment after such declaration, provided such payment is made during the twelve-month period following the close of such year. These distributions are treated as received by our stockholders in the year in which paid. This is so even though these distributions relate to the prior year for purposes of the 90% distribution requirement. In order to be taken into account for purposes of our distribution requirement, the amount distributed must not be preferential i.e., every stockholder of the class of stock to which a distribution is made must be treated the same as every other stockholder of that class, and no class of stock may be treated other than according to its dividend rights as a class. To the extent that we do not distribute all of our net capital gain, or distribute at least 90%, but less than 100%, of our REIT taxable income, as adjusted, we will be required to pay tax on the undistributed amount at regular corporate tax rates. We believe that we have made, and we intend to continue to make, timely distributions sufficient to satisfy these annual distribution requirements and to minimize our corporate tax obligations. In this regard, the partnership agreement of our operating partnership authorizes us, as general partner, to take such steps as may be necessary to cause our operating partnership to distribute to its partners an amount sufficient to permit us to meet these distribution requirements and to minimize our corporate tax obligation.

We expect that our REIT taxable income will be less than our cash flow because of depreciation and other non-cash charges included in computing REIT taxable income. Accordingly, we anticipate that we will generally have sufficient cash or liquid assets to enable us to satisfy the distribution requirements described above. However, from time to time, we may not have sufficient cash or other liquid assets to meet these distribution requirements due to timing differences between the actual receipt of income and actual payment of deductible expenses, and the inclusion of income and deduction of expenses in determining our taxable income. If these timing differences occur, we may borrow funds to pay cash dividends or pay dividends in the form of taxable stock dividends in order to meet the distribution requirements, while preserving our cash. In addition, we may decide to retain our cash, rather than distribute it, in order to repay debt or for other reasons.

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

to our stockholders in the year such dividend is paid.

Furthermore, we will be required to pay a 4% excise tax to the extent we fail to distribute during each calendar year, or in the case of distributions with declaration and record dates falling in the last three months of the calendar year, by the end of January immediately following such year, at least the sum of 85% of our REIT ordinary income for such year, 95% of our REIT capital gain net income for the year and any undistributed taxable income from prior periods. Any ordinary income and net capital gain on which this excise tax is imposed for any year is treated as an amount distributed during that year for purposes of calculating such tax.



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For purposes of the distribution requirements and excise tax described above, distributions declared during the last three months of the taxable year, payable to stockholders of record on a specified date during such period and paid during January of the following year, will be treated as paid by us and received by our stockholders on December 31 of the year in which they are declared.

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

## **Failure to Qualify**

Specified cure provisions may be available to us in the event that we discover a violation of a provision of the Code that would result in our failure to qualify as a REIT. Except with respect to violations of the gross income tests and asset tests (for which the cure provisions are described above), and provided the violation is due to reasonable cause and not due to willful neglect, these cure provisions generally impose a \$50,000 penalty for each violation in lieu of a loss of REIT status.

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

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

*General.* All of our investments are held through our operating partnership. In addition, our operating partnership holds certain of its investments indirectly through subsidiary partnerships and limited liability companies that, unless they otherwise elect to be taxed as corporations that are either taxable REIT subsidiaries of ours or REITs, we believe have been, and will continue to be, treated as partnerships or disregarded entities for federal income tax purposes. In general, entities that are treated as partnerships (or disregarded entities) for federal income tax purposes are pass-through entities which are not required to pay federal income tax. Rather, partners or members of such entities are allocated their shares of the items of income, gain, loss, deduction and credit of the entity, and generally are required to pay tax on this income, without regard to whether the partners or members receive a distribution of cash from the entity. We include in our income our pro rata share of the foregoing items for purposes of the various gross income tests, in the computation of our REIT taxable income and for purposes of the REIT distribution requirements. Moreover, for purposes of the asset tests, we will include our pro rata share of the assets held by our operating partnership, including its share of its subsidiary partnerships and limited liability companies, based on our capital interests in each such entity. See Taxation of Our Company.

*Entity Classification.* Our interests in our operating partnership and the subsidiary partnerships and limited liability companies involve special tax considerations, including the possibility that the IRS might challenge the status of one or more of these entities as a partnership (or disregarded entity), as opposed to an association taxable as a corporation for federal income tax purposes. If our operating partnership, or a subsidiary partnership or limited liability company, were treated as an association, it would be taxable as a corporation and would be required to pay an entity-level tax on its income. In this situation, the character of our assets and items of gross income would change and could prevent us from satisfying the REIT asset tests and possibly the REIT income tests. See [Taxation of Our Company](#) [Asset Tests](#) and [Income Tests](#). This, in turn, could prevent us from qualifying as a REIT. See [Failure to Qualify](#) for a discussion of the effect of our failure to meet these tests for a taxable year.

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In addition, a change in the tax status of our operating partnership s or a subsidiary partnership s or limited liability company s status might be treated as a taxable event. In that case, we might incur a tax liability without any related cash distributions. We believe our operating partnership and each of our other partnerships and limited liability companies will be classified as a partnership or a disregarded entity for federal income tax purposes.

*Allocations of Income, Gain, Loss and Deduction.* A partnership or limited liability company agreement will generally determine the allocation of income and losses among partners or members, provided such allocations comply with the provisions of Section 704(b) of the Code and the related Treasury regulations. Generally, Section 704(b) of the Code and the related Treasury regulations require that partnership and limited liability company allocations respect the economic arrangement of the partners or members. The operating partnership agreement generally provides that items of operating income and loss will be allocated to the holders of units in proportion to the number of units held by each such unit holder. Certain limited partners have agreed to guarantee debt of our operating partnership, either directly or indirectly through an agreement to make capital contributions to our operating partnership under limited circumstances. As a result of these guarantees or contribution agreements, and notwithstanding the foregoing discussion of allocations of income and loss of our operating partnership to holders of units, such limited partners could under limited circumstances be allocated a disproportionate amount of net loss upon a liquidation of our operating partnership, which net loss would have otherwise been allocable to us.

