

URSTADT BIDDLE PROPERTIES INC

Form S-3/A

October 03, 2008

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As filed with the Securities and Exchange Commission on October 3, 2008

Registration No. 333-142072

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

**Amendment No. 1
to
FORM S-3/A**

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

URSTADT BIDDLE PROPERTIES INC.
(Exact name of registrant as specified in its charter)

State of Maryland
(State or other jurisdiction of
incorporation or organization)

04-2458042
(I.R.S. Employer
Identification Number)

321 Railroad Avenue, Greenwich, CT
(Address of Principal Executive Offices)

06830
(Zip Code)

(203) 863-8200
(Registrant's telephone number, including area code)

Charles J. Urstadt
Chairman and Chief Executive Officer
Urstadt Biddle Properties Inc.
321 Railroad Avenue
Greenwich, Connecticut 06830
(203) 863-8200

Willing L. Biddle
President and Chief Operating Officer
Urstadt Biddle Properties Inc.
321 Railroad Avenue
Greenwich, Connecticut 06830
(203) 863-8200

(Name, address, including zip code, and telephone number, including area code, of agent for service)

Copy to:

Carol B. Stubblefield, Esq.
Baker & McKenzie LLP
1114 Avenue of the Americas
New York, NY 10036
(212) 626-4100

APPROXIMATE DATE OF COMMENCEMENT OF PROPOSED SALE TO THE PUBLIC: From time to time after this registration statement becomes effective.

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

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, as amended (the Securities Act), other than securities offered only in connection with dividend or interest reinvestment plans, check the following box. ☒ x

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. ☐ o

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. ☐ o

If this Form is a registration statement pursuant to General Instruction I.D. or a post-effective amendment thereto that shall become effective upon filing with the Commission pursuant to Rule 462(e) under the Securities Act, check the following box. ☐ o

If this Form is a post effective amendment to a registration statement filed pursuant to General Instruction I.D. filed to register additional securities or additional classes of securities pursuant to Rule 413(b) under the Securities Act, check the following box. ☐ o

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of large accelerated filer, accelerated filer and smaller reporting company in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer ☐ Accelerated filer ☐ Non-accelerated filer ☐ Smaller reporting company ☐
(Do not check if a smaller reporting company)

The registrant hereby amends this registration statement on such date or dates as may be necessary to delay its effective date until the registrant shall file a further amendment which specifically states that this registration statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933, or until the registration statement shall become effective on such date as the Commission, acting pursuant to said Section 8(a), may determine.

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The information in this prospectus is not complete and may be changed. We may not sell these securities until the registration statement filed with the Securities and Exchange Commission is effective. This prospectus is not an offer to sell these securities and it is not soliciting an offer to buy these securities in any state where the offer or sale is not permitted.

Subject to Completion, dated October 3, 2008

PROSPECTUS

\$300,000,000
Common Stock
Class A Common Stock
Preferred Stock
Depositary Shares
Debt Securities

We intend to issue from time to time common stock, Class A common stock, preferred stock, shares representing entitlement to all rights and preferences of a fraction of a share of preferred stock of a specified series and represented by depositary receipts and debt securities, having an aggregate public offering price of up to \$300,000,000.

Our common stock, Class A common stock, preferred stock, depositary shares and debt securities (collectively referred to as our securities) may be offered in separate series, in amounts, at prices and on terms that will be determined at the time of sale and set forth in one or more supplements to this prospectus.

Our common stock entitles the holder to one vote per share and our Class A common stock entitles the holder to 1/20th of one vote per share on all matters submitted to a vote of stockholders. Each share of our Class A common stock is also entitled to dividends in an amount equal to not less than 110% of the regular quarterly dividends paid on each share of our common stock.

The specific terms of the securities with respect to which this prospectus is being delivered will be set forth in the applicable prospectus supplement and will include, where applicable:

in the case of common stock and Class A common stock, the number of shares and initial offering price;

in the case of preferred stock, the series designation and number of shares, the dividend, liquidation, redemption, conversion, voting and other rights, the initial public offering price and whether interests in the preferred stock will be represented by depositary shares; and

in the case of debt securities, the specific designation, aggregate principal amount, currency, denominations, maturity, priority, interest rate, time of payment of interest, terms of redemption at our option or repayment at the option of the holder or for sinking fund payments, terms for conversion into or exchange for shares of our other securities, and the initial offering price.

In addition, the specific terms may include limitations on direct or beneficial ownership and restrictions on transfer of the securities, in each case as may be set forth in our charter and as appropriate to preserve our status as a real estate investment trust, or REIT, for federal income tax purposes, among other reasons.

The applicable prospectus supplement will also contain information, where applicable, about United States federal income tax considerations, and any exchange listing of the securities covered by the prospectus supplement.

Our securities may be offered directly, through agents designated from time to time by us, or to or through underwriters or dealers. If any agents or underwriters are involved in the sale of any of our securities, their names and any applicable purchase price, fee, commission or discount arrangement between or among them, will be set forth in the applicable prospectus supplement. None of our securities may be sold without delivery of the applicable prospectus supplement describing the method and terms of the offering of those securities.

Our common stock and our Class A common stock are listed on the New York Stock Exchange under the symbols UBP and UBA, respectively.

Investing in our securities involves risks. Before buying any securities, you should carefully read the discussion of risks beginning on page 9 of our Annual Report on Form 10-K for the fiscal year ended October 31, 2007 and any risk factors set forth in our other filings with the Securities and Exchange Commission (SEC) pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Securities Exchange Act of 1934, as amended (the Exchange Act) and any risk factors set forth in the prospectus supplement for a specific offering of securities.

NEITHER THE SEC NOR ANY STATE SECURITIES COMMISSION HAS APPROVED OR DISAPPROVED OF THESE SECURITIES OR DETERMINED IF THIS PROSPECTUS IS TRUTHFUL OR COMPLETE. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

The date of this prospectus is , 2008.

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SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS

This prospectus and any accompanying prospectus supplement may contain or incorporate by reference information that includes or is based upon forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended. We generally identify forward-looking statements by using such words as anticipate, believe, can, continue, could, estimate, expect, may, plan, potential, seek, should, will, or variations of such words or other similar expressions and the negative of such words.

All statements, other than statements of historical facts, included in this prospectus that address activities, events or developments that we expect, believe or anticipate will or may occur in the future, including such matters as future capital expenditures, dividends and acquisitions (including the amount and nature thereof), expansion and other development trends of the real estate industry, business strategies, expansion and growth of our operations and other such matters are forward-looking statements. These statements are based on certain assumptions and analyses made by us in light of our experience and our perception of historical trends, current conditions, expected future developments and other factors we believe are appropriate. Although we believe that the expectations reflected in the forward-looking statements are reasonable, we cannot guarantee our future results, levels of activity or performance. Any or all of our forward-looking statements in this prospectus may turn out to be inaccurate. Such statements are inherently subject to risks, uncertainties and other factors, many of which cannot be predicted with accuracy and some of which might not even be anticipated. Future events and actual results, performance or achievements, financial and otherwise, may differ materially from the results, performance or achievements expressed or implied by the forward-looking statements. Risks, uncertainties and other factors that might cause such differences, some of which could be material, include, but are not limited to:

economic and other market conditions;

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

the level and volatility of interest rates;

financial stability of tenants;

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

governmental approvals, actions and initiatives;

environmental/safety requirements;

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

risks of disposition strategies;

as well as other risks and uncertainties described in our Annual Report on Form 10-K for the fiscal year ended October 31, 2007 and any risk factors set forth in our other filings with the SEC pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act

Forward-looking statements contained herein speak only as of the date of this prospectus. Unless required by law, we undertake no obligation to update publicly or revise any forward-looking statements to reflect new information or future events or otherwise. You should, however, review the factors and risks described in our Annual Report on Form 10-K for the fiscal year ended October 31, 2007 and any risk factors set forth in our other filings with the SEC pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act. See [Where You Can Find More Information](#) and [Incorporation by Reference](#) elsewhere in this prospectus.

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ABOUT THIS PROSPECTUS

This prospectus is part of a registration statement that we filed with the SEC using a shelf registration process. Under this shelf process, we may, from time to time, sell any combination of the securities described in this prospectus in one or more offerings. This prospectus only provides you with a general description of the securities we may offer. Each time we sell securities under this prospectus, we will provide a prospectus supplement that contains specific information about the terms of the securities. The prospectus supplement may also add, update or change information contained in this prospectus. You should both read this prospectus and any prospectus supplement together with additional information described in *Where You Can Find More Information* and *Incorporation by Reference* elsewhere in this prospectus.

The total dollar amount of the securities sold under this prospectus will not exceed \$300,000,000.

You should rely only on the information contained or incorporated by reference in this prospectus and the prospectus supplement. We have not authorized anyone to provide you with different information. If anyone provides you with different or inconsistent information, you should not rely on it.

You should not assume that the information in this prospectus is accurate after the date of this prospectus. Our business, financial condition and results of operations and prospects may have changed since that date.

OUR COMPANY

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

We intend to continue to invest substantially all of our assets in income-producing real estate, with an emphasis on neighborhood and community shopping centers, although we will retain the flexibility to invest in other types of real property. While we are not limited to any geographic location, our current strategy is to invest primarily in properties located in the northeastern region of the United States with a concentration in Fairfield County, Connecticut, Westchester and Putnam Counties, New York and Bergen County, New Jersey.

At July 31, 2008, we owned or had an equity interest in forty-three properties comprised of neighborhood and community shopping centers, office buildings and industrial facilities located in seven states throughout the United States, containing a total of 3.8 million square feet of gross leasable area.

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

RISK FACTORS

You should carefully consider the specific risks described in our Annual Report on Form 10-K for the fiscal year ended October 31, 2007 and any risk factors set forth in our other filings with the Commission pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act before making an investment decision. See [Where You Can Find More Information](#) and [Incorporation by Reference](#) elsewhere in this prospectus.

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The following table sets forth our ratios of earnings to fixed charges and earnings to combined fixed charges and preferred stock dividends for the periods shown.

			Year ended			Nine months ended July 31,	
	2007	2006	2005	2004	2003	2008	2007
Ratio of earnings to fixed charges	5.21	3.96	3.70	3.64	3.25	5.14	5.43
Ratio of earnings to combined fixed charges and preferred stock dividends	2.37	1.86	2.03	2.30	2.42	1.95	2.48

The ratio of earnings to fixed charges was computed by dividing earnings by fixed charges. The ratio of earnings to combined fixed charges and preferred stock dividends was computed by dividing earnings by the total of fixed charges and preferred stock dividends. For purposes of computing these ratios, earnings consist of net income reduced by the equity in earnings of unconsolidated joint ventures, plus fixed charges. Fixed charges consists of interest expense.

