

**This preliminary prospectus supplement relates to an effective registration statement under the Securities Act of 1933, as amended, but is not complete and may be changed. This preliminary prospectus supplement and the accompanying prospectus are not an offer to sell these securities and are not soliciting an offer to buy these securities in any jurisdiction where the offer or sale is not permitted.**

Subject to completion, dated September 10, 2024

**PRELIMINARY PROSPECTUS SUPPLEMENT  
(To Prospectus dated December 20, 2023)**



\$

**American Assets Trust, L.P.**

**% Senior Notes due 20**

*Guaranteed by*

**American Assets Trust, Inc.**

The notes will bear interest at the rate of % per year. Interest on the notes will be payable semi-annually in arrears on and of each year, beginning , 2025. The notes will mature on , 20 , unless earlier redeemed as described in this prospectus supplement.

American Assets Trust, L.P., which we refer to as the operating partnership, may, at its option, redeem the notes in whole or in part, at any time and from time to time, at the applicable redemption price described under the section titled “*Description of Notes—Redemption of the Notes at the Option of the Operating Partnership*” in this prospectus supplement. The notes will be senior unsecured obligations of the operating partnership and will rank equally in right of payment with all of its other existing and future senior unsecured indebtedness and will be effectively subordinated in right of payment to, among other things, all of its existing and future mortgage indebtedness and other secured indebtedness (to the extent of the value of the collateral securing such indebtedness) and to all existing and future indebtedness and other liabilities, whether secured or unsecured, of the operating partnership’s subsidiaries. The notes will be guaranteed by American Assets Trust, Inc., which we refer to as the Company. The Company has no material assets other than its investment in the operating partnership.

The notes are a new issue of securities with no established trading market. We do not intend to apply for listing of the notes on any securities exchange or for inclusion of the notes in any quotation system.

Insurance Company of the West, or one of its affiliates, which is controlled by Ernest Rady, our Chairman and Chief Executive Officer, has indicated an interest in purchasing an aggregate of up to approximately \$50.0 million in principal amount of the notes in this offering at the public offering price of the notes and on the same terms as the other purchasers in this offering. However, because indications of interest are not binding agreements or commitments to purchase, the underwriters could determine to sell more, less or none of the notes to this potential purchaser, and this potential purchaser could determine to purchase more, less or none of the notes in this offering. The underwriters will receive the same underwriting discount and commissions on these notes as they will on any other notes sold to the public in this offering.

**An investment in the notes involves various risks and prospective investors should carefully consider the matters discussed under the section titled “*Risk Factors*” beginning on page S-11 of this prospectus supplement and the matters discussed in the documents incorporated by reference in this prospectus supplement and the accompanying prospectus before making a decision to invest in the notes.**

	Per Note	Total
Public offering price (1)	%	\$
Underwriting discounts and commissions	%	\$
Proceeds, before expenses, to American Assets Trust, L.P.	%	\$

(1) Plus accrued interest from September , 2024, if settlement occurs after that date.

**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.**

We expect that the notes will be ready for delivery in book-entry form through The Depository Trust Company on or about September , 2024, which will be the business day following the date of the pricing of the notes (such settlement being referred to as “T+ ”). See the section titled “*Underwriting (Conflicts of Interest)—Settlement Cycle*.”

*Joint-Book Running Managers*

**Wells Fargo Securities**

**Mizuho**

**PNC Capital Markets LLC**

The date of this prospectus supplement is September , 2024.

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You should rely only on the information contained in or incorporated, or deemed to be incorporated, by reference into this prospectus supplement, the accompanying prospectus or any applicable free writing prospectus in making a decision about whether to invest in the notes. We have not, and the underwriters have not, authorized any other person to provide you with different or additional information. If anyone provides you with different or additional information, you should not rely on it. This prospectus supplement and the accompanying prospectus do not constitute an offer to sell, or a solicitation of an offer to purchase, any securities in any jurisdiction where it is unlawful to make such offer or solicitation. You should assume that the information appearing in this prospectus supplement, the accompanying prospectus, any applicable free writing prospectus and the documents incorporated by reference herein or therein is accurate only as of their respective dates or on the date or dates which are specified in these documents. Our business, financial condition, liquidity, results of operations and prospects may have changed since those dates.

## **Industry and Market Data**

In this prospectus supplement and the documents incorporated and deemed to be incorporated by reference in this prospectus supplement and the accompanying prospectus, we refer to information and statistics regarding, among other things, the industry, markets, submarkets and sectors in which we operate. We obtained this information and these statistics from various third-party sources and our own internal estimates. We believe that these sources and estimates are reliable, but this information and these statistics (whether obtained from third-party sources or based on our internal estimates) are subject to assumptions, estimates and other uncertainties, and we have not independently verified them and cannot guarantee their accuracy or completeness.

## ABOUT THIS PROSPECTUS SUPPLEMENT AND THE PROSPECTUS

This document is in two parts. The first part is this prospectus supplement, which describes the specific terms of this offering and also adds to and updates information contained in the accompanying prospectus and the documents incorporated by reference. The second part, the accompanying prospectus, gives more general information, some of which may not apply to this offering.

To the extent the information contained in this prospectus supplement differs or varies from the information contained in the accompanying prospectus or documents incorporated by reference herein or therein, the information in this prospectus supplement will supersede such information. In addition, any statement in a filing we make with the Securities and Exchange Commission, or the SEC, that adds to, updates or changes information contained in an earlier filing we made with the SEC shall be deemed to modify and supersede such information in the earlier filing.

*This prospectus supplement does not contain all of the information that is important to you. You should read the accompanying prospectus as well as the documents incorporated by reference in this prospectus supplement and the accompanying prospectus. See the sections titled "Incorporation by Reference" in this prospectus supplement and "Where You Can Find More Information; Incorporation by Reference" in the accompanying prospectus. Unless otherwise indicated or unless the context requires otherwise, references in this prospectus supplement to "we," "our," "us" and "our company" refer to American Assets Trust, Inc., a Maryland corporation, American Assets Trust, L.P., and any of our other consolidated subsidiaries. American Assets Trust, L.P. is a Maryland limited partnership of which we are the sole general partner and to which we refer in this prospectus supplement as our operating partnership.*

As used in this prospectus supplement:

- "third amended and restated credit facility" means our third amended and restated credit facility, entered into on January 5, 2022, as amended, amended and restated or otherwise modified from time to time, with a capacity of \$500.0 million, consisting of a revolving line of credit of \$400.0 million, or the Revolver Loan, and a term loan of \$100.0 million;
- "amended and restated unsecured term loan facility" means our amended and restated term loan agreement, entered into on January 5, 2023, as amended, amended and restated or otherwise modified from time to time, consisting of a \$150.0 million unsecured term loan and a \$75.0 million unsecured term loan, which each mature on January 5, 2025;
- "senior guaranteed notes" means, collectively, our Senior Guaranteed Notes, Series B, issued in the principal amount of \$100.0 million, or the Series B Notes, with a stated maturity of February 2, 2025; our Senior Guaranteed Notes, Series C, issued in the principal amount of \$100.0 million, or the Series C Notes, with a stated maturity of April 1, 2025; our Senior Guaranteed Notes, Series D, issued in the principal amount of \$250.0 million, with a stated maturity of March 1, 2027; our Senior Guaranteed Notes, Series E, issued in the principal amount of \$100.0 million, with a stated maturity of May 23, 2029; and our Senior Guaranteed Notes, Series G, issued in the principal amount of \$150.0 million, with a stated maturity of July 30, 2030; and
- "3.375% senior unsecured notes" means the senior unsecured notes issued on January 26, 2021 in the aggregate principal amount of \$500.0 million, with a stated maturity of February 1, 2031 and which bear interest at 3.375% per annum.

## FORWARD-LOOKING INFORMATION

This prospectus supplement and 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 of 1933, as amended, or 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 SEC and incorporate by reference will contain forward-looking statements. In particular, statements relating to our liquidity and capital resources, portfolio performance and results of operations contain forward-looking statements. Furthermore, all of the statements regarding future financial performance (including anticipated funds from operations, market conditions and demographics) are forward-looking statements. We are including this cautionary statement to make applicable, and take advantage of, the safe harbor provisions of the Private Securities Litigation Reform Act of 1995 for any such forward-looking statements. We caution investors that any forward-looking statements presented in this prospectus supplement and the accompanying prospectus and the documents that we incorporate by reference in each are based on management’s beliefs and assumptions made by, and information currently available to, management. When used, the words “anticipate,” “believe,” “expect,” “intend,” “may,” “might,” “plan,” “estimate,” “project,” “should,” “will,” “result” and similar expressions that do not relate solely to historical matters are intended to identify forward-looking statements. You can also identify forward-looking statements by discussions of strategy, plans or intentions.

Forward-looking statements are subject to risks, uncertainties and assumptions and may be affected by known and unknown risks, trends, uncertainties and factors that are beyond our control. Should one or more of these risks or uncertainties materialize, or should underlying assumptions prove incorrect, actual results may vary materially from those anticipated, estimated or projected. We do not guarantee that the transactions and events described will happen as described (or that they will happen at all).

Some of the risks and uncertainties that may cause our actual results, performance, liquidity or achievements to differ materially from those expressed or implied by forward-looking statements include, among others, the following:

- adverse economic or real estate developments in our markets;
- defaults on, early terminations of or non-renewal of leases by tenants, including significant tenants;
- decreased rental rates or increased vacancy rates;
- our failure to generate sufficient cash flows to service our outstanding indebtedness;
- fluctuations in interest rates and increased operating costs;
- our failure to obtain necessary outside financing;
- our inability to develop or redevelop our properties due to market conditions;
- investment returns from our developed properties may be less than anticipated;
- general economic conditions;
- financial market fluctuations;
- risks that affect the general office, retail, multifamily and mixed-use environment;
- the competitive environment in which we operate;
- system failures or security incidents through cyberattacks;
- the impact of epidemics, pandemics, or other outbreaks of illness, disease or virus (such as the outbreak of COVID-19 and its variants) and the actions taken by government authorities and others related thereto, including the ability of our company, our properties and our tenants to operate;

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- difficulties in identifying properties to acquire and completing acquisitions;
- our failure to successfully operate acquired properties and operations;
- risks related to joint venture arrangements;
- potential litigation;
- difficulties in completing dispositions;
- conflicts of interests with our officers or directors;
- a lack or insufficient amounts of insurance;
- environmental uncertainties and risks related to adverse weather conditions and natural disasters;
- other factors affecting the real estate industry generally;
- limitations imposed on our business and our ability to satisfy complex rules in order for American Assets Trust, Inc. to continue to qualify as a Real Estate Investment Trust, or REIT, for U.S. federal income tax purposes; and
- changes in governmental regulations or interpretations thereof, such as real estate and zoning laws and increases in real property tax rates and taxation of REITs.

While forward-looking statements reflect our good faith beliefs, they are not guarantees of future performance. We disclaim any obligation to publicly update or revise any forward-looking statement to reflect changes in underlying assumptions or factors, new information, data or methods, future events or other changes. For a further discussion of these and other factors that could impact our future results, performance or transactions, see the section titled “*Risk Factors*” contained herein and in our Annual Report on Form 10-K for the year ended December 31, 2023 and our other reports filed with the SEC and incorporated by reference herein.

## PROSPECTUS SUPPLEMENT SUMMARY

*This summary highlights information contained elsewhere or incorporated by reference in this prospectus supplement and the accompanying prospectus. This summary is not complete and does not contain all of the information that you should consider before making an investment decision. We urge you to read this entire prospectus supplement, the accompanying prospectus and the documents incorporated by reference carefully, including the financial statements and notes to those financial statements incorporated by reference herein and therein. Please read the section titled "Risk Factors" for more information about important risks that you should consider before making an investment decision.*

### **Our Company**

We are a full service, vertically integrated and self-administered REIT that owns, operates, acquires and develops high quality office, retail, multifamily and mixed-use properties in attractive, high-barrier-to-entry markets in Southern California, Northern California, Washington, Oregon, Texas and Hawaii. As of June 30, 2024, our portfolio was comprised of twelve retail shopping centers; twelve office properties; a mixed-use property consisting of a 369-room all-suite hotel and a retail shopping center; and six multifamily properties. Additionally, as of June 30, 2024, we owned land at three of our properties that we classified as held for development and/or construction in progress. Our core markets include San Diego, California; the San Francisco Bay Area, California; Bellevue, Washington; Portland, Oregon and Oahu, Hawaii.

Our recently completed development and redevelopment projects include approximately 213,000 rentable square feet of office space at our La Jolla Commons III property in the University Town Center area of San Diego, completed at the end of the first quarter of 2024. Additionally, we redeveloped approximately 100,000 rentable square feet of office space at our One Beach Street property in San Francisco, which was completed in the third quarter of 2023. As of June 30, 2024 we had incurred \$123.3 million in costs for the La Jolla Commons III development and \$34.0 million in costs for the One Beach Street redevelopment. Our total estimated investment for La Jolla Commons III and One Beach Street is \$175.0 million and \$42.8 million, respectively.

As of June 30, 2024, within our office portfolio (excluding La Jolla Commons III in San Diego, One Beach Street in San Francisco and Eastgate in Bellevue/Seattle) in the San Diego market, San Francisco market and Bellevue/Seattle market, we had leased rates of 92.3%, 98.5% and 88.1%, respectively, and our average annualized base rent, or ABR, per leased square foot was \$59.17, \$98.20 and \$52.66, respectively. As of June 30, 2024, within our retail portfolio, we had a leased rate of 94.0% (excluding ground leases and including our Waikiki Beach Walk retail property) and average ABR per leased square foot of \$31.56. ABR is calculated by multiplying base rental payments (defined as cash base rents (before abatements)) under commenced leases for the month ended June 30, 2024, by 12. In the case of triple net or modified gross leases, ABR does not include tenant reimbursements for real estate taxes, insurance, common area or other operating expenses. Other equity REITs may not calculate ABR as we do, and, accordingly, our ABR data may not be comparable to such other REITs' ABR data.

### **Corporate Information**

American Assets Trust, Inc. is a Maryland corporation that was formed on July 16, 2010 to acquire the entities owning various controlling and noncontrolling interests in real estate assets owned and/or managed by Ernest S. Rady or his affiliates, including the Ernest Rady Trust U/D/T March 13, 1983, or the Rady Trust, and did not have any operating activity until the consummation of our initial public offering and the related acquisition of such interest on January 19, 2011. American Assets Trust, Inc., as our operating partnership's sole general partner, has control of our operating partnership and owned 78.8% of our operating partnership as of June 30, 2024. Accordingly, we consolidate the assets, liabilities and results of operations of our operating partnership.

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Our principal executive office is located at 3420 Carmel Mountain Road, Suite 100, San Diego, California 92121. Our telephone number is (858) 350-2600. Our website address is [www.americanassetstrust.com](http://www.americanassetstrust.com). The information on, or accessible through, our website is not incorporated into and does not constitute a part of this prospectus supplement or the accompanying prospectus.



## The Offering

*The following contains basic information about the notes and is not complete. It does not contain all of the information that is important to you. For a more complete understanding of the notes, please refer to the sections titled “Description of Notes” in this prospectus supplement and “Description of Debt Securities and Related Guarantees” in the accompanying prospectus. Unless otherwise expressly stated or the context otherwise requires, references under this caption “The Offering” to American Assets Trust, L.P. or the operating partnership refer to American Assets Trust, L.P., excluding its subsidiaries, and references to American Assets Trust, Inc. or the Company refer to American Assets Trust, Inc., excluding its subsidiaries.*

<b>Issuer of Notes</b>	American Assets Trust, L.P., a Maryland limited partnership.
<b>Guarantor</b>	American Assets Trust, Inc., a Maryland corporation.
<b>Notes Offered</b>	\$            aggregate principal amount of    % senior notes due 20            , or the notes.
<b>Interest</b>	The notes will bear interest at the rate of    % per year, accruing from September            , 2024. Interest on the notes will be payable semi- annually in arrears on            and            of each year, beginning            , 2025.
<b>Maturity</b>	The notes will mature on            , 20            unless earlier redeemed.
<b>Ranking of Notes</b>	<p>The notes will be the operating partnership’s senior unsecured obligations and will rank equally in right of payment with all of its other existing and future senior unsecured indebtedness. The notes will be effectively subordinated in right of payment to:</p> <ul style="list-style-type: none"><li>• all of the operating partnership’s existing and future mortgage indebtedness and other secured indebtedness (to the extent of the value of the collateral securing such indebtedness);</li><li>• all existing and future indebtedness and other liabilities, whether secured or unsecured, of the operating partnership’s subsidiaries and of any entity the operating partnership accounts for using the equity method of accounting; and</li><li>• all existing and future preferred equity not owned by the operating partnership, if any, in the operating partnership’s subsidiaries and in any entity the operating partnership accounts for using the equity method of accounting.</li></ul>
<b>Company Guarantee</b>	<p>The notes will be guaranteed by the Company. The Company guarantee will be a senior unsecured obligation of the Company and will rank equally in right of payment with all of its other existing and future senior unsecured indebtedness and senior unsecured guarantees. The Company’s guarantee of the notes will be effectively subordinated in right of payment to:</p> <ul style="list-style-type: none"><li>• all existing and future secured indebtedness and secured guarantees of the Company (to the extent of the value of the collateral securing such indebtedness and guarantees);</li></ul>

- all existing and future indebtedness and other liabilities, whether secured or unsecured, of the Company's subsidiaries (including the operating partnership) and of any entity the Company accounts for using the equity method of accounting; and
- all existing and future preferred equity not owned by the Company in the Company's subsidiaries (including the operating partnership) and in any entity the Company accounts for using the equity method of accounting.

The Company has no material assets other than its investment in the operating partnership.

**Redemption**

The operating partnership may, at its option, redeem the notes in whole or in part, at any time and from time to time, at the applicable redemption price described under the section titled "*Description of Notes—Redemption of the Notes at the Option of the Operating Partnership*" in this prospectus supplement.

**Certain Covenants**

The indenture that will govern the notes will not prohibit the operating partnership, the Company or any of their respective subsidiaries from incurring secured or unsecured indebtedness in the future and, although the indenture will contain covenants that will limit the ability of the operating partnership and its subsidiaries to incur secured and unsecured indebtedness, those covenants are subject to significant exceptions and limitations, and in any event the operating partnership and its subsidiaries may be able, without taking advantage of any such exceptions and limitations, to incur substantial amounts of additional secured and unsecured indebtedness without violating those covenants. Moreover, these covenants limiting the incurrence of indebtedness will not apply to the Company.

In addition, unless the notes achieve and maintain certain debt ratings, the indenture that will govern the notes will require subsidiaries of the operating partnership that guarantee \$5.0 million or more of other unsecured indebtedness of the operating partnership to also guarantee the notes.

For additional information, see the section titled "*Description of Notes—Certain Covenants*."

**Absence of a Public Market for the Notes**

The notes are a new issue of securities with no established trading market. We do not intend to apply for listing of the notes on any securities exchange or for their inclusion in any quotation system.

**Use of Proceeds**

We expect that the net proceeds from this offering will be approximately \$ million, after deducting the underwriting discount and our estimated expenses.

We intend to use the net proceeds from this offering for the repayment of our Series B Notes and Series C Notes, in each case at or prior to maturity; the repayment of the outstanding borrowings under the Revolver Loan under our third amended and restated credit facility; and the remainder for working capital and general corporate purposes. See the section titled “*Use of Proceeds*” appearing later in this prospectus supplement for important information concerning the use of proceeds from this offering.

**Conflicts of Interest**

Certain of the underwriters and/or their respective affiliates are lenders under our third amended and restated credit facility. As described in this prospectus supplement, we intend to use a portion of the net proceeds from this offering to repay outstanding borrowings under the Revolver Loan under our third amended and restated credit facility. To the extent that we use a portion of the net proceeds of this offering to repay borrowings under the Revolver Loan under our third amended and restated credit facility, such underwriters and/or their respective affiliates will receive their proportionate shares of any such amount. See the section titled “*Underwriting (Conflicts of Interest)—Conflicts of Interest.*”

**Trustee**

U.S. Bank Trust Company, National Association, as successor in interest to U.S. Bank National Association, is the trustee under the indenture relating to the notes.

**Book-Entry**

The notes will be issued in book-entry form and will be represented by one or more permanent global notes deposited with, or on behalf of, The Depository Trust Company, or DTC, and registered in the name of a nominee of DTC. Beneficial interests in the global notes will be shown on, and transfers will be effected only through, records maintained by DTC or its nominee, and such interests may not be exchanged for notes in certificated form, except in limited circumstances described under the section titled “*Description of Debt Securities and Related Guarantees—Book-entry System*” in the accompanying prospectus.

**Tax Considerations**

Prospective investors should consult their tax advisors with respect to the federal, state, local and foreign tax consequences of purchasing, owning and disposing of the notes. See the section titled “*Federal Income Tax Considerations*” in the accompanying prospectus.

**Additional Issuances**

We may, without the consent of or notice to holders of the notes, issue additional notes from time to time in the future.

**Governing Law**

The indenture, the notes and the guarantees endorsed on the notes will be governed by the laws of the State of New York.

**Risk Factors**

An investment in the notes involves various risks and prospective investors should carefully consider the matters discussed under the section titled “*Risk Factors*” beginning on page S-11 of this prospectus supplement, and the risks described under the caption

“Item 1A. Risk Factors” in the Company’s and the operating partnership’s Annual Report on Form 10-K for the year ended December 31, 2023, as supplemented by the risks discussed under the caption “Item 1A. Risk Factors” in the Company’s and the operating partnership’s subsequent Quarterly Reports on Form 10-Q, which reports are incorporated by reference in this prospectus supplement and the accompanying prospectus, as well as the other risks described in this prospectus supplement and the accompanying prospectus and the documents incorporated and deemed to be incorporated by reference in this prospectus supplement and the accompanying prospectus, before making a decision to invest in the notes.

## Certain Results of Operations, Financial Condition and Other Data

### Revenue and Net Income

The table below presents total revenue and net income for the periods presented. For the thirteen-year period ended December 31, 2023, our total revenue grew at a compound annual growth rate of 6.4%.

(Dollars in Thousands; Includes Discontinued Operations)	Three Months Ended		Year Ended December 31,												
	June 30,	March 31,													
	2024	2024	2023	2022	2021	2020	2019	2018	2017	2016	2015	2014	2013	2012	2011
Total Revenue	\$ 110,890	\$ 110,695	\$ 441,164	\$ 422,648	\$ 375,828	\$ 344,573	\$ 366,741	\$ 330,867	\$ 314,983	\$ 295,088	\$ 275,623	\$ 260,000	\$ 255,057	\$ 235,466	\$ 209,823
Net Income	\$ 15,294	\$ 24,623	\$ 64,690	\$ 55,877	\$ 36,593	\$ 35,588	\$ 60,188	\$ 27,202	\$ 40,132	\$ 45,637	\$ 53,915	\$ 31,145	\$ 22,594	\$ 51,601	\$ 19,324

### Dividends

For the thirteen-year period ended December 31, 2023, our dividends per share of common stock grew at a compound annual growth rate of 4.3%.

### Funds From Operations

For the thirteen-year period ended December 31, 2023, our Funds from Operations, or FFO, per share grew at a compound annual growth rate of 7.1%. The table below presents a reconciliation of net income to FFO per share for the thirteen-year period ended December 31, 2023 (dollars in thousands, except per share amounts):

(Dollars in Thousands, Except Per Share Amounts; Includes Discontinued Operations)	Three Months Ended		Year Ended December 31,												
	June 30,	March 31,													
	2024	2024	2023	2022	2021	2020	2019	2018	2017	2016	2015	2014	2013	2012	2011
Net Income	\$ 15,294	\$ 24,623	\$ 64,690	\$ 55,877	\$ 36,593	\$ 35,588	\$ 60,188	\$ 27,202	\$ 40,132	\$ 45,637	\$ 53,915	\$ 31,145	\$ 22,594	\$ 51,601	\$ 19,324
Depreciation and Amortization of Real Estate Assets	31,011	30,217	119,500	123,338	116,306	108,292	96,205	107,093	83,278	71,319	63,392	66,568	66,775	63,011	58,543
Depreciation and Amortization on Unconsolidated JV	—	—	—	—	—	—	—	—	—	—	—	—	—	—	688
Gain on Sale of Real Estate	—	—	—	—	—	—	(633)	—	—	—	(7,121)	—	—	(36,720)	(3,981)
FFO, as Defined by Nareit	46,305	54,840	\$ 184,190	\$ 179,215	\$ 152,899	\$ 143,880	\$ 155,760	\$ 134,295	\$ 123,410	\$ 116,956	\$ 110,186	\$ 97,713	\$ 89,369	\$ 77,892	\$ 74,574
Less: Nonforfeitable Dividends on Restricted Stock Awards	(192)	(192)	(749)	(641)	(557)	(377)	(376)	(305)	(236)	(183)	(159)	(137)	(357)	(354)	(316)
Less: FFO Attributable to Predecessor's Controlled and Noncontrolled Owners' Equity	—	—	—	—	—	—	—	—	—	—	—	—	—	—	(16,973)
FFO Attributable to Common Stock	46,113	54,648	\$ 183,441	\$ 178,574	\$ 152,342	\$ 143,503	\$ 155,384	\$ 133,990	\$ 123,174	\$ 116,773	\$ 110,027	\$ 97,576	\$ 89,012	\$ 77,538	\$ 57,285
Weighted Average Number of Common Shares	76,495	76,500	76,347	76,234	76,175	76,123	70,789	64,139	64,090	63,231	62,343	60,256	57,726	57,263	54,417
FFO Per Diluted Share	\$ 0.60	\$ 0.71	\$ 2.40	\$ 2.34	\$ 2.00	\$ 1.89	\$ 2.20	\$ 2.09	\$ 1.92	\$ 1.85	\$ 1.76	\$ 1.62	\$ 1.54	\$ 1.35	\$ 1.05

We present FFO because we consider FFO an important supplemental measure of our operating performance and believe it is frequently used by securities analysts, investors and other interested parties in the evaluation of REITs, many of which present FFO when reporting their results. We calculate FFO in accordance with the standards established by the National Association of Real Estate Investment Trusts, or NAREIT. FFO represents net income (loss) (computed in accordance with GAAP), excluding gains (or losses) from sales of depreciable operating property, impairment losses, real estate related depreciation and amortization (excluding amortization of deferred financing costs) and after adjustments for unconsolidated partnerships and joint ventures.

FFO is a supplemental non-GAAP financial measure. We use FFO as a supplemental performance measure because we believe that FFO is beneficial to investors as a starting point in measuring our operational performance. Specifically, in excluding real estate related depreciation and amortization and gains and losses from property dispositions, which do not relate to or are not indicative of operating performance, FFO provides a performance measure that, when compared year over year, captures trends in occupancy rates, rental rates and operating costs. We also believe that, as a widely recognized measure of the performance of REITs, FFO will be used by investors as a basis to compare our operating performance with that of other REITs. However, because FFO excludes depreciation and amortization and captures neither the changes in the value of our properties that result from use or market conditions nor the level of capital expenditures and leasing commissions necessary to maintain the operating performance of our properties, all of which have real economic effects and could

materially impact our results from operations, the utility of FFO as a measure of our performance is limited. In addition, other equity REITs may not calculate FFO in accordance with the NAREIT definition as we do, and, accordingly, our FFO may not be comparable to such other REITs' FFO. Accordingly, FFO should be considered only as a supplement to net income as a measure of our performance. FFO should not be used as a measure of our liquidity, nor is it indicative of funds available to fund our cash needs, including our ability to pay dividends or service indebtedness. FFO also should not be used as a supplement to or substitute for cash flow from operating activities computed in accordance with GAAP.

**Net Debt and Interest Coverage Ratios**

For the years ended December 31, 2019, 2020, 2021, 2022, and 2023 and the three-month periods ended March 31 and June 30, 2024, we had trailing twelve months interest coverage ratios (calculated as EBITDA (as defined below) divided by interest on borrowed funds, including capitalized interest and excluding debt fair value adjustments and loan fee amortization) of 4.2x, 3.8x, 3.7x, 3.9x, 3.6x, 3.6x and 3.6x, respectively.

For the years ended December 31, 2019, 2020, 2021, 2022, and 2023 and the three-month periods ended March 31 and June 30, 2024, our ratio of net debt (calculated as total debt less cash on hand) to Adjusted EBITDA (as defined below) was 5.6x, 7.2x, 6.8x, 7.0x, 6.8x, 5.7x, and 6.4x, respectively.

EBITDA is a non-GAAP measure that means net income or loss plus depreciation and amortization, net interest expense, income taxes, gain or loss on sale of real estate and impairments of real estate, if any. EBITDA is presented because it approximates a key performance measure in our debt covenants, but it should not be considered an alternative measure of operating results or cash flow from operations as determined in accordance with GAAP. Adjusted EBITDA is a non-GAAP measure that begins with EBITDA and includes adjustments for certain items that we believe are not representative of ongoing operating performance. Specifically, we include an early extinguishment of debt adjustment and pro forma adjustment to reflect a full period of net operating income on the operating properties we acquire during the quarter, to assume all transactions occurred at the beginning of the quarter. We use Adjusted EBITDA as a supplemental performance measure because we believe these items create significant earnings volatility which in turn results in less comparability between reporting periods and less predictability regarding future earnings potential. The table below presents a reconciliation of net income to EBITDA and Adjusted EBITDA for the years ended December 31, 2019, 2020, 2021, 2022, and 2023 and the three-month periods ended March 31 and June 30, 2024:

(Dollars in Thousands;  
Includes  
Discontinued  
Operations)

	Three Months Ended					Year Ended December 31,									
	June 30, 2024	March 31, 2024	2023	2022	2021	2020	2019	2018	2017	2016	2015	2014	2013	2012	2011
Net Income	\$ 15,294	\$ 24,623	\$ 64,690	\$ 55,877	\$ 36,593	\$ 35,588	\$ 60,188	\$ 27,202	\$ 40,132	\$ 45,637	\$ 53,915	\$ 31,145	\$ 22,594	\$ 51,601	\$ 19,324
Depreciation and Amortization	31,011	30,217	119,500	123,338	116,306	108,292	96,205	107,093	83,278	71,319	63,392	66,568	66,775	63,011	57,639
Interest Expense, Net	16,289	16,255	64,706	58,232	58,587	53,440	54,008	52,248	53,848	51,936	47,260	52,965	58,020	59,043	56,487
Interest and Investment Income	(990)	(589)	(2,175)	(225)	(324)	(436)	(696)	(238)	(548)	(72)	(90)	(155)	(148)	(336)	(1,621)
Income Tax Expense/(Benefit)	201	260	1,041	850	738	(9)	819	327	214	566	295	460	645	1,016	573
Gain on Sale of Real Estate	—	—	—	—	—	—	(633)	—	—	—	(7,121)	—	—	(36,720)	(3,981)
EBITDA	\$ 61,805	\$ 70,766	\$ 247,762	\$ 238,072	\$ 211,900	\$ 196,875	\$ 209,891	\$ 186,632	\$ 176,924	\$ 169,386	\$ 157,651	\$ 150,983	\$ 147,886	\$ 137,615	\$ 128,421
Pro Forma Adjustments <sup>(1)</sup>	—	—	—	—	—	—	—	—	3,026	7,998	—	—	—	—	—
Loss on Early Extinguishment of Debt	—	—	—	—	4,271	—	—	—	—	—	—	—	—	—	—
Early Extinguishment of Debt Loan Transfer and Consent Fees	—	—	—	—	—	—	—	—	—	—	—	—	—	—	25,867
Gain on Acquisition	—	—	—	—	—	—	—	—	—	—	—	—	—	—	9,019
Adjusted EBITDA	\$ 61,805	\$ 70,766	\$ 247,762	\$ 238,072	\$ 216,171	\$ 196,875	\$ 209,891	\$ 186,632	\$ 179,950	\$ 177,384	\$ 157,651	\$ 150,983	\$ 147,886	\$ 137,615	\$ 116,936

(1) Pro forma adjustments for the years ended December 31, 2016 and December 31, 2017 reflect annualized adjustments for Pacific Ridge Apartments and Gateway Marketplace, which were acquired in April 2017 and July 2017, respectively, as if such properties were acquired in January 2016.

Amounts presented in accordance with our definitions of EBITDA and Adjusted EBITDA may not be comparable to similar measures disclosed by other companies, because not all companies calculate these non-GAAP measures in the same manner. Neither EBITDA nor Adjusted EBITDA should be considered as an alternative measure of our net income (loss), operating performance, cash flow or liquidity. EBITDA and Adjusted EBITDA may include funds that may not be available for our discretionary use due to functional requirements to conserve funds for capital expenditures and property acquisitions and other commitments and

uncertainties. Although we believe that EBITDA and Adjusted EBITDA can enhance an investor's understanding of our results of operations, these non-GAAP financial measures, when viewed individually, are not necessarily a better indicator of any trend as compared to GAAP measures such as net income (loss) or cash flow from operations.

### ***Net Operating Income***

For the thirteen-year period ended December 31, 2023, our Net Operating Income, or NOI, grew at a compound annual growth rate of 6.5%.

NOI is a non-GAAP financial measure of performance. We define NOI as operating revenues (rental income, tenant reimbursements, lease termination fees, ground lease rental income and other property income) less property and related expenses (property expenses, ground lease expense, property marketing costs, real estate taxes and insurance). NOI excludes general and administrative expenses, interest expense, depreciation and amortization, acquisition-related expense, other non-property income and losses, gains and losses from property dispositions, extraordinary items, tenant improvements, and leasing commissions. Other REITs may use different methodologies for calculating NOI, and accordingly, our NOI may not be comparable to the NOIs of other REITs. NOI is used by investors and our management to evaluate and compare the performance of our properties and to determine trends in earnings and to compute the fair value of our properties as it is not affected by (1) the cost of funds of the property owner, (2) the impact of depreciation and amortization expenses as well as gains or losses from the sale of operating real estate assets that are included in net income computed in accordance with GAAP or (3) general and administrative expenses and other gains and losses that are specific to the property owner. The cost of funds is eliminated from net income because it is specific to the particular financing capabilities and constraints of the owner. The cost of funds is also eliminated because it is dependent on historical interest rates and other costs of capital as well as past decisions made by us regarding the appropriate mix of capital, which may have changed or may change in the future. Depreciation and amortization expenses as well as gains or losses from the sale of operating real estate assets are eliminated because they may not accurately represent the actual change in value in our retail, office, multifamily or mixed-use properties that result from use of the properties or changes in market conditions. While certain aspects of real property decline in value over time in a manner that is intended to be captured by depreciation and amortization, the value of the properties as a whole has historically increased or decreased as a result of changes in overall economic conditions instead of from actual use of the property or the passage of time. Gains and losses from the sale of real property vary from property to property and are affected by market conditions at the time of sale, which will usually change from period to period. These gains and losses can create distortions when comparing one period to another or when comparing our operating results to the operating results of other real estate companies that have not made similarly timed purchases or sales. We believe that eliminating these costs from net income is useful because the resulting measure captures the actual revenue generated and actual expenses incurred in operating our properties as well as trends in occupancy rates, rental rates and operating costs. However, the usefulness of NOI is limited because it excludes general and administrative costs, interest expense, interest income and other expense, depreciation and amortization expense and gains or losses from the sale of properties, and other gains and losses as stipulated by GAAP, the level of capital expenditures and leasing costs necessary to maintain the operating performance of our properties, all of which are significant economic costs. NOI may fail to capture significant trends in these components of net income, which further limits its usefulness.