If an allocation of partnership income or loss does not comply with the requirements of Section 704(b) of the Code and the Treasury regulations thereunder, the item subject to the allocation would be reallocated in accordance with the partners' interests in the partnership. This reallocation will be determined by taking into account all of the facts and circumstances relating to the economic arrangement of the partners with respect to such item. Our operating partnership s allocations of taxable income and loss are intended to comply with the requirements of Section 704(b) of the Code and the Treasury regulations promulgated thereunder.

*Tax Allocations With Respect to the Properties.* Under Section 704(c) of the Code, income, gain, loss and deduction attributable to appreciated or depreciated property that is contributed to a partnership or limited liability company in exchange for an interest in the partnership or limited liability company, must be allocated in a manner so that the contributing partner or member is charged with the unrealized gain or benefits from the unrealized loss associated with the property at the time of the contribution. The amount of the unrealized gain or unrealized loss generally is equal to the difference between the fair market value or book value and the adjusted tax basis of the contributed property at the time of contribution, as adjusted from time to time. These allocations are solely for federal income tax purposes and do not affect the book capital accounts or other economic or legal arrangements among the partners or members. Appreciated property (i.e., property having an adjusted tax basis less than its fair market value at the time of contribution) has been contributed to our operating partnership in exchange for interests in our operating partnership. In addition, our operating partnership may, from time to time, acquire interests in property in exchange for interests in the operating partnership. In that case, the tax basis of these property interests will generally carry over to our operating partnership, notwithstanding their different book (i.e., fair market) value (this difference is referred to as a book-tax difference). The operating partnership agreement requires that income and loss allocations with respect to these properties be made in a manner consistent with Section 704(c) of the Code. Treasury regulations issued under Section 704(c) of the Code provide partnerships with a choice of several methods of accounting for book-tax differences. We and our operating partnership have agreed to use the traditional method for accounting for book-tax differences for the properties initially contributed to our operating partnership. Under the traditional method, which is the least favorable method from our perspective, the carryover basis of contributed interests in the properties in the hands of our operating partnership (1) could cause us to be allocated lower amounts of depreciation deductions for tax purposes than would be allocated to us if any of the contributed properties were to have a tax basis equal to its respective fair market value at the time of the contribution and (2) could cause us to be allocated taxable gain in the event of a sale of such contributed interests or properties in excess of the economic or book income allocated to us as

a result of such sale, with a corresponding benefit to the other partners in our operating partnership. An allocation described in clause (2) above might cause us or the other partners to recognize taxable income in excess of cash proceeds in the event of a sale or other disposition of property, which might adversely affect our ability to comply with the REIT distribution requirements. See Taxation of Our Company Requirements for Qualification as a Real Estate Investment Trust and Annual Distribution Requirements. To the extent our depreciation is reduced, or our gain on sale is increased, stockholders may recognize additional dividend income without an increase in distributions.

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

**Taxation of Holders of Capital Stock and Debt Securities**

The following summary describes certain of the federal income tax consequences to you of acquiring, owning and disposing of our capital stock and debt securities of BioMed Realty Trust, Inc. or BioMed Realty, L.P. This summary assumes that the securities offered by this prospectus are held as capital assets (generally, property held for investment within the meaning of Section 1221 of the Code). It does not address all the tax consequences that may be relevant to you in light of your particular circumstances, including the impact of the Medicare contribution tax on net investment income. In addition, this discussion does not address the tax consequences relevant to persons who receive special treatment under the United States federal income tax law, except where specifically noted. Holders receiving special treatment include, without limitation:

financial institutions, banks and thrifts,

insurance companies,

tax-exempt organizations (except to the limited extent discussed in [Taxation of Tax-Exempt Stockholders](#) ),

S corporations,

traders in securities that elect to mark to market,

partnerships, pass-through entities and persons holding our securities through a partnership or other pass-through entity,

holders subject to the alternative minimum tax,

regulated investment companies and REITs,

non-U.S. governments and international organizations,

broker-dealers or dealers in securities or currencies,

United States expatriates,

non-U.S. holders that are passive foreign investment companies or controlled foreign corporations,

holders who receive stock through the exercise of employee stock options or otherwise as compensation,

persons holding our securities as part of a hedge, straddle, conversion, integrated or other risk reduction or constructive sale transaction, and

U.S. holders (as defined below) whose functional currency is not the United States dollar.

When we use the term U.S. holder, we mean a beneficial holder of our securities who, for United States federal income tax purposes, is:

an individual who is a citizen or resident of the United States,

a corporation, or an entity treated as a corporation for United States federal income tax purposes, created or organized in or under the laws of the United States or of any state thereof or in the District of Columbia,

an estate the income of which is subject to United States federal income taxation regardless of its source, or

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a trust that (1) is subject to the primary supervision of a United States court and the control of one or more United States persons or (2) has a valid election in effect under applicable Treasury regulations to be treated as a United States person.

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

If you hold our securities and are not a U.S. holder, partnership or an entity classified as a partnership for United States federal income tax purposes, you are a non-U.S. holder.

## **Taxation of Holders of Our Capital Stock**

The following summary describes certain of the federal income tax consequences to you of owning and disposing of our capital stock. If you are considering purchasing our capital stock, you should consult your tax advisors concerning the application of United States federal income tax laws to your particular situation as well as any consequences of the purchase, ownership and disposition of our capital stock arising under other federal laws and the laws of any state, local or foreign taxing jurisdiction.