USE OF PROCEEDS

Unless otherwise set forth in the applicable prospectus supplement, we intend to use the net proceeds from any sale of securities offering by this prospectus to acquire income producing properties consistent with our current business strategy and to fund renovations on, or capital improvements to, our existing properties, including tenant improvements. We intend to focus our acquisition activities on neighborhood and community shopping centers primarily located in the northeastern United States, with a concentration on Fairfield County, Connecticut, Westchester and Putnam Counties, New York and Bergen County, New Jersey.

Pending the use of the net proceeds for acquisitions of properties, we may use the net proceeds to reduce amounts outstanding, if any, under our revolving credit facility and make investments in short-term income producing securities.

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DESCRIPTION OF CAPITAL STOCK

General

Under our Charter we may issue up to 30,000,000 shares of common stock, 40,000,000 shares of Class A common stock, 20,000,000 shares of preferred stock and 10,000,000 shares of Excess Stock. At August 31, 2008, we had outstanding 7,979,610 shares of common stock, 18,328,711 shares of Class A common stock, 400,000 shares of Series C Senior Cumulative preferred stock; 2,450,000 shares of Series D Senior Cumulative preferred stock; 2,400,000 shares of Series E Senior Cumulative preferred stock and no shares of Excess Stock. We have reserved 2,000 shares of common stock and 2,000 shares of Class A common stock for outstanding grants under our employee stock option plan which was terminated on December 13, 2006 but under which the above grants remain outstanding, 144,204 shares of common stock and 470,406 shares of Class A common stock for issuance under our dividend reinvestment and share purchase plan, 574,150 shares which, at our Compensation Committee's discretion, may be awarded in any combination of shares of common stock or Class A common stock for issuance under our restricted stock plan.

Description of Common Stock and Class A Common Stock

Voting

Under our Charter, holders of our common stock are entitled to one vote per share on all matters submitted to the common stockholders for vote at all meetings of stockholders. Holders of our Class A common stock are entitled to 1/20th of one vote per share on all matters submitted to the common stockholders for vote at all meetings of stockholders. Except as otherwise required by law or as to certain matters as to which separate class voting rights may be granted in the future to holders of one or more other classes or series of our capital stock, holders of common stock and Class A common stock vote together as a single class, and not as separate classes, on all matters voted upon by our stockholders. The holders of our outstanding Class A common stock, as a group, control 10.3% of the voting power of our outstanding common equity securities and the holders of our outstanding common stock, as a group, control 89.7% of the voting power of our outstanding common equity securities. Therefore, holders of our common stock have sufficient voting power to approve or disapprove all matters voted upon by our common stockholders, including any proposal that could affect the relative dividend or other rights of our common stock and Class A common stock.

Dividends and Distributions

Subject to the requirements with respect to preferential dividends on any of our preferred stock, dividends and distributions are declared and paid to the holders of common stock and Class A common stock in cash, property or our other securities (including shares of any class or series whether or not shares of such class or series are already outstanding) out of funds legally available therefor. Each share of common stock and each share of Class A common stock has identical rights with respect to dividends and distributions, subject to the following:

with respect to regular quarterly dividends, each share of Class A common stock entitles the holder thereof to receive not less than 110% of amounts paid on each share of common stock, the precise amount of such dividends on the Class A common stock being subject to the discretion of our Board of Directors;

a stock dividend on the common stock may be paid in shares of common stock or shares of Class A common stock; and

a stock dividend on shares of Class A common stock may be paid only in shares of Class A common stock.

If a stock dividend on the common stock is paid in shares of common stock, we are required to pay a stock dividend on the Class A common stock in a proportionate number of shares of Class A

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common stock. The dividend provisions of the common stock and Class A common stock provide our Board of Directors with the flexibility to determine appropriate dividend levels, if any, under the circumstances from time to time.

Mergers and Consolidations

In the event we merge, consolidate or combine with another entity (whether or not we are the surviving entity), holders of shares of Class A common stock will be entitled to receive the same per share consideration as the per share consideration, if any, received by holders of common stock in that transaction.

Liquidation Rights

Holders of common stock and Class A common stock have the same rights with respect to distributions in connection with a partial or complete liquidation of our Company.

Restrictions on Ownership and Transfer

We have the right to refuse transfers of stock that could jeopardize our status as a REIT and to redeem any shares of stock in excess of 7.5% of the value of our outstanding stock beneficially owned by any person (other than an exempted person).

Transferability

The common stock and Class A common stock are freely transferable, and except for the ownership limit and federal and state securities laws restrictions on our directors, officers and other affiliates and on persons holding restricted stock, our stockholders are not restricted in their ability to sell or transfer shares of the common stock or Class A common stock.

Sinking Fund, Preemptive, Subscription and Redemption Rights

Neither the common stock nor the Class A common stock carries any sinking fund, preemptive, subscription or redemption rights enabling a holder to subscribe for or receive shares of any class of our stock or any other securities convertible into shares of any class of our stock.

Transfer Agent and Registrar

The transfer agent and registrar for the common stock and Class A common stock is The Bank of New York Mellon, formerly The Bank of New York.

Description of Preferred Stock

The following description of the terms of the preferred stock sets forth certain general terms and provisions of the preferred stock to which a prospectus supplement may relate. Specific terms of any series of preferred stock offered by a prospectus supplement will be described in that prospectus supplement. The description set forth below is subject to and qualified in its entirety by reference to our Charter fixing the preferences, limitations and relative rights of a particular series of preferred stock.

General

Under our Charter, our Board of Directors is authorized, without further stockholder action, to provide for the issuance of up to 20,000,000 shares of preferred stock, in such class or series, with such preferences, conversion or other rights, voting powers, restrictions and limitations as to dividends, qualifications and terms and conditions of redemption, as may be fixed by our Board of Directors. As a result, our Board of Directors may afford the holders of any series or class of preferred stock preferences, powers, and rights, voting or otherwise, senior to the rights of holders of our common stock and our Class A common stock.

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The preferred stock will have the dividend, liquidation, redemption, conversion and voting rights set forth below unless otherwise provided in the applicable prospectus supplement. You should refer to the prospectus supplement relating to the particular class or series of preferred stock offered thereby for specific terms, including:

the title and liquidation preference per share of the preferred stock and the number of shares offered;

the price at which the class or series will be issued;

the dividend rate (or method of calculation), the dates on which dividends shall be payable and the dates from which dividends shall commence to accumulate;

any redemption or sinking fund provisions of the class or series;

any conversion provisions of the class or series; and

any additional dividend, liquidation, redemption, sinking fund and other rights, preferences, privileges, limitations and restrictions of the class or series.

The preferred stock will, when issued, be fully paid and nonassessable. Unless otherwise specified in the applicable prospectus supplement and subject to the rights of the holders of our existing preferred stock, each class or series will rank on a parity as to dividends and distributions in the event of a liquidation with each other class or series of preferred stock and, in all cases, will be senior to our common stock and our Class A common stock.

We currently have reserved 150,000 shares of Series A participating preferred stock, \$0.01 par value (the "Series A preferred stock"), for issuance pursuant to a rights agreement, dated March 12, 1997, as amended, between our company and The Bank of New York Mellon, formerly The Bank of New York, as rights agent. The rights granted under this rights agreement will expire on November 12, 2008. The Company has adopted a new rights agreement to be effective at the close of business on November 12, 2008. Under the rights agreement, one right to purchase 1/100th of a share of Series A preferred stock (structured so as to be substantially the equivalent of one share of our common stock or our Class A common stock, as applicable) is attached to each issued and outstanding share of our common stock and to each issued and outstanding share of our Class A common stock. The rights are not exercisable and are attached to, and may not trade separately from, our common stock or Class A common stock, as applicable, and the Series A preferred stock will not be issued, unless certain change of control events occur. In the event that the rights become exercisable, the Series A preferred stock will rank junior to our Series C, D and E preferred stock as to dividends and amounts distributed upon liquidation. See "Rank" and "Certain Provisions of Our Charter and Bylaws, Maryland Law, Our Stockholder Rights Plan, Change of Control Agreements" below.

Dividend Rights

Holders of preferred stock of each class or series offered and sold under this registration statement will be entitled to receive, when, as and if declared by our Board of Directors, out of our assets legally available therefor, cash dividends at such rates and on such dates as are set forth in the applicable prospectus supplement. The rate may be fixed or variable or both and may be cumulative, noncumulative or partially cumulative.

The applicable prospectus supplement may provide that, as long as any shares of preferred stock are outstanding, no dividends will be declared or paid or any distributions be made on our common stock or our Class A common stock, other than a dividend payable in common stock or Class A common stock, unless the accrued dividends on each class or series of preferred stock have been fully paid or declared and set apart for payment and we shall have set apart all amounts, if any, required to be set apart for all sinking funds, if any, for each class or series of preferred stock.

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The applicable prospectus supplement may provide that, when dividends are not paid in full upon a class or series of preferred stock and any other class or series of preferred stock ranking on a parity as to dividends with that class or series of preferred stock, all dividends declared upon the class or series of preferred stock and any other series of preferred stock ranking on a parity as to dividends will be declared pro rata so that the amount of dividends declared per share on the class or series of preferred stock and the other class or series will in all cases bear to each other the same ratio that accrued dividends per share on the class or series of preferred stock and the other class or series bear to each other.

Each class or series of preferred stock will be entitled to dividends as described in the applicable prospectus supplement, which may be based upon one or more methods of determination. Different classes or series of preferred stock may be entitled to dividends at different dividend rates or based upon different methods of determination. Except as provided in the applicable prospectus supplement, no class or series of preferred stock will be entitled to participate in our earnings or assets in excess of the specified dividend and liquidation rights.