NOI is a measure of the operating performance of our properties but does not measure our performance as a whole. NOI is therefore not a substitute for net income as computed in accordance with GAAP.

### **Cash Net Operating Income**

Our Cash Net Operating Income, or Cash NOI, for the six-month period ended June 30, 2024 was \$136.1 million. The table below presents a reconciliation of Cash NOI to net income for the six-month period ended June 30, 2024.

<i>(Dollars in Thousands)</i>	<b>Six Months Ended June 30, 2024</b>
Cash NOI	\$ 136,054
Non-Cash Revenue and other Operating Expenses	4,096
General and Administrative	(17,579)
Depreciation and Amortization	(61,228)
Operating Income	61,343
Interest Expense, Net	(32,544)
Other Income, Net	11,118
Net Income	<u>\$ 39,917</u>

We define Cash NOI as operating revenues (rental income, tenant reimbursements, lease termination fees, ground lease rental income and other property income) less property and related expenses (property expenses, ground lease expense, property marketing costs, real estate taxes and insurance), adjusted for non-cash revenue and operating expense items such as straight-line rent, amortization of lease intangibles, amortization of lease incentives and other adjustments. Cash NOI also excludes general and administrative expenses, depreciation and amortization, interest expense, other non-property income and losses, acquisition-related expense, gains and losses from property dispositions, extraordinary items, tenant improvements, and leasing commissions. Other REITs may use different methodologies for calculating Cash NOI, and accordingly, our Cash NOI may not be comparable to the Cash NOIs of other REITs. We believe Cash NOI provides useful information to investors regarding the Company's financial condition and results of operations because it reflects only those income and expense items that are incurred at the property level, and when compared across periods, can be used to determine trends in earnings of the Company's properties as this measure is not affected by (1) the non-cash revenue and expense recognition items, (2) the cost of funds of the property owner, (3) the impact of depreciation and amortization expenses as well as gains or losses from the sale of operating real estate assets that are included in net income computed in accordance with GAAP or (4) general and administrative expenses and other gains and losses that are specific to the property owner. We believe the exclusion of these items from net (loss) income is useful because the resulting measure captures the actual revenue generated and actual expenses incurred in operating the Company's properties as well as trends in occupancy rates, rental rates and operating costs. Cash NOI is a measure of the operating performance of the Company's properties but does not measure the Company's performance as a whole. Cash NOI is therefore not a substitute for net income as computed in accordance with GAAP.



## RISK FACTORS

*Investing in the notes involves risks. You should carefully consider the following risks, the risks described in Item 1A of our Annual Report on Form 10-K for the year ended December 31, 2023, as well as the other information and data set forth in this prospectus supplement, the accompanying prospectus and the documents incorporated by reference herein and therein before making an investment decision with respect to the notes. The risks associated with our business and properties described or incorporated by reference herein, to the extent that they relate generally to the ownership and operation of real estate. The occurrence of any of the following risks could materially and adversely affect our business, prospects, financial condition, results of operations and our ability to repay the principal amount of the notes and the accrued interest, which could cause you to lose all or a part of your investment. Some statements in this prospectus supplement, including statements in the following risk factors, constitute forward-looking statements. See the section titled “Forward-Looking Statements.”*

### Risks Related to this Offering

***The effective subordination of the notes may limit our ability to satisfy our obligations under the notes.***

The notes will be the operating partnership’s senior unsecured obligations and will rank equally in right of payment with all of its other existing and future senior unsecured indebtedness. The notes will be effectively subordinated in right of payment to:

- all of the operating partnership’s existing and future mortgage indebtedness and other secured indebtedness (to the extent of the value of the collateral securing such indebtedness);
- all existing and future indebtedness and other liabilities, whether secured or unsecured, of the operating partnership’s subsidiaries and of any entity the operating partnership accounts for using the equity method of accounting; and
- all existing and future preferred equity not owned by the operating partnership, if any, in the operating partnership’s subsidiaries and in any entity the operating partnership accounts for using the equity method of accounting.

Similarly, the Company’s guarantee of the notes will be its senior unsecured obligation and will rank equally in right of payment with all of its other existing and future senior unsecured indebtedness and senior unsecured guarantees. The Company’s guarantee of the notes will be effectively subordinated in right of payment to:

- all existing and future secured indebtedness and secured guarantees of the Company (to the extent of the value of the collateral securing such indebtedness and guarantees);
- all existing and future indebtedness and other liabilities, whether secured or unsecured, of the Company’s subsidiaries (including the operating partnership) and of any entity the Company accounts for using the equity method of accounting; and
- all existing and future preferred equity not owned by the Company in the Company’s subsidiaries (including the operating partnership) and in any entity the Company accounts for using the equity method of accounting.

The indenture that will govern the notes will not prohibit the operating partnership, the Company or any of their respective subsidiaries from incurring secured or unsecured indebtedness in the future and, although the indenture will contain covenants that will limit the ability of the operating partnership and its subsidiaries to incur secured and unsecured indebtedness, those covenants are subject to significant exceptions and limitations, and in any event the operating partnership and its subsidiaries may be able, without taking advantage of any such exceptions and limitations, to incur substantial amounts of additional secured and unsecured indebtedness without violating those covenants. Moreover, these covenants limiting the incurrence of indebtedness will not apply to the Company. For additional information, see the section titled “Description of Notes—Certain Covenants.”

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In the event of the bankruptcy, liquidation, reorganization or other winding up of the operating partnership or the Company, assets that secure any of their respective secured indebtedness, secured guarantees and other secured obligations will be available to pay their respective obligations under the notes or the guarantee of the notes, as applicable, and their other respective unsecured indebtedness, unsecured guarantees and other unsecured obligations only after all of their respective indebtedness, guarantees and other obligations secured by those assets have been repaid in full, and we caution you that there may not be sufficient assets remaining to pay amounts due on the notes or the guarantee of the notes, as the case may be. In the event of the bankruptcy, liquidation, reorganization or other winding up of any of subsidiaries of the operating partnership or the Company, the rights of holders of indebtedness and other obligations of the operating partnership (including the notes) or the Company (including its guarantee of the notes), as the case may be, will be effectively subordinated to the prior claims of that subsidiary's creditors and of the holders of any indebtedness or other obligations of or guaranteed by that subsidiary, except to the extent that the operating partnership or the Company, as the case may be, is itself a creditor with recognized claims against that subsidiary, in which case those claims would still be effectively subordinated to all indebtedness, guarantees and other obligations secured by mortgages or other liens on the assets of that subsidiary (to the extent of the value of those assets) and would be subordinate to all indebtedness, guarantees and other obligations of that subsidiary senior to that held by the operating partnership or the Company, as the case may be. Moreover, in the event of the bankruptcy, liquidation, reorganization or other winding up of any subsidiary of the operating partnership or the Company, the rights of holders of indebtedness and other obligations of the operating partnership (including the notes) or the Company (including its guarantee of the notes), as the case may be, will be effectively subordinated to any preferred equity interests in that subsidiary held by persons other than the operating partnership or the Company, as the case may be. In addition, in the event of the bankruptcy, liquidation, reorganization or other winding up of any entity that the operating partnership or the Company accounts for using the equity method of accounting, the rights of holders of indebtedness and other obligations of the operating partnership (including the notes) or the Company (including its guarantee of the notes), as the case may be, will be subject to the prior claims of that entity's creditors and the holders of any indebtedness or other obligations of or guaranteed by that entity, except to the extent that the operating partnership or the Company, as the case may be, is itself a creditor with recognized claims against that entity, in which case those claims would still be effectively subordinated to all indebtedness, guarantees and other obligations secured by mortgages or other liens on the assets of that entity (to the extent of the value of those assets) and would be subordinate to all indebtedness, guarantees and other obligations of that entity senior to that held by the operating partnership or the Company, as the case may be.

As of June 30, 2024, the operating partnership (excluding its subsidiaries) had, in addition to trade payables and other liabilities, approximately \$1.6 billion aggregate principal amount of outstanding unsecured indebtedness (including borrowings outstanding under its 3.375% senior unsecured notes, senior guaranteed notes, third amended and restated credit facility and amended and restated unsecured term loan facility), had no borrowing capacity available under its \$100.0 million unsecured term loan under its third amended and restated credit facility, and had no borrowing capacity under its \$150.0 million or \$75.0 million unsecured term loans under its amended and restated unsecured term loan facility. In addition, as of June 30, 2024, the operating partnership had \$400.0 million of remaining borrowing capacity available (subject to customary conditions) under the Revolver Loan under its third amended and restated credit facility, of which the Company drew \$100.0 million on July 18, 2024 to repay the \$100.0 million outstanding principal amount of the operating partnership's 3.78% Senior Guaranteed Notes, Series F, due July 19, 2024, or Series F Notes, at maturity. As of June 30, 2024, the Company (excluding its subsidiaries) had no outstanding indebtedness and had guaranteed the operating partnership's borrowings under the operating partnership's 3.375% senior unsecured notes, senior guaranteed notes, third amended and restated credit facility and amended and restated unsecured term loan facility and other outstanding indebtedness of the operating partnership totaling approximately \$1.6 billion aggregate principal amount. As of June 30, 2024, the subsidiaries of the operating partnership and the subsidiaries of the Company (excluding the operating partnership) had approximately \$75.0 million aggregate principal amount of secured indebtedness outstanding and no outstanding unsecured indebtedness, in addition to their trade payables and other liabilities. In addition, as of June 30, 2024, the subsidiaries of the operating partnership and the subsidiaries of the Company did not guarantee any indebtedness of the operating partnership or the Company.

***We may not be able to meet our debt service obligations.***

Our ability to make payments on and to refinance our indebtedness, including the notes, and to fund our operations, working capital and capital expenditures, depends on our ability to generate cash in the future. Our cash flow is subject to general economic, industry, financial, competitive, operating, legislative, regulatory, environmental and other factors, many of which are beyond our control. Our level of debt and the limitations imposed on us by our debt agreements could have significant adverse consequences, including the following:

- our cash flow may be insufficient to meet our required principal and interest payments of the notes and other indebtedness;
- we may be unable to borrow additional funds as needed or on favorable terms, which could, among other things, adversely affect our ability to meet operational needs;
- we may be unable to refinance our indebtedness at maturity or the refinancing terms may be less favorable than the terms of our original indebtedness;
- we may be forced to dispose of one or more of our properties, possibly on unfavorable terms or in violation of certain covenants to which we may be subject;
- we may violate restrictive covenants in our loan documents, which would entitle the lenders to accelerate our debt obligations; and
- our default under any loan with cross default provisions could result in a default on other indebtedness.

If any one of these events were to occur, our financial condition, results of operations, cash flow and per share trading price of our common stock could be adversely affected. Furthermore, foreclosures could create taxable income without accompanying cash proceeds, which could hinder our ability to meet the REIT distribution requirements imposed by the Internal Revenue Code of 1986, as amended, or the Code.

The instruments and agreements governing some of our outstanding indebtedness (including borrowings under the operating partnership's third amended and restated credit facility, amended and restated unsecured term loan facility and senior guaranteed notes) contain provisions that require us to repurchase for cash or repay that indebtedness under specified circumstances or upon the occurrence of specified events (including upon the acquisition by any person or group of more than a specified percentage of the aggregate voting power of all of the Company's issued and outstanding voting stock, if the Company ceases to be the sole general partner of the operating partnership or the Company ceases to own, directly or indirectly, a majority of the voting equity interests in the operating partnership) and our future debt agreements and debt securities may contain similar provisions or may require that we repay or repurchase or offer to repurchase for cash the applicable indebtedness under specified circumstances or upon the occurrence of specified changes of control of the Company or the operating partnership or other events. We may not have sufficient funds to pay our indebtedness when due (including upon any such required repurchase, repayment or offer to repurchase), and we may not be able to arrange for the financing necessary to make those payments or repurchases on favorable terms or at all. In addition, our ability to make required payments on our indebtedness when due (including upon any such required repurchase, repayment or offer to repurchase) may be limited by the terms of other debt instruments or agreements. Our failure to pay amounts due in respect of any of our indebtedness when due would generally constitute an event of default under the instrument governing that indebtedness, which could permit the holders of that indebtedness to require the immediate repayment of that indebtedness in full and, in the case of secured indebtedness, could allow them to sell the collateral securing that indebtedness and use the proceeds to repay that indebtedness. Moreover, any acceleration or default in respect of any of our indebtedness could, in turn, constitute an event of default under other debt instruments or agreements, thereby resulting in the acceleration and required repayment of that other indebtedness. Any of these events could materially adversely affect our ability to make payments of principal and interest on our indebtedness, including the notes, when due and could prevent us from making those payments altogether.

We cannot assure you that our business will generate sufficient cash flow from operations or that future sources of cash will be available to us in an amount sufficient to enable us to pay amounts due on our indebtedness,

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including the notes, or to fund our other liquidity needs, including cash distributions to stockholders necessary to maintain the Company's REIT qualification. Additionally, if we incur additional indebtedness in connection with future acquisitions or for any other purpose, our debt service obligations could increase.

We may need to refinance all or a portion of our indebtedness, including the notes, on or before maturity. Our ability to refinance our indebtedness or obtain additional financing will depend on, among other things:

- our financial condition, results of operations and market conditions at the time; and
- restrictions in the agreements governing our indebtedness.

As a result, we may not be able to refinance our indebtedness, including the notes, on commercially reasonable terms or at all. If we do not generate sufficient cash flow from operations, and additional borrowings or refinancings or proceeds of asset sales or other sources of cash are not available to us, we may not have sufficient cash to enable us to meet all of our obligations, including payments on the notes. Accordingly, if we cannot service our indebtedness, we may have to take actions such as seeking additional equity financing, delaying capital expenditures, or entering into strategic acquisitions and alliances.

Any of these events or circumstances could have a material adverse effect on our financial condition, results of operations, cash flows, the trading price of our securities (including the notes) and our ability to satisfy our debt service obligations and to pay dividends and distributions to our security holders. In addition, foreclosures of properties that we own could create taxable income without accompanying cash proceeds, which could require us to borrow or sell assets to raise the funds necessary to pay amounts due on our indebtedness, including the notes, and to meet the REIT distribution requirements under the Code, even if such actions are not on favorable terms.

***Despite our substantial indebtedness, we may still incur significantly more debt, which could exacerbate the risks related to our indebtedness, and adversely impact our ability to pay the principal of or interest on the notes.***

We may be able to incur substantial additional indebtedness in the future. Although the agreements governing our secured and unsecured indebtedness limit, and the indenture governing the notes will limit, our ability to incur additional indebtedness, these restrictions are subject to a number of significant exceptions and, in addition, we will have the ability to incur additional indebtedness, which could be substantial, without violating the limitations imposed by these debt instruments. To the extent we incur additional indebtedness, we may face additional risks associated with our indebtedness, including our possible inability to pay the principal of and interest on the notes.

***The Company has no significant operations, other than as the operating partnership's general partner, and no material assets, other than its investment in the operating partnership.***

The notes will be guaranteed by the Company. However, the Company has no significant operations, other than as general partner of the operating partnership, and no material assets, other than its investment in the operating partnership. Accordingly, if the operating partnership fails to make a payment on the notes when due, there can be no assurance that the Company would have funds to pay that amount pursuant to its guarantee. Furthermore, as described above under "*—The effective subordination of the notes may limit our ability to satisfy our obligations under the notes,*" the Company's guarantee will be effectively subordinated in right of payment to:

- all existing and future secured indebtedness and secured guarantees of the Company (to the extent of the value of the collateral securing such indebtedness or guarantees);
- all existing and future indebtedness and other liabilities, whether secured or unsecured, of the Company's subsidiaries (including the operating partnership) and of any entity the Company accounts for using the equity method of accounting; and
- all existing and future preferred equity not owned by the Company in the Company's subsidiaries (including the operating partnership) and in any entity the Company accounts for using the equity method of accounting.

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***Federal and state laws allow courts, under specific circumstances, to void guarantees and require holders of guaranteed debt to return payments received from guarantors.***

Under the federal bankruptcy law and comparable provisions of state fraudulent transfer laws, a court could void the guarantee of the notes provided by the Company or could subordinate the guarantee to all other debts and guarantees of the Company if, among other things, the Company, at the time it incurred or entered into its guarantee of the notes, received less than reasonably equivalent value or fair consideration for the incurrence of the guarantee and any of the following is also true:

- the Company was insolvent or rendered insolvent by reason of the incurrence of the guarantee;
- the Company was engaged in a business or transaction for which its remaining assets constituted unreasonably small capital; or
- the Company intended to incur, or believed that it would incur, debts beyond its ability to pay those debts as they mature.

In addition, under any of the circumstances described above, any payment by the Company pursuant to its guarantee of the notes could be voided and holders of the notes could be required to return those payments to the Company or to a fund for the benefit of the creditors of the Company.

The measures of insolvency for purposes of these fraudulent transfer laws will vary depending upon the law applied in any proceeding to determine whether a fraudulent transfer has occurred. Generally, however, a guarantor would be considered insolvent if:

- the sum of its debts, including contingent liabilities, was greater than the fair saleable value of all of its assets;
- the present fair saleable value of its assets was less than the amount that would be required to pay its probable liabilities on its existing debts, including contingent liabilities, as they became due; or
- it could not pay its debts as they became due.

Moreover, a court might also void the Company's guarantee of the notes, without regard to the above factors, if it found that the Company entered into its guarantee with actual or deemed intent to hinder, delay, or defraud its creditors. We cannot be certain as to the standards a court would use to determine whether reasonably equivalent value or fair consideration was received by the Company for its guarantee of the notes. If a court voided such guarantee, holders of the notes would no longer have a claim against the Company under such guarantee. In addition, the court might direct holders of the notes to repay any amounts already received from the Company under its guarantee. If the court were to void the Company's guarantee, require the return of monies paid by the Company under its guarantee or subordinate the guarantee to other obligations of the Company, we could not assure you that funds to pay the notes would be available from the operating partnership or any of our other subsidiaries or from any other source.

***There is currently no trading market for the notes, and an active public trading market for the notes may not develop or, if it develops, be maintained or be liquid. The failure of an active public trading market for the notes to develop or be maintained is likely to adversely affect the market price and liquidity of the notes.***

The notes are a new issue of securities with no established trading market. We do not intend to apply for listing of the notes on any securities exchange or for inclusion in any quotation system. Although the underwriters have advised us that they intend to make a market in the notes, they are not obligated to do so and may discontinue any market-making at any time without notice. Accordingly, an active public trading market may not develop for the notes and, even if one develops, may not be maintained or be liquid. If an active public trading market for the notes does not develop or is not maintained, the market price and liquidity of the notes are likely to be adversely affected and holders may not be able to sell their notes at desired times and prices or at all. If any of the notes are traded after their purchase in this offering, they may trade at a discount, which could be substantial, from their purchase price.

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The liquidity of the trading market, if any, and future trading prices of the notes will depend on many factors, including, among other things, prevailing interest rates, the financial condition, results of operations, business, prospects and credit quality of the operating partnership and its subsidiaries and the Company and its subsidiaries and other comparable entities, the market for similar securities and the overall securities markets, and may be adversely affected by unfavorable changes in any of these factors, many of which are beyond our control. In addition, market volatility or events or developments in the credit markets could materially and adversely affect the market value of the notes, regardless of the operating partnership's, the Company's or their respective subsidiaries' financial condition, results of operations, business, prospects or credit quality.

### ***The market price of the notes may fluctuate significantly.***

The market price of the notes may fluctuate significantly in response to many factors, including:

- actual or anticipated variations in our operating results, funds from operations, cash flows, liquidity or distributions;
- our ability to successfully execute on our development programs;
- our ability to successfully complete acquisitions and operate acquired properties;
- defaults or potential defaults by tenants or our inability to lease space at acceptable rental rates, or at all, upon completion of development projects or termination of existing leases;
- our ability to successfully manage joint venture arrangements;
- earthquakes and wildfires;
- changes in our earnings estimates or those of analysts;
- publication of research reports about us, the real estate industry generally or the retail, office, multifamily and mixed-use environments in which we operate;
- the failure to maintain our current credit ratings or comply with our debt covenants;
- increases in market interest rates;
- actual or anticipated changes in tax laws and regulations;
- changes in market valuations of similar companies;
- adverse market reaction to any debt or equity securities we may issue or additional debt we incur in the future;
- additions or departures of key management personnel;
- actions by institutional investors;
- speculation in the press or investment community;
- high levels of volatility in the credit markets;
- adverse market reactions as a result of epidemics, pandemics or other outbreaks of illness, disease or virus (such as COVID-19);
- general market and economic conditions; and
- the realization of any of the other risk factors included or incorporated by reference in this prospectus supplement or the accompanying prospectus.

Many of the factors listed above are beyond our control. These factors may cause the market price of the notes to decline, regardless of our financial condition, results of operations, business or prospects. It is impossible to provide any assurance that the market price of the notes will not fall in the future, and it may be difficult for investors to resell the notes at prices they find attractive or at all.

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### ***Holders of the notes will not be entitled to require us to redeem or repurchase the notes upon the occurrence of change of control or highly levered transactions or other designated events.***

The instruments and agreements governing some of our outstanding indebtedness (including borrowings under the operating partnership's third amended and restated credit facility, amended and restated unsecured term loan facility and senior guaranteed notes) contain provisions that require us to repurchase for cash or repay that indebtedness under specified circumstances or upon the occurrence of specified events (including upon the acquisition by any person or group of more than a specified percentage of the aggregate voting power of all of the Company's issued and outstanding voting stock, if the Company or one of its wholly-owned subsidiaries ceases to be the sole general partner of the operating partnership or the Company ceases to own, directly or indirectly, a majority of the voting equity interests in the operating partnership) and our future debt agreements and debt securities may contain similar provisions or may require that we repay or repurchase or offer to repurchase for cash the applicable indebtedness under specified circumstances or upon the occurrence of specified changes of control of the Company or the operating partnership or other events.

The notes offered hereby do not have any similar rights to require us to repurchase or repay the notes, whether upon the occurrence of a change of control or highly leveraged transaction or otherwise, even though these transactions could increase the amount of our indebtedness or otherwise adversely affect our capital structure or credit ratings, thereby adversely affecting the market value of the notes. These provisions may also allow holders of that other indebtedness to be repaid upon the occurrence of specified transactions or events, which may deplete our available cash and sources of financing and make it difficult or impossible for us to make payments on the notes when due.

### ***An increase in interest rates could result in a decrease in the market value of the notes.***

In general, as market interest rates rise, notes bearing interest at a fixed rate generally decline in value. Consequently, if you purchase these notes and market interest rates increase, the market value of your notes may decline. We cannot predict the future level of market interest rates.

### ***A downgrade in our credit ratings could materially adversely affect our business and financial condition and the market value of the notes.***

The credit ratings assigned to the notes and other debt securities of the operating partnership could change based upon, among other things, our results of operations and financial condition. These ratings are subject to ongoing evaluation by credit rating agencies, and we cannot assure you that any rating will not be changed or withdrawn by a rating agency in the future if, in its judgment, circumstances warrant. Moreover, these credit ratings are not recommendations to buy, sell or hold the notes or any other securities. If any of the credit rating agencies that have rated the notes or other debt securities of the operating partnership downgrades or lowers its credit rating, or if any credit rating agency indicates that it has placed any such rating on a so-called "watch list" for a possible downgrading or lowering or otherwise indicates that its outlook for that rating is negative, it could have a material adverse effect on our costs and availability of capital, which could in turn have a material adverse effect on our financial condition, results of operations, cash flows and our ability to satisfy our debt service obligations (including payments on the notes) and to make dividends and distributions to our security holders and could also have the material adverse effect on the market value of the notes.

### ***The notes are subject to early redemption.***

As described under the section titled "*Description of Notes—Redemption of the Notes at the Option of the Operating Partnership*," the operating partnership may, at its option, redeem the notes offered hereby in whole or in part, at any time and from time to time, at the redemption prices described under such caption. Consequently, the operating partnership may choose to redeem your notes at times when prevailing interest rates are lower than the effective interest rate on your notes. If that were to occur, you may be unable to reinvest your redemption proceeds in an investment with a return that is as high as the return you would have earned on the notes had they not been redeemed and that presents a similar level of investment risk as the notes.

## USE OF PROCEEDS

We expect that the net proceeds from this offering will be approximately \$ \_\_\_\_\_ million, after deducting the underwriting discount and our estimated expenses. We intend to use the net proceeds from this offering as follows:

- approximately \$100.0 million for the repayment of our Series B Notes at or prior to maturity;
- approximately \$100.0 million for the repayment of our Series C Notes at or prior to maturity;
- approximately \$100.0 million to repay outstanding borrowings under the Revolver Loan under our third amended and restated credit facility; and
- the remainder for working capital and general corporate purposes.

Pending application of the net proceeds for these purposes, we may temporarily invest such net proceeds in marketable securities.

As of June 30, 2024, we had \$100.0 million in principal amount of Series B Notes outstanding and approximately \$0.8 million of accrued but unpaid interest thereon. The Series B Notes mature on February 2, 2025 and interest accrues on our Series B Notes at a rate of 4.45% per annum and is payable quarterly on the last day of January, April, July and October until maturity.

As of June 30, 2024, we had \$100.0 million in principal amount of Series C Notes outstanding and approximately \$0.8 million of accrued but unpaid interest thereon. The Series C Notes mature on April 1, 2025 and interest accrues on our Series C Notes at a rate of 4.50% per annum and is payable quarterly on the last day of January, April, July and October until maturity.

As of June 30, 2024, there were no amounts outstanding under our Revolver Loan under our third amended and restated credit facility. However, on July 18, 2024, we drew \$100.0 million on our Revolver Loan in order to repay the \$100.0 million outstanding principal amount of our Series F Notes at maturity. The Revolver Loan initially matures on January 5, 2026, with two, six-month extension options. Outstanding borrowings on the Revolver Loan bear interest at floating rates equal to the applicable secured overnight financing rate, or SOFR, plus a SOFR adjustment and a spread which ranges from 1.05%-1.50% based on our consolidated leverage ratio.

Certain of the underwriters and/or their respective affiliates are lenders under our third amended and restated credit facility. As described in this prospectus supplement, we intend to use a portion of the net proceeds from this offering to repay outstanding borrowings under the Revolver Loan under our third amended and restated credit facility. To the extent that we use a portion of the net proceeds of this offering to repay borrowings under the Revolver Loan under our third amended and restated credit facility, such underwriters and/or their respective affiliates will receive their proportionate shares of any such amount. See the section titled “*Underwriting (Conflicts of Interest)—Conflicts of Interest.*”



## DESCRIPTION OF NOTES

The notes will be issued pursuant to an indenture, dated as of January 26, 2021, among the operating partnership, as issuer, the Company, as guarantor, and U.S. Bank Trust Company, National Association, as successor in interest to U.S. Bank National Association, as trustee, or the indenture. The terms of the notes include those stated in the indenture and those made part of the indenture by reference to the Trust Indenture Act of 1939, as amended.

The notes will be a series of “debt securities” referred to in the accompanying prospectus. The following description of some of the provisions of the notes and the indenture supplements, and to the extent inconsistent supersedes and replaces, the description of some of the general provisions of the debt securities and the indenture contained in the accompanying prospectus. The following description of some of the provisions of the notes, the officers’ certificate establishing certain terms of the notes and the indenture and the description of some of the general provisions of the debt securities and the indenture contained in the accompanying prospectus are not complete and are subject to, and qualified in their entirety by reference to, the form of the notes and indenture which have been or will be filed as exhibits to the registration statement of which the accompanying prospectus is a part and which may be obtained as described under the section titled “*Where You Can Find More Information*” in the accompanying prospectus. We urge you to read those documents in their entirety because they, and not this description nor the description in the accompanying prospectus, define your rights as a holder of notes. You may request a copy of those documents from us as described in the section titled “*Where You Can Find More Information*” in the accompanying prospectus.

As used in this “*Description of Notes*” and in the section titled “*Description of Debt Securities and Related Guarantees*” in the accompanying prospectus, references to the “operating partnership,” “we,” “our” or “us” refer solely to American Assets Trust, L.P. and not to any of its subsidiaries and references to the “Company” or “guarantor” refer solely to American Assets Trust, Inc. and not to any of its subsidiaries, unless otherwise expressly stated or the context otherwise requires.

### General

The notes:

- will be the operating partnership’s senior unsecured obligations;
- will mature on \_\_\_\_\_, 20\_\_\_\_ unless earlier redeemed;
- will be issued in minimum denominations of \$2,000 and multiples of \$1,000 in excess thereof;
- will be denominated and payable in U.S. dollars;
- will be represented by one or more registered notes in global form, or global notes, but in certain limited circumstances may be represented by registered notes in certificated form. See the section titled “*Description of Debt Securities and Related Guarantees—Book-entry System*” in the accompanying prospectus;
- will not be entitled to the benefits of, or be subject to, any sinking fund and will not entitle holders, at their option, to require the operating partnership to repurchase or redeem the notes;
- will not be convertible into or exchangeable for any partnership interests in the operating partnership or capital stock of the Company; and
- will be guaranteed on a senior unsecured basis by the Company.

The notes will constitute a single series of debt securities under the indenture and will initially be limited to an aggregate principal amount of \$\_\_\_\_\_. The operating partnership may, without the consent of or notice to the holders of the notes, increase the principal amount of the notes by issuing additional notes of this series from

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time to time in the future. Any such additional notes will have the same terms and provisions as the notes offered hereby, except for any difference in issue date, issue price, date from which interest will begin to accrue, interest accrued prior to the issue date and first interest payment date of those additional notes. Such additional notes may have the same CUSIP number as the applicable series of notes offered hereby so long as such additional notes are fungible for U.S. federal income tax purposes with the applicable series of notes offered hereby. The notes offered hereby and any additional notes of this series that the operating partnership may issue in the future will vote and act together as a single series of debt securities under the indenture, which means that, in circumstances where the indenture provides for holders of the notes of this series to vote or take any action, the notes offered hereby and any additional notes of this series that the operating partnership may issue in the future will vote or take that action as a single series.

Except to the extent described below under “—*Certain Covenants*” and in the accompanying prospectus under the section titled “*Description of Debt Securities and Related Guarantees—Merger, Consolidation and Sale of Assets*,” the indenture governing the notes will not prohibit the operating partnership or the Company or any of the operating partnership’s or the Company’s subsidiaries from incurring additional secured or unsecured indebtedness or issuing preferred equity in the future, nor will the indenture afford holders of the notes protection in the event of (1) a recapitalization or other highly leveraged or similar transaction involving the operating partnership or the Company, (2) a change of control of the operating partnership or the Company or (3) a merger, consolidation, reorganization, restructuring or transfer or lease of all or substantially all of the operating partnership’s or the Company’s assets or similar transactions that may adversely affect the holders of the notes. The operating partnership or the Company may, in the future, enter into certain transactions, such as the sale of all or substantially all of the operating partnership’s or the Company’s assets or a merger or consolidation, that may increase the amount of the operating partnership’s or the Company’s indebtedness or substantially change the operating partnership’s or the Company’s assets, which may have a material adverse effect on the operating partnership’s ability to service its indebtedness, including the notes, or on the Company’s ability to pay amounts due under its guarantee of the notes. Furthermore, the notes and the indenture will not include any provisions that would allow holders of the notes to require the operating partnership or the Company to repurchase or redeem the notes in the event of a transaction of the nature described above. See the sections titled “*Risk Factors—The effective subordination of the notes may limit our ability to satisfy our obligations under the notes*” and “*Risk Factors—Holders of the notes will not be entitled to require us to redeem or repurchase the notes upon the occurrence of change of control or highly levered transactions or other designated events.*”

The operating partnership does not intend to apply to list the notes on any securities exchange or include them on any quotation system.

### **Interest**

Interest on the notes will accrue at the rate of % per year from and including September , 2024 or the most recent interest payment date to which interest has been paid or provided for, and will be payable semi-annually in arrears on and of each year, beginning , 2025. The interest so payable will be paid to each holder in whose name a note is registered at the close of business on the or (whether or not a business day) immediately preceding the applicable interest payment date. Interest on the notes will be computed on the basis of a 360-day year consisting of twelve 30-day months.

### **Company Guarantee**

The Company will guarantee the operating partnership’s obligations under the notes, including the due and punctual payment of principal of and premium, if any, and interest on the notes, whether at stated maturity, upon acceleration, upon redemption or otherwise. Under the terms of the Company’s guarantee, holders of the notes will not be required to exercise their remedies against the operating partnership before they proceed directly against the Company. The Company’s obligations under the guarantee of the notes will be limited to the maximum amount that will not, after giving effect to all other contingent and fixed liabilities of the Company,

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result in the guarantee constituting a fraudulent transfer or conveyance. See the section titled “*Risk Factors—Federal and state laws allow courts, under specific circumstances, to void guarantees and require holders of guaranteed debt to return payments received from guarantors.*”

The covenants in the indenture that will limit the ability of the operating partnership and its subsidiaries to incur indebtedness will not apply to the Company.

The Company has no significant operations, other than as the operating partnership’s general partner, and no material assets, other than its investment in the operating partnership. Accordingly, if the operating partnership fails to make a payment on the notes when due, there can be no assurance that the Company would have funds to pay that amount pursuant to its guarantee. See the section titled “*Risk Factors—The Company has no significant operations, other than as the operating partnership’s general partner, and no material assets, other than its investment in the operating partnership.*”

### **Ranking**

The notes will be the operating partnership’s senior unsecured obligations and will rank equally in right of payment with all of the operating partnership’s other existing and future senior unsecured indebtedness. The notes will be effectively subordinated in right of payment to:

- all of the operating partnership’s existing and future mortgage indebtedness and other secured indebtedness (to the extent of the value of the collateral securing such indebtedness);
- all existing and future indebtedness and other liabilities, whether secured or unsecured, of the operating partnership’s subsidiaries and of any entity the operating partnership accounts for using the equity method of accounting; and
- all existing and future preferred equity not owned by the operating partnership, if any, in the operating partnership’s subsidiaries and in any entity the operating partnership accounts for using the equity method of accounting.