### ***Taxable U.S. Holders Generally***

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

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

Certain stock dividends will be taxable to recipient U.S. holders to the same extent as if paid in cash. See *Taxation of the Company Annual Distribution Requirements* above. As a result, U.S. holders could recognize taxable income in excess of the cash received and may be required to pay tax with respect to such dividends in excess of the cash received.

*Capital Gain Dividends.* Dividends that we properly designate as capital gain dividends will be taxable to our taxable U.S. holders as a gain from the sale or disposition of a capital asset held for more than one year, to the extent that such gain does not exceed our actual net capital gain for the taxable year. U.S. holders that are corporations may, however, be required to treat up to 20% of certain capital gain dividends as ordinary income. If we properly designate any portion of a dividend as a capital gain dividend, then, except as otherwise required by law, we presently intend to allocate a portion of the total capital gain dividends paid or made available to holders of all classes of our stock for the year to the holders of each class of our capital stock in proportion to the amount that our total dividends, as determined for United States federal income tax purposes, paid or made available to the holders of such class of capital stock for the year bears to the total dividends, as determined for United States federal income



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tax purposes, paid or made available to holders of all classes of our stock for the year. In addition, except as otherwise required by law, we may make a similar allocation with respect to any undistributed long term capital gains which are to be included in our stockholders' long term capital gains, based on the allocation of the capital gain amount which would have resulted if those undistributed long term capital gains had been distributed as capital gain dividends by us to our stockholders.

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

include its pro rata share of our undistributed net capital gains in computing its long-term capital gains in its return for its taxable year in which the last day of our taxable year falls, subject to certain limitations as to the amount that is includable,

be deemed to have paid its share of the capital gains tax imposed on us on the designated amounts included in the U.S. holder's income as long-term capital gain,

receive a credit or refund for the amount of tax deemed paid by it,

increase the adjusted tax basis of its stock by the difference between the amount of includable gains and the tax deemed to have been paid by it, and

in the case of a U.S. holder that is a corporation, appropriately adjust its earnings and profits for the retained capital gains in accordance with Treasury regulations to be promulgated by the IRS.

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

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

as long-term capital gains.

*Redemption or Repurchase by Us.* A redemption or repurchase of shares of our capital stock will be treated under Section 302 of the Code as a distribution taxable as a dividend to the extent of our current and accumulated earnings and profits at ordinary income rates unless the redemption or repurchase satisfies one of the tests set forth in Section 302(b) of the Code and is therefore treated as a sale or exchange of the redeemed or repurchased shares. The redemption or repurchase will be treated as a sale or exchange if it:

is substantially disproportionate with respect to the U.S. holder,

results in a complete termination of the U.S. holder's stock interest in us, or

is not essentially equivalent to a dividend with respect to the U.S. holder, all within the meaning of Section 302(b) of the Code.

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In determining whether any of these tests have been met, shares of capital stock, including common stock and other equity interests in us, considered to be owned by the U.S. holder by reason of certain constructive ownership rules set forth in the Code, as well as shares of our capital stock actually owned by the U.S. holder, must generally be taken into account. Because the determination as to whether any of the alternative tests of Section 302(b) of the Code will be satisfied with respect to the U.S. holder depends upon the facts and circumstances at the time that the determination must be made, U.S. holders are advised to consult their tax advisors to determine such tax treatment.

If a redemption or repurchase of shares of our stock is treated as a distribution taxable as a dividend, the amount of the distribution will be measured by the amount of cash and the fair market value of any property received. See

*Distributions Generally.* A U.S. holder's adjusted tax basis in the redeemed or repurchased shares of the stock for tax purposes generally will be transferred to its remaining shares of our capital stock, if any. If a U.S. holder owns no other shares of our capital stock, such basis may, under certain circumstances, be transferred to a related person or it may be lost entirely. Proposed Treasury regulations issued in 2009, if enacted in their current form, would affect the basis recovery rules described above. It is not clear whether these proposed regulations will be enacted in their current form or at all. Prospective investors should consult their tax advisors regarding the federal income tax consequences of a redemption or repurchase of our capital stock.

If a redemption or repurchase of shares of our stock is not treated as a distribution taxable as a dividend, it will be treated as a taxable sale or exchange in the manner described above under *Dispositions of Our Capital Stock*.

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

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

Dividend income from us and gain arising upon a sale of shares of our capital stock generally should not be unrelated business taxable income to a tax-exempt stockholder, except as described below. All or a portion of such dividend income will be unrelated business taxable income if a tax-exempt stockholder holds its shares as debt-financed property within the meaning of the Code, and all or a portion of such gain will be unrelated business taxable income if a tax-exempt stockholder holds its shares as debt-financed property or as inventory or property held primarily for sale to customers in the ordinary course of the trade or business of the tax-exempt stockholder. Generally, debt-financed property is property the acquisition or holding of which was financed through a borrowing by the tax-exempt stockholder.

For tax-exempt stockholders that are social clubs, voluntary employee benefit associations, supplemental unemployment benefit trusts, or qualified group legal services plans exempt from federal income taxation under Sections 501(c)(7), (c)(9), (c)(17) or (c)(20) of the Code, respectively, income from an investment in our shares will constitute unrelated business taxable income unless the organization is able to properly claim a deduction for amounts set aside or placed in reserve for specific purposes so as to offset the income generated by its investment in our shares.

These prospective investors should consult their tax advisors concerning these set aside and reserve requirements.

Notwithstanding the above, however, a portion of the dividends paid by a pension-held REIT may be treated as unrelated business taxable income as to certain trusts that hold more than 10%, by value, of the interests in the REIT.