Rights Upon Liquidation

In the event of any voluntary or involuntary liquidation, dissolution or winding up of our affairs, the holders of each series of preferred stock will be entitled to receive out of our assets available for distribution to stockholders the amount stated or determined on the basis set forth in the applicable prospectus supplement. These amounts may include accrued dividends or may equal the current redemption price per share for the series (otherwise than for the sinking fund, if any, provided for such series). These amounts will be paid to the holders of preferred stock on the preferential basis set forth in the applicable prospectus supplement. If, upon any voluntary or involuntary liquidation, dissolution or winding up of our affairs, the amounts payable with respect to preferred stock of any series and any other shares of our stock ranking as to any such distribution on a parity with the series of preferred stock are not paid in full, the holders of preferred stock of the series and of such other shares will share ratably in any such distribution of our assets in proportion to the full respective preferential amounts to which they are entitled or on such other basis as is set forth in the applicable prospectus supplement. The rights, if any, of the holders of any series of preferred stock to participate in our assets remaining after the holders of other series of preferred stock have been paid their respective specified liquidation preferences upon any liquidation, dissolution or winding up of our affairs will be described in the applicable prospectus supplement.

Redemption

A series of preferred stock may be redeemable, in whole or in part, at our option, and may be subject to mandatory redemption pursuant to a sinking fund, in each case upon terms, at the times, at the redemption prices and for the types of consideration set forth in the applicable prospectus supplement. The prospectus supplement for a series of preferred stock which is subject to mandatory redemption will specify the number of shares of the series that will be redeemed by us in each year commencing after a date to be specified, at a redemption price per share to be specified, together with an amount equal to any accrued and unpaid dividends thereon to the date of redemption.

If, after giving notice of redemption to the holders of a series of preferred stock, we deposit with a designated bank funds sufficient to redeem the preferred stock, then from and after the deposit, all shares called for redemption will no longer be outstanding for any purpose, other than the right to receive the redemption price and the rights, if any, to convert the shares into other classes of our stock. The redemption price will be stated in the applicable prospectus supplement. Except as indicated in the applicable prospectus supplement, the preferred stock will not be subject to any mandatory redemption at the option of the holder.

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Sinking Fund

The prospectus supplement for any series of preferred stock will state the terms, if any, of a sinking fund for the purchase or redemption of that series.

Conversion and Preemptive Rights

The prospectus supplement for any series of preferred stock will state the terms, if any, on which shares of that series are convertible into or redeemable for shares of common stock, Class A common stock or another series of preferred stock. Except as indicated in the applicable prospectus supplement, the preferred stock will have no preemptive rights.

Voting Rights

Except as indicated in the applicable prospectus supplement relating to a particular series of preferred stock, a holder of preferred stock will not be entitled to vote. Except as indicated in the applicable prospectus supplement, in the event we issue full shares of any series of preferred stock, each share will be entitled to one vote on matters on which holders of the series of preferred stock are entitled to vote.

Transfer Agent and Registrar

The transfer agent, registrar and dividend disbursement agent for a series of preferred stock will be selected by us and be described in the applicable prospectus supplement. The registrar for shares of preferred stock will send notices to stockholders of any meetings at which holders of preferred stock have the right to vote on any matter.

Other

Our issuance of preferred stock may have the effect of delaying or preventing a change in control. Our issuance of preferred stock could decrease the amount of earnings and assets available for distribution to the holders of our common stock or our Class A common stock or could adversely affect the rights and powers, including voting rights, of the holders of our common stock or our Class A common stock. The issuance of preferred stock could have the effect of decreasing the market price of our common stock or our Class A common stock.

Description of Outstanding Series of Senior Cumulative Preferred Stock

General

In January 1998, we issued 350,000 shares of our Series B preferred stock to three investors in a private placement for aggregate proceeds of \$35,000,000. On November 30, 2001, we repurchased 200,000 of these shares for \$16,050,000. On March 13, 2008 we repurchased the remaining 150,000 outstanding shares of our Series B preferred stock. As of the date of this prospectus, there are no outstanding shares of our Series B preferred stock.

In May 2003, we issued 400,000 shares of our Series C preferred stock in a Rule 144A offering. As of the date of this prospectus, all 400,000 shares of our Series C preferred stock remain outstanding.

In April through June 2005, we issued 2,450,000 shares of our Series D preferred stock in registered public offerings. As of the date of this prospectus, all 2,450,000 shares of our Series D preferred stock remain outstanding.

In March 2008, we issued and sold 2,400,000 shares of our Series E preferred stock to WFC Holdings Corporation (WFC Holdings), a holding company for Wells Fargo Bank N.A., in a private placement for aggregate proceeds of

\$60,000,000. As of the date of this prospectus, all 2,400,000 shares of our Series E preferred stock remain outstanding.

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Maturity

Each of the Series C, D and E preferred stock has no stated maturity and is not subject to any sinking fund or mandatory redemption.

Rank

Our Series C, D and E preferred stock ranks, with respect to dividend rights and rights upon our liquidation, dissolution or winding up:

senior to our common stock and Class A common stock and to all other equity securities we issue ranking junior to our Series C, D and E preferred stock, as applicable, with respect to dividend rights or rights upon our liquidation, dissolution or winding up;

on a parity with the Series C, D and E preferred stock, as applicable, and with all other equity securities we issue the terms of which specifically provide that such equity securities rank on a parity with that series of preferred stock with respect to dividend rights or rights upon our liquidation, dissolution or winding up; and

junior to all our existing and future indebtedness.

Without the affirmative vote or consent of at least two-thirds of the outstanding Series C preferred stock, we may not issue (or authorize to issue, in the case of Series E) any equity securities which rank senior to our Series C preferred stock with respect to dividend rights or rights upon our liquidation, dissolution, or winding up. The term *equity securities* does not include convertible debt securities, which rank senior to our Series C preferred stock prior to conversion.

Without the affirmative vote or consent of at least two-thirds of the outstanding Series D preferred stock, we may not issue any equity securities which rank senior to our Series D preferred stock with respect to dividend rights or rights upon our liquidation, dissolution, or winding up. The term *equity securities* does not include convertible debt securities which rank senior to our Series D preferred stock prior to conversion.

Without the affirmative vote or consent of 100% of our outstanding common stock and Class A common stock, we may not issue any additional shares of Series E preferred stock and without the affirmative vote or consent of the holders of at least two-thirds of the outstanding Series E preferred stock, we may not issue any equity securities which rank senior to our Series E preferred stock with respect to dividend rights or rights upon our liquidation, dissolution or winding up. The term *equity securities* does not include convertible debt securities, which rank senior to our Series E preferred stock prior to conversion.

Dividends

Holders of shares of our Series C preferred stock are entitled to receive, when and as declared by our Board of Directors, out of our funds legally available for the payment of dividends, preferential cumulative cash dividends at the rate of 8.5% per annum of the Series C liquidation preference (as defined below) (the *Series C initial dividend yield*). Dividends on the Series C preferred stock are cumulative from May 29, 2003, the date of original issue, and are payable quarterly in arrears on January 31, April 30, July 31 and October 31 of each year, or, if not a business day, the next succeeding business day, for the quarterly periods ended January 31, April 30, July 31 and October 31, as applicable. A dividend payable on our Series C preferred stock for any partial dividend period is computed on the basis of a 360-day year consisting of twelve 30-day months. Dividends are payable to holders of record as they appear in our stockholder records at the close of business on the applicable record date determined each quarter by our Board

of Directors, subject to the Maryland General Corporation Law.

If we violate the fixed charge coverage ratio covenant or the capitalization ratio covenant (as such terms are defined below), and fail to cure the violation on or before the second succeeding dividend

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payment date, the Series C initial dividend yield will be increased to 2.0% over the Series C initial dividend yield (the Series C first default dividend yield) as of that second succeeding dividend payment date. If we remain in violation of either the fixed charge ratio covenant or the capitalization ratio covenant on four consecutive dividend payment dates subsequent to the initial violation of either covenant, the Series C initial dividend yield will increase to the greater of (a) the discount rate (as defined below) plus 7.0% or (b) 15% (the Series C second default dividend yield) as of that fourth consecutive dividend payment date. See Certain Covenants. The Series C first default dividend yield and the Series C second default dividend yield will revert back to the Series C initial dividend yield if we remain in compliance with the fixed charge coverage ratio covenant and the capitalization ratio covenant on two consecutive dividend payment dates after the Series C first default dividend yield or Series C second default dividend yield takes effect.

Holders of shares of our Series D preferred stock are entitled to receive, when and as declared by our Board of Directors, out of our funds legally available for the payment of dividends, preferential cumulative cash dividends at the rate of 7.5% per annum of the \$25 per share liquidation preference. Dividends on shares of our Series D preferred stock are cumulative from the date such shares were originally issued, and are payable quarterly in arrears on January 31, April 30, July 31 and October 31 of each year, or, if not a business day, the next succeeding business day, for the quarterly periods ended January 31, April 30, July 31 and October 31, as applicable. A dividend payable on our Series D preferred stock for any partial dividend period is computed on the basis of a 360-day year consisting of twelve 30-day months. Dividends are payable to holders of record as they appear in our stockholder records at the close of business on the applicable record date determined each quarter by our Board of Directors, subject to the Maryland General Corporation Law.

Holders of shares of our Series E preferred stock are entitled to receive, when and as authorized by our Board of Directors and declared by us, out of our funds legally available for the payment of dividends, preferential cumulative cash dividends at the rate of 8.50% per annum of the Series E liquidation preference (as defined below) (the Series E initial dividend yield). Dividends on the Series E preferred stock are cumulative from March 13, 2008, the date of original issue, and are payable quarterly in arrears on January 31, April 30, July 31 and October 31, or, if not a business day, the next succeeding business day, for the quarterly periods ended January 31, April 30, July 31 and October 31, as applicable. A dividend payable on our Series E preferred stock for any partial dividend period is computed on the basis of a 360-day year consisting of twelve 30-day months. Dividends are payable to holders of record as they appear in our stockholder records at the close of business on the applicable record date determined each quarter by our Board of Directors, as provided by the Maryland General Corporation Law.

If we violate the fixed charge coverage ratio covenant, the capitalization ratio covenant or the unencumbered asset test (as such terms are defined below), and fail to cure the violation on or before the second succeeding dividend payment date, or if we fail to have declared effective and to maintain the effectiveness of a registration statement required under our registration rights agreement with WFC Holdings within the time periods required under that agreement, the Series E dividend yield will be increased to 2.0% over the Series E initial dividend yield (the Series E first default dividend yield) as of that second succeeding dividend payment date after the date of such violation or failure. If we remain in violation of the fixed charge ratio covenant, the capitalization ratio covenant or the unencumbered asset test on four consecutive dividend payment dates subsequent to the initial violation of the covenant, the Series E dividend yield will increase to the greater of (a) the discount rate (as defined below) plus 7.0% or (b) 15% (the Series E second default dividend yield) as of that fourth consecutive dividend payment date. See Certain Covenants. The Series E first default dividend yield and the Series E second default dividend yield will revert back to the Series E initial dividend yield if we remain in compliance with the fixed charge coverage ratio covenant, the capitalization ratio covenant, and the unencumbered asset test on two consecutive dividend payment dates after the Series E first default dividend yield or Series E second default dividend yield takes effect. The dividend yield will also revert back to the Series E initial dividend yield if the reason for the Series E first

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default dividend yield was our failure to have declared effective or maintain the effectiveness of the registration statement and we remedy such failure.