As of June 30, 2024, the operating partnership (excluding its subsidiaries) had, in addition to trade payables and other liabilities, approximately \$1.6 billion aggregate principal amount of outstanding unsecured indebtedness (including borrowings outstanding under its 3.375% senior unsecured notes, senior guaranteed notes, third amended and restated credit facility and amended and restated unsecured term loan facility) and no borrowing capacity under its \$150.0 million or \$75.0 million unsecured term loans under its amended and restated unsecured term loan facility. In addition, as of June 30, 2024, the operating partnership had \$400.0 million of remaining borrowing capacity available (subject to customary conditions) under the Revolver Loan under its third amended and restated credit facility, of which the Company drew approximately \$100.0 million on July 18, 2024 to repay the \$100.0 million outstanding principal amount of the operating partnership’s Series F Notes at maturity. As of June 30, 2024, the Company (excluding its subsidiaries) had no outstanding indebtedness and had guaranteed the operating partnership’s borrowings under the operating partnership’s 3.375% senior unsecured notes, senior guaranteed notes, third amended and restated credit facility and amended and restated unsecured term loan facility and other outstanding indebtedness of the operating partnership totaling approximately \$1.6 billion aggregate principal amount. As of June 30, 2024, the subsidiaries of the operating partnership and the subsidiaries of the Company (excluding the operating partnership) had approximately \$75.0 million aggregate principal amount of secured indebtedness outstanding and no outstanding unsecured indebtedness, in addition to their trade payables and other liabilities. In addition, as of June 30, 2024, the subsidiaries of the operating partnership and the subsidiaries of the Company did not guarantee any indebtedness of the operating partnership or the Company.

The indenture that will govern the notes will not prohibit the operating partnership, the Company or any of their respective subsidiaries from incurring secured or unsecured indebtedness or issuing preferred equity in the future and, although the indenture will contain covenants that will limit the ability of the operating partnership

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and its subsidiaries to incur secured and unsecured indebtedness, those covenants are subject to significant exceptions, and in any event the operating partnership and its subsidiaries may be able, without taking advantage of any such exceptions, to incur substantial amounts of additional secured and unsecured indebtedness without violating those covenants.

The guarantee of the notes will be a senior unsecured obligation of the Company and will rank equally in right of payment with all other existing and future senior unsecured indebtedness and senior unsecured guarantees of the Company. The Company's guarantee of the notes will be effectively subordinated in right of payment to:

- all existing and future secured indebtedness and secured guarantees of the Company (to the extent of the value of the collateral securing such indebtedness and guarantees);
- all existing and future indebtedness and other liabilities, whether secured or unsecured, of the Company's subsidiaries (including the operating partnership) and of any entity the Company accounts for using the equity method of accounting; and
- all existing and future preferred equity not owned by the Company in the Company's subsidiaries (including the operating partnership) and in any entity the Company accounts for using the equity method of accounting.

For additional information, see the section titled "*Risk Factors—The effective subordination of the notes may limit our ability to satisfy our obligations under the notes.*"

### **Redemption of the Notes at the Option of the Operating Partnership**

Prior to \_\_\_\_\_, 20\_\_\_\_ (\_\_\_\_\_ months prior to maturity), or the Par Call Date, the operating partnership may redeem the notes at its option, in whole or in part, at any time and from time to time, at a redemption price (expressed as a percentage of principal amount and rounded to three decimal places) equal to the greater of:

- (1) (a) the sum of the present values of the remaining scheduled payments of principal and interest thereon discounted to the redemption date (assuming the notes matured on the Par Call Date) on a semi-annual basis (assuming a 360-day year consisting of twelve 30-day months) at the Treasury Rate plus \_\_\_\_\_ basis points less (b) interest accrued to the date of redemption, and
- (2) 100% of the principal amount of the notes to be redeemed,

plus, in either case, accrued and unpaid interest thereon to the redemption date.

On or after the Par Call Date, the operating partnership may redeem the notes, in whole or in part, at any time and from time to time, at a redemption price equal to 100% of the principal amount of the notes being redeemed plus accrued and unpaid interest thereon to the redemption date.

"Treasury Rate" means, with respect to any redemption date, the yield determined by the operating partnership in accordance with the following two paragraphs.

The Treasury Rate shall be determined by the operating partnership after 4:15 p.m., New York City time (or after such time as yields on U.S. government securities are posted daily by the Board of Governors of the Federal Reserve System), on the third business day preceding the date the notice of redemption is given based upon the yield or yields for the most recent day that appear after such time on such day in the most recent statistical release published by the Board of Governors of the Federal Reserve System designated as "Selected Interest Rates (Daily)—H.15" (or any successor designation or publication), or H.15, under the caption "U.S. government securities—Treasury constant maturities—Nominal" (or any successor caption or heading), or H.15 TCM. In determining the Treasury Rate, the operating partnership shall select, as applicable: (1) the yield for the Treasury

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constant maturity on H.15 exactly equal to the period from the redemption date to the Par Call Date, or the Remaining Life; or (2) if there is no such Treasury constant maturity on H.15 exactly equal to the Remaining Life, the two yields—one yield corresponding to the Treasury constant maturity on H.15 immediately shorter than and one yield corresponding to the Treasury constant maturity on H.15 immediately longer than the Remaining Life—and shall interpolate to the Par Call Date on a straight-line basis (using the actual number of days) using such yields and rounding the result to three decimal places; or (3) if there is no such Treasury constant maturity on H.15 shorter than or longer than the Remaining Life, the yield for the single Treasury constant maturity on H.15 closest to the Remaining Life. For purposes of this paragraph, the applicable Treasury constant maturity or maturities on H.15 shall be deemed to have a maturity date equal to the relevant number of months or years, as applicable, of such Treasury constant maturity from the redemption date.

If on the third business day preceding the date the notice of redemption is given H.15 TCM is no longer published, the operating partnership shall calculate the Treasury Rate based on the rate per annum equal to the semi-annual equivalent yield to maturity at 11:00 a.m., New York City time, on the second business day preceding the date the notice of redemption is given of the United States Treasury security maturing on, or with a maturity that is closest to, the Par Call Date, as applicable. If there is no United States Treasury security maturing on the Par Call Date but there are two or more United States Treasury securities with a maturity date equally distant from the Par Call Date, one with a maturity date preceding the Par Call Date and one with a maturity date following the Par Call Date, the operating partnership shall select the United States Treasury security with a maturity date preceding the Par Call Date. If there are two or more United States Treasury securities maturing on the Par Call Date or two or more United States Treasury securities meeting the criteria of the preceding sentence, the operating partnership shall select from among these two or more United States Treasury securities the United States Treasury security that is trading closest to par based upon the average of the bid and asked prices for such United States Treasury securities at 11:00 a.m., New York City time. In determining the Treasury Rate in accordance with the terms of this paragraph, the semi-annual yield to maturity of the applicable United States Treasury security shall be based upon the average of the bid and asked prices (expressed as a percentage of principal amount) at 11:00 a.m., New York City time, of such United States Treasury security, and rounded to three decimal places.

The operating partnership's actions and determinations in determining the redemption price shall be conclusive and binding for all purposes, absent manifest error.

Notice of any redemption will be mailed or electronically delivered (or otherwise transmitted in accordance with the depository's procedures) at least 10 days but not more than 60 days before the redemption date to each holder of notes to be redeemed.

In the case of a partial redemption, selection of the notes for redemption will be made pro rata, by lot or by such other method as the Trustee in its sole discretion deems appropriate and fair. No notes of a principal amount of \$2,000 or less will be redeemed in part. If any note is to be redeemed in part only, the notice of redemption that relates to the note will state the portion of the principal amount of the note to be redeemed. A new note in a principal amount equal to the unredeemed portion of the note will be issued in the name of the holder of the note upon surrender for cancellation of the original note. For so long as the notes are held by DTC (or another depository), the redemption of the notes shall be done in accordance with the policies and procedures of the depository.

Unless the operating partnership defaults in payment of the redemption price, on and after the redemption date interest will cease to accrue on the notes or portions thereof called for redemption.

### **Certain Covenants**

The following covenants will be applicable to the notes:

*Aggregate Debt Test.* The operating partnership will not, and will not permit any of its Subsidiaries to, incur any Debt (including without limitation Acquired Debt) if, immediately after giving effect to the incurrence of

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such Debt and the application of the proceeds from such Debt on a pro forma basis, the aggregate principal amount of all outstanding Debt of the operating partnership and its Subsidiaries (determined on a consolidated basis in accordance with GAAP) is greater than 60% of the sum of the following (without duplication):

- the Total Assets of the operating partnership and its Subsidiaries as of the last day of the then most recently ended fiscal quarter covered in the Company's annual or quarterly report most recently furnished to holders of the notes or filed with the SEC, as the case may be; and
- the aggregate purchase price of any real estate assets or mortgages receivable acquired, and the aggregate amount of any securities offering proceeds received (to the extent such proceeds were not used to acquire real estate assets or mortgages receivable or used to reduce Debt), by the operating partnership or any of its Subsidiaries since the end of such fiscal quarter, including the proceeds obtained from the incurrence of such additional Debt.

For purposes of this covenant, Debt will be deemed to be incurred by the operating partnership or any of its Subsidiaries whenever the operating partnership or such Subsidiary shall create, assume, guarantee or otherwise become liable in respect thereof.

*Debt Service Test.* The operating partnership will not, and will not permit any of its Subsidiaries to, incur any Debt (including without limitation Acquired Debt) if the ratio of Consolidated Income Available for Debt Service to Annual Debt Service Charge for the period consisting of the four consecutive fiscal quarters ending with the most recently ended fiscal quarter covered in the Company's annual or quarterly report most recently furnished to holders of the notes or filed with the SEC, as the case may be, prior to the date on which such additional Debt is to be incurred shall have been less than 1.5:1 on a pro forma basis after giving effect to the incurrence of such Debt and the application of the proceeds from such Debt (determined on a consolidated basis in accordance with GAAP), and calculated on the following assumptions:

- such Debt and any other Debt (including without limitation Acquired Debt) incurred by the operating partnership or any of its Subsidiaries since the first day of such four-quarter period had been incurred, and the application of the proceeds from such Debt (including to repay or retire other Debt) had occurred, on the first day of such period;
- the repayment or retirement of any other Debt of the operating partnership or any of its Subsidiaries since the first day of such four-quarter period had occurred on the first day of such period (except that, in making this computation, the amount of Debt under any revolving credit facility, line of credit or similar facility will be computed based upon the average daily balance of such Debt during such period); and
- in the case of any acquisition or disposition by the operating partnership or any of its Subsidiaries of any asset or group of assets with a fair market value in excess of \$1.0 million since the first day of such four-quarter period, whether by merger, stock purchase or sale or asset purchase or sale or otherwise, such acquisition or disposition had occurred as of the first day of such period with the appropriate adjustments with respect to such acquisition or disposition being included in such pro forma calculation.

If the Debt giving rise to the need to make the calculation described in this covenant or any other Debt incurred after the first day of the relevant four-quarter period bears interest at a floating rate, then, for purposes of calculating the Annual Debt Service Charge, the interest rate on such Debt will be computed on a pro forma basis by applying the average daily rate which would have been in effect during the entire four-quarter period to the greater of the amount of such Debt outstanding at the end of such period or the average amount of such Debt outstanding during such period.

For purposes of this covenant, Debt will be deemed to be incurred by the operating partnership or any of its Subsidiaries whenever the operating partnership or such Subsidiary shall create, assume, guarantee or otherwise become liable in respect thereof.

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*Secured Debt Test.* The operating partnership will not, and will not permit any of its Subsidiaries to, incur any Debt (including without limitation Acquired Debt) secured by any Lien on any property or assets of the operating partnership or any of its Subsidiaries, whether owned on the date that the notes are originally issued or subsequently acquired, if, immediately after giving effect to the incurrence of such Debt and the application of the proceeds from such Debt on a pro forma basis, the aggregate principal amount (determined on a consolidated basis in accordance with GAAP) of all outstanding Debt of the operating partnership and its Subsidiaries which is secured by a Lien on any property or assets of the operating partnership or any of its Subsidiaries is greater than 40% of the sum of (without duplication):

- the Total Assets of the operating partnership and its Subsidiaries as of the last day of the then most recently ended fiscal quarter covered in the Company's annual or quarterly report most recently furnished to holders of the notes or filed with the SEC, as the case may be; and
- the aggregate purchase price of any real estate assets or mortgages receivable acquired, and the aggregate amount of any securities offering proceeds received (to the extent such proceeds were not used to acquire real estate assets or mortgages receivable or used to reduce Debt), by the operating partnership or any of its Subsidiaries since the end of such fiscal quarter, including the proceeds obtained from the incurrence of such additional Debt.

For purposes of this covenant, Debt will be deemed to be incurred by the operating partnership or any of its Subsidiaries whenever the operating partnership or such Subsidiary shall create, assume, guarantee or otherwise become liable in respect thereof.

*Maintenance of Total Unencumbered Assets.* The operating partnership will not have at any time Total Unencumbered Assets of less than 150% of the aggregate principal amount of all outstanding Unsecured Debt of the operating partnership and its Subsidiaries determined on a consolidated basis in accordance with GAAP.

For purposes of this covenant, Debt will be deemed to be incurred by the operating partnership or any of its Subsidiaries whenever the operating partnership or such Subsidiary shall create, assume, guarantee or otherwise become liable in respect thereof.

*Future Guarantors.* If at any time after the issuance of the notes, including following any release of any Subsidiary that guarantees the notes pursuant to the covenant described in this paragraph (such Subsidiary, a Subsidiary Guarantor) from its guarantee under the indenture, or a Subsidiary Guarantee, a Subsidiary of the operating partnership (including any future Subsidiary) guarantees Unsecured Debt of the operating partnership (that would constitute Debt under the first bullet of the definition thereof) in an amount equal to or greater than \$5.0 million, the Company will cause such Subsidiary to guarantee the notes by executing and delivering a supplemental indenture in accordance with the indenture within 10 business days; provided that if the other Unsecured Debt of the operating partnership being guaranteed by such Subsidiary that gives rise to the obligation of such Subsidiary Guarantor to guarantee the notes pursuant to the covenant described in this paragraph is Acquired Debt, the Company will cause such Subsidiary to guarantee the notes by executing and delivering a supplemental indenture in accordance with the indenture within 30 days.

*Existence.* Except as permitted by the covenant described in the accompanying prospectus under the section titled "*Description of Debt Securities and Related Guarantees—Merger, Consolidation and Sale of Assets,*" the operating partnership will do or cause to be done all things necessary to preserve and keep in full force and effect its existence, rights (charter and statutory) and franchises, and the Company will do or cause to be done all things necessary to preserve and keep in full force and effect its existence, rights (charter and statutory) and franchises. However, neither the operating partnership nor the Company will be required to preserve any right or franchise if the board of directors of the Company (or any duly authorized committee of that board of directors), as the case may be, determines that the preservation of the right or franchise is no longer desirable in the conduct of the business of the operating partnership or the Company, as the case may be.



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*Maintenance of Properties.* The operating partnership will cause all of its properties used or useful in the conduct of its business or the business of any Subsidiary of the operating partnership to be maintained and kept in good condition, repair and working order and supplied with all necessary equipment and cause all necessary repairs, renewals, replacements, betterments and improvements to be made, all as in the judgment of the operating partnership may be necessary in order for the operating partnership to at all times properly and advantageously conduct its business carried on in connection with such properties.

*Insurance.* The operating partnership will, and will cause each of its Subsidiaries to, keep in force upon all of its properties and operations insurance policies carried with responsible companies in such amounts and covering all such risks as is customary in the industry in which the operating partnership and its Subsidiaries do business in accordance with prevailing market conditions and availability.

*Payment of Taxes and Other Claims.* Each of the operating partnership and the Company will pay or discharge or cause to be paid or discharged before it becomes delinquent:

- all taxes, assessments and governmental charges levied or imposed on it or any of its Subsidiaries or on its or any such Subsidiary's income, profits or property; and
- all lawful claims for labor, materials and supplies that, if unpaid, might by law become a Lien upon its property or the property of any of its Subsidiaries.

However, neither the Company nor the operating partnership will be required to pay or discharge or cause to be paid or discharged any tax, assessment, charge or claim the amount, applicability or validity of which is being contested in good faith by appropriate proceedings.

*Provision of Financial Information.* The Company will:

- whether or not the Company is subject to Section 13 or 15(d) of the Securities Exchange Act of 1934, as amended, or the Exchange Act, and for so long as any notes are outstanding, file with the trustee, within 15 days after the Company is required to file the same with the SEC or would be required to file with the SEC pursuant to the applicable rules and regulations of the SEC, as the case may be, copies of the annual reports, quarterly reports, and information, documents and other reports which the Company would be required to file with the SEC pursuant to Section 13 or Section 15(d) of the Exchange Act;
- file with the trustee and the SEC, in accordance with rules and regulations prescribed from time to time by the SEC, such additional information, documents and reports with respect to compliance by the Company with the conditions and covenants of the indenture as may be required from time to time by such rules and regulations; and
- transmit by mail to the holders of the notes, within 30 days after the filing thereof with the trustee, in the manner and to the extent provided in Section 313(c) of the Trust Indenture Act of 1939, as amended, such summaries of any information, documents and reports required to be filed by the operating partnership or the Company pursuant to the bullet points above as may be required by rules and regulations prescribed from time to time by the SEC.

The Company will be deemed to have filed any of the foregoing with the trustee if the Company has filed the same with the SEC using the EDGAR filing system and such filings are publicly available.

The covenants described under this caption “—*Certain Covenants*” shall, insofar as they relate to the notes, be subject to covenant defeasance as described in the accompanying prospectus under the section titled “*Description of Debt Securities and Related Guarantees—Discharge, Defeasance and Covenant Defeasance*,” provided that, notwithstanding the foregoing, the covenant of the operating partnership and the Company to do or cause to be done all things necessary to preserve and keep in full force and effect their respective existence (except as permitted by the provisions described in the accompanying prospectus under the section titled



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“*Description of Debt Securities and Related Guarantees—Merger, Consolidation and Sale of Assets*”) and the provisions described above under “—*Provision of Financial Information*” shall not be subject to covenant defeasance. In addition, the operating partnership and the Company may omit in any particular instance to comply, insofar as relates to the notes, with any covenant described under this caption “—*Certain Covenants*” (other than the covenant described under “—*Provision of Financial Information*”) if the holders of at least a majority in principal amount of the outstanding notes waive such compliance.

### **Suspension of Future Guarantors Covenant**

For so long as (i) the notes are rated at least BBB+, Baa1 or the equivalent, provided, that if such rating is equal to BBB+, Baa1 or the equivalent it must be without qualification by a negative outlook, negative watch or any other similar indication of potential downgrade, or an Applicable Rating, by at least two of S&P, Moody’s and Fitch (or, if any of S&P, Moody’s or Fitch have been replaced in accordance with the definition of “Rating Agencies,” by at least two of the then-applicable Rating Agencies) and (ii) no default has occurred and is continuing under the indenture, the operating partnership, the Company, and the Subsidiaries will not be subject to the covenant described under the section titled “—*Certain Covenants—Future Guarantors*”, or the Suspended Covenant.

If at any time the notes are no longer assigned an Applicable Rating by at least two of S&P, Moody’s and Fitch (or, if any of S&P, Moody’s or Fitch have been replaced in accordance with the definition of “Rating Agencies,” by at least two of the then-applicable Rating Agencies), then the Suspended Covenant will thereafter be reinstated (such date, the Reinstatement Date) and will be applicable pursuant to the terms of the indenture (including in connection with performing any calculation or assessment to determine compliance with the terms of the indenture) and, in the event that any Subsidiaries would be required to guarantee the notes at the time of such reinstatement, the Subsidiary Guarantee of such Subsidiary shall be automatically reinstated on (or, if any such Subsidiary was not a Subsidiary Guarantor of the notes at the time of the suspension, such entity shall enter into a supplemental indenture pursuant to which it shall become a Subsidiary Guarantor of the notes under the indenture within 10 business days of) such Reinstatement Date and, unless and until the notes subsequently attain an Applicable Rating from at least two of S&P, Moody’s and Fitch (or, if any of S&P, Moody’s or Fitch have been replaced in accordance with the definition of “Rating Agencies,” by at least two of the then applicable Rating Agencies) and no default shall have occurred and be continuing (in which event the Suspended Covenant and the Subsidiary Guarantees will no longer be in effect for such time that the notes maintain an Applicable Rating from two or more Rating Agencies, subject to subsequent reinstatement thereof under the circumstances described above in this paragraph). The period of time from and including the date of suspension of the Suspended Covenant to, but excluding, the Reinstatement Date or, if there is no Reinstatement Date, through and including the final maturity date of the Notes is referred to as a Suspension Period. For purposes of clarity, it is understood that there may be one or more Suspension Periods and one or more Reinstatement Dates. The operating partnership shall provide an officers’ certificate to the trustee indicating the occurrence of any Suspension Period, Suspended Covenant or Reinstatement Date. The trustee shall have no obligation to monitor the ratings of the notes, independently determine or verify if such events have occurred or notify the holders of notes of any Suspension Period, Suspended Covenant or Reinstatement Date.

### **Subsidiary Guarantees**

The notes will not initially be guaranteed by any Subsidiaries of the operating partnership. The obligations of any Subsidiary Guarantor under such a Subsidiary Guarantee will be limited to the amount necessary to prevent such guarantee from constituting a fraudulent transfer or conveyance under applicable law. Any Subsidiary Guarantee will be a continuing guarantee and will inure to the benefit of and be enforceable by the trustee, the holders of the notes and their successors, transferees and assigns.

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A Subsidiary Guarantor will be automatically and unconditionally released from its obligations under an indenture and the related guarantee:

- upon any sale, exchange or transfer to a person not an affiliate of the Company of all of the equity interests held by the operating partnership and its Subsidiaries in, or all or substantially all of the assets of, such Subsidiary Guarantor;
- upon the liquidation or dissolution of such Subsidiary Guarantor; provided no default or event of default shall occur as a result thereof; or
- if the operating partnership exercises its legal defeasance option or its covenant defeasance option as described in the accompanying prospectus under the section titled “*Description of Debt Securities and Related Guarantees—Discharge, Defeasance and Covenant Defeasance*”;

provided, however, that in the case of the first bullet above, (x) such sale or other disposition is made to a Person other than the operating partnership or any of its Subsidiaries and (y) such sale or disposition is otherwise permitted by the indenture.

Nothing contained in the indenture or in the notes will prevent any consolidation or merger of a Subsidiary Guarantor with or into the Guarantor, the operating partnership (in which case such Subsidiary Guarantor shall no longer be a Subsidiary Guarantor) or another Subsidiary Guarantor or shall prevent any sale or conveyance of the property of a Subsidiary Guarantor as an entirety or substantially as an entirety to the Company, operating partnership or another Subsidiary Guarantor.

### **Trustee**

U.S. Bank Trust Company, National Association will initially act as the trustee, registrar and paying agent for the notes.

If the trustee becomes one of the operating partnership’s or the Company’s creditors, it will be subject to limitations on its rights to obtain payment of claims or to realize on some property received for any such claim, as security or otherwise. The trustee is permitted to engage in other transactions with the operating partnership, the Company or their respective subsidiaries. If, however, it acquires any conflicting interest, it must eliminate that conflict or resign.

### ***Payments on the Notes; Paying Agent and Registrar; Transfer***

The operating partnership will pay the principal of and premium, if any, and interest on notes in global form registered in the name of DTC or its nominee by wire transfer of immediately available funds to DTC or its nominee, as the case may be, as the registered holder of such global notes. The operating partnership will make all payments of principal, interest and premium, if any, with respect to certificated notes (if issued) by wire transfer of immediately available funds to the accounts specified by the holders of the certificated notes or, if no such account is specified, by mailing a check to each such holder’s registered address. The operating partnership will maintain an office or agency where notes may be presented or surrendered for payment and for registration of transfer and exchange. Interest on any note that is payable, and is punctually paid or duly provided for, on any interest payment date will be paid to the person in whose name that note (or one or more predecessor notes) is registered at the close of business on the applicable record date. The operating partnership has initially designated the trustee as paying agent and registrar for the notes and its agency in Los Angeles, California as a place where notes may be presented for payment or for registration of transfer or exchange. The operating partnership may, however, change the paying agent or registrar without prior notice to the holders of the notes, and the operating partnership may act as paying agent or registrar.

If any interest payment date, stated maturity date or redemption date of a note is not a business day, the payment otherwise required to be made on such date may be made on the next business day with the same force

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and effect as if made on such interest payment date, stated maturity date or redemption date, as the case may be, and no interest shall accrue on the amount so payable for the period from and after such interest payment date, stated maturity date or redemption date, as the case may be, until such next business day. All payments will be made in United States dollars.

A holder of notes may transfer or exchange notes at the office of the registrar in accordance with the indenture. Every note presented or surrendered for registration of transfer or for exchange or redemption shall (if so required by the operating partnership or the registrar) be duly endorsed, or accompanied by a written instrument of transfer in form satisfactory to the operating partnership and the registrar, duly executed by the registered holder thereof or such holder's attorney duly authorized in writing. No service charge shall be made for any registration of transfer or exchange of notes, but the operating partnership may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection therewith, subject to limited exceptions.

The registered holder of a note will be treated as the owner of the note for all purposes.

### **No Personal Liability of Directors, Officers, Employees and Stockholders**

No recourse under or upon any obligation, covenant or agreement contained in the indenture, the notes or any guarantee or because of any indebtedness evidenced thereby shall be had against any past, present or future stockholder, employee, officer or director, as such, of the operating partnership or the Company (either in its capacity as the operating partnership's general partner or as guarantor of the notes), all such liability being expressly waived and released by the acceptance of the notes by the registered holders and as part of the consideration for the issue of the notes.

### **Notices**

The indenture provides that notices to holders of the notes will be given by mail to the addresses of holders of the notes as they appear in the note register or in accordance with the applicable procedures of DTC.

### **Governing Law**

The indenture, the notes and the guarantees endorsed on the notes will be governed by, and construed in accordance with, the law of the State of New York.

### **Definitions**

As used under this caption "*Description of Notes*" and in the indenture, the following terms have the respective meanings specified below:

"*Acquired Debt*" means Debt of a person:

- existing at the time such person is merged or consolidated with or into the operating partnership or any of its Subsidiaries or becomes a Subsidiary of the operating partnership; or
- assumed by the operating partnership or any of its Subsidiaries in connection with the acquisition of assets from such person.

Acquired Debt shall be deemed to be incurred on the date the acquired person is merged or consolidated with or into the operating partnership or any of its Subsidiaries or becomes a Subsidiary of the operating partnership or the date of the related acquisition, as the case may be.

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“*Annual Debt Service Charge*” means, for any period, the interest expense of the operating partnership and its Subsidiaries for such period, determined on a consolidated basis in accordance with GAAP, including, without duplication:

- all amortization of debt discount and premium;
- all accrued interest;
- all capitalized interest; and
- the interest component of finance lease obligations.

“*Consolidated Income Available for Debt Service*” for any period means Consolidated Net Income of the operating partnership and its Subsidiaries for such period, plus amounts which have been deducted and minus amounts which have been added for, without duplication:

- interest expense on Debt;
- provision for taxes based on income;
- amortization of debt discount, premium and deferred financing costs;
- provisions for gains and losses on sales or other dispositions of properties and other investments;
- property depreciation and amortization;
- the effect of any non-recurring or other unusual non-cash items, as may be determined by the operating partnership in good faith; and
- amortization of deferred charges,

all determined on a consolidated basis in accordance with GAAP.

“*Consolidated Net Income*” for any period means the amount of net income (or loss) of the operating partnership and its Subsidiaries for such period, excluding, without duplication:

- extraordinary items; and
- the portion of net income (but not losses) of the operating partnership and its Subsidiaries allocable to minority interests in unconsolidated persons to the extent that cash dividends or distributions have not actually been received by the operating partnership or one of its Subsidiaries,

all determined on a consolidated basis in accordance with GAAP.

“*Debt*” means, with respect to any person, any indebtedness of such person, whether or not contingent, in respect of:

- borrowed money or evidenced by bonds, notes, debentures or similar instruments;
- indebtedness secured by any Lien on any property or asset owned by such person, but only to the extent of the lesser of (a) the amount of indebtedness so secured and (b) the fair market value (determined in good faith by the board of directors of such person or, in the case of the operating partnership or a Subsidiary of the operating partnership, by the Company’s board of directors or a duly authorized committee thereof) of the property subject to such Lien;
- reimbursement obligations, contingent or otherwise, in connection with any letters of credit actually issued or amounts representing the balance deferred and unpaid of the purchase price of any property except any such balance that constitutes an accrued expense or trade payable; or
- any lease of property by such person as lessee which is required to be reflected on such person’s balance sheet as a finance lease in accordance with GAAP,

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and also includes, to the extent not otherwise included, any obligation of such person to be liable for, or to pay, as obligor, guarantor or otherwise (other than for purposes of collection in the ordinary course of business), Debt of the types referred to above of another person (it being understood that Debt shall be deemed to be incurred by such person whenever such person shall create, assume, guarantee or otherwise become liable in respect thereof). Notwithstanding the foregoing, with respect to the operating partnership, the Company or any Subsidiary, the term “Debt” shall not include Permitted Non-Recourse Guarantees of the Company, the operating partnership or any Subsidiary until such time as they become primary obligations of, and payments are due and required to be made thereunder by, the Company, the operating partnership or any Subsidiary. Additionally, in the case of the fourth bullet point above, the term “Debt” shall not include any lease of property by such person as lessee which is required to be reflected on such person’s balance sheet as an operating lease in accordance with GAAP.

“*Fitch*” means Fitch Ratings Inc., or any successor or assignee of the business of such company in the business of rating debt.

“*GAAP*” means generally accepted accounting principles in the United States of America as in effect from time to time; provided that if, as of a particular date as of which compliance with the covenants contained in the indenture is being determined, there have been changes in accounting principles generally accepted in the United States of America from those that applied to the Company’s consolidated financial statements included in its Annual Report on Form 10-K for the year ended December 31, 2023, the operating partnership may, in its sole discretion, determine compliance with the covenants contained in the indenture using accounting principles generally accepted in the United States of America as in effect as of the end of any calendar quarter selected by the operating partnership, in its sole discretion, that is on or after December 31, 2023 and prior to the date as of which compliance with the covenants in the indenture is being determined, or Fixed GAAP, and, solely for purposes of calculating the covenants as of such date, “GAAP” shall mean Fixed GAAP.

“*Lien*” means any mortgage, deed of trust, lien, charge, pledge, security interest, security agreement, or other encumbrance of any kind.

“*Moody’s*” means Moody’s Investors Service, Inc. and any successor or assignee of the business of such company in the business of rating debt.

“*Non-Recourse Debt*” means Debt of a Subsidiary of the operating partnership (or an entity in which the operating partnership is the general partner or managing member) that is directly or indirectly secured by real estate assets or other real estate-related assets (including equity interests) of a Subsidiary of the operating partnership (or entity in which the operating partnership is the general partner or managing member) that is the borrower and is non-recourse to the operating partnership or any Subsidiary of the operating partnership (other than pursuant to a Permitted Non-Recourse Guarantee and other than with respect to the Subsidiary of the operating partnership (or entity in which the operating partnership is the general partner or managing member) that is the borrower); provided, further, that, if any such Debt is partially recourse to the operating partnership or any Subsidiary of the operating partnership (other than pursuant to a Permitted Non-Recourse Guarantee and other than with respect to the Subsidiary of the operating partnership (or entity in which the operating partnership is the general partner or managing member) that is the borrower) and therefore does not meet the criteria set forth above, only the portion of such Debt that does meet the criteria set forth above shall constitute “Non-Recourse Debt.”

“*Permitted Non-Recourse Guarantees*” means customary completion or budget guarantees or indemnities (including by means of separate indemnification agreements and carve-out guarantees) provided under Non-Recourse Debt in the ordinary course of business by the operating partnership or any Subsidiary of the operating partnership in financing transactions that are directly or indirectly secured by real estate assets or other real estate-related assets (including equity interests) of a Subsidiary of the operating partnership (or entity in which the operating partnership is the general partner or managing member), in each case that is the borrower in such financing, but is non-recourse to the operating partnership or any of the operating partnership’s other Subsidiaries, except for customary completion or budget guarantees or indemnities (including by means of separate indemnification agreements or carve-out guarantees)

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as are consistent with customary industry practice (such as environmental indemnities and recourse triggers based on violation of transfer restrictions and other customary exceptions to nonrecourse liability).

“*Rating Agencies*” means:

- S&P;
- Moody’s;
- Fitch; or
- if S&P, Moody’s Fitch or any of them shall not make a rating of the notes publicly available, a nationally recognized securities rating agency or agencies, as the case may be, selected by the operating partnership, which shall be substituted for S&P, Moody’s or Fitch, or any of them, as the case may be.

“*S&P*” means S&P Global Ratings, and its subsidiaries, or any successor or assignee thereof in the business of rating debt.

“*Subsidiary*” means, with respect to the operating partnership or the Company, any person (as defined in the indenture but excluding an individual), a majority of the outstanding voting stock, partnership interests, membership interests or other equity interest, as the case may be, of which is owned or controlled, directly or indirectly, by the operating partnership or the Company, as the case may be, or by one or more other Subsidiaries of the operating partnership or the Company, as the case may be. For the purposes of this definition, “voting stock” means stock having voting power for the election of directors, trustees or managers, as the case may be, whether at all times or only so long as no senior class of stock has such voting power by reason of any contingency.

“*Total Assets*” means the sum of, without duplication:

- Undepreciated Real Estate Assets; and
- all other assets (excluding accounts receivable and intangibles) of the operating partnership and its Subsidiaries,

all determined on a consolidated basis in accordance with GAAP.

“*Total Unencumbered Assets*” means the sum of, without duplication:

- those Undepreciated Real Estate Assets that are not subject to a Lien securing Debt; and
- all other assets (excluding accounts receivable and intangibles) of the operating partnership and its Subsidiaries not subject to a Lien securing Debt,

all determined on a consolidated basis in accordance with GAAP; provided, however, that, in determining Total Unencumbered Assets as a percentage of outstanding Unsecured Debt for purposes of the covenant set forth above in “*Certain Covenants—Maintenance of Total Unencumbered Assets*,” all investments in unconsolidated limited partnerships, unconsolidated limited liability companies and other unconsolidated entities shall be excluded from Total Unencumbered Assets.

“*Undepreciated Real Estate Assets*” means, as of any date, the cost (original cost plus capital improvements) of real estate assets, right-of-use assets associated with leases of property required to be reflected as finance leases on the balance sheet of the operating partnership and its Subsidiaries in accordance with GAAP and related intangibles of the operating partnership and its Subsidiaries on such date, before depreciation and amortization, all determined on a consolidated basis in accordance with GAAP; provided, however, that “Undepreciated Real Estate Assets” shall not include right-of-use assets associated with leases of property required to be reflected as operating leases on the balance sheet of the operating partnership and its Subsidiaries in accordance with GAAP.

“*Unsecured Debt*” means Debt of the operating partnership or any of its Subsidiaries that is not secured by a Lien on any property or assets of the operating partnership or any of its Subsidiaries.