A REIT will not be a pension-held REIT if it is able to satisfy the not closely held requirement without relying on the look-through exception with respect to certain trusts or if such REIT is not predominantly held by qualified trusts. As a result of restrictions on the transfer and ownership of our stock contained in our charter, we

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do not expect to be classified as a pension-held REIT, and as a result, the tax treatment described above should be inapplicable to our stockholders. However, because our stock is (and, we anticipate, will continue to be) publicly traded, we cannot guarantee that this is or will always be the case.

***Taxation of Non-U.S. Holders***

The following discussion addresses the rules governing United States federal income taxation of the purchase, ownership and disposition of our capital stock by non-U.S. holders. These rules are complex, and no attempt is made herein to provide more than a brief summary of such rules. Accordingly, the discussion does not address all aspects of United States federal income taxation that may be relevant to a non-U.S. holder in light of its particular circumstances and does not address any state, local or non-U.S. tax consequences. We urge non-U.S. holders to consult their tax advisors to determine the impact of federal, state, local and non-U.S. income tax laws on the purchase, ownership, and disposition of shares of our capital stock, including any tax return filing and other reporting requirements.

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

Distributions in excess of our current and accumulated earnings and profits will not be taxable to a non-U.S. holder to the extent that such distributions do not exceed the non-U.S. holder's adjusted tax basis in our capital stock, but rather will reduce the adjusted tax basis of such capital stock. To the extent that these distributions exceed the non-U.S. holder's adjusted tax basis in our capital stock, they will give rise to gain from the sale or exchange of such stock. The tax treatment of this gain is described below.

For withholding purposes, because we generally cannot determine at the time we make a distribution whether the distribution will exceed our current and accumulated earnings and profits, we expect to treat all distributions as made out of our current or accumulated earnings and profits. As a result, except with respect to certain distributions attributable to the sale of United States real property interests as described below, we expect to withhold United States federal income tax at the rate of 30% on any distributions made to a non-U.S. holder unless:

a lower treaty rate applies and the non-U.S. holder provides us with an IRS Form W-8BEN or IRS Form W-8BEN-E (or other applicable documentation) evidencing eligibility for that reduced treaty rate, or

the non-U.S. holder provides us with an IRS Form W-8ECI claiming that the distribution is income effectively connected with the non-U.S. holder's United States trade or business.

However, amounts withheld may be refundable if it is subsequently determined that the distribution was, in fact, in excess of our current and accumulated earnings and profits, provided that certain conditions are met.

*Capital Gain Dividends and Distributions Attributable to a Sale or Exchange of United States Real Property Interests.* Distributions to a non-U.S. holder that we properly designate as capital gain dividends, other than those

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arising from the disposition of a United States real property interest, generally should not be subject to United States federal income taxation, unless:

- (1) the investment in our capital stock is treated as effectively connected with the non-U.S. holder's United States trade or business (and, if required by an applicable income tax treaty, the non-U.S. holder maintains a permanent establishment in the United States to which such dividends are attributable), in which case the non-U.S. holder will be subject to the same treatment as U.S. holders with respect to such gain, except that a non-U.S. holder that is a non-U.S. corporation may also be subject to a branch profits tax of up to 30%, as discussed above, or
- (2) the non-U.S. holder is a nonresident alien individual who is present in the United States for 183 days or more during the taxable year and certain other conditions are met, in which case the nonresident alien individual will be subject to a 30% tax on the individual's capital gains (or such lower rate specified by an applicable income tax treaty), which may be offset by U.S. source capital losses of such non-U.S. holder (even though the individual is not considered a resident of the United States), provided the non-U.S. holder has timely filed United States federal income tax returns with respect to such losses.

Pursuant to the Foreign Investment in Real Property Tax Act, or FIRPTA, distributions to a non-U.S. holder that are attributable to gain from our sale or exchange of United States real property interests (whether or not designated as capital gain dividends) will cause the non-U.S. holder to be treated as recognizing such gain as income effectively connected with a United States trade or business. Non-U.S. holders would generally be taxed at the same rates applicable to U.S. holders, subject to any applicable alternative minimum tax. We also will be required to withhold and to remit to the IRS 35% (or 20% to the extent provided in Treasury regulations) of any distribution to non-U.S. holders that is designated as a capital gain dividend or, if greater, 35% of any distribution to non-U.S. holders that could have been designated as a capital gain dividend. Distributions subject to FIRPTA may also be subject to a 30% branch profits tax in the hands of a non-U.S. holder that is a corporation. The amount withheld is creditable against the non-U.S. holder's United States federal income tax liability. However, any distribution with respect to any class of stock that is regularly traded on an established securities market located in the United States is not subject to FIRPTA, and therefore, not subject to the 35% U.S. withholding tax described above, if the non-U.S. holder did not own more than 5% of such class of stock at any time during the one-year period ending on the date of the distribution. Instead, such distributions generally will be treated as ordinary dividend distributions and subject to withholding in the manner described above with respect to ordinary dividends.

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

*Sale of Our Capital Stock.* Except as described below under Redemption or Repurchase by Us, gain recognized by a non-U.S. holder upon the sale, exchange or other taxable disposition of our capital stock generally will not be subject to United States federal income taxation unless such stock constitutes a United States real property interest within the meaning of FIRPTA. In general, stock of a domestic corporation that constitutes a United States real property holding

corporation will constitute a United States real property interest. We believe that we are a United States real property holding corporation. Our capital stock, however, will not constitute a United States real property interest so long as we are a domestically-controlled qualified investment entity. A domestically-controlled qualified investment entity includes a REIT in which at all times during a specified testing period, less than 50% in value of such REIT's stock is held directly or indirectly by non-U.S. persons. We believe, but cannot guarantee, that we are a domestically-controlled qualified investment entity. Because our stock is (and, we anticipate, will continue to be) publicly traded, no assurance can be given that we will continue to be a domestically-controlled qualified investment entity.