Our Board of Directors will not declare (or authorize, in the case of Series E) dividends on our Series C, D or E preferred stock or pay or set aside for payment dividends on our Series C, D or E preferred stock at such time if the terms and provisions of any agreement of our company, including any agreement relating to our indebtedness, prohibits the declaration, payment or setting aside for payment or provides that the declaration, payment or setting apart for payment would constitute a breach or a default under the agreement, or if the declaration (authorization, in the case of Series E) or payment is restricted or prohibited by law.

Notwithstanding the foregoing, dividends on our outstanding Series C, D or E preferred stock accrue whether or not we have earnings, whether or not there are funds legally available for the payment of those dividends and whether or not those dividends are declared (or authorized, in the case of Series E). Accrued but unpaid dividends on our Series C, D or E preferred stock do not bear interest and holders of our Series C, D or E preferred stock are not entitled to any distributions in excess of full cumulative distributions described above.

Except as described in the next sentence, we will not declare or pay or set apart for payment dividends on any of our stock ranking, as to dividends, on a parity with or junior to our Series C, D or E preferred stock, as applicable (other than a dividend in shares of our common stock or Class A common stock or in shares of any other class of stock ranking junior to our Series C, D or E preferred stock, as applicable, as to dividends and upon liquidation) for any period unless full cumulative dividends on our Series C, D or E preferred stock, as applicable, for all past dividend periods and the then current dividend period have been or contemporaneously are (in the case of Series E, authorized) declared and paid or declared and a sum sufficient for the payment thereof is set apart for such payment. When we do not pay dividends in full (or we do not set apart a sum sufficient to pay them in full) upon our Series C, D or E preferred stock and the shares of any other series of preferred stock ranking on a parity as to dividends with our Series C, D or E preferred stock, we will declare all dividends upon our Series C, D or E preferred stock and any other series of preferred stock ranking on a parity as to dividends with our Series C, D or E preferred stock proportionately so that the amount of dividends declared per share of Series C, D or E preferred stock and such other series of preferred stock will in all cases bear to each other the same ratio that accrued dividends per share on our Series C, D or E preferred stock and such other series of preferred stock (which will not include any accrual in respect of unpaid dividends for prior dividend periods if such preferred stock does not have a cumulative dividend) bear to each other.

Except as described in the immediately preceding paragraph, unless full cumulative dividends on our Series C, D or E preferred stock, as applicable, have been or contemporaneously are (in the case of Series E, authorized) declared and paid or declared and a sum sufficient for the payment thereof is set apart for payment for all past dividend periods and the then current dividend period, we will not declare or pay or set aside for payment dividends (other than in shares of our common stock or Class A common stock or other shares of capital stock ranking junior to our Series C, D or E preferred stock as to dividends and upon liquidation) or declare or make any other distribution on our common stock or Class A common stock, or any other stock ranking junior to or on a parity with our Series C, D or E preferred stock as to dividends or upon liquidation, nor will we redeem, purchase or otherwise acquire for any consideration, or pay or make available any monies for a sinking fund for the redemption of, any of our shares of common stock or Class A common stock or any other shares of our stock ranking junior to or on a parity with our Series C, D or E preferred stock as to dividends or upon liquidation (except (i) by conversion into or exchange for our other capital stock ranking junior to our Series C, D or E preferred stock, as applicable, as to dividends and upon liquidation or (ii) redemption for the purpose of preserving our status as a REIT).

Holders of shares of our Series C, D or E preferred stock are not entitled to any dividend, whether payable in cash, property or stock, in excess of full cumulative dividends on our Series C, D or

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E preferred stock as described above. Any dividend payment made on shares of our Series C, D or E preferred stock is first credited against the earliest accrued but unpaid dividend due with respect to those shares which remains payable. In the case of our Series C and D preferred stock, so long as no dividends are in arrears, we are entitled at any time and from time to time to repurchase shares of our Series C or D preferred stock, as applicable, in open-market transactions duly authorized by our Board of Directors and effected in compliance with applicable laws.

Liquidation Preference

Upon any voluntary or involuntary liquidation, dissolution or winding up of our affairs, the holders of shares of Series C preferred stock are entitled to be paid out of our assets legally available for distribution to our stockholders a liquidation preference of \$100 per share (the Series C liquidation preference), plus an amount equal to any accrued and unpaid dividends to the date of payment, but without interest, before any distribution of assets may be made to holders of our common stock or Class A common stock or any other class or series of our stock ranking junior to our Series C preferred stock as to liquidation rights.

Upon any voluntary or involuntary liquidation, dissolution or winding up of our affairs, the holders of shares of Series D preferred stock are entitled to be paid out of our assets legally available for distribution to our stockholders a liquidation preference of \$25 per share (the Series D liquidation preference), plus an amount equal to any accrued and unpaid dividends to the date of payment, but without interest, before any distribution of assets may be made to holders of our common stock or Class A common stock or any other class or series of our capital stock ranking junior to our Series D preferred stock as to liquidation rights.

Upon any voluntary or involuntary liquidation, dissolution or winding up of our affairs, the holders of shares of Series E preferred stock are entitled to be paid out of our assets legally available for distribution to our stockholders a liquidation preference of \$25 per share (the Series E liquidation preference), plus an amount equal to any accrued and unpaid dividends to the date of payment (whether or not declared), but without interest, before any distribution of assets may be made to holders of our common stock or Class A common stock or any other class or series of our stock ranking junior to our Series E preferred stock as to liquidation rights.

However, the holders of the shares of Series C, D or E preferred stock are not entitled to receive the liquidating distribution described above until the liquidation preference of any other series or class of our capital stock hereafter issued ranking senior as to liquidation rights to our Series C, D or E preferred stock, as applicable, has been paid in full. The holders of Series C, D or E preferred stock and all series or classes of our stock ranking on a parity as to liquidation rights with our Series C, D or E preferred stock are entitled to share proportionately, in accordance with the respective preferential amounts payable on such capital stock, in any distribution (after payment of the liquidation preference of any of our stock ranking senior to our Series C, D or E preferred stock as to liquidation rights) which is not sufficient to pay in full the aggregate of the amounts of the liquidating distributions to which they would otherwise be respectively entitled. After payment of the full amount of the liquidating distributions to which they are entitled, the holders of Series C, D or E preferred stock have no right or claim to any of our remaining assets. Our consolidation or merger with or into any other corporation, trust or entity or of any other corporation with or into our company, or the sale, lease or conveyance of all or substantially all of our property or business, is not deemed to constitute our liquidation, dissolution or winding up.

Our Charter provides that, in determining whether a distribution to holders of Series C, D or E preferred stock (other than upon voluntary or involuntary liquidation) by dividend, redemption or other acquisition of shares of our stock or otherwise is permitted under the Maryland General Corporation Law, no effect will be given to amounts that would be needed, if we were to be dissolved at the time of the distribution, to satisfy the preferential rights upon distribution of holders of shares of our stock whose preferential rights upon dissolution are superior to those receiving the distribution.

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Redemption

Except in certain circumstances relating to the preservation of our status as a REIT under the Internal Revenue Code, and to a change in control, our Series C preferred stock is not redeemable before May 29, 2013 (the Series C tenth anniversary date). On and after May 29, 2013, we may, at our option, upon not less than 30 nor more than 60 days written notice, redeem shares of our Series C preferred stock, in whole or in part, at any time or from time to time, for cash at a redemption price of \$100 per share, plus all accrued and unpaid dividends to the date fixed for redemption (except with respect to shares of Series C preferred stock which have been converted into shares of excess stock pursuant to our Charter), without interest.

Except in certain circumstances relating to the preservation of our status as a REIT under the Internal Revenue Code or a change in control of our company, our Series D preferred stock is not redeemable in whole or in part before April 12, 2010 (the Series D fifth anniversary date). On and after April 12, 2010, we may, at our option, upon not less than 30 nor more than 60 days written notice, redeem shares of our Series D preferred stock, in whole or in part, at any time or from time to time, for cash at a redemption price of \$25 per share, plus all accrued and unpaid dividends to the date fixed for redemption (except with respect to shares of Series D preferred stock which have been converted into shares of excess stock pursuant to our Charter), without interest.

Prior to March 13, 2013 (the Series E fifth anniversary date), we may at our option, upon not less than 30 nor more than 60 days written notice, redeem shares of our Series E preferred stock, in whole or in part, at the Series E preferred stock make-whole price (as defined below). On and after March 13, 2013, we may, at our option, upon not less than 30 nor more than 60 days written notice, redeem shares of our Series E preferred stock, in whole or in part, for cash at a redemption price of \$25 per share, plus all accrued and unpaid dividends thereon up to the date fixed for redemption, without interest.

Holders of Series C, D or E preferred stock to be redeemed will be required to surrender our preferred stock at the place designated in such notice and will be entitled to the redemption price and any accrued and unpaid dividends payable upon the redemption or the make-whole price, as applicable, following surrender of the preferred stock. If we have given notice of redemption of any shares of Series C, D or E preferred stock and if we have set aside the funds necessary for the redemption in trust for the benefit of the holders of any shares of the series so called for redemption, then from and after the redemption date dividends will cease to accrue on such shares of the series, the shares will no longer be deemed outstanding and all rights of the holders of the shares will terminate, except the right to receive the redemption price or the make-whole price, as applicable. If less than all of the outstanding shares of Series C, D or E preferred stock is to be redeemed, the stock to be redeemed will be selected proportionately (as nearly as may be practicable without creating fractional shares) or by any other equitable method we determine.

Unless we have declared and paid, we are contemporaneously declaring and paying, or we have declared and set aside a sum sufficient for the payment of the full cumulative dividends on all shares of Series C, D or E preferred stock, as applicable, for all past dividend periods and the then current dividend period, we may not redeem any shares of that series unless we simultaneously redeem all outstanding shares of that series and we will not purchase or otherwise acquire directly or indirectly any shares of that series (except by exchange for shares of our stock ranking junior to that series of preferred stock as to dividends and upon liquidation). Notwithstanding the foregoing, we may make any purchase or exchange offer made on the same terms to holders of all outstanding shares of our Series C, D or E preferred stock, as applicable and, we may in the case of our Series C and D preferred stock, redeem stock in order to ensure that we continue to meet the requirements for status as a REIT. So long as no dividends on the series are in arrears, we are entitled at any time and from time to time to repurchase shares of Series C, D or E preferred stock in open-market transactions duly authorized by our Board of Directors and effected in compliance with applicable laws.