## UNDERWRITING (CONFLICTS OF INTEREST)

Under the terms and subject to the conditions in an underwriting agreement dated the date of this prospectus supplement, the underwriters named below, for whom Wells Fargo Securities, LLC, Mizuho Securities USA LLC and PNC Capital Markets LLC are acting as representatives, have severally and not jointly agreed to purchase, and we have agreed to sell to them, severally and not jointly, the respective principal amount of the notes set forth opposite their respective names below:

<u>Underwriter</u>	<u>Principal Amount</u>
Wells Fargo Securities, LLC	\$
Mizuho Securities USA LLC	
PNC Capital Markets LLC	
Total	\$

The underwriters and the representatives are collectively referred to as the “underwriters” and the “representatives,” respectively. The underwriting agreement provides that the obligations of the underwriters are subject to certain conditions precedent, and that the underwriters will purchase all notes offered hereby if any of such notes are purchased. If an underwriter defaults, the underwriting agreement provides that the purchase commitments of the non-defaulting underwriters may be increased or the underwriting agreement may be terminated. The offering of the notes by the underwriters is subject to receipt and acceptance and subject to the underwriters’ right to reject any order in whole or in part.

The underwriters propose to offer the notes directly to the public at the public offering price specified on the cover page to this prospectus supplement and may also offer the notes to certain dealers at the public offering prices less a concession not to exceed % of the principal amount of the notes. The underwriters may allow, and these dealers may reallow, concession to certain brokers and dealers not to exceed % of the principal amount of the notes. After the initial offering of the notes, the underwriters may change the public offering price and other selling terms.

The notes are a new issue of securities with no established trading market. We do not intend to apply for listing of the notes on any securities exchange or for quotation of the notes on any automated dealer quotation system. The underwriters have advised us that they intend to make a market in the notes, but they are not obligated to do so and may discontinue any market-making at any time without notice. No assurance can be given as to the liquidity of the trading market for the notes or that an active public market for the notes will develop. If an active public trading market for the notes does not develop, the market price and liquidity of the notes may be adversely affected.

We estimate our expenses for this offering, other than the underwriting discounts and commissions, to be approximately \$ , and will be payable by us.

The operating partnership and the Company have agreed to indemnify the several underwriters against certain liabilities, including liabilities under the Securities Act or to contribute to payments which the underwriters may be required to make in respect thereof.

In order to facilitate the offering, the underwriters may engage in transactions that stabilize, maintain or otherwise affect the price of the notes. Specifically, the underwriters may over-allot in connection with the offering, creating short positions in the notes for their own accounts. In addition, to cover over-allotments or to stabilize the price of the notes, the underwriters may bid for, and purchase, notes in the open market. The underwriters may reclaim selling concessions allowed to an underwriter or dealer for distributing notes in the offering if the underwriters repurchase previously distributed notes in transactions to cover short positions, in stabilization transactions or otherwise. Any of these activities may stabilize or maintain the market price of the notes above independent market levels. The underwriters are not required to engage in these activities, and may end any of these activities at any time without notice.

## **Conflicts of Interest**

Certain of the underwriters and/or their respective affiliates are lenders under our third amended and restated credit facility. As described in this prospectus supplement, we intend to use a portion of the net proceeds from this offering to repay outstanding borrowings under the Revolver Loan under our third amended and restated credit facility. To the extent that we use a portion of the net proceeds of this offering to repay borrowings under the Revolver Loan under our third amended and restated credit facility, such underwriters and/or their respective affiliates will receive their proportionate shares of any such amount.

## **Other Relationships**

The underwriters and their respective affiliates are full service financial institutions engaged in various activities, which may include securities trading, commercial and investment banking, financial advisory, investment management, investment research, principal investment, hedging, financing and brokerage activities. Certain of the underwriters and their respective affiliates have, from time to time, performed, and may in the future perform, various financial advisory and investment banking services for us, for which they received or will receive customary fees and expenses.

In addition, in the ordinary course of their various business activities, the underwriters and their respective affiliates may make or hold a broad array of investments and actively trade debt and equity securities (or related derivative securities) and financial instruments (including bank loans) for their own account and for the accounts of their customers. Such investment and securities activities may involve our securities and instruments. If any of the underwriters or their respective affiliates have a lending relationship with us, certain of those underwriters or their respective affiliates routinely hedge, and certain other of those underwriters or their respective affiliates may hedge, their credit exposure to us consistent with their customary risk management policies. Typically, these underwriters and their respective affiliates would hedge such exposure by entering into transactions which consist of either the purchase of credit default swaps or the creation of short positions in our securities, including potentially the notes offered hereby. Any such credit default swaps or short positions could adversely affect future trading prices of the notes offered hereby. The underwriters and their respective affiliates may also make investment recommendations or publish or express independent research views in respect of such securities or instruments and may at any time hold, or recommend to clients that they acquire, long or short positions in such securities and instruments.

## **Settlement Cycle**

It is expected that delivery of the notes will be made against payment therefor on or about the date specified in the last paragraph of the cover page of this prospectus supplement, which will be the business day following the date of the pricing of the notes (such settlement being referred to as “T+ ”). Under Rule 15c6-1 under the Exchange Act, trades in the secondary market are generally required to settle in one business day, unless the parties to any such trade expressly agree otherwise. Accordingly, purchasers who wish to trade the notes prior to the first business day preceding the closing date of this offering will be required, by virtue of the fact that the notes will initially settle in T+ , to specify an alternate settlement arrangement at the time of any such trade to prevent a failed settlement.

## **Selling Restrictions**

### ***Prohibition of Sales to EEA Retail Investors***

The notes are not intended to be offered, sold, or otherwise made available to and should not be offered, sold, or otherwise made available to any retail investor in the European Economic Area, or the EEA. For these purposes, a retail investor means a person who is one (or more) of: (i) a retail client as defined in point (11) of Article 4(1) of Directive 2014/65/EU, as amended, or MiFID II; (ii) a customer within the meaning of Directive (EU) 2016/97 (as amended or superseded, or the Insurance Distribution Directive, where that customer would not



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qualify as a professional client as defined in point (10) of Article 4(1) of MiFID II; or (iii) not a qualified investor as defined in Regulation (EU) 2017/1129, as amended or superseded, or the Prospectus Regulation). Consequently, no key information document required by Regulation (EU) No 1286/2014, as amended, or the PRIIPs Regulation, for offering or selling the notes or otherwise making them available to retail investors in the EEA has been prepared and therefore offering or selling the notes or otherwise making them available to any retail investor in the EEA may be unlawful under the PRIIPs Regulation.

### ***Prohibition of Sales to United Kingdom Retail Investors***

The notes are not intended to be offered, sold or otherwise made available to and should not be offered, sold or otherwise made available to any retail investor in the United Kingdom, or the UK. For these purposes, a retail investor means a person who is one (or more) of: (i) a retail client, as defined in point (8) of Article 2 of Regulation (EU) No 2017/565 as it forms part of domestic law by virtue of the European Union (Withdrawal) Act 2018, or EUWA; (ii) a customer within the meaning of the provisions of the Financial Services and Markets Act 2000, or FSMA and any rules or regulations made under the FSMA to implement the Insurance Distribution Directive, where that customer would not qualify as a professional client, as defined in point (8) of Article 2(1) of Regulation (EU) No 600/2014 as it forms part of domestic law by virtue of the EUWA; or (iii) not a qualified investor as defined in Article 2 of Regulation (EU) 2017/1129 as it forms part of domestic law by virtue of the EUWA. Consequently no key information document required by Regulation (EU) No 1286/2014 as it forms part of domestic law by virtue of the EUWA, or the UK PRIIPs Regulation, for offering or selling the notes or otherwise making them available to retail investors in the UK has been prepared, and therefore, offering or selling the notes or otherwise making them available to any retail investor in the UK may be unlawful under the UK PRIIPs Regulation.

### ***Notice to Prospective Investors in the United Kingdom***

In addition, in the UK, this prospectus supplement and the accompanying prospectus are being distributed only to, and are directed only at, and any offer subsequently made may only be directed at persons who are “qualified investors” (as defined in the Prospectus Regulation) who: (i) have professional experience in matters relating to investments falling within Article 19(5) of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005, as amended, or the Order, and/or (ii) are high net worth companies (or persons to whom it may otherwise be lawfully communicated) falling within Article 49(2)(a) to (d) of the Order (all such persons together being referred to as relevant persons) or otherwise in circumstances which have not resulted and will not result in an offer to the public of the notes in the UK within the meaning of the FSMA. Any person in the UK that is not a relevant person should not act or rely on the information included in this prospectus supplement and the accompanying prospectus or use either as a basis for taking any action. In the UK, any investment or investment activity to which this prospectus supplement and accompanying prospectus relates may be made or taken exclusively by relevant persons.

### ***Notice to Prospective Investors in Japan***

The notes have not been and will not be registered pursuant to Article 4, Paragraph 1 of the Financial Instruments and Exchange Act. Accordingly, none of the notes nor any interest therein may be offered or sold, directly or indirectly, in Japan or to, or for the benefit of, any “resident” of Japan (which term as used herein means any person resident in Japan, including any corporation or other entity organized under the laws of Japan), or to others for re-offering or resale, directly or indirectly, in Japan or to or for the benefit of a resident of Japan, except pursuant to an exemption from the registration requirements of, and otherwise in compliance with, the Financial Instruments and Exchange Act and any other applicable laws, regulations and ministerial guidelines of Japan in effect at the relevant time.

The notes have not been and will not be registered under the Financial Instruments and Exchange Act and are subject to the Special Taxation Measures Act of Japan (Act No. 26 of 1957), as amended, or Special Taxation

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Measures Act. The notes may not be offered or sold directly or indirectly (i) in Japan or to, or for the benefit of, any resident of Japan (which term as used herein means any person resident in Japan, including any corporation or other entity organized under the laws of Japan) or to others for reoffering or resale, directly or indirectly, in Japan or to, or for the benefit of, any resident of Japan, except pursuant to an exemption from the registration requirements of, and otherwise in compliance with, the Financial Instruments and Exchange Act and any other applicable laws, regulations and government guidelines of Japan; or (ii) as part of the initial distribution of the notes at any time, to, or for the benefit of, any person other than a beneficial owner that is, (a) for Japanese tax purposes, neither (x) an individual resident of Japan or a Japanese corporation, nor (y) an individual non-resident of Japan or a non-Japanese corporation that in either case is a person having a special relationship with the Issuer as described in Article 6, paragraph (4) of the Special Taxation Measures Act, (b) a Japanese financial institution, designated in Article 6 paragraph (9) of the Special Taxation Measures Act or (c) an individual resident of Japan or a Japanese corporation whose receipt of interest on the notes is made through a payment handling agent in Japan as defined in Article 2-2 paragraph (2) of the Cabinet Order relating to the Special Taxation Measures Act.

### *Notice to Prospective Investors in Singapore*

This prospectus supplement and the accompanying prospectus have not been registered as a prospectus under the Securities and Futures Act, Chapter 289 of Singapore, or SFA with the Monetary Authority of Singapore. Accordingly, this prospectus supplement, the accompanying prospectus, and any other document or material in connection with the offer or sale, or invitation for subscription or purchase, of the notes may not be circulated or distributed, nor may the notes be offered or sold, or be made the subject of an invitation for subscription or purchase, whether directly or indirectly, to persons in Singapore other than (i) to an institutional investor as defined in Section 4A of the SFA, or Institutional Investor, under Section 274 of the SFA, (ii) to an accredited investor as defined in Section 4A of the SFA, or Accredited Investor, or other relevant person as defined in Section 275(2) of the SFA, or Relevant Person, or any person pursuant to Section 275(1A), and in accordance with the conditions, specified in Section 275 of the SFA and (where applicable) Regulation 3 of the Securities and Futures (Classes of Investors) Regulations 2018, or (iii) otherwise pursuant to, and in accordance with the conditions of, any other applicable provision of the SFA.

Where the notes are subscribed or purchased under Section 275 by a relevant person which is:

- (a) a corporation (which is not an Accredited Investor) the sole business of which is to hold investments and the entire share capital of which is owned by one or more individuals, each of whom is an Accredited Investor; or
- (b) a trust (where the trustee is not an Accredited Investor) whose sole purpose is to hold investments and each beneficiary is an Accredited Investor,

then securities or securities-based derivatives contracts (each as defined in Section 2(1) of the SFA) of that corporation or the beneficiaries' rights and interest in that trust shall not be transferable for 6 months after that corporation or that trust has acquired the notes under Section 275 except: (i) to an Institutional Investor under Section 274 of the SFA or to a Relevant Person, or any person pursuant to Section 275(1A) (in the case of that corporation) or Section 276(4)(i)(B) (in the case of that trust), and in accordance with the conditions, specified in Section 275 of the SFA; (ii) where no consideration is given for the transfer; or (iii) by operation of law.

*Singapore Securities and Futures Act Product Classification*—Solely for the purposes of its obligations pursuant to sections 309B(1)(a) and 309B(1)(c) of the SFA, we have determined, and hereby notifies all relevant persons (as defined in Section 309A of the SFA) that the notes are “prescribed capital markets products” (as defined in the Securities and Futures (Capital Markets Products) Regulations 2018) and Excluded Investment Products (as defined in MAS Notice SFA 04-N12: Notice on the Sale of Investment Products and MAS Notice FAA-N16: Notice on Recommendations on Investment Products).

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### ***Notice to Prospective Investors in Taiwan***

The notes have not been and will not be registered with the Financial Supervisory Commission of Taiwan pursuant to relevant securities laws and regulations and may not be sold, issued or offered within Taiwan through a public offering or in circumstances which constitutes an offer within the meaning of the Securities and Exchange Act of Taiwan that requires a registration or approval of the Financial Supervisory Commission of Taiwan. No person or entity in Taiwan has been authorized to offer, sell, give advice regarding or otherwise intermediate the offering and sale of the notes in Taiwan.

### ***Notice to Prospective Investors in Hong Kong***

The notes may not be offered or sold in Hong Kong by means of any document other than (i) in circumstances which do not constitute an offer to the public within the meaning of the Companies Ordinance (Cap. 32, Laws of Hong Kong), or (ii) to “professional investors” within the meaning of the Securities and Futures Ordinance (Cap. 571, Laws of Hong Kong) and any rules made thereunder, or (iii) in other circumstances which do not result in the document being a “prospectus” within the meaning of the Companies Ordinance (Cap. 32, Laws of Hong Kong) and no advertisement, invitation, or document relating to the notes may be issued or may be in the possession of any person for the purpose of issue (in each case whether in Hong Kong or elsewhere), which is directed at, or the contents of which are likely to be accessed or read by, the public in Hong Kong (except if permitted to do so under the laws of Hong Kong) other than with respect to notes which are or are intended to be disposed of only to persons outside Hong Kong or only to “professional investors” within the meaning of the Securities and Futures Ordinance (Cap. 571, Laws of Hong Kong) and any rules made thereunder.

### ***Notice to Prospective Investors in Switzerland***

This prospectus supplement does not constitute an issue prospectus pursuant to Article 652a or Article 1156 of the Swiss Code of Obligations and the notes will not be listed on the SIX Swiss Exchange. Therefore, this prospectus supplement may not comply with the disclosure standards of the listing rules (including any additional listing rules or prospectus schemes) of the SIX Swiss Exchange. Accordingly, the notes may not be offered to the public in or from Switzerland, but only to a selected and limited circle of investors who do not subscribe to the notes with a view to distribution. Any such investors will be individually approached by the underwriters from time to time.

## LEGAL MATTERS

Certain legal matters in connection with this offering will be passed upon for us by Latham & Watkins LLP, San Diego, California. Certain legal matters relating to Maryland law will be passed upon for us by Venable LLP, Baltimore, Maryland. Hogan Lovells US LLP, Washington, DC, will act as counsel for the underwriters.

## EXPERTS

The consolidated financial statements of American Assets Trust, Inc. and American Assets Trust, L.P. appearing in American Assets Trust, Inc.'s and American Assets Trust, L.P.'s Annual Report (Form 10-K) for the year ended December 31, 2023, including the schedule appearing therein, and the effectiveness of American Assets Trust, Inc.'s internal control over financial reporting as of December 31, 2023, have been audited by Ernst & Young LLP, independent registered public accounting firm, as set forth in their reports thereon included therein, and incorporated herein by reference. Such consolidated financial statements and American Assets Trust, Inc.'s management's assessment of the effectiveness of internal control over financial reporting as of December 31, 2023 are incorporated herein by reference in reliance upon such reports given on the authority of such firm as experts in accounting and auditing.

## WHERE YOU CAN FIND MORE INFORMATION

American Assets Trust, Inc. and American Assets Trust, L.P. have filed a registration statement on Form S-3 with the SEC in connection with this offering. In addition, American Assets Trust, Inc. and American Assets Trust, L.P. file annual, quarterly and current reports, proxy statements and other information with the SEC. Such filings are available to the public through the SEC's website at [www.sec.gov](http://www.sec.gov). In addition, we maintain a website that contains information about us at <http://www.americanassetstrust.com>. The information found on, or otherwise accessible through, our website is not incorporated into, and does not form a part of, this prospectus supplement or the accompanying prospectus or any other report or document we file with or furnish to the SEC.

## INCORPORATION BY REFERENCE

The SEC allows us to “incorporate by reference” the information we file with the SEC, 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 supplement and the accompanying prospectus. The incorporated documents contain significant information about us, our business and our finances. Any statement contained in a document that is incorporated by reference in this prospectus supplement and the accompanying prospectus is automatically updated and superseded if information contained in this prospectus supplement and the accompanying prospectus, or information that we later file with the SEC, modifies or replaces this information.

We incorporate by reference the following documents we filed with the SEC:

- the Annual Report on [Form 10-K](#) of American Assets Trust, Inc. and American Assets Trust, L.P. for the year ended December 31, 2023, filed with the SEC on February 14, 2024;
- the Quarterly Reports on Form 10-Q of American Assets Trust, Inc. and American Assets Trust, L.P. for the quarters ended [March 31, 2024](#) and [June 30, 2024](#), filed with the SEC on May 3, 2024 and August 2, 2024, respectively;
- the portions of the [Definitive Proxy Statement on Schedule 14A](#) of American Assets Trust, Inc., incorporated by reference in the Annual Report on Form 10-K of American Assets Trust, Inc. and American Assets Trust, L.P. for the year ended December 31, 2023, filed with the SEC on April 5, 2024;
- the Current Reports on Form 8-K of American Assets Trust, Inc. and American Assets Trust, L.P., as applicable, filed with the SEC on [June 3, 2024](#) and [July 30, 2024](#); and
- all documents filed by American Assets Trust, Inc. or American Assets Trust, L.P. with the SEC pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act after the date of this prospectus supplement 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 SEC, such information or exhibit is specifically not incorporated by reference in this prospectus supplement and the accompanying prospectus.

We will provide without charge to each person, including any beneficial owner, to whom this prospectus supplement and the accompanying 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 supplement and the accompanying prospectus, other than exhibits to those documents, unless those exhibits are specifically incorporated by reference into those documents. A written request should be addressed to American Assets Trust, Inc., 3420 Carmel Mountain Road, Suite 100, San Diego, California 92121 Attention: General Counsel or by telephone at (858) 350-2600.

PROSPECTUS



## American Assets Trust, Inc.

**Common Stock,  
Preferred Stock,  
Depository Shares,  
Warrants,  
Purchase Contracts,  
Rights,  
Units and Guarantees  
American Assets Trust, L.P.  
Debt Securities**

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We may offer and sell the securities identified above, and the selling securityholders may offer and sell common stock, in each case from time to time in one or more offerings. This prospectus provides you with a general description of the securities. We will not receive any proceeds from the sale of our common stock by the selling securityholders.

Each time we or any of the selling securityholders offer and sell securities, we or such selling securityholders will provide a supplement to this prospectus that contains specific information about the offering and, if applicable, the selling securityholders, as well as the amounts, prices and terms of the securities. The supplement may also add, update or change information contained in this prospectus with respect to that offering. You should carefully read this prospectus and the applicable prospectus supplement before you invest in any of our securities.

The specific terms of each series or class of the securities will be set forth in the applicable prospectus supplement and may include limitations on actual or constructive ownership and restrictions on transfer of the securities, in each case as may be appropriate to preserve the status of American Assets Trust, Inc. as a real estate investment trust, or REIT, for U.S. federal income tax purposes. The applicable prospectus supplement will also contain information, where applicable, about certain U.S. federal income tax considerations relating to, and any listing on a securities exchange of, the securities covered by such prospectus supplement.

We may offer and sell the securities described in this prospectus and any prospectus supplement to or through one or more underwriters, dealers and agents, or directly to purchasers, or through a combination of these methods. In addition, the selling securityholders may offer and sell shares of our common stock from time to time, together or separately. If any underwriters, dealers or agents 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 of this prospectus entitled “About this Prospectus” and “Plan of Distribution” 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 securities.

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**INVESTING IN OUR SECURITIES INVOLVES RISKS. SEE THE “[RISK FACTORS](#)” ON PAGE 5 OF THIS PROSPECTUS AND ANY SIMILAR SECTION CONTAINED IN THE APPLICABLE PROSPECTUS SUPPLEMENT CONCERNING FACTORS YOU SHOULD CONSIDER BEFORE INVESTING IN OUR SECURITIES.**

Our common stock is listed on the New York Stock Exchange, or the NYSE, under the symbol “AAT.” On December 19, 2023, the last reported sale price of our common stock on the NYSE was \$22.67 per share.

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

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**The date of this prospectus is December 20, 2023.**

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## ABOUT THIS PROSPECTUS

This prospectus is part of a registration statement that we filed with the U.S. Securities and Exchange Commission, or the Securities and Exchange Commission, as a “well-known seasoned issuer” as defined in Rule 405 under the Securities Act of 1933, as amended, or the Securities Act, using a “shelf” registration process. By using a shelf registration statement, we may sell securities (including guarantees of debt securities sold by our operating partnership) from time to time and in one or more offerings and the selling securityholders to be named in a supplement to this prospectus may, from time to time, sell common stock from time to time in one or more offerings as described in this prospectus. Each time that we or the selling securityholders offer and sell securities, we or the selling securityholders will provide a prospectus supplement to this prospectus that contains specific information about the securities being offered and sold and the specific terms of that offering. We may also authorize one or more free writing prospectuses to be provided to you that may contain material information relating to these offerings. The prospectus supplement or free writing prospectus may also add, update or change information contained in this prospectus with respect to that offering. If there is any inconsistency between the information in this prospectus and the applicable prospectus supplement or free writing prospectus, you should rely on the prospectus supplement or free writing prospectus, as applicable. Before purchasing any securities, you should carefully read both this prospectus and the applicable prospectus supplement (and any applicable free writing prospectuses), together with the additional information described under the heading “Where You Can Find More Information; Incorporation by Reference.”

Neither we, nor the selling securityholders, have authorized any other person to provide you with different information. If anyone provides you with different or inconsistent information, you should not rely on it. We and the selling securityholders will not make an offer to sell these securities in any jurisdiction where the offer or sale is not permitted. You should assume that the information appearing in this prospectus and the applicable prospectus supplement to this prospectus is accurate as of the date on its respective cover, and that any information incorporated by reference is accurate only as of the date of the document incorporated by reference, unless we indicate otherwise. Our business, financial condition, results of operations and prospects may have changed since those dates.

References to the “Company” or the “guarantor” refer to American Assets Trust, Inc., a Maryland corporation. References to “the operating partnership” or “our operating partnership” refer to American Assets Trust, L.P., a Maryland limited partnership, of which the Company is the sole general partner. When we refer to “we,” “our,” “us” and “our company,” we mean the Company, our operating partnership and any of our other subsidiaries, unless otherwise specified. In statements regarding qualification as a REIT, such terms refer solely to American Assets Trust, Inc. When we refer to “you,” we mean the holders of the applicable class or series of securities.



WHERE YOU CAN FIND MORE INFORMATION; INCORPORATION BY REFERENCE

Available Information

The Company and the operating partnership file reports, proxy statements and other information with the Securities and Exchange Commission. The Securities and Exchange Commission also maintains a website that contains reports, proxy and information statements and other information about issuers, such as us, that file electronically with the Securities and Exchange Commission. The address of that website is <http://www.sec.gov>.

Our website address is [www.americanassetstrust.com](http://www.americanassetstrust.com). The information on our website, however, is not, and shall not be deemed to be, a part of this prospectus.

This prospectus and any prospectus supplement are part of a registration statement that we filed with the Securities and Exchange Commission and do not contain all of the information in the registration statement. The full registration statement may be obtained from the Securities and Exchange Commission or us, as provided below. Other documents establishing the terms of the offered securities are or may be filed as exhibits to the registration statement or otherwise incorporated by reference into the registration statement. Statements in this prospectus or any prospectus supplement about these documents are summaries and each statement is qualified in all respects by reference to the document to which it refers. You should refer to the actual documents for a more complete description of the relevant matters. You may inspect a copy of the registration statement through the Securities and Exchange Commission's website, as provided above.

Incorporation by Reference

The Securities and Exchange Commission's rules allow us to "incorporate by reference" information into this prospectus, which means that we can disclose important information to you by referring you to another document filed separately with the Securities and Exchange Commission. The information incorporated by reference is deemed to be part of this prospectus, and subsequent information that we file with the Securities and Exchange Commission will automatically update and supersede that information. Any statement contained in a previously filed document incorporated by reference will be deemed to be modified or superseded for purposes of this prospectus to the extent that a statement contained in this prospectus modifies or replaces that statement.

We incorporate by reference our documents listed below and any future filings made by American Assets Trust, Inc. and American Assets Trust, L.P. with the Securities and Exchange Commission under Sections 13(a), 13(c), 14 or 15(d) of the Securities Exchange Act of 1934, as amended, or the Exchange Act, between the date of this prospectus and the termination of the offering of the securities described in this prospectus. We are not, however, incorporating by reference any documents or portions thereof, whether specifically listed below or filed in the future, that are not deemed "filed" with the Securities and Exchange Commission, including our Compensation Committee report and performance graph or any information furnished pursuant to Items 2.02 or 7.01 of Form 8-K or related exhibits furnished pursuant to Item 9.01 of Form 8-K.

This prospectus and any accompanying prospectus supplement incorporate by reference the documents set forth below that have previously been filed with the Securities and Exchange Commission:

- The Annual Report on [Form 10-K](#) of American Assets Trust, Inc. and American Assets Trust, L.P. for the year ended December 31, 2022, filed with the Securities and Exchange Commission on February 10, 2023.
- The Quarterly Reports on Form 10-Q of American Assets Trust, Inc. and American Assets Trust, L.P. for the quarters ended March 31, 2023, June 30, 2023 and September 30, 2023, filed with the Securities and Exchange Commission on [April 28, 2023](#), [July 28, 2023](#) and [October 27, 2023](#), respectively.
- The Current Report on Form 8-K of American Assets Trust, Inc. and American Assets Trust, L.P., filed with the Securities and Exchange Commission on [January 5, 2023](#), and the Current Reports on

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Form 8-K of American Assets Trust, Inc., filed with the Securities and Exchange Commission on [June 5, 2023](#) and [July 25, 2023](#).

- The portions of the Definitive Proxy Statement on [Schedule 14A](#) of American Assets Trust, Inc., filed with the Securities and Exchange Commission on April 7, 2023, incorporated by reference in the Annual Report on Form 10-K of American Assets Trust, Inc. and American Assets Trust, L.P. for the year ended December 31, 2022.
- The description of American Assets Trust, Inc.'s common stock contained in the registration statement on [Form 8-A](#) of American Assets Trust, Inc., filed with the Securities and Exchange Commission on January 11, 2011, and any amendment or report filed with the Securities and Exchange Commission for the purpose of updating the description.

All reports and other documents American Assets Trust, Inc. or American Assets Trust, L.P. subsequently files pursuant to Section 13(a), 13(c), 14 or 15(d) of the Exchange Act prior to the termination of this offering but excluding any information furnished to, rather than filed with, the Securities and Exchange Commission, will also be incorporated by reference into this prospectus and deemed to be part of this prospectus from the date of the filing of such reports and documents.

You may request a free copy of any of the documents incorporated by reference in this prospectus (other than exhibits, unless they are specifically incorporated by reference in the documents) by writing or telephoning us at the following address:

American Assets Trust, Inc.  
3420 Carmel Mountain Road, Suite 100  
San Diego, California 92121  
Attention: President and Chief Operating Officer  
(858) 350-2600

Exhibits to the filings will not be sent, however, unless those exhibits have specifically been incorporated by reference in this prospectus and any accompanying prospectus supplement.

## THE COMPANY

We are a full service, vertically integrated and self-administered REIT that owns, operates, acquires and develops high quality retail, office, multifamily and mixed-use properties in attractive, high-barrier-to-entry markets in Southern California, Northern California, Washington, Oregon, Texas and Hawaii. As of September 30, 2023, our portfolio was comprised of twelve office properties; twelve retail shopping centers; a mixed-use property consisting of a 369-room all-suite hotel and a retail shopping center; and six multifamily properties. Additionally, as of September 30, 2023, we owned land at three of our properties that we classified as held for development and/or construction in progress. Our core markets include San Diego, California; the San Francisco Bay Area, California; Bellevue, Washington; Portland, Oregon and Oahu, Hawaii.

The Company is a Maryland corporation formed on July 16, 2010 to acquire the entities owning various controlling and noncontrolling interests in real estate assets owned and/or managed by Ernest S. Rady or his affiliates, including the Ernest Rady Trust U/D/T March 13, 1983, or the Rady Trust, and did not have any operating activity until the consummation of our initial public offering on January 19, 2011. The Company, as the sole general partner of the operating partnership, has control of our operating partnership and owned 78.8% of our operating partnership as of September 30, 2023. Accordingly, the Company consolidates the assets, liabilities and results of operations of our operating partnership. The Company has elected to be taxed as a REIT for federal income tax purposes commencing with its taxable year ended December 31, 2011. The Company believes that it has operated in a manner that has allowed it to qualify as a REIT for federal income tax purposes commencing with such taxable year, and intends to continue operating in such a manner. The Company conducts substantially all of its business through our operating partnership, of which it serves as the sole general partner.

Our principal executive offices are located at 3420 Carmel Mountain Road, Suite 100, San Diego, California 92121, and our telephone number is (858) 350-2600. Our website address is [www.americanassetstrust.com](http://www.americanassetstrust.com). The information on, or otherwise accessible through, our website does not constitute a part of this prospectus.

## RISK FACTORS

Investment in any securities offered pursuant to this prospectus and the applicable prospectus supplement involves risks. Before acquiring any of such securities, you should carefully consider the risk factors incorporated by reference into the most recent Annual Report on Form 10-K of American Assets Trust, Inc. and American Assets Trust, L.P., and any subsequent Quarterly Reports on Form 10-Q or Current Reports on Form 8-K that American Assets Trust, Inc. or American Assets Trust, L.P. files after the date of this prospectus, and all other information contained or incorporated by reference into this prospectus, as updated by any subsequent filings under the Exchange Act, as well as the risk factors and other information contained or incorporated by reference in the applicable prospectus supplement. The occurrence of any of these risks might cause you to lose all or part of your investment in the offered securities.

## GUARANTOR DISCLOSURES

American Assets Trust, Inc. may guarantee debt securities of the operating partnership as described in “Description of Debt Securities and Related Guarantees.” Any such guarantees by American Assets Trust, Inc. will be full, irrevocable, unconditional and absolute joint and several guarantees to the holders of each series of such outstanding guaranteed debt securities. The Company owns all of its assets and conducts all of its operations through the operating partnership and the operating partnership is consolidated into the Company’s financial statements.

The Company and the operating partnership have filed this prospectus with the Securities and Exchange Commission registering, among other securities, debt securities of the operating partnership, which will be fully and unconditionally guaranteed by the Company. Pursuant to Rule 3-10 of Regulation S-X, subsidiary issuers of obligations guaranteed by the parent are not required to provide separate financial statements, provided that the subsidiary obligor is consolidated into the parent company’s consolidated financial statements, the parent guarantee is “full and unconditional” and, subject to certain exceptions as set forth below, the alternative disclosure required by Rule 13-01 is provided, which includes narrative disclosure and summarized financial information. Accordingly, separate consolidated financial statements of the operating partnership are not expected to be presented or incorporated by reference for future periods.

Furthermore, as permitted under Rule 13-01(a)(4)(vi) of Regulation S-X, we do not expect to present or incorporate by reference summarized financial information for the operating partnership going forward because the assets, liabilities and results of operations of the operating partnership are not materially different than the corresponding amounts in American Assets Trust, Inc.’s consolidated financial statements that have been and will be incorporated by reference herein, and management believes such summarized financial information would be repetitive and would not provide incremental value to investors.

USE OF PROCEEDS

We intend to use the net proceeds from the sale of the securities as set forth in the applicable prospectus supplement. We will not receive any proceeds from the sale of common stock by the selling securityholders.

## DESCRIPTION OF DEBT SECURITIES AND RELATED GUARANTEES

This section describes the general terms and provisions of our operating partnership's debt securities. When our operating partnership offers to sell a particular series of debt securities, we will describe the specific terms of the series in a supplement to this prospectus, along with any applicable modifications of or additions to the general terms of the debt securities as described in this prospectus, including the terms of any related guarantees by the Company and the terms, if any, on which a series of debt securities may be convertible into or exchangeable for other 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 either separately, or together with, or upon the conversion or exercise of or in exchange for, other securities described in this prospectus. Debt securities may be our operating partnership's senior, senior subordinated or subordinated obligations and may be issued in one or more series. Unless otherwise specified in the applicable prospectus supplement, the debt securities will be our operating partnership's direct, unsecured senior obligations and will rank equally in right of payment with all of its other senior unsecured indebtedness.

Unless otherwise specified in a prospectus supplement, the debt securities will be issued under the indenture to be entered into among our operating partnership, the Company and U.S. Bank National Association, as trustee, a form of which has been filed as an exhibit to the Registration Statement of which this prospectus is a part, or the indenture. The indenture contains the full legal text of the matters described in this section. We have summarized select portions of the indenture below. The summary is not complete and is subject to and qualified in its entirety by reference to all the provisions of the indenture, including definitions of the terms used in the indenture. Whenever we refer to particular sections or defined terms of the indenture in this prospectus or in a prospectus supplement, those sections or defined terms are incorporated by reference into this prospectus or the applicable prospectus supplement, and this summary also is subject to and qualified by reference to the description of the particular terms of a particular series of debt securities described in the applicable prospectus supplement. You should read the indenture for provisions that may be important to you. Capitalized terms used in the summary and not defined herein have the meanings specified in the indenture.

As used in this "Description of Debt Securities and Related Guarantees," references to the "operating partnership," refer solely to American Assets Trust, L.P. and not to any of its subsidiaries and references to the "Company," "guarantor," "we," "our" or "us" refer solely to American Assets Trust, Inc. and not to any of its subsidiaries, unless otherwise expressly stated or the context otherwise requires.