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Notwithstanding the foregoing, gain from the sale, exchange or other taxable disposition of our capital stock not otherwise subject to FIRPTA will be taxable to a non-U.S. holder if either (1) the investment in our capital stock is treated as effectively connected with the non-U.S. holder's United States trade or business (and, if required by an applicable income tax treaty, the non-U.S. holder maintains a permanent establishment in the United States to which such gain is attributable) or (2) the non-U.S. holder is a nonresident alien individual who is present in the United States for 183 days or more during the taxable year and certain other conditions are met. In addition, even if we are a domestically-controlled qualified investment entity, upon disposition of our capital stock, a non-U.S. holder may be treated as having gain from the sale, exchange or other taxable disposition of a United States real property interest if the non-U.S. holder (1) disposes of our capital stock within a 30-day period preceding the ex-dividend date of a distribution, any portion of which, but for the disposition, would have been treated as gain from the sale or exchange of a United States real property interest and (2) acquires, or enters into a contract or option to acquire, or is deemed to acquire, other shares of our capital stock during the 61-day period beginning with the first day of the 30-day period described in clause (1). The preceding sentence shall not apply to a non-U.S. holder if the non-U.S. holder did not own more than 5% of the stock at any time during the one year period ending on the date of the distribution described in clause (1) of the preceding sentence and the class of stock is regularly traded, as defined by applicable Treasury regulations. Non-U.S. holders should contact their tax advisors regarding the tax consequences of any sale, exchange, or other taxable disposition of our capital stock.

Even if we do not qualify as a domestically-controlled qualified investment entity at the time a non-U.S. holder sells or exchanges our capital stock, gain arising from such a sale, exchange or other taxable disposition would not be subject to United States federal income taxation under FIRPTA as a sale of a United States real property interest if:

- (1) such class of our capital stock is regularly traded, as defined by applicable Treasury regulations, on an established securities market such as the NYSE, and
- (2) such non-U.S. holder owned, actually and constructively, 5% or less of such class of our capital stock throughout the five year period ending on the date of the sale, exchange or other taxable disposition.

If gain on the sale, exchange or other taxable disposition of our capital stock were subject to taxation under FIRPTA, the non-U.S. holder would be required to file a United States federal income tax return and would be subject to regular United States federal income tax with respect to such gain in the same manner as a taxable U.S. holder (subject to any applicable alternative minimum tax and a special alternative minimum tax in the case of nonresident alien individuals). In addition, if the sale, exchange or other taxable disposition of our capital stock were subject to taxation under FIRPTA, and if shares of our capital stock were not regularly traded on an established securities market, the purchaser of such capital stock generally would be required to withhold and remit to the IRS 10% of the purchase price. If amounts withheld on a sale, redemption, repurchase, or exchange of our capital stock exceed the non-U.S. holder's substantive tax liability resulting from such disposition, such excess may be refunded or credited against such non-U.S. holder's federal income tax liability, provided that the required information is provided to the IRS on a timely basis. Amounts withheld on any such sale, exchange or other taxable disposition of our capital stock may not satisfy a non-U.S. holder's entire tax liability under FIRPTA, and such non-U.S. holder remains liable for the timely payment of any remaining tax liability.

*Redemption or Repurchase by Us.* A redemption or repurchase of shares of our capital stock will be treated under Section 302 of the Code as a distribution (and taxable as a dividend to the extent of our current and accumulated earnings and profits) unless the redemption or repurchase satisfies one of the tests set forth in Section 302(b) of the Code and is therefore treated as a sale or exchange of the redeemed or repurchased shares. See Taxable U.S. Holders

Generally Redemption or Repurchase by Us. If the redemption or repurchase of shares is treated as a distribution, the amount of the distribution will be measured by the amount of cash and the fair market value of any property received. See Taxation of Non-U.S. Holders Distributions Generally. If the redemption or repurchase of shares is not treated as a distribution, it will be treated as a taxable sale or exchange in the manner described under Taxation of Non-U.S. Holders Sale of Our Capital Stock.

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

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Payments of dividends or of proceeds from the disposition of stock made to a non-U.S. holder may be subject to information reporting and backup withholding unless such holder establishes an exemption, for example, by properly certifying its non-United States status on an IRS Form W-8BEN or IRS Form W-8BEN-E or another appropriate version of IRS Form W-8. Notwithstanding the foregoing, backup withholding and information reporting may apply if either we have or our paying agent has actual knowledge, or reason to know, that a non-U.S. holder is a United States person.

Backup withholding is not an additional tax. Rather, the United States federal income tax liability of persons subject to backup withholding will be reduced by the amount of tax withheld. If withholding results in an overpayment of taxes, a refund or credit may be obtained, provided that the required information is timely furnished to the IRS.

**Taxation of Holders of Debt Securities Issued by BioMed Realty Trust, Inc. or BioMed Realty, L.P.**

The following summary describes the principal United States federal income tax consequences to you of purchasing, owning and disposing of debt securities issued by BioMed Realty Trust, Inc. or BioMed Realty, L.P. For purposes of this section under the heading Taxation of Holders of Debt Securities Issued by BioMed Realty Trust, Inc. or BioMed Realty, L.P., references to we, our, and us mean either BioMed Realty Trust, Inc. or BioMed Realty, L.P., as applicable, to indicate the issuer of the debt securities. This discussion assumes the debt securities will be issued with no more than a *de minimis* amount of original issue discount for United States federal income tax purposes. In addition, this discussion is limited to persons purchasing the debt securities for cash at original issue and at their original issue price within the meaning of Section 1273 of the Code (*i.e.*, the first price at which a substantial amount of the debt securities is sold to the public for cash).