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We will give holders of Series C and D notice of redemption by publication in a newspaper of general circulation in the City of New York, such publication to be made once a week for two successive weeks commencing not less than 30 nor more than 60 days prior to the redemption date. We will give holders of Series E preferred stock notice of redemption by issuing a press release not less than 30 days nor more than 60 days prior to the redemption date. We will mail to holders of Series C, D or E a similar notice, postage prepaid, not less than 30 nor more than 60 days prior to the redemption date, addressed to the respective holders of record of our Series C, D or E preferred stock to be redeemed at their respective addresses as they appear on our stock transfer records. No failure to give such notice or any defect in the notice or in the mailing of the notice will affect the validity of the proceedings for the redemption of any shares of Series C, D or E preferred stock except as to a holder to whom notice was defective or not given. Each notice will state:

the redemption date;

the redemption price (holders of Series E preferred stock will be notified of the redemption price plus the amount of accrued and unpaid dividends, without interest, or the Series E make-whole price);

the number of shares of Series C, D or E preferred stock, as applicable, to be redeemed;

the place or places where the stock is to be surrendered for payment of the redemption price (or the Series E make-whole price); and

that dividends on the shares to be redeemed will cease to accrue on such redemption date.

If we redeem less than all of our Series C, D or E preferred stock held by any holder, the notice mailed to such holder will also specify the number of shares of Series C, D or E preferred stock held by such holder to be redeemed.

Immediately prior to any redemption of Series C, D or E preferred stock, we will pay, in cash, any accumulated and unpaid dividends through the redemption date, unless a redemption date falls after the applicable dividend record date and prior to the corresponding dividend payment date, in which case each holder of shares of the series to be redeemed, at the close of business on the applicable dividend record date, is entitled to the dividend payable on such shares on the corresponding dividend payment date notwithstanding the redemption of such shares before the dividend payment date.

Change of Control

In the event we experience a change of control, each holder of shares of Series C preferred stock has the right, at the holder's option, to require us to repurchase all or any part of the holder's Series C preferred stock for cash at a repurchase price of \$100 per share, plus all accrued and unpaid dividends, if any, up to the date fixed for repurchase (except with respect to shares of Series C preferred stock which have been converted into shares of excess stock pursuant to our Charter), without interest pursuant to the procedures described below (the Series C change of control put option), subject to the Maryland General Corporation Law.

In the event we experience a change of control, each holder of shares of Series E preferred stock has the right, at the holder's option, to require us to repurchase all or any part of the holder's Series E preferred stock for cash at a repurchase price of \$25 per share, plus all accrued and unpaid dividends on the shares, if any, up to the date fixed for repurchase, without interest, pursuant to procedures described below (the Series E change of control put option), subject to the Maryland General Corporation Law.

In the event of a change of control of our Company, we will have the right, at our option, to redeem all or any part of the shares of each holder of Series C preferred stock (a) before the Series C tenth anniversary date, at the Series C make-whole price (as defined below) as of the date fixed for redemption (except with respect to shares of Series C preferred stock converted into shares of excess stock pursuant to our Charter) and (b) on or after the Series C tenth anniversary date, at the

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redemption price of \$100 per share, plus all accrued and unpaid dividends, if any, up to the date fixed for redemption (except with respect to shares of Series C preferred stock converted into shares of excess stock pursuant to our Charter), in each case pursuant to the procedures applicable to other redemptions of shares of Series C preferred stock. See Redemption.

In the event of a change of control of our company, we will have the right, at our option, to redeem all or any part of the shares of each holder of Series D preferred stock (a) before April 12, 2010, at the Series D make-whole price (as defined below) as of the date fixed for redemption (except with respect to shares of Series D preferred stock converted into shares of excess stock pursuant to our Charter) and (b) on or after April 12, 2010, at the redemption price of \$25 per share, plus all accrued and unpaid dividends, if any, up to the date fixed for redemption (except with respect to shares of Series D preferred stock converted into shares of excess stock pursuant to our Charter), in each case pursuant to the procedures applicable to other redemptions of shares of Series D preferred stock. See Redemption.

In the event of a change of control of our Company, we will have the right, at our option, to redeem all or any part of the shares of each holder of Series E preferred stock for cash (a) before the Series E fifth anniversary date, at the Series E make-whole price as of the date fixed for redemption and (b) on or after the Series E fifth anniversary date, at the redemption price of \$25 per share, plus all accrued and unpaid dividends on the shares redeemed, if any, up to the date fixed for redemption, without interest, in each case pursuant to the procedures applicable to other redemptions of shares of Series E preferred stock. See Redemption.

If we do not elect to exercise the change of control call option for the redemption of 100% of the outstanding shares of Series E Preferred Stock pursuant to any change of control notice delivered to holders of Series E preferred stock, any such holder may deliver to us, not fewer than five days prior to the anticipated change of control date designated in the change of control notice, written notice of such holder's exercise of the change of control put option, indicating the number of shares of Series E preferred stock to be redeemed by us. The number of put shares that any holder of Series E preferred stock may elect to include in any exercise of the change of control put option may be equal to all or any part of the holder's remaining shares of Series E preferred stock after our exercise of the change of control call option.

If either (i) we elect to exercise the change of control call option or (ii) any holder of Series E preferred stock elects to exercise the change of control put option, we will pay each holder of called shares or put shares, as applicable, upon the change of control date. Payment will be made to each holder at its address as it appears in our books and records or pursuant to such other payment instructions as are provided by such holder to us not later than 3 business days prior to the change of control date.

Unless we exercise the change of control call option or the holders of Series E preferred stock exercise their change of control put option, in each case with respect to 100% of the issued and outstanding shares of Series E preferred stock, we will, as a condition precedent to any reorganization, recapitalization, transfer of assets, consolidation, merger or dissolution, cause any successor to our Company or acquiring person or entity, as the case may be, to carry out all the provisions of the articles supplementary governing the Series E preferred stock or issue preferred stock to each holder of the Series E preferred stock with preferences, priorities, rights, powers, restrictions, limitations, qualifications and terms and conditions as nearly equivalent as may be practicable to those contained in the articles supplementary.

Voting Rights

Holders of Series C, D and E preferred stock will not have any voting rights, except as described below.

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Whenever dividends on any shares of the Series C preferred stock are in arrears for three or more consecutive or non-consecutive quarterly periods within any five-year period, any dividends on any shares of the Series D preferred stock are in arrears for six or more consecutive or non-consecutive quarterly periods, or any dividends on any shares of the Series E preferred stock are in arrears for three or more consecutive or non-consecutive quarterly periods, a preferred dividend default will exist, the number of directors then constituting our Board of Directors will be increased by two (if not already increased by reason of a similar arrearage with respect to any parity preferred as defined below), and the holders of the shares of the series for which there is a preferred dividend default (subject to certain restrictions in the case of any regulated person in Series C and D preferred stock (as defined below)) will be entitled to vote separately as a class with all other series of preferred stock ranking on a parity with such series as to dividends or upon liquidation and upon which like voting rights have been conferred and are exercisable (parity preferred), in order to fill the newly created vacancies, for the election of a total of two additional directors of our Company (the preferred stock directors) at a special meeting called by us at the request of holders of record of at least 20% of the series for which the preferred dividend default has occurred or the holders of record of at least 20% of any series of parity preferred so in arrears (unless the request is received less than 90 days before the date fixed for the next annual meeting of stockholders) or at the next annual meeting of stockholders, and at each subsequent annual meeting until all dividends accumulated on the shares of the series for which the preferred dividend default occurred and parity preferred for the past dividend periods and the dividend for the then current dividend period are fully paid or declared and a sum sufficient for payment has been set aside to pay them. In the event our directors are divided into classes, each vacancy will be apportioned among the classes of directors to prevent stacking in any one class and to insure that the number of directors in each of the classes of directors are as nearly equal as possible.

Each preferred stock director, as a qualification for election (and regardless of how elected), will submit to our Board of Directors a duly executed, valid, binding and enforceable letter of resignation from the Board of Directors, to be effective upon the date upon which all dividends accumulated on the shares of the series for which the preferred dividend default occurred and parity preferred for the past dividend periods and the dividend for the then current dividend period are fully paid or declared and a sum sufficient for payment has been set aside to pay them at which time the terms of office of all persons elected as preferred stock directors by the holders of that series and any parity preferred will, upon the effectiveness of their respective letters of resignation, terminate, and the number of directors then constituting the Board of Directors will be reduced accordingly. A quorum for any meeting will exist if at least a majority of the outstanding shares of the series for which the preferred dividend default occurred and shares of parity preferred are represented in person or by proxy at the meetings.

The preferred stock directors will be elected upon the affirmative vote of a plurality of the shares of the series for which the preferred dividend default occurred and the parity preferred present and voting in person or by proxy at a duly called and held meeting at which a quorum is present. If and when all accumulated dividends and the dividend for the then current dividend period on the series for which the preferred dividend default occurred are paid in full or declared and set aside for payment in full, the holders of that series will be divested of the foregoing voting rights (subject to retesting in the event of each and every preferred dividend default).

Any preferred stock director may be removed at any time with or without cause by, and will not be removed otherwise than by the vote of, the holders of record of a majority of the outstanding shares of a series for which there is a preferred dividend default when they have the voting rights described above (voting separately as a class with all series of parity preferred). So long as a preferred dividend default continues, any vacancy in the office of a preferred stock director may be filled by written consent of the preferred stock director remaining in office, or if none remains in office, by a vote of the holders of record of a majority of the outstanding shares of the series for which the dividend default exists when they have the voting rights described above (voting separately as a class with all

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series of parity preferred). The preferred stock directors will each be entitled to one vote per director on any matter properly coming before our Board of Directors.

Notwithstanding the preceding paragraphs, any and all shares of Series C or D preferred stock owned by a regulated person which exceed 4.9% of the total issued and outstanding shares of that series will not be entitled to vote for the election of preferred stock directors (and will not be counted for purposes of determining the percentage of holders of that series necessary to call the special meeting described above or whether a quorum is present at the special meeting or for any other similar purpose described above) so long as those shares are owned by a regulated person.