### 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 a resolution of the Company's board of directors, in an officer's certificate or by a supplemental indenture. The particular terms of each series of debt securities, along with any applicable modifications of or additions to the general terms of the debt securities as described in this prospectus, will be described in a prospectus supplement relating to such series (including any pricing supplement or term sheet). A prospectus supplement, pricing supplement or term sheet may change any of the terms of the debt securities described in this prospectus.

Unless we state otherwise in the applicable prospectus supplement, we can issue an unlimited amount of our operating partnership's 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 or term sheet) relating to any series of debt securities being offered, the aggregate principal amount and the following terms of the debt securities, if applicable:

- the title and ranking of the debt securities

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- 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 of and premium, if any, 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, if any, and interest on the debt securities will be payable;
- any limit on the aggregate principal amount of the debt securities;
- the date or dates on which we will pay the principal of and premium, if any, 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, if any, and interest on the debt securities will be payable;
- the price or prices and 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 \$2,000 and any integral multiple of \$1,000 in excess thereof;
- whether the debt securities will be issued in the form of certificated debt securities or global debt securities;
- the portion of principal amount of the debt securities payable upon declaration of acceleration of the maturity date, if other than the entire principal amount;
- if other than U.S. dollars, the designation of the currency, currencies or currency units in which payment of principal of, premium and interest on the debt securities will be made and, if payments of principal, premium or 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, if any, 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 or the guarantees, if any, thereof;
- any addition to, deletion of 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, deletion of or change in the covenants described in this prospectus or in the indenture with respect to the debt securities;
- any depositaries, interest rate calculation agents, exchange rate calculation agents or other agents with respect to the debt securities;
- the provisions, if any, relating to conversion or exchange of any debt securities of the series, including if applicable, the conversion or exchange price, the conversion or exchange period, the securities or other property into which such debt securities will be convertible or exchangeable, provisions as to whether conversion or exchange will be mandatory, at the option of the holders thereof or at our option, the events requiring an adjustment of the conversion or exchange price and provisions affecting conversion or exchange if such debt securities are redeemed;
- whether the debt securities of the series will be senior debt securities, senior subordinated debt securities or subordinated debt securities and, if applicable, the subordination terms thereof;
- whether the debt securities of the series are guaranteed by the Company, the terms of the guarantee and whether any guarantee is made on a senior, senior subordinated or subordinated basis and, if applicable, the subordination terms of any guarantee; and
- any other terms of the debt securities, which may supplement, modify or delete any provision of the indenture as it applies to that series.

As discussed above, we may issue debt securities of our operating partnership 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. In addition, we may denominate the purchase price of any of the debt securities in a foreign currency or currencies or a foreign currency unit or units, and the principal of and any premium and interest on any series of debt securities may be payable in a foreign currency or currencies or a foreign currency unit or units. The applicable prospectus supplement will provide you with information on the federal income tax considerations and other special considerations applicable to any such debt securities.

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

Unless we state otherwise in the applicable prospectus supplement, the debt securities of any series will not contain any provisions which may afford holders of the debt securities of such series protection in the event our operating partnership or the Company has a change of control or in the event of a highly leveraged transaction (whether or not such transaction results in a change of control), which 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 any series of debt securities.

### Merger, Consolidation and Sale of Assets

Unless we state otherwise in the applicable prospectus supplement, our operating partnership and the Company may consolidate with, or sell, lease or convey all or substantially all of their respective assets to, or merge with or into, any other entity, provided that the following conditions are met:

- our operating partnership or the Company, as the case may be, shall be the continuing entity, or the successor entity (if other than our operating partnership or the Company, as the case may be) formed by or resulting from any consolidation or merger or which shall have received the transfer of assets, shall be organized and existing under the laws of the United States, any state thereof or the District of Columbia and shall expressly assume, in the case of our operating partnership, payment of the principal

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of and premium, if any, and interest and any redemption price due on all of the debt securities and the due and punctual performance and observance of all of the covenants and conditions of our operating partnership in the indenture and the debt securities, or in the case of the Company, the payment of all amounts due under its guarantees of the debt securities and the due and punctual performance and observance of all of the covenants and conditions of the Company in the indenture and the guarantees, as the case may be;

- immediately after giving effect to the transaction, no Event of Default under the indenture, and no event which, after notice or the lapse of time, or both, would become an Event of Default, shall have occurred and be continuing; and
- an officer's certificate and legal opinion covering these conditions shall be delivered to the trustee.

Upon any such merger, consolidation or conveyance, the resulting, surviving or transferee person shall succeed to, and may exercise every right and power of, our operating partnership or the Company, as the case may be, under the indenture.

### Events of Default

Unless we state otherwise in the applicable prospectus supplement, the indenture provides that the following events are "Events of Default" with respect to any series of debt securities:

- default in the payment of any interest on the debt securities of such series when such interest becomes due and payable that continues for a period of 30 days;
- default in the payment of any principal of or premium, if any, on the debt securities of such series, or any redemption price due with respect to the debt securities of such series, when due and payable;
- default in the deposit of any sinking fund payment, when and as due by the terms of any debt securities of such series;
- failure by our operating partnership or the Company to comply with their respective obligations described under "Merger, Consolidation and Sale of Assets";
- default in the performance, or breach, of any other covenant or warranty of our operating partnership or the Company in the indenture (other than a covenant or warranty which has expressly been included in the indenture solely for the benefit of the debt securities of a series other than such series) and continuance of such default or breach for a period of 60 days after written notice as provided in the indenture;
- default under any bond, debenture, note, mortgage, indenture or instrument under which there may be issued or by which there may be secured or evidenced any indebtedness for money borrowed (other than Non-Recourse Indebtedness) by the Company or our operating partnership or by any Significant Subsidiary of our operating partnership or the Company, the repayment of which the Company or our operating partnership has guaranteed or for which the Company or our operating partnership is directly responsible or liable as obligor or guarantor, having an aggregate principal amount outstanding of at least \$25 million, whether such indebtedness exists as of the date of the indenture or shall thereafter be created, which default shall have resulted in such indebtedness becoming or being declared due and payable prior to the date on which it would otherwise have become due and payable, without such indebtedness having been discharged, or such acceleration having been rescinded or annulled, within the period specified in such instrument; provided, that if the cross-default amount applicable to recourse indebtedness specified in the credit agreement governing the Company's second amended and restated credit facility, as such agreement may be amended, restated, extended, refinanced or replaced, is increased to exceed \$25 million, the reference to \$25 million in the foregoing clause shall be automatically replaced by such higher amount up to \$50 million;

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- a final judgment for the payment of \$35 million or more (excluding any amounts covered by insurance) is rendered against our operating partnership, the Company or any of our operating partnership's or the Company's respective Significant Subsidiaries, which judgment is not discharged or stayed within 60 days after (1) the date on which the right to appeal thereof has expired if no such appeal has commenced, or (2) the date on which all rights to appeal have been extinguished; or
- certain events of bankruptcy, insolvency or reorganization with respect to our operating partnership, the Company or any Significant Subsidiary of our operating partnership or the Company.

A supplemental indenture or officer's certificate establishing the terms of a particular series of debt securities may delete, modify or add to the Events of Default described above.

If an Event of Default with respect to the debt securities of a particular series occurs and is continuing (other than an Event of Default specified in the last bullet above, which shall result in an automatic acceleration), then in every case the trustee or the holders of not less than 25% in principal amount of the outstanding debt securities of such series may declare the principal amount of, and accrued and unpaid interest on, all of the debt securities of such series to be due and payable immediately by written notice thereof to our operating partnership and the Company (and to the trustee if given by the holders). However, at any time after the declaration of acceleration (or automatic acceleration) with respect to the debt securities of such series has occurred, but before a judgment or decree for payment of the money due has been obtained by the trustee, the holders of not less than a majority in principal amount of the debt securities of such series outstanding may rescind and annul the declaration and its consequences if:

- our operating partnership or the Company shall have deposited with the trustee all payments of the principal of and premium, if any, and interest on the debt securities of such series which have become due otherwise than by such acceleration, plus certain fees, expenses, disbursements and advances of the trustee; and
- all Events of Default, other than the non-payment of accelerated principal of and interest on the debt securities of such series, have been cured or waived as provided in the indenture.

The indenture also provides that the holders of not less than a majority in principal amount of the outstanding debt securities of any series may waive any past default or Event of Default with respect to the debt securities of such series and its consequences, except, among other things, a default:

- in the payment of the principal of or premium, if any, or interest on the debt securities of such series; or
- in respect of a covenant or provision contained in the indenture that cannot be modified or amended without the consent of the holders of each outstanding debt security affected thereby.

The trustee will be required to give notice to the holders of the debt securities of any particular series within 90 days of a default under the indenture with respect to the debt securities of such series known to a responsible officer (as defined in the indenture) of the trustee unless the default has been cured or waived; provided, however, that the trustee may withhold notice to the holders of the debt securities of such series of any default with respect to the debt securities of such series (except a default in the payment of the principal of or premium, if any or interest on the debt securities of such series) if responsible officers of the trustee in good faith determine the withholding to be in the interest of the holders of the debt securities of such series; and provided, further, that in the case of a default with respect to the debt securities of any series of the character specified in the penultimate bullet point of the first paragraph under this caption "Events of Default," no such notice to holders of debt securities of such series shall be given until at least 60 days after the occurrence thereof.

The indenture provides that no holder of the debt securities of a particular series may institute any action or proceedings, judicial or otherwise, with respect to the indenture or for any remedy thereunder, unless:

- such holder has given the trustee written notice of an Event of Default and of the continuance thereof with respect to the debt securities of such series;

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- the registered holders of at least 25% in aggregate principal amount of the outstanding debt securities of such series have made a written request upon the trustee to institute such action or proceeding and shall have offered to the trustee such indemnity or security reasonably satisfactory to it against costs, liabilities or expenses to be incurred therein or thereby;
- the trustee for 60 days after its receipt of such notice, request and offer of indemnity has failed to institute any such action, suit or proceeding; and
- no direction inconsistent with such written request shall have been given to the trustee by holders of a majority in an aggregate principal amount of the debt securities of such series then outstanding.

This provision will not prevent, however, any holder of the debt securities of any series from instituting suit for the enforcement of payment of the principal of or premium if any, or interest on such debt securities on or after the respective due dates thereof.

Subject to provisions in the indenture relating to its duties in case of default, the trustee will be under no obligation to exercise any of its rights or powers under the indenture at the request or direction of any holders of debt securities of any series then outstanding under the indenture, unless the holders of debt securities of such series shall have offered to the trustee security or indemnity satisfactory to the trustee. The holders of not less than a majority in principal amount of the outstanding debt securities of any series shall have the right to direct the time, method and place of conducting any proceeding for any remedy available to the trustee, or of exercising any trust or power conferred upon the trustee with respect to the debt securities of such series. However, the trustee may refuse to follow any direction which is in conflict with any law or the indenture or which may involve the trustee in personal liability or be unduly prejudicial to the holders of the debt securities of such series not joining therein.

Within 120 days after the close of each fiscal year, our operating partnership and the Company must deliver a certificate of an officer certifying to the trustee whether or not the officer has knowledge of any default under the indenture and, if so, specifying each default and the nature and status thereof.

As used in this subsection titled “—Events of Default”, the following terms have the respective meanings specified below:

“Non-Recourse Indebtedness” means indebtedness of a Subsidiary of our operating partnership (or an entity in which our operating partnership is the general partner or managing member) that is directly or indirectly secured by real estate assets or other real estate-related assets (including equity interests) of a Subsidiary of our operating partnership (or entity in which our operating partnership is the general partner or managing member) that is the borrower and is non-recourse to our operating partnership or any Subsidiary of our operating partnership (other than pursuant to a Permitted Non-Recourse Guarantee and other than with respect to the Subsidiary of our operating partnership (or entity in which our operating partnership is the general partner or managing member) that is the borrower); provided, further, that, if any such indebtedness is partially recourse to our operating partnership or any Subsidiary of our operating partnership (other than pursuant to a Permitted Non-Recourse Guarantee and other than with respect to the Subsidiary of our operating partnership (or entity in which our operating partnership is the general partner or managing member) that is the borrower) and therefore does not meet the criteria set forth above, only the portion of such indebtedness that does meet the criteria set forth above shall constitute “Non-Recourse Indebtedness.”

“Permitted Non-Recourse Guarantees” means customary completion or budget guarantees or indemnities (including by means of separate indemnification agreements and carve-out guarantees) provided under Non-Recourse Indebtedness in the ordinary course of business by our operating partnership or any Subsidiary of our operating partnership in financing transactions that are directly or indirectly secured by real estate assets or other real estate-related assets (including equity interests) of a Subsidiary of our operating partnership (or entity in which our operating partnership is the general partner or managing member), in each case that is the borrower in such financing, but is non-recourse to our operating partnership or any of our operating partnership’s other

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Subsidiaries, except for customary completion or budget guarantees or indemnities (including by means of separate indemnification agreements or carve-out guarantees) as are consistent with customary industry practice (such as environmental indemnities and recourse triggers based on violation of transfer restrictions and other customary exceptions to nonrecourse liability).

“Significant Subsidiary” of any specified person means any Subsidiary in which such person has invested at least \$50.0 million in capital.

“Subsidiary” means, with respect to our operating partnership or the Company, any person (as defined in the indenture but excluding an individual), a majority of the outstanding voting stock, partnership interests, membership interests or other equity interest, as the case may be, of which is owned or controlled, directly or indirectly, by our operating partnership or the Company, as the case may be, or by one or more other Subsidiaries of our operating partnership or the Company, as the case may be. For the purposes of this definition, “voting stock” means stock having voting power for the election of directors, trustees or managers, as the case may be, whether at all times or only so long as no senior class of stock has such voting power by reason of any contingency.

### Modification, Waiver and Meetings

Unless we state otherwise in the applicable prospectus supplement, modifications and amendments of the indenture will be permitted to be made pursuant to a supplemental indenture entered into by our operating partnership, the Company and the trustee with the consent of the holders of not less than a majority in principal amount of all outstanding debt securities of each series affected by such supplemental indenture (including consent obtained in connection with a tender offer or exchange offer for the outstanding debt securities of such series); provided, however, that no modification or amendment may, without the consent of the holder of each debt security affected thereby:

- change the stated maturity of the principal of or premium, if any, or any installment of interest on any debt security or reduce the principal amount of or premium, if any, or the rate or amount of interest on any debt security;
- change the place of payment, or the coin or currency, for payment of principal of or premium, if any, or interest on any debt security or impair the right to institute suit for the enforcement of any payment on or with respect to any debt security;
- reduce the above-stated percentage of outstanding debt securities of any series necessary to modify or amend the indenture, to waive compliance with certain provisions thereof or certain defaults and their consequences thereunder or to reduce the quorum or change voting requirements set forth in the indenture;
- modify or affect in any manner adverse to the holders of any debt security the terms and conditions of the obligations of the Company, as guarantor, in respect of the payment of principal, premium, if any, and interest; or
- modify any of the foregoing provisions or any of the provisions relating to the waiver of certain defaults or Events of Default with respect to debt securities of any series, or the waiver of compliance with certain covenants applicable to the debt securities of any series, except to increase the percentage required to effect the action or to provide that certain other provisions may not be modified or waived without the consent of the holders of each of the debt securities affected thereby.

Notwithstanding the foregoing, modifications and amendments of the indenture will be permitted to be made by supplemental indenture executed by our operating partnership, the Company and the trustee without the consent of any holder of the debt securities for, among other things, any of the following purposes:

- to evidence a successor to our operating partnership as obligor or the Company as guarantor under the indenture;

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- to add to the covenants of our operating partnership or the Company for the benefit of the holders of the debt securities of all or any series and any related guarantees or to surrender any right or power conferred upon our operating partnership or the Company in the indenture with respect to all or any series of debt securities or any related guarantees;
- to add Events of Default for the benefit of the holders of the debt securities of all or any series;
- to amend or supplement any provisions of the indenture with respect to the debt securities of all or any series, provided that no amendment or supplement shall adversely affect the interests of the holders of such debt securities in any respect;
- to secure the debt securities of all or any series;
- to provide for the acceptance of appointment by a successor trustee in respect of all or any series of debt securities or facilitate the administration of the trusts under the indenture by more than one trustee;
- to cure any ambiguity, defect or inconsistency in the indenture; provided that the action shall not adversely affect the interests of holders of the debt securities of any series in any respect;
- to establish the form or terms of debt securities of any series and any related guarantees, and any deletions from or additions or changes to the indenture in connection therewith (provided that any such deletions, additions and changes shall not be applicable to any other debt securities then outstanding or to any other series of debt securities);
- to delete, amend or supplement any provision contained in the indenture or in any supplemental indenture (which deletion, amendment or supplement may apply to one or more series of debt securities or may apply to the indenture generally), provided that such deletion, amendment or supplement does not (i) apply to any debt securities of any series then outstanding created or issued prior to the date of the supplemental indenture pursuant to which such deletion, amendment or supplement is made and entitled to the benefit of such provision deleted, amended or supplemented by such supplemental indenture, or (ii) modify the rights of the holder of any such debt security;
- to comply with the Trust Indenture Act of 1939;
- to supplement any of the provisions of the indenture to the extent necessary to permit or facilitate satisfaction and discharge, legal defeasance or covenant defeasance of the debt securities of any series as described below under the caption “—Discharge, Defeasance and Covenant Defeasance”; provided that the action shall not adversely affect the interests of the holders of the debt securities of any series in any respect;
- to conform the provisions of the indenture, the debt securities or the related guarantee to this “Description of Debt Securities and Related Guarantees” and to the additional terms set forth in the applicable prospectus supplement; or
- to add guarantors for the benefit of the debt securities of all or any series.

Our operating partnership and the Company may omit in any particular instance to comply with certain specified covenants in the indenture with respect to the debt securities of any series (which, if expressly stated in the prospectus supplement applicable to the debt securities of such series, may include any additional covenants specified in such prospectus supplement) if the holders of at least a majority in principal amount of all outstanding debt securities of such series waive such compliance. In determining whether the holders of the requisite principal amount of outstanding debt securities have given any request, demand, authorization, direction, notice, consent or waiver under the indenture or whether a quorum is present at a meeting of holders of debt securities, the indenture provides that debt securities owned by our operating partnership, the Company or any other obligor upon the debt securities or the guarantees thereof or any affiliate of our operating partnership, the Company, or of any other such obligor shall be disregarded.

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The indenture contains provisions for convening meetings of the holders of debt securities of any series. A meeting of the holders of debt securities of any series will be permitted to be called at any time by the trustee, and also, upon request, by our operating partnership or the holders of at least 25% in principal amount of the outstanding debt securities of such series, in any case upon notice given as provided in the indenture. Except for any consent that must be given by the holder of each debt security affected by certain modifications and amendments of the indenture, any resolution presented at a meeting or adjourned meeting duly reconvened at which a quorum is present will be permitted to be adopted by the affirmative vote of the holders of a majority in principal amount of the outstanding debt securities of such series; provided, however, that, except for any consent that must be given by the holder of each debt security affected as referred to above, any resolution with respect to any request, demand, authorization, direction, notice, consent, waiver or other action that may be made, given or taken by the holders of a specified percentage, which is less than a majority, in principal amount of the outstanding debt securities of such series may be adopted at a meeting or adjourned meeting duly reconvened at which a quorum is present by the affirmative vote of the holders of the specified percentage in principal amount of the outstanding debt securities of such series. Any resolution passed or decision taken at any meeting of holders of debt securities of any series duly held in accordance with the indenture will be binding on all holders of the debt securities of such series. The quorum at any meeting called to adopt a resolution, and at any reconvened meeting, of the debt securities of any series will be holders of a majority in principal amount of the outstanding debt securities of such series; provided, however, that if any action is to be taken at the meeting with respect to a request, demand, authorization, direction, notice, consent, waiver or other action which may be given by the holders of not less than a specified percentage in principal amount of the outstanding debt securities of such series, holders of the specified percentage in principal amount of the outstanding debt securities of such series will constitute a quorum with respect to that matter. In the absence of a quorum at the reconvening of any adjourned meeting, such adjourned meeting may be further adjourned for a period of not less than ten days; at the reconvening of any meeting adjourned or further adjourned for lack of a quorum, the persons entitled to vote 25% in aggregate principal amount of the then outstanding debt securities of such series shall constitute a quorum.

Notwithstanding the foregoing provisions, if any action is to be taken at a meeting of holders of debt securities of any series with respect to any request, demand, authorization, direction, notice, consent, waiver or other action that the indenture expressly provides may be taken by holders of such series and one or more additional series acting collectively and voting together as a single class, there shall be no minimum quorum requirement for that meeting and the principal amount of outstanding debt securities of all such series that are entitled to vote in favor of that request, demand, authorization, direction, notice, consent, waiver or other action shall be taken into account in determining whether such action has been made, given or taken under the indenture.

### Discharge, Defeasance and Covenant Defeasance

Unless we state otherwise in the applicable prospectus supplement, the indenture shall cease to be of further effect with respect to any series of debt securities, and the Company shall be released from its guarantee of the debt securities of such series (subject to the survival of a limited number of specified provisions) when:

- either (A) all outstanding debt securities of such series have been delivered to the trustee for cancellation (subject to specified exceptions) or (B) all outstanding debt securities of such series have become due and payable or will become due and payable at their maturity date within one year or are to be called for redemption on a redemption date within one year and our operating partnership has deposited with the trustee, in trust, funds in an amount sufficient to pay the entire indebtedness on the outstanding debt securities of such series not theretofore delivered to the trustee for cancellation in respect of principal, premium, if any, and interest, to the date of such deposit (if the debt securities of such series have become due and payable) or to the maturity date or redemption date, as the case may be;
- our operating partnership has paid or caused to be paid all other sums payable under the indenture with respect to the debt securities of such series; and
- certain other conditions are met.

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The indenture provides that our operating partnership may elect:

- to be discharged from any and all obligations in respect of the debt securities of any series (subject to the survival of a limited number of specified provisions), or legal defeasance; or
- to be released from compliance with specified covenants in the indenture in respect of the debt securities of any series, or covenant defeasance.

To effect legal defeasance or covenant defeasance, our operating partnership will be required to make an irrevocable deposit with the trustee, in trust for such purpose, of money and/or government obligations (as defined in the indenture) that, through the scheduled payment of interest and principal in accordance with their terms, will provide money in an amount sufficient to pay and discharge the principal, premium, if any, and interest on the debt securities of such series on the scheduled due dates or the applicable redemption date, as the case may be, in accordance with the terms of the indenture and the debt securities of such series. Upon any legal defeasance (but not covenant defeasance) the Company will be released from its guarantee of the debt securities of such series.

The trust described in the preceding paragraph may only be established if, among other things:

- our operating partnership has delivered to the trustee a legal opinion of outside counsel reasonably acceptable to the trustee to the effect that the holders of the debt securities of such series will not recognize income, gain or loss for U.S. federal income tax purposes as a result of such legal defeasance or covenant defeasance and will be subject to U.S. federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such legal defeasance or covenant defeasance had not occurred, and such legal opinion, in the case of legal defeasance, must refer to and be based upon a ruling of the Internal Revenue Service, or IRS, or a change in applicable U.S. federal income tax law occurring after the date of the indenture;
- if the cash and government obligations deposited are sufficient to pay the principal of, and premium, if any, and interest (including the redemption price) on the debt securities of such series, provided such debt securities of such series are redeemed on a particular redemption date, our operating partnership shall have given the trustee irrevocable instructions to redeem the debt securities of such series on the date and to provide notice of the redemption to the holders of the debt securities of such series;
- such legal defeasance or covenant defeasance will not result in a breach or violation of, or constitute a default under, the indenture or any other material agreement or instrument to which our operating partnership or the Company is a party or by which either of them is bound; and
- no Event of Default or event which with notice or lapse of time or both would become an Event of Default with respect to the debt securities of such series shall have occurred and shall be continuing on the date of, or, solely in the case of events of default due to certain events of bankruptcy, insolvency, or reorganization, during the period ending on the 91st day after the date of, such deposit into trust.

In the event we effect covenant defeasance with respect to the debt securities of any series, then any failure by our operating partnership or the Company to comply with any covenant as to which there has been covenant defeasance will not constitute an Event of Default. However, if the debt securities of such series are declared due and payable because of the occurrence of any other Event of Default, the amount of monies and/or government obligations deposited with the trustee to effect such covenant defeasance may not be sufficient to pay amounts due on the debt securities of such series at the time of any acceleration resulting from such Event of Default. However, our operating partnership and the Company would remain liable to make payment of such amounts due at the time of acceleration.

### Governing Law

The indenture, the debt securities and any guarantees endorsed on the certificates evidencing the debt securities will be governed by, and construed in accordance with, the internal laws of the State of New York.



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### Book-entry System

#### *The Global Notes*

The debt securities of each series will be initially issued in the form of one or more registered debt securities in global form, without interest coupons, or the global notes. Upon issuance, each of the global notes will be deposited with the trustee as custodian for The Depository Trust Company, or DTC, and registered in the name of Cede & Co., as nominee of DTC. Ownership of beneficial interests in a global note will be limited to persons who have accounts with DTC, or DTC participants, or persons who hold interests through DTC participants. We expect that under procedures established by DTC:

- upon deposit of a global note with DTC's custodian, DTC will credit portions of the principal amount of the global note to the accounts of the DTC participants designated by the applicable underwriters; and
- ownership of beneficial interests in a global note will be shown on, and transfer of ownership of those interests will be effected only through, records maintained by DTC (with respect to interests of DTC participants) and the records of DTC participants (with respect to other owners of beneficial interests in the global note).

Beneficial interests in global notes may not be exchanged for notes in physical, certificated form except in the limited circumstances described below.

#### *Book-entry Procedures for the Global Notes*

All interests in the global notes will be subject to the operations and procedures of DTC. We provide the following summary of those operations and procedures solely for the convenience of investors. The operations and procedures of DTC are controlled by that settlement system and may be changed at any time. None of our operating partnership, the Company or the applicable underwriters are responsible for those operations or procedures.

DTC has advised us that it is:

- a limited purpose trust company organized under the laws of the State of New York;
- a "banking organization" within the meaning of the New York State Banking Law;
- a member of the Federal Reserve System;
- a "clearing corporation" within the meaning of the Uniform Commercial Code; and
- a "clearing agency" registered under Section 17A of the Exchange Act.

DTC was created to hold securities for its participants and to facilitate the clearance and settlement of securities transactions between its participants through electronic book-entry changes to the accounts of its participants. DTC's participants include securities brokers and dealers, including underwriters, banks and trust companies, clearing corporations and other organizations. Indirect access to DTC's system is also available to others such as banks, brokers, dealers and trust companies; these indirect participants clear through or maintain a custodial relationship with a DTC participant, either directly or indirectly. Investors who are not DTC participants may beneficially own securities held by or on behalf of DTC only through DTC participants or indirect participants in DTC.

So long as DTC's nominee is the registered owner of a global note, that nominee will be considered the sole owner or holder of the debt securities represented by that global note for all purposes under the indenture. Except as provided below, owners of beneficial interests in a global note:

- will not be entitled to have debt securities represented by the global note registered in their names;
- will not receive or be entitled to receive physical, certificated debt securities; and

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- will not be considered the owners or holders of the debt securities under the indenture for any purpose, including with respect to the giving of any direction, instruction or approval to the trustee under the indenture.

As a result, each investor who owns a beneficial interest in a global note of any series must rely on the procedures of DTC to exercise any rights of a holder of debt securities of such series under the indenture (and, if the investor is not a participant or an indirect participant in DTC, on the procedures of the direct, or, if applicable, indirect DTC participant through which the investor owns its interest).

Payments of principal, premium, if any, and interest with respect to the debt securities represented by a global note will be made by the trustee to DTC or DTC's nominee as the registered holder of the global note. Neither our operating partnership, the Company nor the trustee will have any responsibility or liability for the payment of amounts to owners of beneficial interests in a global note, for any aspect of the records relating to or payments made on account of those interests by DTC, or for maintaining, supervising or reviewing any records of DTC relating to those interests.

Payments by participants and indirect participants in DTC to the owners of beneficial interests in a global note will be governed by standing instructions and customary industry practice and will be the responsibility of those participants or indirect participants and DTC.

Transfers between participants in DTC will be effected under DTC's procedures and will be settled in same-day funds.

### *Certificated Notes*

If the debt securities of any series are initially issued as global notes, debt securities of such series in physical, certificated form will be issued and delivered to each person that DTC identifies as a beneficial owner of the debt securities of such series only if:

- DTC notifies our operating partnership at any time that it is unwilling or unable to continue as depository for the global notes of such series and a successor depository is not appointed within 90 days;
- DTC ceases to be registered as a clearing agency under the Exchange Act at any time when the depository is required to be so registered and a successor depository is not appointed within 90 days after our operating partnership learns of such ineligibility;
- an Event of Default has occurred and is continuing under the indenture with respect to the debt securities of such series; or
- we, at our option, determine that the debt securities of such series shall no longer be represented by global notes.

## 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. When we or any selling securityholders offer to sell a particular class or series of stock, we or such selling securityholders will describe the specific terms of such 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 the Company may issue up to 490 million shares of common stock, \$0.01 par value per share, or common stock. The Company's charter authorizes its board of directors, with the approval of a majority of the entire board of directors and without any action by the Company's stockholders, to amend the Company's charter to increase or decrease the aggregate number of shares of common stock or, subject to the rights of holders of any class or series of the Company's stock, the number of shares of common stock of any class or series that the Company has the authority to issue. As of December 19, 2023, 60,895,786 shares of the Company's common stock were issued and outstanding and no shares of the Company's preferred stock were issued and outstanding.

Under Maryland law, stockholders generally are not personally liable for the Company's debts or obligations solely as a result of their status as stockholders.

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

Subject to the provisions of the Company's charter regarding the restrictions on ownership and transfer of the Company's stock and except as may otherwise be specified in the terms of any class or series of the Company's stock that may be issued in the future, 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 the holders of shares of the Company's common stock will possess the exclusive voting power. There is no cumulative voting in the election of the Company's directors. Directors are elected by a plurality of all of the votes cast in the election of directors.

Holders of shares of the Company's common stock have no preference, conversion, exchange, sinking fund or redemption rights, and have no preemptive rights to subscribe for any securities of the Company. The Company's charter provides that the Company's stockholders generally have no appraisal rights unless the Company's board of directors determines prospectively that appraisal rights will apply to one or more transactions in which holders of the Company's common stock would otherwise be entitled to exercise appraisal rights. Subject to the provisions of the Company's charter regarding the restrictions on ownership and transfer of the Company's stock, holders of 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, consolidate, convert into another type of entity, sell all or substantially all of its assets or engage in a statutory share exchange

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unless declared advisable by the board of directors and approved by the affirmative vote of stockholders entitled to cast at least two-thirds of all of the votes entitled to be cast on the matter unless a lesser percentage (but not less than a majority of the votes entitled to be cast on the matter) is set forth in the corporation's charter. The Company's charter provides for approval of any of these matters by the affirmative vote of stockholders entitled to cast a majority of the votes entitled to be cast on such matters, except that the affirmative vote of stockholders entitled to cast at least two-thirds of the votes entitled to be cast generally in the election of directors is required to remove a director and the affirmative vote of stockholders entitled to cast at least two-thirds of the votes entitled to be cast on the matter is required to amend the provisions of our charter relating to the removal of directors, specifying that the Company's stockholders may act without a meeting only by unanimous consent, or specifying the vote required to amend such provisions. Maryland law also permits a Maryland corporation to transfer all or substantially all of its assets without the approval of its stockholders to an entity all of the equity interests of which are owned, directly or indirectly, by the corporation. Because the Company's operating assets may be held by our operating partnership or its wholly owned subsidiaries, these subsidiaries may be able to merge or transfer all or substantially all of such assets without the approval of the Company's stockholders.

The Company's charter authorizes the Company's board of directors to reclassify any unissued shares of the Company's common stock into other classes or series of stock, to establish the designation and number of shares of each such class or series and to set, subject to the rights of holders of any class or series of the Company's stock and the provisions of the Company's charter regarding the restrictions on ownership and transfer of the Company's stock, the preferences, conversion or other rights, voting powers, restrictions, limitations as to dividends or other distributions, qualifications or terms or conditions of redemption of each such class or series.

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

We believe that the power of the Company's board of directors to amend the Company's charter to increase or decrease the aggregate number of authorized shares of common 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 cause the Company to issue such classified or reclassified shares will provide us with increased flexibility in structuring possible future financings and acquisitions and in meeting other needs that might arise. Additional classes or series of common stock, as well as the additional authorized shares of common stock, will be available for issuance without further action by the Company's stockholders unless such action is required by the terms of any class or series of the Company's stock that may be issued in the future or the rules of any stock exchange or automated quotation system on which the Company's 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 common stock or that the Company's common stockholders otherwise believe to be in their best interests. See "Material Provisions of Maryland Law and of The Company's Charter and Bylaws—Anti-takeover Effect of Certain Provisions of Maryland Law and of The Company's Charter and Bylaws."

### Restrictions on Ownership and Transfer

To assist us in complying with certain federal income tax requirements applicable to REITs, the Company's charter contains certain restrictions relating to the ownership and transfer of the Company's common stock. See "Restrictions on Ownership and Transfer."

### Transfer Agent and Registrar

The transfer agent and registrar for the Company's shares of common stock is Equiniti Trust Company, 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. When the Company offers to sell a particular class or series of preferred 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 preferred stock, you must refer to both the prospectus supplement relating to that class or series and the description of preferred 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 10 million shares of preferred stock, \$0.01 par value per share, or preferred stock. The Company's charter authorizes the Company's board of directors, with the approval of a majority of the entire board of directors and without any action by the Company's stockholders, to amend the Company's charter to increase or decrease the aggregate number of shares of preferred stock or, subject to the rights of holders of any class or series of the Company's stock, the number of shares of preferred stock of any class or series that the Company has the authority to issue. As of the date hereof, no shares of the Company's preferred stock were outstanding.

The Company's charter authorizes the Company's board of directors to classify any unissued shares of preferred stock and to reclassify any previously classified but unissued shares of preferred stock into one or more classes or series of stock. Prior to issuance of shares of each new class or series, the Company's board of directors is required by the MGCL and the Company's charter to set, subject to the rights of holders of any class or series of the Company's stock and the provisions of the Company's charter regarding the restrictions on ownership and transfer of the Company's stock, the preferences, conversion or other rights, voting powers, restrictions, limitations as to dividends or other distributions, qualifications or terms or conditions of redemption of each such class or series. As a result, the Company's board of directors could authorize the issuance of shares of preferred stock that have priority over shares of the Company's common stock with respect to dividends, distributions or rights upon liquidation or with other terms or conditions that could have the effect of delaying, deferring or preventing a transaction or a change of control of the Company that might involve a premium price for the Company's common stock or that the Company's common stockholders otherwise believe to be in their best interests.

The specific terms of a particular class or series of preferred stock will be described in the prospectus supplement relating to that class or series, including a prospectus supplement providing that preferred stock may be issuable upon the exercise of warrants the Company issues. The description of preferred stock set forth below 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.