***Taxable U.S. Holders of Our Debt Securities***

*Payments of Interest.* U.S. holders generally will be required to recognize and include in gross income any stated interest as ordinary income at the time it is paid or accrued on the debt securities in accordance with such U.S. holder's method of accounting for United States federal income tax purposes.

*Sale, Exchange or Other Taxable Disposition of the Debt Securities.* U.S. holders will recognize gain or loss on the sale, exchange, redemption (including a partial redemption), retirement or other taxable disposition of a debt security equal to the difference between the sum of the cash and the fair market value of any property received in exchange therefor (less a portion allocable to any accrued and unpaid stated interest, which generally will be taxable as interest if not previously included in such holder's income) and the U.S. holder's adjusted tax basis in the debt security. A U.S. holder's adjusted tax basis in a debt security (or a portion thereof) generally will be the U.S. holder's cost therefor. Any gain or loss will be capital gain or loss, and will be long-term capital gain or loss if the U.S. holder has held the debt security for more than one year at the time of such disposition. Otherwise, such gain or loss will be short-term capital gain or loss. Long-term capital gains recognized by certain non-corporate U.S. holders, including individuals, will be taxable at a reduced rate. The deductibility of capital losses is subject to limitation.

*Information Reporting and Backup Withholding.* A U.S. holder may be subject to information reporting and backup withholding when such holder receives payments on the debt securities or receives proceeds upon the sale or other disposition of such debt securities (including a redemption or retirement of the debt securities). Certain U.S. holders (including, among others, corporations and certain tax-exempt organizations) are exempt from backup withholding. A U.S. holder will be subject to backup withholding if such holder is not otherwise exempt and such holder:

fails to furnish its taxpayer identification number, or TIN, which for an individual is ordinarily his or her social security number;

furnishes an incorrect TIN;

is notified by the IRS that the holder previously failed to properly report payments of interest or dividends;  
or

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fails to certify, under penalties of perjury, that such holder has furnished a correct TIN and that the IRS has not notified such holder that it is subject to backup withholding.

A U.S. holder should consult its tax advisor regarding its qualification for an exemption from backup withholding and the procedures for obtaining such an exemption, if applicable. Backup withholding is not an additional tax. Any amounts withheld under the backup withholding rules from a payment to a U.S. holder may be allowed as a credit against the holder's United States federal income tax liability or may be refunded, provided the required information is timely furnished to the IRS.

***Non-U.S. Holders of Our Debt Securities***

*Payments of Interest.* Interest paid to a non-U.S. holder on its debt securities that is not effectively connected with such holder's conduct of a trade or business within the United States generally will not be subject to United States federal income tax, provided that:

the non-U.S. holder does not, actually or constructively, own 10% or more of the total combined voting power of all classes of BioMed Realty Trust, Inc.'s voting stock or 10% or more of BioMed Realty, L.P.'s capital or profits, as applicable,

the non-U.S. holder is not a controlled foreign corporation related to us through actual or constructive stock ownership, and

either (1) the non-U.S. holder certifies in a statement provided to the applicable withholding agent, under penalties of perjury, that it is not a United States person and provides its name and address, (2) a securities clearing organization, bank or other financial institution that holds customers' securities in the ordinary course of its trade or business and holds the debt securities on behalf of the non-U.S. holder certifies to the applicable withholding agent under penalties of perjury that it, or the financial institution between it and the non-U.S. holder, has received from the non-U.S. holder a statement, under penalties of perjury, that such holder is not a United States person and provides a copy of such statement to the applicable withholding agent or (3) the non-U.S. holder holds its debt securities directly through a qualified intermediary (within the meaning of applicable Treasury regulations) and certain conditions are satisfied.

If a non-U.S. holder does not satisfy the requirements above, such non-U.S. holder may be entitled to a reduction in or an exemption from withholding on such interest as a result of an applicable tax treaty. To claim such entitlement, the non-U.S. holder must provide the applicable withholding agent with a properly executed IRS Form W-8BEN or W-8BEN-E (or other applicable documentation) claiming a reduction in or exemption from withholding tax under the benefit of an income tax treaty between the United States and the country in which the non-U.S. holder resides or is established.

If interest paid to a non-U.S. holder is effectively connected with the non-U.S. holder's conduct of a trade or business within the United States (and, if required by an applicable income tax treaty, the non-U.S. holder maintains a permanent establishment in the United States to which such interest is attributable), the non-U.S. holder will be exempt from the United States federal withholding tax described above. To claim the exemption, the non-U.S. holder must furnish to the applicable withholding agent a valid IRS Form W-8ECI, certifying that interest paid on a note is not subject to withholding tax because it is effectively connected with the conduct by the non-U.S. holder of a trade or business within the United States.

Any such effectively connected interest generally will be subject to United States federal income tax at the regular graduated rates. A non-U.S. holder that is a corporation also may be subject to a branch profits tax at a rate of 30% (or such lower rate specified by an applicable income tax treaty) on such effectively connected interest, as adjusted for certain items.

The certifications described above must be provided to the applicable withholding agent prior to the payment of interest and must be updated periodically. Non-U.S. holders that do not timely provide the applicable withholding agent with the required certification, but that qualify for a reduced rate under an applicable income tax treaty, may obtain a refund of any excess amounts withheld by timely filing an appropriate claim for refund with the IRS. Non-U.S. holders should consult their tax advisors regarding their entitlement to benefits under any applicable income tax treaty.

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*Sale, Exchange or Other Taxable Disposition of Debt Securities.* A non-U.S. holder generally will not be subject to United States federal income tax on any gain realized upon the sale, exchange, redemption, retirement or other taxable disposition of a debt security (such amount excludes any amount allocable to accrued and unpaid interest, which generally will be treated as interest and may be subject to the rules discussed above in *Payments of Interest* ) unless (1) the gain is effectively connected with the conduct by the non-U.S. holder of a trade or business within the United States (and, if required by an applicable income tax treaty, the non-U.S. holder maintains a permanent establishment in the United States to which such gain is attributable) or (2) the non-U.S. holder is a nonresident alien individual present in the United States for 183 days or more during the taxable year of the disposition and certain other requirements are met.