In addition, each of the Series C, D and E preferred stock have limited rights to approve certain actions.

Without the affirmative vote or consent of the holders of at least two-thirds of the outstanding shares of our Series C preferred stock, at the time, given in person or by proxy, either in writing or at a meeting (voting separately as a class), we will not:

voluntarily terminate our status as a REIT;

enter into or undertake any senior obligations (as defined below) at any time during which we are in violation of the fixed charge coverage ratio covenant or the capitalization ratio covenant; or

amend, alter or repeal the provisions of our Charter or the articles supplementary, whether by merger, consolidation or otherwise (an Event), so as to materially and adversely affect any preferences, conversion and other rights, voting powers, restrictions, limitations as to dividends, qualifications, and terms and conditions of redemption of our Series C preferred stock or the holders our Series C preferred stock.

However, without the affirmative vote or consent of each holder of shares of our Series C preferred stock outstanding at the time, no amendment, alteration or repeal of the provisions of our Charter or of the articles supplementary may be made that will (a) reduce the number of shares of our Series C preferred stock required to consent to certain amendments, alterations or repeals of our Charter or the articles supplementary, (b) reduce the Series C initial dividend yield or the Series C liquidation preference or change the method of calculation of the Series C first default dividend yield, the Series C second default dividend yield, or the Series C make-whole price, (c) change the payment date for payment of dividends with respect to our Series C preferred stock or change the period with respect to which such dividends are paid, or (d) alter or modify the rights of any holder of Series C preferred stock arising under certain provisions of the articles supplementary described in Change of Control.

So long as any shares of Series C preferred stock remain outstanding and any holder of our Series C preferred stock as of the date of its issuance continues to hold, beneficially or of record, at least 75% of the number of shares of Series C preferred stock which the holder owns, beneficially or of record, as of the date of its issuance, we will not without the affirmative vote or consent of the holders of at least 85% of the shares of our Series C preferred stock outstanding at the time, given in person or by proxy, either in writing or at a meeting (voting separately as a class), amend or waive certain provisions of the articles supplementary described in Certain Covenants.

Without the affirmative vote or consent of the holders of at least two-thirds of the outstanding shares of our Series D preferred stock, at the time, given in person or by proxy, either in writing or at a meeting (voting separately as a class), we will not:

voluntarily terminate our status as a REIT; or

amend, alter or repeal the provisions of our Charter or the articles supplementary, whether by merger, consolidation or otherwise (an Event), so as to materially and adversely affect any preferences, conversion and other rights, voting powers, restrictions, limitations as to

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dividends, qualifications, and terms and conditions of redemption of our Series D preferred stock or the holders of our Series D preferred stock.

However, without the affirmative vote or consent of each holder of shares of our Series D preferred stock outstanding at the time, no amendment, alteration or repeal of the provisions of our Charter or of the articles supplementary may be made that will (a) reduce the number of shares of our Series D preferred stock required to consent to certain amendments, alterations or repeals of our Charter or the articles supplementary, (b) reduce the dividend yield or the \$25 per share liquidation preference or change the method of calculation of the Series D make-whole price or (c) change the payment date for payment of dividends with respect to our Series D preferred stock or change the period with respect to which such dividends are paid.

Without the affirmative vote or consent of at least two-thirds of the outstanding shares of our Series E preferred stock, at the time, given in person or by proxy, either in writing or at a meeting (voting separately as a class), we will not:

effect any voluntary termination of our status as a REIT,

enter into or undertake any senior obligations (as defined below) at any time during which we are in violation of the fixed charge ratio covenant or the capitalization ratio covenant as they apply to the Series E preferred stock; or

amend, alter or repeal the provisions of our Charter or the articles supplementary, whether by merger, consolidation or otherwise (an Event), so as to materially and adversely affect any preferences, conversion and other rights, voting powers, restrictions (including, without limitation, the covenants of the articles supplementary for our Series E preferred stock as described in Certain Covenants , limitations as to dividends and other distributions, qualifications, and terms and conditions of redemption of our Series E preferred stock or the holders our Series E preferred stock.

However, without the affirmative vote or consent of each holder of shares of our Series E preferred stock outstanding at the time, no amendment, alteration or repeal of the provisions of our Charter or of the articles supplementary may be made that will (a) alter the rank of the Series E preferred stock, (b) reduce the number of shares of our Series E preferred stock required to consent to certain amendments, alterations or repeals of our Charter or the articles supplementary, (c) reduce the Series E initial dividend yield or the Series E liquidation preference or change the method of calculation of the Series E first default dividend yield, the Series E second default dividend yield, or the Series E make-whole price, (d) change the payment date for payment of dividends with respect to our Series E preferred stock or change the period with respect to which such dividends are paid, or (e) alter or modify the rights of any holder of Series E preferred stock arising under certain provisions of the articles supplementary described in Change of Control.

So long as any shares of Series E preferred stock remain outstanding and any holder of our Series E preferred stock as of March 13, 2008 continues to hold, beneficially or of record, at least 75% of the number of shares of Series E preferred stock which the holder owns, beneficially or of record, as of March 13, 2008, we will not without the affirmative vote or consent of the holders of at least 85% of the shares of our Series E preferred stock outstanding at the time, given in person or by proxy, either in writing or at a meeting (voting separately as a class), amend or waive certain provisions of the articles supplementary described in Certain Covenants or effect any voluntary termination of our status as a REIT.

With respect to the occurrence of any Event described above in respect of the Series C, D or E preferred stock, so long as that series (or any equivalent class or series of stock issued by the surviving corporation in any merger or consolidation to which we became a party) remains outstanding with the terms thereof materially unchanged, the

occurrence of any such event will not be deemed to materially and adversely affect any preferences, conversion and other rights, voting powers, restrictions, limitations as to dividends, qualifications, and terms and conditions of redemption of holders of that series. Any

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increase in the amount of the authorized preferred stock or the creation or issuance of any other series of preferred stock, or any increase in the amount of the authorized shares of such series, in each case ranking on a parity with or junior to that series with respect to payment of dividends or the distribution of assets upon our liquidation, dissolution or winding up, or the issuance of additional shares of Series C preferred stock, Series D preferred stock, or Series E preferred stock will not be deemed to materially and adversely affect any preferences, conversion and other rights, voting power, restrictions, limitations as to dividends (in the case of Series E preferred stock, other distributions), qualifications, and terms and conditions of redemption.

The foregoing voting provisions in respect of Series C, D or E preferred stock will not apply if, at or prior to the time when the act with respect to which the vote would otherwise be required is effected, all outstanding shares of that series are redeemed in accordance with their terms or called for redemption upon proper notice and we deposit sufficient funds in trust to effect the redemption.

Except as expressly stated in the applicable articles supplementary, holders of our Series C, D or E preferred stock will not have any relative, participating, optional or other special voting rights and powers, and the consent of the holders of our Series C, D or E preferred stock, as applicable, will not be required for the taking of any corporate action, including any merger or consolidation involving us, our liquidation or dissolution or a sale of all or substantially all of our assets, irrespective of the effect that the merger, consolidation or sale may have upon the rights, preferences or voting power of the holders of that series of preferred stock.

Conversion

The Series C, D and E preferred stock are not convertible into or exchangeable for any other securities or property of our Company.

Certain Covenants

The articles supplementary for our Series C preferred stock provide that so long as any share of the Series C preferred stock remains outstanding:

We will not permit:

the fixed charge coverage ratio to be less than 1.30 for the period comprised of our two most recently completed fiscal quarters at the end of each fiscal quarter, or

the capitalization ratio to exceed 0.55 as measured at the end of each fiscal quarter.

We will not enter into or undertake any senior obligation, as defined in respect of the applicable series, which results in a violation of the fixed charge coverage ratio covenant or the capitalization ratio covenant, compliance with these covenants being determined (a) in the case of the fixed charge coverage ratio covenant, after giving effect on a pro forma basis to any senior obligation as if the senior obligation had been issued on the first day of the calculation period (as defined below), and (b) in the case of the capitalization ratio covenant, as of the end of the fiscal quarter immediately preceding the fiscal quarter in which the senior obligation is issued and undertaken, after giving effect on a pro forma basis to any senior obligation as if the senior obligation had been issued on the first day of such immediately preceding quarter.

The articles supplementary for our Series E preferred stock provide that so long as any share of the Series E preferred stock remains outstanding, we will:

not permit the fixed charge coverage ratio to be less than 1.50 or the capitalization ratio to exceed 0.55;

maintain an unencumbered asset value of not less than 150% of the aggregate outstanding principal amount of our unsecured debt and liquidated preference of our preferred stock; and

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not enter into or undertake any senior obligation, as defined in respect of the applicable series, which results in a violation of the fixed charge coverage ratio covenant or the capitalization ratio covenant, compliance with these covenants being determined (a) in the case of the fixed charge coverage ratio covenant, after giving effect on a pro forma basis to any senior obligation as if the senior obligation had been issued on the first day of the calculation period (as defined below), and (b) in the case of the capitalization ratio covenant, as of the end of the fiscal quarter immediately preceding the fiscal quarter in which the senior obligation is issued and undertaken, after giving effect on a pro forma basis to any senior obligation as if the senior obligation had been issued on the first day of such immediately preceding quarter.

The Series C and E preferred stock covenants stated above are for the exclusive benefit of the holders of the Series C and E preferred stock and may be waived with an affirmative vote or consent of the holders of at least (i) 85% of the outstanding shares of Series C or E preferred stock, so long as any shares of Series C or E preferred stock remain outstanding and any holder of our Series C or E preferred stock as of the date of issuance continues to hold, beneficially or of record, at least 75% of the number of shares of Series C or E preferred stock which the holder owns, beneficially or of record, as of the date of issuance, or (ii) two-thirds of the outstanding shares of Series C or E preferred stock.

Restrictions on Ownership and Transfer

We have the right to refuse transfers of capital stock that could jeopardize our status as a REIT and to redeem any shares of capital stock in excess of 7.5% of the value of our outstanding capital stock beneficially owned by any person. We have granted WFC Holdings and any subsequent holder of the Series E preferred stock a waiver, solely as to shares of the Series E preferred stock, of the 7.5% ownership limitation.