Under Maryland law, stockholders generally are not personally liable for the Company's debts or obligations solely as a result of their status as stockholders.

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

- the designation and stated value of such class or series of preferred stock,
- the number of shares of such class or series of preferred stock authorized and offered, the liquidation preference per share and the offering price of such class or series of preferred stock,

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- the dividend rate(s), period(s), and/or payment date(s) or method(s) of calculation thereof applicable to such class or series of preferred stock,
- whether dividends on such class or series of preferred stock are cumulative or not and, if cumulative, the date from which dividends on such class or series of preferred stock shall accumulate,
- the provision for a sinking fund, if any, for such class or series of preferred stock,
- the provision for redemption, if applicable, of such class or series of preferred stock,
- any listing of such class or series of preferred stock on any securities exchange,
- the preemptive rights, if any, of such class or series of preferred stock,
- the terms and conditions, if applicable, upon which shares of such class or series of preferred stock will be convertible into shares of the Company's common stock or shares of any other class or series of the Company's stock, including the conversion price (or manner of calculation thereof),
- a discussion of any additional material federal income tax considerations applicable to an investment in such class or series of preferred stock,
- any limitations on actual, beneficial and constructive ownership and restrictions on transfer, in each case as may be appropriate to preserve the status of the Company as a REIT,
- the relative ranking and preferences of 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,
- any limitations on issuance of any class or series of 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,
- any voting rights of such class or series of preferred stock, and
- any other specific terms, preferences, rights, limitations or restrictions of such class or series of 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 the 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 shares of the Company's common stock or shares of any other class or series of the Company's 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 or the number of shares of such other class or series of the Company's 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 or Decrease Authorized Preferred 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 or decrease the aggregate number of authorized shares of preferred stock, to authorize the Company to issue additional authorized but unissued shares of the Company's preferred stock in one or more classes or series 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 will provide us with increased flexibility in structuring possible future financings and acquisitions and in meeting other needs that might arise. Additional classes or series of preferred stock, as well as the additional authorized shares of preferred stock, will be available for issuance without further action by the Company's stockholders unless such action is required by the terms of any class or series of the Company's stock that may be issued in the future or the rules of any stock exchange or automated quotation system on which the Company's 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 preferred stock or that the Company's preferred stockholders otherwise believe to be in their best interests. See "Material Provisions of Maryland Law and of The Company's Charter and Bylaws—Anti-takeover Effect of Certain Provisions of Maryland Law and The Company's Charter and Bylaws."

### Restrictions on Ownership and Transfer

To assist us in complying with certain federal income tax requirements applicable to REITs, we expect that each class or series of preferred stock offered pursuant to this prospectus will be subject to certain restrictions relating to the ownership and transfer of such class or series of preferred stock set forth in the Company's charter, including the articles supplementary for each such class or series. The applicable prospectus supplement will specify any ownership limitation relating to such class or series. See "Restrictions on Ownership and Transfer."

### Transfer Agent and Registrar

The transfer agent and registrar for the Company's shares of preferred stock is Equiniti Trust Company, LLC.

DESCRIPTION OF OTHER SECURITIES

We will set forth in the applicable prospectus supplement a description of any depositary shares, warrants, purchase contracts, rights, units or guarantees issued by the Company that may be offered and sold pursuant to this prospectus.



## 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 documents 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 documents, as amended and supplemented from time to time, including any articles supplementary relating to any class or series of preferred stock offered and sold pursuant to this prospectus. 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 documents 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; Incorporation 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 12 months (other than the first year for which an election to be a REIT has been made) or during a proportionate part of a shorter taxable year. Also, not more than 50% of the value of the outstanding shares of the Company's stock (after taking into account certain options to acquire shares of stock) may be owned, directly, indirectly or through attribution, by five or fewer individuals (for this purpose, the term "individual" includes a supplemental unemployment compensation benefit plan, a private foundation or a portion of a trust permanently set aside or used exclusively for charitable purposes, but generally does not include a qualified pension plan or profit sharing trust) at any time during the last half of a taxable year (other than the first year for which an election to be a REIT has been made).

The Company's charter contains restrictions on the ownership and transfer of the Company's stock that are intended to assist the Company in complying with these requirements and continuing to qualify as a REIT. The relevant sections of the Company's charter provide that, subject to the exceptions described below, no person or entity may actually or beneficially own, or be deemed to own by virtue of the applicable constructive ownership provisions of the Code, more than 7.275% (in value or in number of shares, whichever is more restrictive) of the aggregate of the outstanding shares of the Company's common stock, or 7.275% in value of the aggregate of the outstanding shares of all classes and series of the Company's stock, in each case excluding any shares of the Company's common stock that are not treated as outstanding for federal income tax purposes. We refer to each of these restrictions as an "ownership limit" and collectively as the "ownership limits." A person or entity that would have acquired actual, beneficial or constructive ownership of the Company's stock but for the application of the ownership limits or any of the other restrictions on ownership and transfer of the Company's stock discussed below is referred to as a "prohibited owner."

The constructive ownership rules under the Code are complex and may cause stock owned actually or constructively by a group of related individuals and/or entities to be owned constructively by one individual or entity. As a result, the acquisition of less than 7.275% of the Company's common stock (or the acquisition of an interest in an entity that owns, actually or constructively, the Company's common stock) by an individual or entity, could, nevertheless cause that individual or entity, or another individual or entity, to own constructively in excess of 7.275% of the Company's outstanding common stock and thereby violate the applicable ownership limit.

The Company's board of directors, in its sole and absolute discretion, prospectively or retroactively, may exempt a person from either or both of the ownership limits if doing so would not result in the Company being "closely held" within the meaning of Section 856(h) of the Code (without regard to whether the ownership interest is held during the last half of a taxable year) or otherwise failing to qualify as a REIT and the Company's board of directors reasonably determines that such waiver will not cause or allow:

- five or fewer individuals to actually or beneficially own more than 49% in value of the aggregate of the outstanding shares of all classes and series of the Company's stock; and

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- subject to certain exceptions, 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 a tenant of the Company's (or a tenant of an entity owned in whole or in part by the Company).

As a condition of the exception, the Company's board of directors may require an opinion of counsel or IRS ruling, in either case in form and substance satisfactory to the Company's board of directors, in its sole and absolute discretion, in order to determine or ensure the Company's status as a REIT and such representations, covenants and undertakings from the person requesting the exception as are reasonably necessary or prudent to make the determinations above. The Company's board of directors may impose such conditions or restrictions as it deems appropriate in connection with such an exception.

In connection with past offerings of the Company's common stock, the Company's board of directors has granted to Mr. Rady (and certain of his affiliates) an exemption from the ownership limits that allow him to beneficially or constructively own, in the aggregate, up to 19.9% in value or in number of shares, whichever is more restrictive, of the Company's outstanding common stock, subject to various conditions and limitations.

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

The Company's charter provisions further prohibit:

- any person from actually, beneficially or constructively owning shares of the Company's stock that could result in the Company being "closely held" under Section 856(h) of the Code (without regard to whether the ownership interest is held during the last half of a taxable year) or otherwise cause the Company to fail to qualify as a REIT (including, but not limited to, actual, beneficial or constructive ownership of shares of the Company's stock that could result in (i) the Company owning (actually or constructively) an interest in a tenant that is described in Section 856(d)(2)(B) of the Code, or (ii) any manager of a "qualified lodging facility," within the meaning of Section 856(d)(9)(D) of the Code, leased by the Company to one of the Company's taxable REIT subsidiaries failing to qualify as an "eligible independent contractor" within the meaning of Section 856(d)(9)(A) of the Code, in each case if the income the Company derives from such tenant or such taxable REIT subsidiary, taking into account the Company's other income that would not qualify under the gross income requirements of Section 856(c) of the Code, would cause the Company to fail to satisfy any of the gross income requirements imposed on REITs); and
- any person from transferring shares of the Company's stock if such transfer would result in shares of the Company's stock being beneficially owned by fewer than 100 persons (determined without reference to any rules of attribution).

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

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The ownership limits and other restrictions on ownership and transfer of the Company's stock described above will not apply if the Company's board of directors determines that it is no longer in the Company's best interest to attempt to qualify, or to continue to qualify, as a REIT or that compliance is no longer required in order for the Company to qualify as a REIT.

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

Shares of the Company's stock transferred to the trustee are deemed 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 paid in the transaction that resulted in the transfer of the shares to the trust (or, in the event of a gift, devise or other such transaction, the last reported sale price on the NYSE on the day of the transfer or other event that resulted in the transfer of such shares to the trust) and (2) the last reported sale price on the NYSE on the date the Company accepts, or the Company's designee accepts, such offer. The Company must reduce the amount payable to the prohibited owner by the amount of dividends and distributions paid to the prohibited owner and owed by the prohibited owner to the trustee. The Company will pay the amount of such reduction to the trustee for the benefit of the charitable beneficiary. The Company has the right to accept such offer until the trustee has sold the shares of the stock of the Company held in the trust. Upon a sale to the Company, the interest of the charitable beneficiary in the shares sold terminates and the trustee must distribute the net proceeds of the sale to the prohibited owner and any dividends or other distributions held by the trustee with respect to such stock must be paid to the charitable beneficiary.

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

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

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

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

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

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

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

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

These restrictions on ownership and transfer 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 stock that the Company's stockholders otherwise believe to be in their best interest.

## DESCRIPTION OF THE PARTNERSHIP AGREEMENT OF AMERICAN ASSETS TRUST, L.P.

*We have summarized the material terms and provisions of the Amended and Restated Agreement of Limited Partnership of American Assets Trust, L.P., which we refer to as the “partnership agreement.” This summary is not complete. For more detail, you should refer to the partnership agreement itself, a copy of which is filed with the Securities and Exchange Commission and is incorporated by reference as an exhibit to the registration statement of which this prospectus is a part. For purposes of this section, references to “we,” “our,” “us,” “our company” and the “general partner” refer to American Assets Trust, Inc. in its capacity as the general partner of our operating partnership.*

### General

Substantially all of the Company’s assets are held by, and substantially all of the Company’s operations are conducted through, the Company’s operating partnership, either directly or through its subsidiaries. The Company is the sole general partner of our operating partnership and, as of September 30, 2023, the Company owned approximately 78.8% of the outstanding common units in our operating partnership.

Certain persons who contributed interests in properties and/or other assets pursuant to the formation transactions related to our initial public offering received common units of partnership interest in our operating partnership, which we refer to as common units and have the terms described below. Our operating partnership is also authorized to issue a class of units of partnership interest designated as LTIP units, which have the terms described below. The units in our operating partnership are not listed on any exchange or quoted on any national market system.

Provisions in the partnership agreement may delay or make more difficult unsolicited acquisitions of the Company or changes in the Company’s control. These provisions could discourage third parties from making proposals involving an unsolicited acquisition of the Company or change of the Company’s control, although some stockholders might consider such proposals, if made, desirable. These provisions also make it more difficult for third parties to alter the management structure of our operating partnership without the concurrence of the Company’s board of directors. These provisions include, among others:

- redemption rights of limited partners and certain assignees of common units;
- transfer restrictions on units and other partnership interests;
- a requirement that the Company may not be removed as the general partner of our operating partnership without the Company’s consent;
- the Company’s ability in some cases to amend the partnership agreement and to cause our operating partnership to issue preferred partnership interests in our operating partnership with terms that the Company’s may determine, in either case, without the approval or consent of any limited partner; and
- the rights of the limited partners to consent to certain direct or indirect transfers of the Company’s interest in our operating partnership, including in connection with certain mergers, consolidations and other business combinations involving us, recapitalizations and reclassifications of the Company’s outstanding stock and issuances of the Company’s stock that require approval of the Company’s stockholders.

### Purposes, Business and Management

Our operating partnership was formed for the purpose of conducting any business, enterprise or activity permitted by or under the Maryland Revised Uniform Limited Partnership Act. Our operating partnership may enter into any partnership, joint venture, business trust arrangement, limited liability company or other similar arrangement and may own interests in any entity engaged in any business permitted by or under the Maryland

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Revised Uniform Limited Partnership Act. However, our operating partnership may not, without the Company's specific consent, which the Company may give or withhold in the Company's sole and absolute discretion, take, or refrain from taking, any action that, in the Company's judgment, in the Company's sole and absolute discretion:

- could adversely affect the Company's ability to continue to qualify as a REIT;
- could subject the Company to any taxes under Section 857 or Section 4981 of the Code or any other related or successor provision under the Code; or
- could violate any law or regulation of any governmental body or agency having jurisdiction over the Company, the Company's securities or our operating partnership.

In general, the Company's board of directors manages the business and affairs of our operating partnership by directing the Company's business and affairs, in the Company's capacity as the sole general partner of our operating partnership. Except as otherwise expressly provided in the partnership agreement and subject to the rights of holders of any class or series of partnership interest, all management powers over the business and affairs of our operating partnership are exclusively vested in the Company, in the Company's capacity as the sole general partner of our operating partnership. The Company may not be removed as the general partner of our operating partnership, with or without cause, without the Company's consent, which the Company may give or withhold in the Company's sole and absolute discretion.

### Restrictions on General Partner's Authority

The partnership agreement prohibits the Company, in the Company's capacity as general partner, from taking any action that would make it impossible to carry out the ordinary business of our operating partnership or performing any act that would subject a limited partner to liability as a general partner in any jurisdiction or any other liability except as provided under the partnership agreement. The Company generally may not, without the prior consent of the partners of our operating partnership (including the Company), amend, modify or terminate the partnership agreement, except for certain amendments described below that require the consent of a majority in interest of the limited partners (excluding the Company and any limited partner 50% or more of whose equity is owned, directly or indirectly, by the Company) and certain amendments described below that require the approval of each affected partner. The Company may not, in the Company's capacity as the general partner of our operating partnership, without the consent of a majority in interest of the limited partners (excluding the Company and any limited partner 50% or more of whose equity is owned, directly or indirectly, by the Company):

- take any action in contravention of an express provision or limitation of the partnership agreement;
- transfer all or any portion of the Company's general partnership interest in our operating partnership or admit any person as a successor general partner, subject to the exceptions described in "—Transfers of Partnership Interests—Restrictions on Transfers by the General Partner";
- voluntarily withdraw as the general partner; or
- amend the partnership agreement to alter the restrictions on the general partner's power to transfer all or any portion of its interest in our operating partnership or voluntarily withdraw as the general partner.

Without the consent of each affected limited partner, the Company may not enter into any contract, mortgage, loan or other agreement that expressly prohibits or restricts the Company or our operating partnership from performing the Company's or its specific obligations in connection with a redemption of units or expressly prohibits or restricts a limited partner from exercising its redemption rights in full. For the avoidance of doubt, because the Company has the right to elect to acquire common units tendered for redemption in exchange for shares of common stock, the approval of the limited partners generally should not be required in order for the Company or our operating partnership to enter into loan agreements which conditionally restrict our operating

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partnership from redeeming common units for cash. In addition to any approval or consent required by any other provision of the partnership agreement, the Company may not, without the consent of each affected partner, amend the partnership agreement or take any other action that would:

- convert a limited partner interest into a general partner interest (except as a result of the Company's acquisition of that interest);
- modify the limited liability of a limited partner;
- alter the rights of any partner to receive the distributions to which such partner is entitled, or alter the allocations specified in the partnership agreement, except to the extent permitted by the partnership agreement in connection with the creation or issuance of any new class or series of partnership interest;
- alter or modify the redemption rights of holders of common units or the related definitions specified in the partnership agreement;
- remove, alter or amend certain provisions of the partnership agreement relating to the requirements for the Company to qualify as a REIT or permitting the Company to avoid paying tax under Sections 857 or 4981 of the Code; or
- amend the provisions of the partnership agreement requiring the consent of each affected partner before taking any of the actions described above.

### Additional Partnership Interests and Limited Partners

The Company may cause our operating partnership to issue additional units or other partnership interests and to admit additional limited partners to our operating partnership from time to time, on such terms and conditions and for such capital contributions as the Company may establish in the Company's sole and absolute discretion, without the approval or consent of any limited partner.

The partnership agreement authorizes our operating partnership to issue common units and LTIP units, and our operating partnership may issue additional partnership interests in one or more additional classes, or one or more series of any of such classes, with such designations, preferences, conversion or other rights, voting powers or rights, restrictions, limitations as to distributions, qualifications or terms or conditions of redemption (including, without limitation, terms that may be senior or otherwise entitled to preference over existing units) as the Company may determine, in the Company's sole and absolute discretion, without the approval of any limited partner or any other person. Without limiting the generality of the foregoing, the Company may specify, as to any such class or series of partnership interest:

- the allocations of items of partnership income, gain, loss, deduction and credit to each such class or series of partnership interest;
- the right of each such class or series of partnership interest to share, on a junior, senior or pari passu basis, in distributions;
- the rights of each such class or series of partnership interest upon dissolution and liquidation of our operating partnership;
- the voting rights, if any, of each such class or series of partnership interest; and
- the conversion, redemption or exchange rights applicable to each such class or series of partnership interest.

If the Company issues shares of preferred stock, the Company anticipates that the Company will contribute the net proceeds of such issuance to our operating partnership in exchange for preferred units with substantially similar distribution rights.

#### Ability to Engage in Other Businesses; Conflicts of Interest

The Company may not conduct any business other than in connection with the ownership, acquisition and disposition of partnership interests, the management of the business and affairs of our operating partnership, the Company's operation as a reporting company with a class (or classes) of securities registered under the Exchange Act, the Company's operations as a REIT, the offering, sale, syndication, private placement or public offering of stock, bonds, securities or other interests, financing or refinancing of any type related to our operating partnership or its assets or activities and such activities as are incidental to those activities discussed above. In general, the Company must contribute any assets or funds that the Company acquires to our operating partnership in exchange for additional partnership interests. The Company may, however, in the Company's sole and absolute discretion, from time to time hold or acquire assets in the Company's own name or otherwise other than through our operating partnership so long as the Company takes commercially reasonable measures to ensure that the economic benefits and burdens of such property are otherwise vested in our operating partnership.

#### Distributions

Our operating partnership will make distributions at such times and in such amounts, as the Company may in the Company's sole and absolute discretion determine:

- first, with respect to any partnership interests that are entitled to any preference in distribution, in accordance with the rights of the holders of such class(es) or series of partnership interest, and, within each such class, among the holders of such class pro rata in proportion to their respective percentage interests of such class; and
- second, with respect to any partnership interests that are not entitled to any preference in distribution, including the common units and, except as described below under “—LTIP Units” with respect to liquidating distributions and as may be provided in the Company's 2011 Equity Incentive Award Plan, or the 2011 Plan, or any other incentive award plan, or any applicable award agreement, the LTIP units, in accordance with the rights of the holders of such class(es) or series of partnership interest, and, within each such class, among the holders of each such class, pro rata in proportion to their respective percentage interests of such class.

#### Exculpation and Indemnification of General Partner

The partnership agreement provides that the Company is not liable to our operating partnership or any partner for monetary damages for losses sustained, liabilities incurred or benefits not derived by our operating partnership or any limited partner, except for liability for the Company's intentional harm or gross negligence. The partnership agreement also provides that any obligation or liability in the Company's capacity as the general partner of our operating partnership that may arise at any time under the partnership agreement or any other instrument, transaction or undertaking contemplated by the partnership agreement will be satisfied, if at all, out of the Company's assets or the assets of our operating partnership only, and no such obligation or liability will be personally binding upon any of the Company's directors, stockholders, officers, employees or agents.

In addition, the partnership agreement requires our operating partnership to indemnify the Company, the Company's directors and officers, officers of our operating partnership and any other person designated by the Company against any and all losses, claims, damages, liabilities (whether joint or several), expenses (including, without limitation, attorneys' fees and other legal fees and expenses), judgments, fines, settlements and other amounts arising from any and all claims, demands, actions, suits or proceedings, whether civil, criminal, administrative or investigative, that relate to the operations of our operating partnership, unless (1) an act or omission of the person was material to the matter giving rise to the action and either was committed in bad faith or was the result of active and deliberate dishonesty, (2) such person actually received an improper personal benefit in violation or breach of any provision of the partnership agreement or (3) in the case of a criminal proceeding, the person had reasonable cause to believe the act or omission was unlawful. Our operating



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partnership must also pay or reimburse the reasonable expenses of any such person upon its receipt of a written affirmation of the person's good faith belief that the standard of conduct necessary for indemnification has been met and a written undertaking to repay any amounts paid or advanced if it is ultimately determined that the person did not meet the standard of conduct for indemnification. Our operating partnership will not indemnify or advance funds to any person with respect to any action initiated by the person seeking indemnification without the Company's approval (except for any proceeding brought to enforce such person's right to indemnification under the partnership agreement) or if the person is found to be liable to our operating partnership on any portion of any claim in the action.

### Business Combinations and Dissolution of Our Operating Partnership

Subject to the limitations on the transfer of the Company's interest in our operating partnership described in "—Transfers of Partnership Interests —Restrictions on Transfers by the General Partner," the Company generally has the exclusive power to cause our operating partnership to merge, reorganize, consolidate, sell all or substantially all of its assets or otherwise combine its assets with another entity. The Company may also elect to dissolve our operating partnership without the consent of any limited partner. However, in connection with the acquisition of properties from persons to whom our operating partnership issues units or other partnership interests as part of the purchase price, in order to preserve such persons' tax deferral, our operating partnership may contractually agree, in general, not to sell or otherwise transfer the properties for a specified period of time, or in some instances, not to sell or otherwise transfer the properties without compensating the sellers of the properties for their loss of the tax deferral.

### Redemption Rights of Qualifying Parties

Beginning 14 months after first becoming a holder of common units, each limited partner and some assignees of limited partners will have the right, subject to the terms and conditions set forth in the partnership agreement, to require our operating partnership to redeem all or a portion of the common units held by such limited partner or assignee in exchange for a cash amount per common unit equal to the value of one share of the Company's common stock, determined in accordance with and subject to adjustment under the partnership agreement. Our operating partnership's obligation to redeem common units does not arise and is not binding against our operating partnership until the sixth business day after the Company receives the holder's notice of redemption or, if earlier, the day the Company notifies the holder seeking redemption that the Company has declined to acquire some or all of the common units tendered for redemption. If the Company does not elect to acquire the common units tendered for redemption in exchange for shares of the Company's common stock (as described below), our operating partnership must deliver the cash redemption amount on or before the tenth business day after the Company receives the holder's notice of redemption.

On or before the close of business on the fifth business day after a holder of common units gives notice of redemption to the Company, the Company may, in the Company's sole and absolute discretion but subject to the restrictions on the ownership and transfer of the Company's stock set forth in the Company's charter and described in "Restrictions on Ownership and Transfer," elect to acquire some or all of the common units tendered for redemption from the tendering party in exchange for shares of the Company's common stock, based on an exchange ratio of one share of common stock for each common unit, subject to adjustment as provided in the partnership agreement. The partnership agreement does not require the Company to register, qualify or list any shares of common stock issued in exchange for common units with the Securities and Exchange Commission, with any state securities commissioner, department or agency, under the Securities Act or the Exchange Act or with any stock exchange.

### Transfers of Partnership Interests

#### *Restrictions on Transfers by Limited Partners*

Until the expiration of 14 months after the date on which a limited partner first acquires a partnership interest, the limited partner generally may not directly or indirectly transfer all or any portion of its partnership

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interest without the Company's consent, which the Company may give or withhold in the Company's sole and absolute discretion, except for certain permitted transfers to certain affiliates, family members and charities, and certain pledges of partnership interests to lending institutions in connection with bona fide loans. After the expiration of 14 months after the date on which a limited partner first acquires a partnership interest, the limited partner will have the right to transfer all or any portion of its partnership interest without the Company's consent to any person that is an "accredited investor," within the meaning set forth in Rule 501 promulgated under the Securities Act, upon ten business days prior notice to the Company, subject to the satisfaction of conditions specified in the partnership agreement, including minimum transfer requirements and the Company's right of first refusal.

### *Restrictions on Transfers by the General Partner*

Except as described below, any transfer of all or any portion of the Company's interest in our operating partnership, whether by sale, disposition, statutory merger or consolidation, liquidation or otherwise, must be approved by the consent of a majority in interest of the limited partners (excluding the Company and any limited partner 50% or more of whose equity is owned, directly or indirectly, by the Company). Subject to the rights of the Company's stockholders and the limited partners of our operating partnership to approve certain direct or indirect transfers of the Company's interests in our operating partnership described below and the rights of holders of any class or series of partnership interest, the Company may transfer all (but not less than all) of the Company's general partnership interest without the consent of the limited partners, voting as a separate class, in connection with a merger, consolidation or other combination of the Company's assets with another entity, a sale of all or substantially all of the Company's assets or a reclassification, recapitalization or change in any outstanding shares of the Company's stock if:

- in connection with such event, all of the limited partners will receive or have the right to elect to receive, for each common unit, the greatest amount of cash, securities or other property paid to a holder of one share of the Company's common stock (subject to adjustment in accordance with the partnership agreement) in the transaction and, if a purchase, tender or exchange offer is made and accepted by holders of the Company's common stock in connection with the event, each holder of common units receives, or has the right to elect to receive, the greatest amount of cash, securities or other property that the holder would have received if it had exercised its redemption right and received shares of the Company's common stock in exchange for its common units immediately before the expiration of the purchase, tender or exchange offer and had accepted the purchase, tender or exchange offer; or
- substantially all of the assets of our operating partnership will be owned by a surviving entity (which may be our operating partnership) in which the limited partners of our operating partnership holding common units immediately before the event will hold a percentage interest based on the relative fair market value of the net assets of our operating partnership and the other net assets of the surviving entity immediately before the event, which interest will be on terms that are at least as favorable as the terms of the common units in effect immediately before the event and as those applicable to any other limited partners or non-managing members of the surviving entity and will include a right to redeem interests in the surviving entity for the consideration described in the preceding bullet or cash on similar terms as those in effect with respect to the common units immediately before the event, or, if common equity securities of the person controlling the surviving entity are publicly traded, such common equity securities.

The Company may also transfer all (but not less than all) of the Company's interest in our operating partnership to a controlled affiliate of the Company's without the consent of any limited partner, subject to the rights of holders of any class or series of partnership interest.

The Company may not, without prior "partnership approval," directly or indirectly transfer all or any portion of the Company's interest in our operating partnership, before the later of the death of Mr. Rady and the death of his wife, in connection with a merger, consolidation or other combination of the Company's assets with

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another entity, a sale of all or substantially all of the Company's assets, a reclassification, recapitalization or change in any outstanding shares of the Company's stock or other outstanding equity interests or an issuance of shares of the Company's stock, in any case that requires approval by the Company's common stockholders. The "partnership approval" requirement is satisfied, with respect to such a transfer, when the sum of the (1) the percentage interest of limited partners consenting to the transfer of the Company's interest, plus (2) the product of (a) the percentage of the outstanding common units held by the Company multiplied by (b) the percentage of the votes that were cast in favor of the event by the Company's common stockholders equals or exceeds the percentage required for the Company's common stockholders to approve the event resulting in the transfer. Limited partners will be entitled to cast one vote for each common unit or LTIP unit, subject to adjustment under the partnership agreement.

In addition, any transferee of our interest in our operating partnership must be admitted as a general partner of our operating partnership, assume, by operation of law or express agreement, all of the Company's obligations as general partner under the partnership agreement, accept all of the terms and conditions of the partnership agreement and execute such instruments as may be necessary to effectuate the transferee's admission as a general partner.

The Company may not voluntarily withdraw as the general partner of our operating partnership without the consent of a majority in interest of the limited partners (excluding the Company and any limited partner 50% or more of whose equity is owned, directly or indirectly, by the Company) other than upon the transfer of the Company's entire interest in our operating partnership and the admission of the Company's successor as a general partner of our operating partnership.

### LTIP Units

Our operating partnership is authorized to issue a class of units of partnership interest designated as LTIP units. The Company may cause our operating partnership to issue LTIP units to persons who provide services to or for the benefit of our operating partnership, for such consideration or for no consideration as the Company may determine to be appropriate, and the Company may admit such persons as limited partners of the Company's operating partnership, without the approval or consent of any limited partner. Further, the Company may cause our operating partnership to issue LTIP units in one or more classes or series, with such terms as the Company may determine, without the approval or consent of any limited partner. LTIP units may be subject to vesting, forfeiture and restrictions on transfer and receipt of distributions pursuant to the terms of any applicable equity-based plan and the terms of the 2011 Plan or any other award agreement relating to the issuance of the LTIP units.

### *Conversion Rights*

Vested LTIP units are convertible at the option of each limited partner and some assignees of limited partners into common units, upon notice to the Company and our operating partnership, to the extent that the capital account balance of the LTIP unitholder with respect to all of his or her LTIP units is at least equal to the Company's capital account balance with respect to an equal number of common units. The Company may cause our operating partnership to convert vested LTIP units eligible for conversion into an equal number of common units at any time, upon at least 10 and not more than 60 days' notice to the holder of the LTIP units.

If the Company or our operating partnership is party to a transaction, including a merger, consolidation, sale of all or substantially all of the Company's assets or other business combination, as a result of which common units are exchanged for or converted into the right, or holders of common units are otherwise entitled, to receive cash, securities or other property (or any combination thereof), the Company must cause our operating partnership to convert any vested LTIP units then eligible for conversion into common units immediately before the transaction, taking into account any special allocations of income that would be made as a result of the transaction. Our operating partnership must use commercially reasonable efforts to cause each limited partner

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(other than a party to such a transaction or an affiliate of such a party) holding LTIP units that will be converted into common units in such a transaction to be afforded the right to receive the same kind and amount of cash, securities and other property (or any combination thereof) for such common units that each holder of common units receives in the transaction.

### *Transfer*

Unless the 2011 Plan, any other applicable equity-based plan or the terms of an award agreement specify additional restrictions on transfer of LTIP units, LTIP units are transferable to the same extent as common units, as described above in “—Transfers of Partnership Interests.”

### *Voting Rights*

Limited partners holding LTIP units are entitled to vote together with limited partners holding common units on all matters on which limited partners holding common units are entitled to vote or consent, and may cast one vote for each LTIP unit so held.

### *Adjustment of LTIP Units*

If our operating partnership takes certain actions, including making a distribution of units on all outstanding common units, combining or subdividing the outstanding common units into a different number of common units or reclassifying the outstanding common units, the Company must adjust the number of outstanding LTIP units or subdivide or combine outstanding LTIP units to maintain a one-for-one conversion ratio and economic equivalence between common units and LTIP units.

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

*The following summary of certain provisions of Maryland law and the Company's charter and bylaws does not purport to be 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 filed as exhibits to the registration statement of which this prospectus is a part. See "Where You Can Find More Information; Incorporation by Reference."*

### The Company's Board of Directors

The Company's charter and bylaws provide that the number of directors of the Company may be established, increased or decreased only by a majority of the Company's entire board of directors but may not be fewer than the minimum number required under the MGCL nor, unless the Company's bylaws are amended, more than 15.

The Company has elected by a provision of its charter to be subject to a provision of Maryland law requiring that, except as otherwise provided in the terms of any class or series of the Company's stock, vacancies on the Company's board of directors may be filled only by the remaining directors and that any individual elected to fill a vacancy will serve for the remainder of the full term of the class of directors in which the vacancy occurred and until his or her successor is duly elected and qualifies.

### 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 to elect or remove one or more directors, a director may be removed only for cause (as defined in the Company's charter) and 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 exclusive power of the Company's board of directors to fill vacant directorships, may preclude stockholders from removing incumbent directors except for cause and by a substantial affirmative vote and filling the vacancies created by such removal with their own nominees.

### Business Combinations

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

- any person who beneficially owns, directly or indirectly, 10% or more of the voting power of the corporation's outstanding voting stock; or
- an affiliate or associate of the corporation who, at any time within the two-year period prior to the date in question, was the beneficial owner of, directly or indirectly, 10% or more of the voting power of the then-outstanding voting stock of the corporation.

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

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

- 80% of the votes entitled to be cast by holders of outstanding shares of voting stock of the corporation; and

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

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

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

### Control Share Acquisitions

The MGCL provides that a holder of "control shares" of a Maryland corporation acquired in a "control share acquisition" has no voting rights with respect to such shares except to the extent approved by the affirmative vote of at least two-thirds of the votes entitled to be cast in the election of directors, generally, but excluding shares held (or entitled to be voted) by: (1) the person who has made or proposes to make the control share acquisition, (2) any officer of the corporation or (3) any employee of the corporation who is also a director of the corporation. "Control shares" are voting shares of stock that, if aggregated with all other such shares of stock previously acquired by the acquirer or in respect of which the acquirer is able to exercise or direct the exercise of voting power (except solely by virtue of a revocable proxy), would entitle the acquirer to exercise voting power in electing directors within one of the following ranges:

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

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

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

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

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The control share acquisition statute does not apply (1) to shares acquired in a merger, consolidation or statutory 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 before the acquisition of control shares.

The Company's bylaws contain a provision exempting from the control share acquisition statute any and all control share acquisitions by any person of shares of the Company's stock. The Company's board of directors may amend or eliminate this provision at any time in the future.

### Subtitle 8

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

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

The Company has elected by a provision in its charter to be subject to the provisions of Subtitle 8 relating to the filling of vacancies on the Company's board of directors. Through provisions in the Company's charter and bylaws unrelated to Subtitle 8, the Company already (1) requires a two-thirds vote for the removal of any director from the board, which removal must be for cause, (2) vests in the board the exclusive power to fix the number of directorships, subject to limitations set forth in the Company's charter and bylaws, and (3) requires, unless called by the chairman of the Company's board of directors, the Company's president, the Company's chief executive officer or the Company's board of directors, the request of stockholders entitled to cast not less than a majority of all votes entitled to be cast on a matter at such meeting to call a special meeting to consider and vote on any matter that may properly be considered at a meeting of stockholders. The Company has not elected to create a classified board. In the future, the Company's board of directors may elect, without stockholder approval, to create a classified board or adopt one or more of the other provisions of Subtitle 8.

### Amendments to the Company's Charter and Bylaws

Other than amendments to certain provisions of the Company's charter described below and amendments permitted to be made without stockholder approval under Maryland law or by a specific provision in the charter, the Company's charter may be amended only if such amendment is declared advisable by the Company's board of directors and approved by the affirmative vote of stockholders entitled to cast a majority of all of the votes entitled to be cast on the matter. The provisions of the Company's charter relating to the removal of directors or specifying that the Company's stockholders may act without a meeting only by unanimous consent, or the provision specifying the vote required to amend such provisions, may be amended only if such amendment is declared advisable by the Company's board of directors and approved by the affirmative vote of stockholders entitled to cast not less than two-thirds of all of the votes entitled to be cast on the matter. The Company's board of directors has the exclusive power to adopt, alter or repeal any provision of the Company's bylaws or to make new bylaws.