Gain described in clause (1) above generally will be subject to United States federal income tax on a net income basis at the regular graduated rates. A non-U.S. holder that is a foreign corporation also may be subject to a branch profits tax at a rate of 30% (or such lower rate specified by an applicable income tax treaty) on such effectively connected gain, as adjusted for certain items.

Gain described in clause (2) above will be subject to United States federal income tax at a rate of 30% (or such lower rate specified by an applicable income tax treaty), which may be offset by U.S. source capital losses of the non-U.S. holder (even though the individual is not considered a resident of the United States), provided the non-U.S. holder has timely filed United States federal income tax returns with respect to such losses.

Non-U.S. holders should consult their tax advisors regarding any applicable income tax treaties that may provide for different rules.

*Backup Withholding and Information Reporting.* Payments of interest generally will not be subject to backup withholding, provided the applicable withholding agent does not have actual knowledge or reason to know that the non-U.S. holder is a United States person and the holder certifies its non-U.S. status as described above under *Non-U.S. Holders of Our Debt Securities* *Payments of Interest*. However, information returns are required to be filed with the IRS in connection with any interest paid to the non-U.S. holder, regardless of whether any tax was actually withheld. In addition, proceeds of the sale or other taxable disposition of debt securities (including a retirement or redemption of such debt securities) within the United States or conducted through certain U.S.-related brokers generally will not be subject to backup withholding or information reporting, if the applicable withholding agent receives the statement described above and does not have actual knowledge or reason to know that the non-U.S. holder is a United States person or the non-U.S. holder otherwise establishes an exemption. Proceeds of a disposition of debt securities paid outside the United States and conducted through a non-U.S. office of a non-U.S. broker generally will not be subject to backup withholding or information reporting.

Copies of information returns that are filed with the IRS may also be made available under the provisions of an applicable treaty or agreement to the tax authorities of the country in which the non-U.S. holder resides or is established.

Backup withholding is not an additional tax. Any amounts withheld under the backup withholding rules may be allowed as a refund or credit against a non-U.S. holder's United States federal income tax liability, provided that the required information is timely furnished to the IRS. Non-U.S. holders of debt securities should consult their tax advisors regarding the application of backup withholding and information reporting in their particular situation, the availability of an exemption therefrom, and the procedure for obtaining an exemption, if available.

**Tax Rates**

The maximum tax rate for non-corporate taxpayers for capital gains, including certain capital gain dividends, is generally 20% (although depending on the characteristics of the assets which produced these gains and on designations which we may make, certain capital gain dividends may be taxed at a 25% rate). Capital gain dividends will only be eligible for the rates described above to the extent they are properly designated by the REIT as capital gain dividends. The maximum tax rate for non-corporate taxpayers for income that the REIT properly designates as qualified dividend income is generally 20%. However, dividends payable by REITs are not eligible for the 20% tax rate on qualified dividend income, except to the extent that certain holding requirements have been



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met and the REIT's dividends are attributable to dividends received by the REIT from taxable corporations (such as the REIT's taxable REIT subsidiaries) or to income that was subject to tax at the corporate/REIT level (for example, if the REIT distributed taxable income that it retained and paid tax on in the prior taxable year).

In addition, certain U.S. holders that are individuals, estates or trusts must pay an additional 3.8% tax on, among other things, dividends, interest on and capital gains from the sale or other disposition of stock or debt obligations. U.S. holders should consult their tax advisors regarding the effect, if any, of these rules on their ownership and disposition of our capital stock or debt securities.

## **Foreign Accounts**

Withholding taxes may be imposed under Sections 1471 to 1474 of the Code (such sections commonly referred to as the Foreign Account Tax Compliance Act, or FATCA) on certain types of payments made to non-U.S. financial institutions and certain other non-U.S. entities. Specifically, a 30% withholding tax may be imposed on dividends and interest on, and gross proceeds from the sale or other disposition of, our capital stock or debt securities paid to a foreign financial institution or a non-financial foreign entity (each as defined in the Code), unless (1) the foreign financial institution undertakes certain diligence and reporting obligations, (2) the non-financial foreign entity either certifies it does not have any substantial United States owners (as defined in the Code) or furnishes identifying information regarding each substantial United States owner, or (3) the foreign financial institution or non-financial foreign entity otherwise qualifies for an exemption from these rules. If the payee is a foreign financial institution and is subject to the diligence and reporting requirements in clause (1) above, it must enter into an agreement with the United States Department of the Treasury requiring, among other things, that it undertake to identify accounts held by certain specified United States persons or United States-owned foreign entities (each as defined in the Code), annually report certain information about such accounts, and withhold 30% on certain payments to non-compliant foreign financial institutions and certain other account holders. Foreign financial institutions located in jurisdictions that have an intergovernmental agreement with the United States governing FATCA may be subject to different rules.

Under the applicable Treasury regulations, withholding under FATCA generally applies to payments of dividends on our capital stock and interest on our debt securities and will apply to payments of gross proceeds from the sale or other disposition of capital stock or debt securities on or after January 1, 2017.

U.S. holders and prospective investors should consult their tax advisors regarding the potential application of withholding under FATCA to their investment in our capital stock and debt securities.

## **Other Tax Consequences**

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

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**PLAN OF DISTRIBUTION**

We may sell the securities domestically or abroad to one or more underwriters for public offering and sale by them or may sell the securities to investors directly or through dealers or agents, or through a combination of methods. Any underwriter, dealer or agent involved in the offer and sale of the securities will be named in the applicable prospectus supplement.