In addition, the Series E preferred stock has not been registered under the Securities Act of 1933, as amended (the Securities Act), or any state securities laws and pending the registration may not be offered or sold except pursuant to an exemption from, or in a transaction not subject to, the registration requirements of the Securities Act and applicable state securities laws. We have granted WFC Holdings limited registration rights to cause us to file a shelf registration statement on Form S-3 in the event that WFC Holdings cannot sell all of its shares of Series E preferred stock pursuant to Rule 144 under the Securities Act.

No Impairment of Series E Preferred Stock

We have agreed that we will not, with the purpose of impairing the voting rights of the Series E preferred stock: (a) issue shares of any series of preferred stock ranking on parity with the series of preferred stock as to dividends and upon liquidation with voting rights greater than one vote per share or (b) issue shares of any such series of preferred stock with a liquidation preference per share less than \$25 without a proportionate reduction in percentage voting rights per share on the basis of \$25 liquidation preference equals 1 vote, unless, in the case of this clause (b), we have been advised in writing by our financial advisor that it has become the market standard in preferred stock issuances of a similar size and nature to issue shares of preferred stock with a liquidation preference per share less than \$25, in which case we will not issue such preferred stock at a lesser liquidation preference per share than the market standard liquidation preference per share so advised by our financial advisor.

Listing

Our Series C and Series D preferred stock are listed on the NYSE under the symbols, UBPPRC and UBPPRD, respectively.

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Certain Definitions

Below is a summary of certain of the defined terms used in the various articles supplementary for the Series C, D or E preferred stock, as applicable. You should refer to the articles supplementary for the full definition of all these terms, as well as any other terms used but not defined in this prospectus.

Calculation period means, as of any date of determination, the period comprised of our two most recently completed fiscal quarters immediately preceding our fiscal quarter in which that date of determination occurs.

Capitalization ratio means, as of any date of determination, the ratio obtained by dividing (i) the sum of (A) the aggregate amount of our debt and (B) the aggregate amount of our preferred stock by (ii) the sum of (A) the aggregate amount of our debt, (B) the aggregate amount of our preferred stock, (C) the aggregate amount of capital (including surplus) which in accordance with generally accepted accounting principles would be reflected on our balance sheet in connection with our common equity securities as of the end of the quarter immediately preceding our fiscal quarter in which that date of determination occurs and (D) our accumulated depreciation as set forth on our balance sheet as of the end of the quarter immediately preceding our fiscal quarter in which that date of determination occurs.

Change of control , when used in respect of the Series C and D, means either (a) the occurrence of any merger or other acquisition as a consequence of which a majority of the outstanding shares of our common equity securities are owned or acquired by the merging or acquiring person, entity or group or (b) the occurrence of any event or transaction as a consequence of which the persons, entities or organizations described in (A), (B) and (C), below, cease, in the aggregate, to own, beneficially or of record, or cease to control the voting or disposition or the power to direct the voting or disposition of, at least 75% of the number of shares of our common equity securities which the persons, entities or organizations in (A), (B) or (C), below, in the aggregate, own, beneficially or of record, or control the voting or disposition or have the power to direct the voting or disposition of, as of May 29, 2003 (in the case of the Series C preferred stock) or April 12, 2005 (in the case of the series D preferred stock) (excluding, in each case, any stock options or other stock rights which any such person, entity or organization may then own or subsequently acquire for purposes of this definition): (A) Charles J. Urstadt; (B) Charles J. Urstadt's spouse, any of his children or any of their spouses, or any of his grandchildren or any of their spouses; or (C) any trust, corporation, partnership, limited liability company or other entity or organization controlled by Charles J. Urstadt or any of his relatives described in (B) above or in which Charles J. Urstadt or any of his relatives described in (B) above has any economic, beneficial or other interest.

Change of control , when used in respect of the Series E, means (a) any individual, entity or group, including any person within the meaning of Section 13(d)(3) or 14(d)(2) of the Exchange Act, other than exempted persons, acquires beneficial ownership within the meaning of Rule 13d-3 promulgated under the Exchange Act of 20% or more of the voting power of the our voting stock and thereafter individuals who were not on our board of directors on March 13, 2008 are elected as board members pursuant to an arrangement or understanding with, or upon the request of or nomination by, such person(s) and constitute at least two of the members of our board of directors; (b) there occurs any solicitation of proxies by or on behalf of any person other than our directors or an exempted person and thereafter individuals who were not our directors prior to the commencement of such solicitation are elected as directors pursuant to an arrangement or understanding which, or upon the request of or nomination by, such person and constitute at least a majority of the members of our board of directors; or (c) the acquisition (whether by purchase, merger, consolidation, exchange or otherwise) by an individual, entity or group, including any person within the meaning of Section 13(d)(3) or 14(d)(2) of the Exchange Act, other than exempted persons, of beneficial ownership within the meaning of Rule 13d-3 promulgated under the Exchange Act, of a majority or more of the combined voting power of our voting stock.

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Debt of the Company or any subsidiary means, when used in respect of the Series C preferred stock, any indebtedness of our Company or any subsidiary, whether or not contingent, in respect of (a) borrowed money or evidenced by bonds, notes, debentures or similar instruments, (b) indebtedness secured by any mortgage, pledge, lien, charge, encumbrance or any security interest existing on property owned by our Company or any subsidiary, (c) reimbursement obligations, contingent or otherwise, in connection with letters of credit or amounts representing the balance deferred and unpaid of the purchase price of any property except any balance that constitutes an accrued expense or trade payable or (d) any lease of property by our Company or any subsidiary as lessee which is reflected on our consolidated balance sheet as a capitalized lease in accordance with generally accepted accounting principles, in the case of items of indebtedness under (a) through (c) above to the extent that any of those items (other than reimbursement obligations in connection with letters of credit) would appear as a liability on our consolidated balance sheet in accordance with generally accepted accounting principles, and also includes, to the extent not otherwise included, any obligation by our Company or any subsidiary to be liable for, or to pay, as obligor, guarantor or otherwise (other than for purposes of collection in the ordinary course of business), indebtedness of another person (other than our Company or any subsidiary) (it being understood that debt will be deemed to be incurred by our Company or any subsidiary whenever our Company or the subsidiary creates, assumes, guarantees or otherwise becomes liable in respect of the debt).

Debt of any person, without duplication, when used in respect of the Series E preferred stock means, (a) the principal of and premium (if any) in respect of indebtedness of such person for money borrowed and other indebtedness evidenced by notes, debentures, bonds or other similar instruments for the payment of which such person is responsible or liable, (b) all capitalized lease obligations of such person, (c) all obligations of such person issued or assumed as the deferred purchase price of property, all conditional sale obligations of such person and all obligations of such person under any title retention agreement (but excluding trade accounts payable arising in the ordinary course of business); (d) all obligations of such person for the reimbursement of any obligor on any letter of credit, banker's acceptance or similar credit transaction (other than obligations with respect to letters of credit securing obligations (other than obligations described in (a) through (c) above) entered into in the ordinary course of business or such person to the extent such letters of credit are not drawn upon or, if and to the extent drawn upon, such drawing is reimbursed no later than the third business day following receipt by such person of a demand for reimbursement following payment on the letter of credit); (e) the amount of all obligations of such person with respect to redemption, repayment or other repurchase of any redeemable stock (but excluding any accrued dividends); (f) all obligations of the type referred to (a) through (e) above of other persons and all dividends of other persons for the payment of which, in either case, such person is responsible or liable, directly or indirectly, as obligor, guarantor or otherwise, including by means of any agreement that has the economic effect of a guarantee; and (g) all obligations of the type referred to (a) through (f) above of any other person secured by any lien on any property asset of such person (whether or not such obligation is assumed by such person), the amount of such obligation being deemed to be the lesser of the value of such property or assets and the amount of the obligation so secured.

Discount rate means, as of any date of determination, the yield to maturity implied by (a) the yields reported, as of 10:00 A.M. (New York City time) on the second business day preceding that date of determination on the display designated as Page 678 on the Telerate Access Service (or any other display that may replace Page 678 on the Telerate Access Service) for actively traded U.S. Treasury securities having a 30-year maturity as of that date of determination (for Series E preferred stock, designated as Page 7051 on the Telerate Access Service (or any other display that may replace Page 7051 on the Telerate Access Service)), or (b) if the yields are not reported at that time or the yields reported at that time are not ascertainable, the Treasury Constant Maturity Series Yields reported for the latest day for which the yields have been so reported as of the second business day preceding the date of determination in Federal Reserve Statistical Release H.15 (519) (or any comparable successor publication) for actively traded U.S. Treasury securities having a 30-year constant maturity as of that date of determination.

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Exempted Person when used in respect of the Series E preferred stock means, (i) Charles J. Urstadt; (ii) any Urstadt family member (as defined below); (iii) any executor, administrator, trustee or personal representative who succeeds to the estate of Charles J. Urstadt or an Urstadt family member as a result of the death of such individual, acting in their capacity as an executor, administrator, trustee or personal representative with respect to any such estate; (iv) a trustee, guardian or custodian holding property for the primary benefit of Charles J. Urstadt or an Urstadt family member; (v) any corporation, partnership, limited liability company or other business organization that is directly or indirectly controlled by one or more persons or entities described in clauses (i) through (iv) hereof and is not controlled by any other person or entity; and (vi) any charitable foundation, trust or other not-for-profit organization for which one or more persons or entities described in clauses (i) through (v) hereof controls the investment and voting decisions in respect of any interest in our Company held by such organization. With respect to clause (v) above, **control** includes the power to control the investment and voting decisions of any such corporation, partnership, limited liability company or other business organization. For purposes of this definition, the term **Urstadt family member** shall mean and include the spouse of Charles J. Urstadt, the descendants of the parents of Charles J. Urstadt, the descendants of the parents of the spouse of Charles J. Urstadt, the spouses of any such descendant and the descendants of the parents of any spouse of a child of Charles J. Urstadt. For this purpose, an individual's spouse includes the widow or widower of such individual, and an individual's descendants includes biological descendants and persons deriving their status as descendants by adoption.

Fixed charge coverage ratio means, when used in respect of the Series C and Series E preferred stock, as of any date of determination, the ratio obtained by dividing (i) the sum of (A) interest expense for the calculation period and preferred dividends for the calculation period and (B) funds from operations for the calculation period by (ii) the sum of (A) interest expense for the calculation period and (B) preferred dividends for the calculation period; provided, however, that (x) if we have issued any debt or preferred stock since the beginning of the calculation period that remains outstanding or (y) if the transactions giving rise to the need to calculate the fixed charge coverage ratio is an issuance of debt or preferred stock, or both (x) and (y), interest expense and preferred dividends for the calculation period will be calculated after giving effect on a pro forma basis to the debt or preferred stock as if the debt or preferred stock had been issued on the first day of the calculation period and the discharge of any other debt or preferred stock refinanced, refunded, exchanged or otherwise discharged with the proceeds of the new debt or preferred stock as if any such discharge had occurred on the first day of the calculation period.