### Transactions Outside the Ordinary Course of Business

The Company generally may not merge with or into, convert into or consolidate with another company, sell all or substantially all of the Company's assets or engage in a statutory share exchange unless such transaction is

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declared advisable by the Company's board of directors and approved by the affirmative vote of stockholders entitled to cast a majority of all of the votes entitled to be cast on the matter. In addition, to the extent that such a merger, conversion, consolidation, sale of assets or statutory share exchange would require the approval of the Company's stockholders, such transaction may also require the approval of the limited partners of our operating partnership. See "Description of the Partnership Agreement of American Assets Trust, L.P.—Transfers of Partnership Interests—Restrictions on Transfers by the General Partner."

### Dissolution of the Company

The dissolution of the Company must be declared advisable by a majority of the Company's entire board of directors and approved by the affirmative vote of stockholders entitled to cast a majority of all of the votes entitled to be cast on the matter.

### Meetings of Stockholders

Under the Company's bylaws, annual meetings of stockholders must be held each year at a date, time and place determined by the Company's board of directors. Special meetings of stockholders may be called by the chairman of the Company's board of directors, the Company's chief executive officer, the Company's president and the Company's board of directors. Additionally, subject to the provisions of the Company's bylaws, a special meeting of stockholders to act on any matter that may properly be considered at a meeting of stockholders must be called by the Company's secretary upon the written request of stockholders entitled to cast a majority of all of the votes entitled to be cast on the matter at such meeting who have requested the special meeting in accordance with the procedures specified in the Company's bylaws and provided the information and certifications required by the Company's bylaws. Only matters set forth in the notice of a special meeting of stockholders may be considered and acted upon at such a meeting.

### 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 at the annual meeting may be made only:

- pursuant to the Company's notice of the meeting;
- by or at the direction of the Company's board of directors; or
- by a stockholder who was a stockholder of record both at the time of giving of the notice required by the Company's bylaws and at the time of the annual meeting, who is entitled to vote at the meeting in the election of each individual so nominated or on such other business and who has provided the information and certifications required by the advance notice procedures set forth in the Company's bylaws.

The Company's bylaws provide that, 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 Company's board of directors may be made only:

- by or at the direction of the Company's board of directors; or
- provided that 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 of the notice required by the Company's bylaws and at the time of the meeting, who is entitled to vote at the meeting in the election of each individual so nominated and who has provided the information and certifications required by the advance notice procedures set forth in the Company's bylaws.



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The purpose of requiring stockholders to give advance notice of nominations and other proposals is to afford the Company's board of directors the opportunity to consider the qualifications of the proposed nominees or the advisability of the other proposals and, to the extent considered necessary by the Company's board of directors, to inform stockholders and make recommendations regarding the nominations or other proposals. The advance notice procedures also permit a more orderly procedure for conducting the Company's stockholder meetings.

### Anti-takeover Effect of Certain Provisions of Maryland Law and the Company's Charter and Bylaws

The restrictions on ownership and transfer of the Company's stock, the provisions of the Company's charter regarding the removal of directors, the exclusive power of the Company's board of directors to fill vacancies on the board and the advance notice provisions of the Company's bylaws could delay, defer or prevent a transaction or a change of control of Company that might involve a premium price for holders of the Company's common stock or otherwise be in their best interests. Likewise, if the Company's board of directors were to opt in to the business combination provisions of the MGCL or the provisions of Subtitle 8 of Title 3 of the MGCL providing for a classified board of directors, or if the provision in Company's bylaws opting out of the control share acquisition provisions of the MGCL were amended or rescinded, these provisions of the MGCL could have similar anti-takeover effects.

### Indemnification and Limitation of Directors' and Officers' Liability

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

The MGCL requires a Maryland corporation (unless its charter provides otherwise, which the Company's charter does not) to indemnify a director or officer who has been successful, on the merits or otherwise, in the defense of any proceeding to which he or she is made or threatened to be made a party by reason of his or her service in that capacity. The MGCL permits a Maryland corporation to indemnify its present and former directors and officers, among others, against judgments, penalties, fines, settlements and reasonable expenses actually incurred by them in connection with any proceeding to which they may be made or are threatened to be made a party by reason of their service in those or other capacities unless it is established that:

- the act or omission of the director or officer was material to the matter giving rise to the proceeding and:
- was committed in bad faith; or
- was the result of active and deliberate dishonesty;
- the director or officer actually received an improper personal benefit in money, property or services; or
- in the case of any criminal proceeding, the director or officer had reasonable cause to believe that the act or omission was unlawful.

However, under the MGCL, a Maryland corporation may not indemnify a director or officer for an adverse judgment in a suit by or on behalf of the corporation or if the director or officer was adjudged liable on the basis that personal benefit was improperly received, unless in either case a court orders indemnification and then only for expenses.

In addition, the MGCL permits a Maryland corporation to advance reasonable expenses to a director or officer, without requiring a preliminary determination of the director's or officer's ultimate entitlement to indemnification, upon the corporation's receipt of:

- a written affirmation by the director or officer of his or her good faith belief that he or she has met the standard of conduct necessary for indemnification by the corporation; and

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- a written undertaking by the director or officer or on his or her behalf to repay the amount paid or reimbursed by the corporation if it is ultimately determined that he or she did not meet the standard of conduct.

The Company's charter and bylaws obligate the Company, to the fullest extent permitted by Maryland law in effect from time to time, to indemnify and to pay or reimburse reasonable expenses in advance of final disposition of a proceeding without requiring a preliminary determination of the individual's ultimate entitlement to indemnification to:

- any present or former director or officer who is made or threatened to be made a party to the proceeding by reason of his or her service in that capacity; or
- any individual who, while a director or officer of the Company and at the Company's request, serves or has served as a director, officer, partner, member, manager or trustee of another corporation, real estate investment trust, partnership, limited liability company, joint venture, trust, employee benefit plan or any other enterprise and who is made or threatened to be made a party to the proceeding by reason of his or her service in that capacity.

The Company's charter and bylaws also permit it, with the approval of the Company's board of directors, to indemnify and advance expenses to any person who served a predecessor of the Company in any of the capacities described above and to any employee or agent of the Company or a predecessor of the Company.

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

The partnership agreement also provides that the Company, as general partner, and the Company's directors, officers, employees, agents and designees are indemnified to the extent provided therein. See "Description of the Partnership Agreement of American Assets Trust, L.P.—Exculpation and Indemnification of General Partner."

Insofar as the foregoing provisions permit indemnification of directors, officers or persons controlling us for liability arising under the Securities Act, we have been informed that in the opinion of the Securities and Exchange Commission, this indemnification is against public policy as expressed in the Securities Act and is therefore unenforceable.

### Restrictions on Ownership and Transfer of the Company's Stock

Subject to certain exceptions, 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, more than 7.275% (in value or number of shares, whichever is more restrictive) of the outstanding shares of the Company's common stock or more than 7.275% in value of the aggregate outstanding shares of the Company's stock. For a fuller description of this and other restrictions on ownership and transfer of the Company's stock, see "Restrictions on Ownership and Transfer."

### REIT Qualification

The Company's charter provides that the Company's board of directors may revoke or otherwise terminate the Company's REIT election, without approval of the Company's stockholders, if it determines that it is no longer in the Company's best interest to continue to be qualified as a REIT.

## FEDERAL INCOME TAX CONSIDERATIONS

The following is a general summary of certain material U.S. federal income tax considerations regarding our election to be taxed as a REIT and the acquisition, ownership and disposition of our capital stock or our operating partnership's debt securities. Supplemental U.S. federal income tax considerations relevant to holders of the securities offered by this prospectus may be provided in the prospectus supplement that relates to those securities. For purposes of this discussion, references to "we," "our" and "us" mean only American Assets Trust, Inc. and do not include any of its subsidiaries, except as otherwise indicated. This summary is for general information only and is not tax advice. The information in this summary is based on:

- the Code;
- current, temporary and proposed Treasury Regulations promulgated under the Code;
- the legislative history of the Code;
- administrative interpretations and practices of the 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 U.S. federal income tax treatment of a REIT and its stockholders and the holders of the operating partnership's debt securities. This summary is qualified in its entirety by the applicable Code provisions, Treasury Regulations promulgated under the Code, and administrative and judicial interpretations thereof. Potential tax reforms may result in significant changes to the rules governing U.S. federal income taxation. New legislation, Treasury Regulations, administrative interpretations and practices and/or court decisions may significantly and adversely affect our ability to qualify as a REIT, the U.S. federal income tax consequences of such qualification, or the U.S. federal income tax consequences of an investment in us, including those described in this discussion. Moreover, the law relating to the tax treatment of other entities, or an investment in other entities, could change, making an investment in such other entities more attractive relative to an investment in a REIT. Any such changes could apply retroactively to transactions preceding the date of the change. We have not requested, and do not plan to request, any rulings from the IRS that we qualify as a REIT, and the statements in this prospectus are not binding on the IRS or any court. Thus, we can provide no assurance that the tax considerations contained in this discussion will not be challenged by the IRS or will be sustained by a court if challenged by the IRS. This summary does not discuss any state, local or non-U.S. tax consequences, or any tax consequences arising under any U.S. federal tax laws other than U.S. federal income tax laws, associated with the purchase, ownership or disposition of our capital stock or our operating partnership's debt securities, or our election to be taxed as a REIT.

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

- the purchase, ownership and disposition of our capital stock or our operating partnership's debt securities, including the U.S. federal, state, local, non-U.S. and other tax consequences;
- our election to be taxed as a REIT for U.S. federal income tax purposes; and
- potential changes in applicable tax laws.

### Taxation of Our Company

*General.* We have elected to be taxed as a REIT under Sections 856 through 860 of the Code commencing with our taxable year ended December 31, 2011. We believe that we have been organized and have operated in a

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manner that has allowed us to qualify for taxation as a REIT under the Code commencing with such taxable year, and we intend to continue to be organized and operate in this manner. However, qualification and taxation as a REIT depend upon our ability to meet the various qualification tests imposed under the Code, including through actual 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 operate, in a manner so as to qualify or remain qualified as a REIT. See “—Failure to Qualify” for potential tax consequences if we fail to qualify as a REIT.

Latham & Watkins LLP has acted as our tax counsel in connection with the filing of this prospectus and our election to be taxed as a REIT. Latham & Watkins LLP has rendered an opinion to us, as of the date of this prospectus, to the effect that, commencing with our taxable year ended December 31, 2011, we have been organized and have operated in conformity with the requirements for qualification and taxation as a REIT under the Code, and our proposed method of operation will enable us to 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 or more 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 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 operations for any particular taxable year have satisfied or will satisfy those requirements. Further, the anticipated U.S. federal income tax treatment described herein may be changed, perhaps retroactively, by legislative, administrative or judicial action at any time. Latham & Watkins LLP has no obligation to update its opinion subsequent to the date of such opinion.

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

- First, we will be required to pay regular U.S. federal corporate income tax on any undistributed REIT taxable income, including undistributed capital gain.
- Second, 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 regular U.S. federal corporate income tax on this income. To the extent that income from foreclosure property is otherwise qualifying income for purposes of the 75% gross income test, this tax is not applicable. Subject to certain other requirements, foreclosure property generally is defined as property we acquired through foreclosure or after a default on a loan secured by the property or a lease of the property.
- Third, 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.
- Fourth, 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.

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- Fifth, if we fail to satisfy any of the asset tests (other than a *de minimis* failure of the 5% or 10% asset test), as described below, due to reasonable cause and not due to willful neglect, and we nonetheless maintain our REIT qualification because of specified cure provisions, we will be required to pay a tax equal to the greater of \$50,000 or the U.S. federal corporate income tax rate multiplied by the net income generated by the nonqualifying assets that caused us to fail such test.
- Sixth, if we fail to satisfy any provision of the Code that would result in our failure to qualify as a REIT (other than a violation of the gross income tests or certain violations of the asset tests, as described below) and the violation is due to reasonable cause and not due to willful neglect, we may retain our REIT qualification but we will be required to pay a penalty of \$50,000 for each such failure.
- Seventh, 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.
- Eighth, 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 five-year period beginning on the date on which we acquired the asset, then we generally will be required to pay regular U.S. federal corporate income tax on this gain to the extent of the excess of (1) the fair market value of the asset over (2) our adjusted 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 Section 1033 (an involuntary conversion) of the Code generally is excluded from the application of this built-in gains tax.
- Ninth, our subsidiaries that are C corporations and are not qualified REIT subsidiaries, including our “taxable REIT subsidiaries” described below, generally will be required to pay regular U.S. federal corporate income tax on their earnings.
- Tenth, we will be required to pay a 100% tax on any “redetermined rents,” “redetermined deductions,” “excess interest” or “redetermined TRS service income,” as described below under “—Penalty Tax.” In general, redetermined rents are rents from real property that are overstated as a result of services furnished to any of our tenants by a taxable REIT subsidiary of ours. Redetermined deductions and excess interest generally represent amounts that are deducted by a taxable REIT subsidiary of ours for amounts paid to us that are in excess of the amounts that would have been deducted based on arm’s length negotiations. Redetermined TRS service income generally represents income of a taxable REIT subsidiary that is understated as a result of services provided to us or on our behalf.
- Eleventh, 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 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 tax basis of the stockholder in our capital stock.
- Twelfth, if we fail to comply with the requirement to send annual letters to our stockholders holding at least a certain percentage of our stock, as determined under applicable Treasury Regulations, requesting information regarding the actual ownership of our stock, and the failure is not due to reasonable cause or is due to willful neglect, we will be subject to a \$25,000 penalty, or if the failure is intentional, a \$50,000 penalty.

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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 and other taxes on our assets and operations.

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

- (1) that is managed by one or more trustees or directors;
- (2) that issues transferable shares or transferable certificates to evidence its beneficial ownership;
- (3) that would be taxable as a domestic corporation, but for Sections 856 through 860 of the Code;
- (4) that is not a financial institution or an insurance company within the meaning of certain provisions of the Code;
- (5) that is beneficially owned by 100 or more persons;
- (6) not more than 50% in value of the outstanding stock of which is owned, actually or constructively, by five or fewer individuals, including certain specified entities, during the last half of each taxable year; and
- (7) that meets other tests, described below, regarding the nature of its income and assets and the amount of its distributions.

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

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

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

*Ownership of Interests in Partnerships, Limited Liability Companies and Qualified REIT Subsidiaries.* In the case of a REIT that is a partner in a partnership (for purposes of this discussion, references to “partnership” include a limited liability company treated as a partnership for U.S. federal income tax purposes, and references to “partner” include a member in such a limited liability company), 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 that entity. The assets and gross income of the partnership retain the same character in the hands of the REIT for purposes of Section 856 of the Code, including satisfying

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the gross income tests and the asset tests. Thus, our pro rata share of the assets and items of income of our operating partnership, including our operating partnership's share of these items of any partnership or disregarded entity for U.S. federal income tax purposes in which it owns an interest, is treated as our assets and items of income for purposes of applying the requirements described in this discussion, including the gross income and asset tests described below. A brief summary of the rules governing the U.S. federal income taxation of partnerships is set forth below in “—Tax Aspects of Our Operating Partnership and the Subsidiary Partnerships and Limited Liability Companies.”

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

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

*Ownership of Interests in Taxable REIT Subsidiaries.* We and our operating partnership own interests in a company that has elected, together with us, to be treated as our taxable REIT subsidiary, and we may acquire securities in additional taxable REIT subsidiaries in the future. A taxable REIT subsidiary is a corporation (or other entity treated as a corporation for U.S. federal income tax purposes) other than a REIT in which a REIT directly or indirectly holds stock, and that has made a joint election with such REIT to be treated as a taxable REIT subsidiary. If a taxable REIT subsidiary owns more than 35% of the total voting power or value of the outstanding securities of another corporation, such other corporation will also be treated as a taxable REIT subsidiary. Other than some activities relating to lodging and health care facilities, 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 U.S. federal income tax as a regular C corporation. A REIT is not treated as holding the assets of a taxable REIT subsidiary or as receiving any income that the taxable REIT subsidiary earns. Rather, the stock issued by the taxable REIT subsidiary is an asset in the hands of the REIT, and the REIT generally recognizes as income the dividends, if any, that it receives from the taxable REIT subsidiary. A REIT's ownership of securities of a taxable REIT subsidiary is not subject to the 5% or 10% asset test described below. See “—Asset Tests.” Taxpayers are subject to a limitation on their ability to deduct net business interest generally equal to 30% of adjusted taxable income, subject to certain exceptions. See “—Annual Distribution Requirements.” While not certain, this provision may limit the ability of our taxable REIT subsidiaries to deduct interest, which could increase their taxable income.

*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 and certain foreign currency gains) from investments relating to real property or mortgages on real property, including “rents from real property,” dividends from other REITs and, in certain circumstances, interest, or certain types of temporary investments. Second, in each taxable year we must derive at least 95% of our gross income (excluding gross income from prohibited transactions, certain hedging transactions and certain foreign currency gains) from the real property investments described above or dividends, interest and gain from the sale or disposition of stock or securities, or 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 or if it is based on the net income of a tenant which derives substantially all of its income with respect to such property from subleasing of substantially all of such property, to the extent that the rents paid by the subtenants would qualify as rents from real property if we earned such amounts directly;
- 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 a taxable REIT subsidiary of ours, however, will not be excluded from the definition of “rents from real property” as a result of this condition if 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 the parent REIT owns stock possessing more than 50% of the voting power or more than 50% of the total value of the outstanding stock of such taxable REIT subsidiary;
- Rent attributable to personal property, leased in connection with a lease of real property, is not greater than 15% of the total rent received under the lease. If this condition is not met, then the portion of the rent attributable to personal property will not qualify as “rents from real property.” To the extent that rent attributable to personal property, leased in connection with a lease of real property, exceeds 15% of the total rent received under the lease, we may transfer a portion of such personal property to a taxable REIT subsidiary; and
- We generally may 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 may, however, perform 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 services include the provision of light, heat, or other utilities, trash removal and general maintenance of common areas. In addition, we may 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.”



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A portion of our rental income is derived from the lease of our hotel property to our taxable REIT subsidiary. In order for the rent payable under this lease to constitute “rents from real property,” the lease must be respected as a true lease for U.S. federal income tax purposes and must not be treated as a service contract, joint venture, or some other type of arrangement. We believe that this lease is a true lease for U.S. federal income tax purposes. However, this determination is inherently a question of fact, and we cannot assure you that the IRS will not successfully assert a contrary position. If this lease is not respected as a true lease, part or all of the payments that we receive as rent from our taxable REIT subsidiary with respect to such lease may not be considered rent or may not otherwise satisfy the various requirements for qualification as “rents from real property.” In that case, we may not be able to satisfy either the 75% or 95% gross income test and, as a result, could fail to qualify as a REIT.

Also, our taxable REIT subsidiary may not operate or manage a lodging facility or provide rights to any brand name under which any lodging facility is operated. However, rents we receive from a lease of a hotel to our taxable REIT subsidiary will constitute “rents from real property” if the following conditions are satisfied:

- First, the hotel must be a “qualified lodging facility.” A qualified lodging facility is a hotel, motel or other establishment more than one-half of the dwelling units in which are used on a transient basis, unless wagering activities are conducted at or in connection with such facility by any person who is engaged in the business of accepting wagers and who is legally authorized to engage in such business at or in connection with such facility. Accordingly, we are not permitted to have gambling or wagering activity on the premises of our hotel property or to earn income from gambling or wagering activities; and
- Second, the hotel must be managed by an “eligible independent contractor.” An eligible independent contractor is an independent contractor that, at the time the management contract is entered into, is actively engaged in the trade or business of operating qualified lodging facilities for any person not related to us or any of our taxable REIT subsidiaries. For this purpose, an independent contractor means any person (1) that does not own (taking into account relevant attribution rules) more than 35% of our capital stock, and (2) with respect to which no person or group owning directly or indirectly (taking into account relevant attribution rules) 35% or more of our capital stock owns 35% or more directly or indirectly (taking into account relevant attribution rules) of the ownership interest.

We believe that our hotel property is a qualified lodging facility, and that the hotel manager engaged by our taxable REIT subsidiary to manage the hotel is an eligible independent contractor. Furthermore, while we monitor the activities of the eligible independent contractor to maximize the value of our hotel investment, neither we nor our taxable REIT subsidiary lessee directly or indirectly operates or manages our hotel. Thus, we believe that the rents we derive from our taxable REIT subsidiary with respect to the lease of our hotel property qualify as “rents from real property.”

We generally do not intend, and, as the general partner of our operating partnership, we 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 determine, based on the advice of our tax counsel, that the failure will not jeopardize our tax status as a REIT. For example, as described in this prospectus under the heading “Restrictions on Ownership and Transfer,” an excepted holder limit was established for Mr. Rady and his affiliates in excess of the ownership limit. Because Mr. Rady and his affiliates own 10% or more of our capital stock and 10% or more of the voting power or value of all classes of stock of certain of our tenants, the rents payable by such tenants do not qualify as “rents from real property” and, therefore, do not qualify under the 95% and 75% gross income tests described above. We believe, however, that we are able to satisfy the REIT gross income tests notwithstanding our receipt of such nonqualifying rental income. In addition, with respect to the limitation on the rental of personal property, we generally 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.

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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 spaces 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 spaces will meet these tests and, accordingly, will constitute rents from real property for purposes of the gross income tests.

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

To the extent our taxable REIT subsidiaries pay dividends or interest, our allocable share of such dividend or interest income will qualify under the 95%, but not the 75%, gross income test (except that our allocable share of such interest would also qualify under the 75% gross income test to the extent the interest is paid on a loan that is adequately secured by real property).

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

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

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

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

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*Prohibited Transaction Income.* Any gain that we realize on the sale of property (other than any foreclosure 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, 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. As the general partner of our operating partnership, we intend to cause our operating partnership 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 investment objectives. We do not intend, and do not intend to permit our operating partnership or its subsidiary partnerships, 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 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. The 100% penalty tax will not apply to gains from the sale of assets that are held through a taxable REIT subsidiary, but such income will be subject to regular U.S. federal corporate income tax.

*Penalty Tax.* Any redetermined rents, redetermined deductions, excess interest or redetermined TRS service income we generate will be subject to a 100% penalty tax. In general, redetermined rents are rents from real property that are overstated as a result of any services furnished to any of our tenants by a taxable REIT subsidiary of ours, redetermined deductions and excess interest represent any 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, and redetermined TRS service income is income of a taxable REIT subsidiary that is understated as a result of services provided to us or on our behalf. Rents we receive will not constitute redetermined rents if they qualify for certain safe harbor provisions contained in the Code.

We do not believe we have been, and do not expect to be, subject to this penalty tax, although any rental or service arrangements we enter into from time to time may not satisfy the safe-harbor provisions referenced above.

As described above under “—Income Tests,” our taxable REIT subsidiary pays rent to us. We believe the rent payable to us by our taxable REIT subsidiary is at arm's length rates. In addition, from time to time our taxable REIT subsidiary may provide services to our tenants. We believe we have set, and we intend to set in the future, any fees paid to our taxable REIT subsidiary for such services, and any rent payable to us by our taxable REIT subsidiary, at arm's length rates, although the amounts paid may not satisfy the safe-harbor provisions referenced 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 any overstated rents paid to us, or any excess deductions or understated income of our taxable REIT subsidiaries.

*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 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 or on both real property and, to a limited extent, personal property), shares (or transferable certificates of beneficial interest) in other REITs, any stock or debt instrument attributable to the investment of the proceeds of a stock offering or a public offering of debt with a term of at least five years (but only for the one-year period beginning on the date the REIT receives such proceeds), debt instruments of publicly offered REITs, and personal property leased in connection with a lease of real property for which the rent attributable to personal property is not greater than 15% of the total rent received under the lease.

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Second, not more than 25% of the value of our total assets may be represented by securities (including securities of 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 certain investments in other REITs, our qualified REIT subsidiaries and 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. Certain types of securities we may own are disregarded as securities solely for purposes of the 10% value test, including, but not limited to, securities satisfying the "straight debt" safe harbor, securities issued by a partnership that itself would satisfy the 75% income test if it were a REIT, any loan to an individual or an estate, any obligation to pay rents from real property and any security issued by a REIT. In addition, solely for purposes of the 10% value test, the determination of our interest in the assets of a partnership in which we own an interest will be based on our proportionate interest in any securities issued by the partnership, excluding for this purpose certain securities described in the Code. From time to time we may own securities (including debt securities) of issuers that do not qualify as a REIT, a qualified REIT subsidiary or a taxable REIT subsidiary. We intend that our ownership of any such securities will be structured in a manner that allows us to comply with the asset tests described above.

Fourth, not more than 20% (25% for taxable years beginning before January 1, 2018) of the value of our total assets may be represented by the securities of one or more taxable REIT subsidiaries. We and our operating partnership own interests in a company that has elected, together with us, to be treated as our taxable REIT subsidiaries, and we may acquire securities in additional taxable REIT subsidiaries in the future. So long as each of these companies qualifies as a taxable REIT subsidiary of ours, we will not be subject to the 5% asset test, the 10% voting power limitation or the 10% value limitation with respect to our ownership of the securities of such companies. We believe that the aggregate value of our taxable REIT subsidiaries has not exceeded, and in the future will not exceed, 20% (25% for taxable years beginning before January 1, 2018) of the aggregate value of our gross assets. We generally do not obtain independent appraisals to support these conclusions. In addition, there can be no assurance that the IRS will not disagree with our determinations of value.

Fifth, not more than 25% of the value of our total assets may be represented by debt instruments of publicly offered REITs to the extent those debt instruments would not be real estate assets but for the inclusion of debt instruments of publicly offered REITs in the meaning of real estate assets, as described above (e.g., a debt instrument issued by a publicly offered REIT that is not secured by a mortgage on real property).

The asset tests must be satisfied at the close of each calendar quarter of our taxable year in which we (directly or through any partnership or qualified REIT subsidiary) acquire securities in the applicable issuer, and also at the close of each calendar quarter in which we increase our ownership of securities of such issuer (including as a result of an increase in our interest in any partnership that owns such securities). 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 any redemption/exchange rights. Also, 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. 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 any partnership), we may cure this failure by disposing of sufficient nonqualifying assets within 30 days after the close of that quarter. We believe that we have maintained, and we intend to maintain, adequate records of the value of our assets to ensure compliance with the asset tests. If we fail to cure any noncompliance with the asset tests within the 30-day cure period, we would cease to qualify as a REIT unless we are eligible for certain relief provisions discussed below.

Certain relief provisions may be available to us if we discover a failure to satisfy the asset tests described above after the 30-day cure period. Under these provisions, we will be deemed to have met the 5% and 10% asset tests if the value of our nonqualifying assets (i) 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 (ii) we dispose of the nonqualifying assets or

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otherwise satisfy such tests within (a) six months after the last day of the quarter in which the failure to satisfy the asset tests is discovered or (b) the period of time prescribed by Treasury Regulations to be issued. For violations of any of the asset tests due to reasonable cause and not due to willful neglect and that are, in the case of the 5% 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 (i) 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, (ii) paying a tax equal to the greater of (a) \$50,000 or (b) the U.S. federal corporate income tax rate multiplied by the net income generated by the nonqualifying assets, and (iii) disclosing certain information to the IRS.

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

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

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

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 generally means income attributable to leveled stepped rents, original issue discount, cancellation of indebtedness, or a like-kind exchange that is later determined to be taxable.

In addition, our REIT taxable income will be reduced by any taxes we are required to pay on any gain we recognize from the disposition of any asset we acquired 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, within the five-year period following our acquisition of such asset, as described above under “—General.”

Except as provided below, a taxpayer's deduction for net business interest expense will generally be limited to 30% of its taxable income, as adjusted for certain items of income, gain, deduction or loss. Any business interest deduction that is disallowed due to this limitation may be carried forward to future taxable years, subject to special rules applicable to partnerships. If we or any of our subsidiary partnerships (including our operating partnership) are subject to this interest expense limitation, our REIT taxable income for a taxable year may be increased. Taxpayers that conduct certain real estate businesses may elect not to have this interest expense limitation apply to them, provided that they use an alternative depreciation system to depreciate certain property. Our operating partnership has made this election and we believe that we or any of our subsidiary partnerships that are subject to this interest expense limitation will be eligible to make this election. If such election is made, although we or such subsidiary partnership, as applicable, would not be subject to the interest expense limitation described above, depreciation deductions may be reduced and, as a result, our REIT taxable income for a taxable year may be increased.

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

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timely file our tax return for such year and paid on or before the first regular dividend payment after such declaration, provided such payment is made during the 12-month period following the close of such year. These distributions are treated as received by our stockholders in the year in which they are 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, except as provided below, 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. This preferential dividend limitation will not apply to distributions made by us, provided we qualify as a “publicly offered REIT.” We believe that we are, and expect we will continue to be, a publicly offered REIT. 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 regular U.S. federal corporate income tax on the undistributed amount. 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 the general partner of our operating partnership, to take such steps as may be necessary to cause our operating partnership to distribute to its partners an amount sufficient to permit us to meet these distribution requirements and to minimize our corporate tax obligation.

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 generally will 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. In addition, we may decide to retain our cash, rather than distribute it, in order to repay debt or for other reasons. If these timing differences occur, we may borrow funds to pay dividends or pay dividends in the form of taxable stock distributions in order to meet the distribution requirements, while preserving our cash.

Under some circumstances, we may be able to rectify an inadvertent failure to meet the 90% distribution requirement for a year by paying “deficiency dividends” to our stockholders in a later year, which may be included in our deduction for dividends paid for the earlier year. In that case, 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 at least the sum of 85% of our ordinary income for such year, 95% of our capital gain net income for the year and any undistributed taxable income from prior periods. Any ordinary income and net capital gain on which U.S. federal corporate income tax is imposed for any year is treated as an amount distributed during that year for purposes of calculating this excise tax.

For purposes of the 90% distribution requirement and excise tax described above, dividends declared during the last three months of the taxable year, payable to stockholders of record on a specified date during such period and paid during January of the following year, will be treated as paid by us and received by our stockholders on December 31 of the year in which they are declared.

*Like-Kind Exchanges.* We may dispose of real property that is not held primarily for sale 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 U.S. federal income tax purposes. The failure of any such transaction to qualify as a like-kind exchange could require us to pay U.S. federal income tax, possibly including the 100% prohibited transaction tax, or deficiency dividends, depending on the facts and circumstances surrounding the particular transaction.

*Tax Liabilities and Attributes Inherited in Connection with Acquisitions.* From time to time, we or our operating partnership may acquire other corporations or entities and, in connection with such acquisitions, we may succeed to the historical tax attributes and liabilities of such entities. For example, if we acquire a C corporation and subsequently dispose of its assets within five years of the acquisition, we could be required to pay the built-in gain tax described above under “—General.” In addition, in order to qualify as a REIT, at the end of any taxable year, we must not have any earnings and profits accumulated in a non-REIT year. As a result, if we acquire a C corporation, we must distribute the corporation’s earnings and profits accumulated prior to the acquisition before the end of the taxable year in which we acquire the corporation. We also could be required to pay the acquired entity’s unpaid taxes even though such liabilities arose prior to the time we acquired the entity.

Moreover, we or one of our subsidiaries may from time to time acquire other REITs through a merger or acquisition. If any such REIT failed to qualify as a REIT for any of its taxable years, such REIT would be liable for (and we or our subsidiary, as applicable, as the surviving corporation in the merger or acquisition, would be obligated to pay) regular U.S. federal corporate income tax on its taxable income for such taxable years. In addition, if such REIT was a C corporation at the time of the merger or acquisition, the tax consequences described in the preceding paragraph generally would apply. If such REIT failed to qualify as a REIT for any of its taxable years, but qualified as a REIT at the time of such merger or acquisition, and we acquired such REIT’s assets in a transaction in which our tax basis in the assets of such REIT is determined, in whole or in part, by reference to such REIT’s tax basis in such assets, we generally would be subject to tax on the built-in gain on each asset of such REIT as described above if we were to dispose of the asset in a taxable transaction during the five-year period following such REIT’s requalification as a REIT, subject to certain exceptions. Moreover, even if such REIT qualified as a REIT at all relevant times, we would similarly be liable for other unpaid taxes (if any) of such REIT (such as the 100% tax on gains from any sales treated as “prohibited transactions” as described above under “—Prohibited Transaction Income”).

Furthermore, after our acquisition of another corporation or entity, the asset and income tests will apply to all of our assets, including the assets we acquire from such corporation or entity, and to all of our income, including the income derived from the assets we acquire from such corporation or entity. As a result, the nature of the assets that we acquire from such corporation or entity and the income we derive from those assets may have an effect on our tax status as a REIT.

*Failure to Qualify.* If we discover a violation of a provision of the Code that would result in our failure to qualify as a REIT, certain specified cure provisions may be available to us. Except with respect to violations of the gross income tests and asset tests (for which the cure provisions are described above), and provided the violation is due to reasonable cause and not due to willful neglect, these cure provisions generally impose a \$50,000 penalty for each violation in lieu of a loss of REIT status. If we fail to satisfy the requirements for taxation as a REIT in any taxable year, and the relief provisions do not apply, we will be required to pay regular U.S. federal corporate income tax on our taxable income. Distributions to stockholders in any year in which we fail to qualify as a REIT will not be deductible by us. 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, we will not be required to distribute any amounts to our stockholders and all distributions to stockholders will be taxable as regular corporate dividends to the extent of our current and accumulated earnings and profits. In such event, corporate stockholders 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. Non-corporate stockholders, including individuals, generally may deduct up to 20% of dividends from a REIT, other than capital gain dividends and dividends treated as qualified dividend income, for taxable years beginning before January 1, 2026 for purposes of determining their U.S. federal income tax (but not for purposes of the 3.8% Medicare tax), subject to certain holding period requirements and other limitations. If we fail to qualify as a REIT, such stockholders may not claim this deduction with respect to dividends paid by us. 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 lose 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 and the Subsidiary Partnerships and Limited Liability Companies

*General.* All of our investments are held indirectly through our operating partnership. In addition, our operating partnership holds certain of its investments indirectly through subsidiary partnerships and limited liability companies that we believe are and will continue to be treated as partnerships or disregarded entities for U.S. federal income tax purposes. In general, entities that are treated as partnerships or disregarded entities for U.S. federal income tax purposes are “pass-through” entities which are not required to pay U.S. federal income tax. Rather, partners of such partnerships are allocated their shares of the items of income, gain, loss, deduction and credit of the partnership, and are potentially required to pay tax on this income, without regard to whether they receive a distribution from the partnership. We will include in our income our share of these partnership items for purposes of the various gross income tests, the computation of our REIT taxable income, and the REIT distribution requirements. Moreover, for purposes of the asset tests, we will include our pro rata share of assets held by our operating partnership, including its share of the assets of its subsidiary partnerships, based on our capital interests in each such entity. See “—Taxation of Our Company—Ownership of Interests in Partnerships, Limited Liability Companies and Qualified REIT Subsidiaries.” A disregarded entity is not treated as a separate entity for U.S. federal income tax purposes, and all assets, liabilities and items of income, gain, loss, deduction and credit of a disregarded entity are treated as assets, liabilities and items of income, gain, loss, deduction and credit of its parent that is not a disregarded entity (e.g., our operating partnership) for all purposes under the Code, including all REIT qualification tests.