The distribution of the securities may be effected from time to time in one or more transactions at: (1) a fixed price or prices, which may be changed, (2) market prices prevailing at the time of sale, (3) prices related to the prevailing market prices at the time of sale or (4) negotiated prices. We also may, from time to time, authorize underwriters acting as our agents to offer and sell the securities upon the terms and conditions as are set forth in the applicable prospectus supplement. In connection with the sale of securities, underwriters may be deemed to have received compensation from us in the form of underwriting discounts or commissions and may also receive commissions from purchasers of securities for whom they may act as agent. Underwriters may sell securities to or through dealers, and the dealers may receive compensation in the form of discounts, concessions or commissions from the underwriters and/or commissions from the purchasers for whom they may act as agent.

Any underwriting compensation paid by us to underwriters, dealers or agents in connection with the offering of securities, and any discounts, concessions or commissions allowed by underwriters to participating dealers, will be set forth in the applicable prospectus supplement. Dealers and agents participating in the distribution of the securities may be deemed to be underwriters, and any discounts and commissions received by them and any profit realized by them on resale of the securities may be deemed to be underwriting discounts and commissions under the Securities Act. The maximum compensation to be received by any FINRA member will not exceed 8% of the gross offering proceeds in connection with the sale of the securities registered hereunder. Underwriters, dealers and agents may be entitled, under agreements entered into with us, to indemnification against and contribution toward civil liabilities, including liabilities under the Securities Act. We will describe any indemnification agreement in the applicable prospectus supplement.

Unless we specify otherwise in the applicable prospectus supplement, any series of securities issued hereunder will be a new issue with no established trading market (other than the Company's common stock, which is listed on the NYSE). If we sell any shares of the Company's common stock pursuant to a prospectus supplement, we expect that such shares will be listed on the NYSE, subject to official notice of issuance. We may elect to list any other securities issued hereunder on any exchange, but we are not obligated to do so. Any underwriters or agents to or through whom such securities are sold by us for public offering and sale may make a market in such securities, but such underwriters or agents will not be obligated to do so and may discontinue any market making at any time without notice. We cannot assure you as to the liquidity of the trading market for any such securities.

If indicated in the applicable prospectus supplement, we may authorize underwriters or other persons acting as our agents to solicit offers by institutions or other suitable purchasers to purchase the securities from us at the public offering price set forth in the prospectus supplement, pursuant to delayed delivery contracts providing for payment and delivery on the date or dates stated in the prospectus supplement. These purchasers may include, among others, commercial and savings banks, insurance companies, pension funds, investment companies and educational and charitable institutions. Delayed delivery contracts will be subject to the condition that the purchase of the securities covered by the delayed delivery contracts will not at the time of delivery be prohibited under the laws of any jurisdiction in the United States to which the purchaser is subject. The underwriters and agents will not have any responsibility with respect to the validity or performance of these contracts.

To facilitate the offering of the securities, certain persons participating in the offering may engage in transactions that stabilize, maintain, or otherwise affect the price of the securities. This may include over-allotments or short sales of the securities, which involves the sale by persons participating in the offering of more securities than we sold to them. In these circumstances, these persons would cover the over-allotments or short positions by making purchases in the open market or by exercising their over-allotment option. In addition, these persons may stabilize or maintain the price of the securities by bidding for or purchasing securities in the open market or by imposing penalty bids, whereby selling concessions allowed to dealers participating in the offering may be reclaimed if securities sold by them are repurchased in connection with stabilization transactions. The effect of these transactions may be to stabilize or maintain the market price of the securities at a level above that which might otherwise prevail in the open market. These transactions may be discontinued at any time.

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The underwriters, dealers and agents and their affiliates may be customers of, engage in transactions with and perform services for us in the ordinary course of business.

**LEGAL MATTERS**

Certain legal matters will be passed upon for us by Latham & Watkins LLP, San Diego, California. Venable LLP, Baltimore, Maryland, has issued an opinion to us regarding certain matters of Maryland law.

**EXPERTS**

The consolidated balance sheets of BioMed Realty Trust, Inc. and subsidiaries as of December 31, 2014 and 2013, and the related consolidated statements of operations, comprehensive income, equity and cash flows for each of the years in the three-year period ended December 31, 2014 and the accompanying financial statement schedule III, and management's assessment of the effectiveness of internal control over financial reporting as of December 31, 2014 have been incorporated by reference herein in reliance upon the reports of KPMG LLP, independent registered public accounting firm incorporated by reference herein, and upon the authority of said firm as experts in accounting and auditing.

The consolidated balance sheets of BioMed Realty, L.P. and subsidiaries as of December 31, 2014 and 2013, and the related consolidated statements of operations, comprehensive income, capital and cash flows for each of the years in the three-year period ended December 31, 2014 and the accompanying financial statement schedule III, have been incorporated by reference herein in reliance upon the report of KPMG LLP, independent registered public accounting firm incorporated by reference herein, and upon the authority of said firm as experts in accounting and auditing.

The audit reports covering the December 31, 2014 consolidated financial statements of BioMed Realty Trust, Inc. and BioMed Realty, L.P. refer to a change in the method for accounting for discontinued operations upon the adoption of FASB Accounting Standards Update No. 2014-08, *Presentation of Financial Statements (Topic 205) and Property, Plant, and Equipment (Topic 360): Reporting Discontinued Operations and Disclosures of Disposals of Components of an Entity*.

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**\$300,000,000**

**BioMed Realty Trust, Inc.**

**Common Stock**

**PROSPECTUS SUPPLEMENT**

**Raymond James**

**UBS Investment Bank**

**Mizuho Securities**

**August 28, 2015**