*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 these entities as partnerships or disregarded entities for U.S. federal income tax purposes. For example, an entity that would otherwise be treated as a partnership for U.S. federal income tax purposes may nonetheless be taxable as a corporation if it is a “publicly traded partnership” and certain other requirements are met. A partnership would be treated as a publicly traded partnership if its interests are traded on an established securities market or are readily tradable on a secondary market or a substantial equivalent thereof, within the meaning of applicable Treasury Regulations. We do not anticipate that our operating partnership or any subsidiary partnership will be treated as a publicly traded partnership that is taxable as a corporation. However, if any such entity were treated as a corporation, it would be required to pay an entity-level tax on its income. In this situation, the character of our assets and items of gross income would change and could prevent us from satisfying the REIT asset tests and possibly the REIT income tests. See “—Taxation of Our Company—Asset Tests” and “—Income Tests.” This, in turn, could prevent us from qualifying as a REIT. See “—Taxation of Our Company—Failure to Qualify” for a discussion of the effect of our failure to meet these tests. In addition, a change in the tax status of our operating partnership or a subsidiary treated as a partnership or disregarded entity to a corporation might be treated as a taxable event. If so, we might incur a tax liability without any related cash payment. We believe our operating partnership and each of the subsidiary partnerships and limited liability companies are and will continue to be treated as partnerships or disregarded entities for U.S. federal income tax purposes.

*Allocations of Items of Income, Gain, Loss and Deduction.* A partnership agreement (or, in the case of a limited liability company treated as a partnership for U.S. federal income tax purposes, the limited liability company agreement) generally will determine the allocation of income and loss among partners. These allocations, however, will be disregarded for tax purposes if they do not comply with the provisions of Section 704(b) of the Code and the Treasury Regulations thereunder. Generally, Section 704(b) of the Code and the Treasury Regulations thereunder require that partnership allocations respect the economic arrangement of the partners. If an allocation of partnership income or loss does not comply with the requirements of Section 704(b) of the Code and the Treasury Regulations thereunder, the item subject to the allocation will be reallocated in accordance with the partners’ interests in the partnership. This reallocation will be determined by taking into account all of the facts and circumstances relating to the economic arrangement of the partners with respect to such item. The allocations of taxable income and loss of our operating partnership and any subsidiaries that are treated as partnerships for U.S. federal income tax purposes are intended to comply with the requirements of Section 704(b) of the Code and the Treasury Regulations thereunder.



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

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

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

*Partnership Audit Rules.* Under current tax law, subject to certain exceptions, any audit adjustment to items of income, gain, loss, deduction, or credit of a partnership (and any partner’s distributive share thereof) is determined, and taxes, interest, or penalties attributable thereto are assessed and collected, at the partnership level. It is possible that these rules could result in partnerships in which we directly or indirectly invest, including our operating partnership, being required to pay additional taxes, interest and penalties as a result of an audit adjustment, and we, as a direct or indirect partner of these partnerships, could be required to bear the economic burden of those taxes, interest, and penalties even though we, as a REIT, may not otherwise have been required to pay additional corporate-level taxes as a result of the related audit adjustment. Investors are urged to consult their tax advisors with respect to these changes and their potential impact on their investment in our capital stock.

### Material U.S. Federal Income Tax Consequences to Holders of Our Capital Stock and Our Operating Partnership’s Debt Securities

The following discussion is a summary of the material U.S. federal income tax consequences to you of purchasing, owning and disposing of our capital stock or our operating partnership’s debt securities. This discussion is limited to holders who hold our capital stock or our operating partnership’s debt securities as “capital assets” within the meaning of Section 1221 of the Code (generally, property held for investment). This discussion does not address all U.S. federal income tax consequences relevant to a holder’s particular circumstances, including the alternative minimum tax. In addition, except where specifically noted, it does not address consequences relevant to holders subject to special rules, including, without limitation:

- U.S. expatriates and former citizens or long-term residents of the United States;

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- U.S. holders (as defined below) whose functional currency is not the U.S. dollar;
- persons holding our capital stock or our operating partnership's debt securities as part of a hedge, straddle or other risk reduction strategy or as part of a conversion transaction or other integrated investment;
- banks, insurance companies, and other financial institutions;
- REITs or regulated investment companies;
- brokers, dealers or traders in securities;
- "controlled foreign corporations," "passive foreign investment companies," and corporations that accumulate earnings to avoid U.S. federal income tax;
- S corporations, partnerships or other entities or arrangements treated as partnerships for U.S. federal income tax purposes (and investors therein);
- tax-exempt organizations or governmental organizations;
- persons subject to special tax accounting rules as a result of any item of gross income with respect to our capital stock or our operating partnership's debt securities being taken into account in an applicable financial statement;
- persons deemed to sell our capital stock or our operating partnership's debt securities under the constructive sale provisions of the Code;
- tax-qualified retirement plans; and
- persons who hold or receive our capital stock pursuant to the exercise of any employee stock option or otherwise as compensation.

THIS DISCUSSION IS FOR INFORMATIONAL PURPOSES ONLY AND IS NOT INTENDED AS TAX ADVICE. INVESTORS SHOULD CONSULT THEIR TAX ADVISORS WITH RESPECT TO THE APPLICATION OF THE U.S. FEDERAL INCOME TAX LAWS TO THEIR PARTICULAR SITUATIONS AS WELL AS ANY TAX CONSEQUENCES OF THE PURCHASE, OWNERSHIP AND DISPOSITION OF OUR CAPITAL STOCK OR OUR OPERATING PARTNERSHIP'S DEBT SECURITIES ARISING UNDER OTHER U.S. FEDERAL TAX LAWS (INCLUDING ESTATE AND GIFT TAX LAWS), UNDER THE LAWS OF ANY STATE, LOCAL OR NON-U.S. TAXING JURISDICTION OR UNDER ANY APPLICABLE TAX TREATY.

For purposes of this discussion, a "U.S. holder" is a beneficial owner of our capital stock or our operating partnership's debt securities that, for U.S. federal income tax purposes, is or is treated as:

- an individual who is a citizen or resident of the United States;
- a corporation created or organized under the laws of the United States, any state thereof, or the District of Columbia;
- an estate, the income of which is subject to U.S. federal income tax regardless of its source; or
- a trust that (1) is subject to the primary supervision of a U.S. court and the control of one or more "United States persons" (within the meaning of Section 7701(a)(30) of the Code) or (2) has a valid election in effect to be treated as a United States person for U.S. federal income tax purposes.

For purposes of this discussion, a "non-U.S. holder" is any beneficial owner of our capital stock or our operating partnership's debt securities that is neither a U.S. holder nor an entity treated as a partnership for U.S. federal income tax purposes.

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If an entity treated as a partnership for U.S. federal income tax purposes holds our capital stock or our operating partnership's debt securities, the tax treatment of a partner in the partnership will depend on the status of the partner, the activities of the partnership and certain determinations made at the partner level. Accordingly, partnerships holding our capital stock or our operating partnership's debt securities and the partners in such partnerships should consult their tax advisors regarding the U.S. federal income tax consequences to them.

### Taxation of Taxable U.S. Holders of Our Capital Stock

*Distributions Generally.* Distributions out of our current or accumulated earnings and profits will be treated as dividends and, other than with respect to capital gain dividends and certain amounts which have previously been subject to corporate level tax, 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 described 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 to the extent of the U.S. holder's adjusted tax basis in such shares of stock. This treatment will reduce the U.S. holder's adjusted tax basis in such shares of stock by such amount, 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 holder of record on a specified date in any of these months will be treated as both paid by us and received by the holder 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 own income tax returns any of our net operating losses or capital losses.

U.S. holders that receive taxable stock distributions, including distributions partially payable in our capital stock and partially payable in cash, would be required to include the full amount of the distribution (*i.e.*, the cash and the stock portion) as a dividend (subject to limited exceptions) to the extent of our current and accumulated earnings and profits for U.S. federal income tax purposes, as described above. The amount of any distribution payable in our capital stock generally is equal to the amount of cash that could have been received instead of the capital stock. Depending on the circumstances of a U.S. holder, the tax on the distribution may exceed the amount of the distribution received in cash, in which case such U.S. holder would have to pay the tax using cash from other sources. If a U.S. holder sells the capital stock it received in connection with a taxable stock distribution in order to pay this tax and the proceeds of such sale are less than the amount required to be included in income with respect to the stock portion of the distribution, such U.S. holder could have a capital loss with respect to the stock sale that could not be used to offset such income. A U.S. holder that receives capital stock pursuant to such distribution generally has a tax basis in such capital stock equal to the amount of cash that could have been received instead of such capital stock as described above, and has a holding period in such capital stock that begins on the day immediately following the payment date for the distribution.

*Capital Gain Dividends.* Dividends that we properly designate as capital gain dividends will generally 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 and may not exceed our dividends paid for the taxable year, including dividends paid the following year that are treated as paid in the current 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

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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 capital 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 U.S. federal income tax purposes, paid or made available to the holders of each such class of our capital stock for the year bears to the total dividends, as determined for U.S. federal income tax purposes, paid or made available to holders of all classes of our capital stock for the year. In addition, except as otherwise required by law, we will 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 U.S. federal income tax purposes) would be adjusted accordingly, and a U.S. holder generally would:

- include its pro rata share of our undistributed capital gain in computing its long-term capital gains in its U.S. federal income tax 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 capital 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 of our capital stock by a U.S. holder 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 generally may elect to treat capital gain dividends, capital gains from the disposition of our capital stock and income designated as qualified dividend income, as described in "—Tax Rates" below, as investment income for purposes of computing the investment interest limitation, but in such case, the holder 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.* Except as described below under "—Taxation of Taxable U.S. Holders of Our Capital Stock—Redemption or Repurchase by Us," if a U.S. holder sells or disposes of shares of our capital stock, it will recognize gain or loss for U.S. 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 such capital stock for more than one year. However, if a U.S. holder recognizes a loss upon the sale or other disposition of 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. The deductibility of capital losses is subject to limitations.

*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

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accumulated earnings and profits as described above under “—Distributions Generally”) 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 generally will be treated as a sale or exchange if it:

- is “substantially disproportionate” with respect to the U.S. holder,
- results in a “complete redemption” 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.

In determining whether any of these tests has been met, shares of our 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, generally must 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 capital stock 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 “—Distributions Generally.” A U.S. holder’s adjusted tax basis in the redeemed or repurchased shares generally will be transferred to the holder’s remaining shares of our capital stock, if any. If a U.S. holder owns no other shares of our capital stock, under certain circumstances, such basis may be transferred to a related person or it may be lost entirely. Prospective investors should consult their tax advisors regarding the U.S. federal income tax consequences of a redemption or repurchase of our capital stock.

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

*Tax Rates.* The maximum tax rate for non-corporate taxpayers for (1) long-term capital gains, including certain “capital gain dividends,” generally is 20% (although depending on the characteristics of the assets which produced these gains and on designations which we may make, certain capital gain dividends may be taxed at a 25% rate) and (2) “qualified dividend income” generally is 20%. In general, dividends payable by REITs are not eligible for the reduced tax rate on qualified dividend income, except to the extent that certain holding period requirements have been met and the REIT’s dividends are attributable to dividends received from taxable corporations (such as its 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). Capital gain dividends will only be eligible for the rates described above to the extent that they are properly designated by the REIT as “capital gain dividends.” U.S. holders that are corporations may be required to treat up to 20% of some capital gain dividends as ordinary income. In addition, non-corporate U.S. holders, including individuals, generally may deduct up to 20% of dividends from a REIT, other than capital gain dividends and dividends treated as qualified dividend income, for taxable years beginning before January 1, 2026 for purposes of determining their U.S. federal income tax (but not for purposes of the 3.8% Medicare tax), subject to certain holding period requirements and other limitations.

### Taxation of Tax-Exempt Holders of Our Capital Stock

Dividend income from us and gain arising upon a sale of shares of our capital stock generally should not be unrelated business taxable income, or UBTI, to a tax-exempt holder, except as described below. This income or gain will be UBTI, however, to the extent a tax-exempt holder holds its shares as “debt-financed property” within the meaning of the Code. Generally, “debt-financed property” is property the acquisition or holding of which was financed through a borrowing by the tax-exempt holder.

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

Notwithstanding the above, however, a portion of the dividends paid by a “pension-held REIT” may be treated as UBTI 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 ownership and transfer of our stock contained in our charter, we do not expect to be classified as a “pension-held REIT,” and as a result, the tax treatment described above should be inapplicable to our holders. However, because our common stock is (and, we anticipate, will continue to be) publicly traded, we cannot guarantee that this will always be the case.

### Taxation of Non-U.S. Holders of Our Capital Stock

The following discussion addresses the rules governing U.S. 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 U.S. federal income taxation and does not address other federal, state, local or non-U.S. tax consequences that may be relevant to a non-U.S. holder in light of its particular circumstances. We urge non-U.S. holders to consult their tax advisors to determine the impact of U.S. federal, state, local and non-U.S. income and other tax laws and any applicable tax treaty on the purchase, ownership and disposition of shares of our capital stock, including any reporting requirements.

*Distributions Generally.* Distributions (including any taxable stock distributions) that are neither attributable to gains from sales or exchanges by us of United States real property interests, or USRPIs, 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 U.S. 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 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 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 for a non-U.S. holder to be exempt from withholding under the effectively connected income exemption. Dividends that are treated as effectively connected with a U.S. trade or business generally will not be subject to withholding but will be subject to U.S. federal income tax on a net basis at the regular rates, in the same manner as dividends paid to U.S. holders are subject to U.S. 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 U.S. federal income taxes paid on such effectively connected income) or such lower rate as may be specified by an applicable income tax treaty.

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

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

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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 adjusted tax basis of the holder's capital stock, but rather will reduce the adjusted tax basis of such stock. To the extent that such distributions exceed the non-U.S. holder's adjusted tax basis in such capital stock, they generally will give rise to gain from the sale or exchange of such stock, the tax treatment of which is described below. However, such excess distributions may be treated as dividend income for certain non-U.S. holders. For withholding purposes, we expect to treat all distributions as made out of our current or accumulated earnings and profits. However, amounts withheld may be refundable if it is subsequently determined that the distribution was, in fact, in excess of our current and accumulated earnings and profits, provided that certain conditions are met.

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

- (1) the investment in our capital stock is treated as 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 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 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 non-U.S. holder will be subject to U.S. federal income tax at a rate of 30% on the non-U.S. holder'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 U.S. federal income tax returns with respect to such losses.

Pursuant to the Foreign Investment in Real Property Tax Act, which is referred to as "FIRPTA," distributions to a non-U.S. holder that are attributable to gain from sales or exchanges by us of USRPIs, 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 U.S. trade or business. Non-U.S. holders generally would be taxed at the regular rates applicable to U.S. holders, subject to any applicable alternative minimum tax and a special alternative minimum tax in the case of nonresident alien individuals. We also will be required to withhold and to remit to the IRS 21% of any distribution to non-U.S. holders attributable to gain from sales or exchanges by us of USRPIs. 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 U.S. federal income tax liability. However, any distribution with respect to any class of stock that is "regularly traded," as defined by applicable Treasury Regulations, on an established securities market located in the United States is not subject to FIRPTA, and therefore, not subject to the 21% U.S. withholding tax described above, if the non-U.S. holder did not own more than 10% 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. In addition, distributions to certain non-U.S. publicly traded shareholders that meet certain record-keeping and other requirements, or qualified shareholders, are exempt from FIRPTA, except to the extent owners of such qualified shareholders that are not also qualified shareholders own, actually or constructively, more than 10% of our capital stock. Furthermore, distributions to "qualified foreign pension funds" or entities all of the interests of which are held by "qualified foreign pension funds" are exempt from FIRPTA. Non-U.S. holders should consult their tax advisors regarding the application of these rules.

*Retention of Net Capital Gains.* Although the law is not clear on the matter, it appears that amounts we designate as retained net capital gains in respect of our capital stock should be treated with respect to non-U.S.



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holders as actual distributions of capital gain dividends. Under this approach, the non-U.S. holders may be able to offset as a credit against their U.S. federal income tax liability their proportionate share of the tax paid by us on such retained net capital gains and to receive from the IRS a refund to the extent their proportionate share of such tax paid by us exceeds their actual U.S. federal income tax liability. If we were to designate any portion of our net capital gain as retained net capital gain, non-U.S. holders should consult their tax advisors 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 realized by a non-U.S. holder upon the sale, exchange or other taxable disposition of our capital stock generally will not be subject to U.S. federal income tax unless such stock constitutes a USRPI. In general, stock of a domestic corporation that constitutes a “United States real property holding corporation,” or USRPHC, will constitute a USRPI. We believe that we are a USRPHC. Our capital stock will not, however, constitute a USRPI so long as we are a “domestically controlled qualified investment entity.” A “domestically controlled qualified investment entity” includes a REIT in which at all times during a five-year testing period less than 50% in value of its stock is held directly or indirectly by non-United States persons, subject to certain rules. For purposes of determining whether a REIT is a “domestically controlled qualified investment entity,” a person who at all applicable times holds less than 5% of a class of stock that is “regularly traded” is treated as a United States person unless the REIT has actual knowledge that such person is not a United States person. Proposed Treasury Regulations, if finalized, would provide additional guidance for determining whether a REIT is a domestically controlled qualified investment entity and clarify, among other things, that ownership by non-U.S. persons (other than persons treated as United States persons as described in the preceding sentence) will be determined by looking through pass-through entities and certain U.S. corporations. We believe, but cannot guarantee, that we are a “domestically controlled qualified investment entity.” Because our common 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.”

Even if we do not qualify as a “domestically controlled qualified investment entity” at the time a non-U.S. holder sells our capital stock, gain realized from the sale or other taxable disposition by a non-U.S. holder of such capital stock would not be subject to U.S. federal income tax under FIRPTA as a sale of a USRPI if:

- (1) such class of 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, 10% or less of such class of stock throughout the shorter of the five-year period ending on the date of the sale or other taxable disposition or the non-U.S. holder’s holding period.

In addition, dispositions of our capital stock by qualified shareholders are exempt from FIRPTA, except to the extent owners of such qualified shareholders that are not also qualified shareholders own, actually or constructively, more than 10% of our capital stock. Furthermore, dispositions of our capital stock by certain “qualified foreign pension funds” or entities all of the interests of which are held by such “qualified foreign pension funds” are exempt from FIRPTA. Non-U.S. holders should consult their tax advisors regarding the application of these rules.

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 (a) the investment in our capital stock is treated as 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), 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 corporation may also be subject to the 30% branch profits tax (or such lower rate as may be specified by an applicable income tax treaty) on such gain, as adjusted for certain items, or (b) 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



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certain other conditions are met, in which case the non-U.S. holder will be subject to a 30% tax on the non-U.S. holder'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 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 U.S. federal income tax returns with respect to such losses. 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 or other taxable disposition of a USRPI if the non-U.S. holder (1) disposes of such stock within a 30-day period preceding the ex-dividend date of a distribution, any portion of which, but for the disposition, would have been treated as gain from the sale or exchange of a USRPI and (2) acquires, or enters into a contract or option to acquire, or is deemed to acquire, other shares of that stock during the 61-day period beginning with the first day of the 30-day period described in clause (1), unless such class of stock is "regularly traded" and the non-U.S. holder did not own more than 10% of such class of stock at any time during the one-year period ending on the date of the distribution described in clause (1).

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 U.S. federal income tax return and would be subject to regular U.S. 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 the applicable class 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 15% of the purchase price.

*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 "—Taxation of Taxable U.S. Holders of Our Capital Stock—Redemption or Repurchase by Us." Qualified shareholders and their owners may be subject to different rules, and should consult their tax advisors regarding the application of such rules. 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 of Our Capital Stock—Distributions Generally" above. 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 above under "—Sale of Our Capital Stock."

### Taxation of Holders of Our Operating Partnership's Debt Securities

The following summary describes the material U.S. federal income tax consequences of purchasing, owning and disposing of debt securities issued by our operating partnership. This discussion assumes the debt securities will be issued with less than a statutory *de minimis* amount of original issue discount for U.S. 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).

#### *U.S. Holders*

*Payments of Interest.* Interest on a debt security generally will be taxable to a U.S. holder as ordinary income at the time such interest is received or accrued, in accordance with such U.S. holder's method of accounting for U.S. federal income tax purposes.

*Sale or Other Taxable Disposition.* A U.S. holder will recognize gain or loss on the sale, exchange, redemption, retirement or other taxable disposition of a debt security. The amount of such gain or loss generally

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will be equal to the difference between the amount received for the debt security in cash or other property valued at fair market value (less amounts attributable to any accrued but unpaid interest, which will be taxable as interest to the extent not previously included in 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 generally will be equal to the amount the U.S. holder paid for the debt security. Any gain or loss generally 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 sale or other taxable 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, generally will be taxable at reduced rates. The deductibility of capital losses is subject to limitations.

### *Non-U.S. Holders*

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

- the non-U.S. holder does not, actually or constructively, own 10% or more of our operating partnership's capital or profits;
- the non-U.S. holder is not a controlled foreign corporation related to our operating partnership 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 security 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 the applicable withholding agent with a copy of such statement; or (3) the non-U.S. holder holds its debt security directly through a "qualified intermediary" (within the meaning of the 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 will be subject to withholding tax of 30%, subject 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 U.S. 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 debt security 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 U.S. federal income tax at the regular rates. A non-U.S. holder that is a corporation may also 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

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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.

*Sale or Other Taxable Disposition.* A non-U.S. holder will not be subject to U.S. 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 “—Taxation of Holders of Our Operating Partnership’s Debt Securities—Non-U.S. Holders—Payments of Interest”) unless:

- the gain 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 gain is attributable); or
- 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 the first bullet point above generally will be subject to U.S. federal income tax on a net income basis at the regular 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 gain, as adjusted for certain items.

A non-U.S. holder described in the second bullet point above will be subject to U.S. federal income tax at a rate of 30% (or such lower rate specified by an applicable income tax treaty) on gain realized upon the sale or other taxable disposition of a debt security, 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 U.S. 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.

### Information Reporting and Backup Withholding

*U.S. Holders.* A U.S. holder may be subject to information reporting and backup withholding when such holder receives payments on our capital stock or our operating partnership’s debt securities or proceeds from the sale or other taxable disposition of such stock or debt securities (including a redemption or retirement of a debt security). Certain U.S. holders are exempt from backup withholding, including corporations and certain tax-exempt organizations. A U.S. holder will be subject to backup withholding if such holder is not otherwise exempt and:

- the holder fails to furnish the holder’s taxpayer identification number, which for an individual is ordinarily his or her social security number;
- the holder furnishes an incorrect taxpayer identification number;
- the applicable withholding agent is notified by the IRS that the holder previously failed to properly report payments of interest or dividends; or
- the holder fails to certify under penalties of perjury that the holder has furnished a correct taxpayer identification number and that the IRS has not notified the holder that the holder is subject to backup withholding.

Backup withholding is not an additional tax. Any amounts withheld under the backup withholding rules may be allowed as a refund or a credit against a U.S. holder’s U.S. federal income tax liability, provided the required information is timely furnished to the IRS. U.S. holders should consult their tax advisors regarding their qualification for an exemption from backup withholding and the procedures for obtaining such an exemption.

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*Non-U.S. Holders.* Payments of dividends on our capital stock or interest on our operating partnership's debt securities generally will not be subject to backup withholding, provided the applicable withholding agent does not have actual knowledge or reason to know the holder is a United States person and the holder either certifies its non-U.S. status, such as by furnishing a valid IRS Form W-8BEN, W-8BEN-E or W-8ECI, or otherwise establishes an exemption. However, information returns are required to be filed with the IRS in connection with any distributions on our capital stock or interest on our operating partnership's debt securities paid to the non-U.S. holder, regardless of whether such distributions constitute a dividend or whether any tax was actually withheld. In addition, proceeds of the sale or other taxable disposition of such stock or debt securities (including a retirement or redemption of a debt security) 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 certification described above and does not have actual knowledge or reason to know that such holder is a United States person, or the holder otherwise establishes an exemption. Proceeds of a disposition of such stock or debt securities 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 a credit against a non-U.S. holder's U.S. federal income tax liability, provided the required information is timely furnished to the IRS.

### Medicare Contribution Tax on Unearned Income

Certain U.S. holders that are individuals, estates or trusts are required to pay an additional 3.8% tax on, among other things, dividends on stock, interest on debt obligations and capital gains from the sale or other disposition of stock or debt obligations, subject to certain limitations. 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 our operating partnership's debt securities.

### Additional Withholding Tax on Payments Made to 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 on our capital stock, interest on our operating partnership's debt securities or (subject to the proposed Treasury Regulations discussed below) gross proceeds from the sale or other disposition of our capital stock or our operating partnership's debt securities, in each case 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 U.S. 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.

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Under the applicable Treasury Regulations and administrative guidance, withholding under FATCA generally applies to payments of dividends on our capital stock or interest on our operating partnership's debt securities. While withholding under FATCA would have applied also to payments of gross proceeds from the sale or other disposition of stock or debt securities on or after January 1, 2019, proposed Treasury Regulations eliminate FATCA withholding on payments of gross proceeds entirely. Taxpayers generally may rely on these proposed Treasury Regulations until final Treasury Regulations are issued. Because we may not know the extent to which a distribution is a dividend for U.S. federal income tax purposes at the time it is made, for purposes of these withholding rules we may treat the entire distribution as a dividend.

Prospective investors should consult their tax advisors regarding the potential application of withholding under FATCA to their investment in our capital stock or our operating partnership's debt securities.

### Other Tax Consequences

State, local and non-U.S. income tax laws may differ substantially from the corresponding U.S. 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 U.S. federal tax other than income tax. You should consult your tax advisor regarding the effect of state, local and non-U.S. tax laws with respect to our tax treatment as a REIT and on an investment in our capital stock or our operating partnership's debt securities.

## GLOBAL SECURITIES

### Book-Entry, Delivery and Form

Unless we indicate differently in a prospectus supplement, the securities initially will be issued in book-entry form and represented by one or more global securities. The global securities will be deposited with, or on behalf of, The Depository Trust Company, New York, New York, as depository, or DTC, and registered in the name of Cede & Co., the nominee of DTC. Unless and until it is exchanged for individual certificates evidencing securities under the limited circumstances described below, a global security may not be transferred except as a whole by the depository to its nominee or by the nominee to the depository, or by the depository or its nominee to a successor depository or to a nominee of the successor depository.

DTC has advised us that it is:

- a limited-purpose trust company organized under the New York Banking Law;
- a “banking organization” within the meaning of the New York Banking Law;
- a member of the Federal Reserve System;
- a “clearing corporation” within the meaning of the New York Uniform Commercial Code; and
- a “clearing agency” registered pursuant to the provisions of Section 17A of the Exchange Act.

DTC holds securities that its participants deposit with DTC. DTC also facilitates the settlement among its participants of securities transactions, such as transfers and pledges, in deposited securities through electronic computerized book-entry changes in participants’ accounts, thereby eliminating the need for physical movement of securities certificates. “Direct participants” in DTC include securities brokers and dealers, including underwriters, banks, trust companies, clearing corporations and other organizations. DTC is a wholly-owned subsidiary of The Depository Trust & Clearing Corporation, or DTCC. DTCC is the holding company for DTC, National Securities Clearing Corporation and Fixed Income Clearing Corporation, all of which are registered clearing agencies. DTCC is owned by the users of its regulated subsidiaries. Access to the DTC system is also available to others, which we sometimes refer to as indirect participants, that clear through or maintain a custodial relationship with a direct participant, either directly or indirectly. The rules applicable to DTC and its participants are on file with the Securities and Exchange Commission.

Purchases of securities under the DTC system must be made by or through direct participants, which will receive a credit for the securities on DTC’s records. The ownership interest of the actual purchaser of a security, which we sometimes refer to as a beneficial owner, is in turn recorded on the direct and indirect participants’ records. Beneficial owners of securities will not receive written confirmation from DTC of their purchases. However, beneficial owners are expected to receive written confirmations providing details of their transactions, as well as periodic statements of their holdings, from the direct or indirect participants through which they purchased securities. Transfers of ownership interests in global securities are to be accomplished by entries made on the books of participants acting on behalf of beneficial owners. Beneficial owners will not receive certificates representing their ownership interests in the global securities, except under the limited circumstances described below.

To facilitate subsequent transfers, all global securities deposited by direct participants with DTC will be registered in the name of DTC’s partnership nominee, Cede & Co., or such other name as may be requested by an authorized representative of DTC. The deposit of securities with DTC and their registration in the name of Cede & Co. or such other nominee will not change the beneficial ownership of the securities. DTC has no knowledge of the actual beneficial owners of the securities. DTC’s records reflect only the identity of the direct participants to whose accounts the securities are credited, which may or may not be the beneficial owners. The participants are responsible for keeping account of their holdings on behalf of their customers.

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So long as the securities are in book-entry form, you will receive payments and may transfer securities only through the facilities of the depository and its direct and indirect participants. We will maintain an office or agency in the location specified in the prospectus supplement for the applicable securities, where notices and demands in respect of the securities may be delivered to us and where certificated securities may be surrendered for payment, registration of transfer or exchange.

Conveyance of notices and other communications by DTC to direct participants, by direct participants to indirect participants and by direct participants and indirect participants to beneficial owners will be governed by arrangements among them, subject to any legal requirements in effect from time to time.

Redemption notices will be sent to DTC. If less than all of the securities of a particular series are being redeemed, DTC's practice is to determine by lot the amount of the interest of each direct participant in the securities of such series to be redeemed.

Neither DTC nor Cede & Co. (or such other DTC nominee) will consent or vote with respect to the securities. Under its usual procedures, DTC will mail an omnibus proxy to us as soon as possible after the record date. The omnibus proxy assigns the consenting or voting rights of Cede & Co. to those direct participants to whose accounts the securities of such series are credited on the record date, identified in a listing attached to the omnibus proxy.

So long as securities are in book-entry form, we will make payments on those securities to the depository or its nominee, as the registered owner of such securities, by wire transfer of immediately available funds. If securities are issued in definitive certificated form under the limited circumstances described below, we will have the option of making payments by check mailed to the addresses of the persons entitled to payment or by wire transfer to bank accounts in the United States designated in writing to the applicable trustee or other designated party at least 15 days before the applicable payment date by the persons entitled to payment, unless a shorter period is satisfactory to the applicable trustee or other designated party.

Redemption proceeds, distributions and dividend payments on the securities will be made to Cede & Co., or such other nominee as may be requested by an authorized representative of DTC. DTC's practice is to credit direct participants' accounts upon DTC's receipt of funds and corresponding detail information from us on the payment date in accordance with their respective holdings shown on DTC records. Payments by participants to beneficial owners will be governed by standing instructions and customary practices, as is the case with securities held for the account of customers in bearer form or registered in "street name." Those payments will be the responsibility of participants and not of DTC or us, subject to any statutory or regulatory requirements in effect from time to time. Payment of redemption proceeds, distributions and dividend payments to Cede & Co., or such other nominee as may be requested by an authorized representative of DTC, is our responsibility, disbursement of payments to direct participants is the responsibility of DTC, and disbursement of payments to the beneficial owners is the responsibility of direct and indirect participants.

Except under the limited circumstances described below, purchasers of securities will not be entitled to have securities registered in their names and will not receive physical delivery of securities. Accordingly, each beneficial owner must rely on the procedures of DTC and its participants to exercise any rights under the securities.

The laws of some jurisdictions may require that some purchasers of securities take physical delivery of securities in definitive form. Those laws may impair the ability to transfer or pledge beneficial interests in securities.

DTC may discontinue providing its services as securities depository with respect to the securities at any time by giving reasonable notice to us. Under such circumstances, in the event that a successor depository is not obtained, securities certificates are required to be printed and delivered.

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As noted above, beneficial owners of a particular series of securities generally will not receive certificates representing their ownership interests in those securities. However, if:

- DTC notifies us that it is unwilling or unable to continue as a depository for the global security or securities representing such series of securities or if DTC ceases to be a clearing agency registered under the Exchange Act at a time when it is required to be registered and a successor depository is not appointed within 90 days of the notification to us or of our becoming aware of DTC's ceasing to be so registered, as the case may be;
- we determine, in our sole discretion, not to have such securities represented by one or more global securities; or
- an Event of Default has occurred and is continuing with respect to such series of securities.

we will prepare and deliver certificates for such securities in exchange for beneficial interests in the global securities. Any beneficial interest in a global security that is exchangeable under the circumstances described in the preceding sentence will be exchangeable for securities in definitive certificated form registered in the names that the depository directs. It is expected that these directions will be based upon directions received by the depository from its participants with respect to ownership of beneficial interests in the global securities.

We have obtained the information in this section and elsewhere in this prospectus concerning DTC and DTC's book-entry system from sources that are believed to be reliable, but we take no responsibility for the accuracy of this information.



SELLING SECURITYHOLDERS

Information about selling securityholders, where applicable, will be set forth in a prospectus supplement, in a post-effective amendment or in filings we make with the Securities and Exchange Commission under the Exchange Act that are incorporated herein by reference.

PLAN OF DISTRIBUTION

We or any of the selling securityholders may sell the offered securities from time to time:

- through underwriters or dealers;
- through agents;
- directly to one or more purchasers; or
- through a combination of any of these methods of sale.

We will identify the specific plan of distribution, including any underwriters, dealers, agents or direct purchasers and their compensation in the applicable prospectus supplement.

## 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, including the validity of the securities offered hereby. Additional legal matters may be passed upon for us, the selling securityholders or any underwriters, dealers or agents, by counsel that we will name in the applicable prospectus supplement.

## EXPERTS

The consolidated financial statements of American Assets Trust, Inc. and American Assets Trust, L.P. appearing in American Assets Trust, Inc.'s and American Assets Trust, L.P.'s Annual Report (Form 10-K) for the year ended December 31, 2022, including the schedule appearing therein, and the effectiveness of American Assets Trust, Inc.'s internal control over financial reporting as of December 31, 2022 have been audited by Ernst & Young LLP, independent registered public accounting firm, as set forth in their reports thereon, included therein, and incorporated herein by reference. Such consolidated financial statements are, and audited consolidated financial statements to be included in subsequently filed documents will be, incorporated herein in reliance upon the reports of Ernst & Young LLP pertaining to such consolidated financial statements and the effectiveness of our internal control over financial reporting as of the respective dates (to the extent covered by consents filed with the SEC) given on the authority of such firm as experts in accounting and auditing.



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**American Assets Trust, L.P.**

**% Senior Notes due 20**

*Guaranteed by*

**American Assets Trust, Inc.**

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**PROSPECTUS SUPPLEMENT**

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**Wells Fargo Securities  
Mizuho  
PNC Capital Markets LLC**

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September , 2024

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