Funds from operations means, when used in respect of the Series C preferred stock, with respect to any fiscal quarter, net income, computed in accordance with generally accepted accounting principles, for that quarter, excluding gains (or losses) from sales of properties, plus depreciation and amortization and after adjustments for unconsolidated joint ventures.

Funds from operations means when used in respect of the Series E preferred stock, net income available to common stock (computed in accordance with generally accepted accounting principles), excluding gains (or losses) from sales of properties, plus depreciation and amortization and after adjustments for unconsolidated partnerships and joint ventures. Adjustments for unconsolidated partnerships and joint ventures will be calculated to reflect funds from operations on the same basis and (ii) any unusual and non-recurring items which otherwise would materially distort the comparative measurement of funds from operations for different fiscal periods. Funds from operations shall be determined in accordance with the April 2002 White Paper on Funds From Operations approved by the Board of Governors of the National Association of Real Estate Investment Trusts, as in effect on the date of issuance of the Series E preferred stock.

Interest expense means, when used in respect of the Series C preferred stock, for any period, our total interest expense, including (a) interest expense attributable to capital leases, (b) amortization of debt discount and debt issuance cost, (c) capitalized interest, (d) non-cash interest payments, and (e) interest actually paid by us under any guarantee of debt

or other obligation of any other person.

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Interest expense means, when used in respect of the Series E preferred stock for any period, our total interest expense, including (a) interest expense attributable to capital leases, (b) amortization of debt discount and debt issuance cost, (c) capitalized interest, (d) non-cash interest payments, (e) commissions, discounts and other fees and charges owed with respect to letters of credit and bankers acceptance financing, (f) net costs under hedging obligations (including amortization of fees), and (g) interest actually paid by us under any guarantee of debt or other obligation of any other person.

NOI means, for any property and for a given period, the sum of the following (without duplication): (a) rents and other revenues received or accrued in the ordinary course of such property (excluding prepaid rents and revenues and security deposits except to the extent applied in satisfaction of tenants obligations for rent) minus (b) all expenses paid or accrued related to the ownership, operation or maintenance of the property, including taxes, assessments and the like, insurance, utilities, payroll costs, maintenance, repair and landscaping expenses, marketing expenses, and general and administrative expenses (including an appropriate allocation for legal, accounting, advertising, marketing and other expenses incurred in connection with the property, but specifically excluding our general overhead expenses which includes general legal expenses not related to any particular property) minus (c) reserve for replacement (which is an amount equal to \$0.10 per square foot per annum for all retail, office and industrial properties and \$300 per unit for all apartment properties) minus (d) the greater of (i) the actual property management fee paid during the period and (ii) an imputed management fee in the amount of 3% of the base rent revenues for the property for the period.

Parity preferred means all other series of preferred stock ranking on a parity with the Series C, D or E preferred stock, as applicable, as to dividends or upon liquidation and upon which like voting rights have been conferred and are exercisable.

Preferred dividends means dividends accrued in respect of all preferred stock held by persons other than us.

Regulated person means with respect to Series C and Series D, any bank holding company, subsidiary of a bank holding company or other person or entity that is subject to the Bank Holding Company Act of 1956, as amended from time to time.

Senior obligations means any (i) debt other than accounts payable incurred in the ordinary course of our business and (ii) any equity securities which rank senior to the Series C or E preferred stock, as applicable, with respect to the payment of dividends or the distribution of assets upon our liquidation, dissolution or winding up.

Series C make-whole price means, for any share of Series C preferred stock, as of any date of determination, the sum of (a) the present value as of that date of determination of all remaining scheduled dividend payments of that share of Series C preferred stock until the tenth anniversary date, discounted by the discount rate, (b) the Series C liquidation preference and (c) all accrued and unpaid dividends thereon to such date of determination.

Series D make-whole price means, for any share of Series D preferred stock, as of any date of determination, the sum of (a) the present value as of that date of determination of all remaining scheduled dividend payments of that share of Series D preferred stock until April 12, 2010, discounted by the discount rate, (b) the \$25 per share liquidation preference and (c) all accrued and unpaid dividends thereon to such date of determination.

Series E make-whole price means, for any share of Series E preferred stock, as of any date of determination, the sum of (a) the present value as of that date of determination of all remaining scheduled dividend payments of that share of Series E preferred stock until the Series E fifth anniversary date, discounted by the discount rate, (b) the Series E liquidation preference and (c) all accrued and unpaid dividends thereon to that date of determination.

Unencumbered Assets means our real estate assets which are (a) wholly-owned by us; (b) at least 80% leased at the time of any determination, measured as a percentage of gross leasable area and

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excluding from the measurement any gross leasable areas undergoing redevelopment and (c) not encumbered by any lien.

Unencumbered Asset Value means, as of the date of determination, the sum of (a) the NOI generated by the Unencumbered Assets as of the last day of the three-fiscal month period most recently ended times 4 divided by 8.00% plus (b) the acquisition cost of Unencumbered Assets not owned for the entire three-fiscal month period most recently ended.

Transfer Agent and Registrar

The transfer agent and registrar for each of our Series C, D or E preferred stock is The Bank of New York Mellon.

Description of Depositary Shares

General

We may, at our option, elect to offer fractional shares of our preferred stock, rather than full shares of preferred stock. In such event, we will issue to the public receipts for depositary shares, each of which will represent a fraction (to be set forth in the prospectus supplement relating to a particular series of preferred stock) of a share of a particular series of our preferred stock as described below.

The shares of any series of our preferred stock represented by depositary shares will be deposited under a deposit agreement between us and the depositary named in the applicable prospectus supplement. Subject to the terms of the deposit agreement, each owner of a depositary share will be entitled, in proportion to the applicable fraction of a share of our preferred stock represented by such depositary share, to all the rights and preferences of the preferred stock represented thereby (including dividend, voting, redemption and liquidation rights).

The depositary shares will be evidenced by depositary receipts issued pursuant to the deposit agreement. Depositary receipts will be distributed to those persons purchasing the fractional shares of our preferred stock in accordance with the terms of the offering. If depositary shares are issued, copies of the forms of deposit agreement and depositary receipt will be incorporated by reference in the registration statement of which this prospectus is a part, and the following summary is qualified in its entirety by reference to those documents.

Pending the preparation of definitive engraved depositary receipts, the depositary may, upon our written order, issue temporary depositary receipts substantially identical to (and entitling the holders thereof to all the rights pertaining to) the definitive depositary receipts but not in definitive form. Definitive depositary receipts will be prepared thereafter without unreasonable delay, and temporary depositary receipts will be exchangeable for definitive depositary receipts at our expense.

Dividends and Other Distributions

The depositary will distribute all cash dividends or other cash distributions received in respect of our preferred stock to the record holders of depositary shares relating to the preferred stock in proportion to the number of depositary shares owned by the holders. The depositary will distribute only such amount, however, as can be distributed without attributing to any holder of depositary shares a fraction of one cent, and the balance that is not distributed will be added to and treated as part of the next sum received by the depositary for distribution to record holders of depositary shares.

In the event of a distribution other than in cash, the depositary will distribute property received by it to the record holders of depositary shares entitled thereto, unless the depositary determines that it is not feasible to make the distribution, in which case the depositary may, with our approval, sell the property and distribute the net proceeds from the sale to the holders.

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The deposit agreement will also contain provisions relating to the manner in which any subscription or similar rights offered by us to holders of the preferred stock shall be made available to the holders of depositary shares.

Redemption of Depositary Shares

If a series of our preferred stock represented by depositary shares is subject to redemption, the depositary shares will be redeemed from the proceeds received by the depositary resulting from the redemption, in whole or in part, of the series of preferred stock held by the depositary. The redemption price per depositary share will be equal to the applicable fraction of the redemption price per share payable with respect to the series of preferred stock. Whenever we redeem shares of preferred stock held by the depositary, the depositary will redeem as of the same redemption date the number of depositary shares representing the shares of preferred stock that have been redeemed. If fewer than all the depositary shares are to be redeemed, the depositary shares to be redeemed will be selected by lot or pro rata as may be determined by the depositary.

After the date fixed for redemption, the depositary shares that are called for redemption will no longer be outstanding and all rights of the holders of the depositary shares will cease, except the right to receive the money, securities, or other property payable upon the redemption and any money, securities, or other property to which the holders of the depositary shares were entitled upon the redemption upon surrender to the depositary of the depositary receipts evidencing the depositary shares.

Voting the Preferred Stock

Upon receipt of notice of any meeting at which the holders of our preferred stock are entitled to vote, the depositary will mail the information contained in the notice of meeting to the record holders of the depositary shares relating to the preferred stock. Each record holder of the depositary shares on the record date (which will be the same date as the record date for the preferred stock) will be entitled to instruct the depositary as to the exercise of the voting rights pertaining to the amount of preferred stock represented by that holder's depositary shares. The depositary will endeavor, insofar as practicable, to vote the amount of preferred stock represented by the depositary shares in accordance with the instructions, and we will agree to take all action which may be deemed necessary by the depositary in order to enable the depositary to do so. The depositary may abstain from voting shares of preferred stock to the extent it does not receive specific instructions from the holders of depositary shares representing the preferred stock.

Amendment and Termination of the Depositary Agreement

The form of depositary receipt evidencing the depositary shares and any provision of the deposit agreement may at any time be amended by agreement between us and the depositary. However, any amendment that materially and adversely alters the rights of the holders of depositary shares will not be effective unless the amendment has been approved by the holders of at least a majority of the depositary shares then outstanding. The deposit agreement may be terminated by us or the depositary only if (a) all outstanding depositary shares have been redeemed or (b) there has been a final distribution in respect of our preferred stock in connection with any liquidation, dissolution or winding up of our affairs and the distribution has been distributed to the holders of depositary receipts.

Charges of Depositary

We will pay all transfer and other taxes and governmental charges arising solely from the existence of the depositary arrangements. We will pay charges of the depositary in connection with the initial deposit of the preferred stock and any redemption of the preferred stock. Holders of depositary receipts will pay other transfer and other taxes and governmental charges and such other charges,

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including a fee for the withdrawal of shares of preferred stock upon surrender of depositary receipts, as are expressly provided to be for their accounts in the deposit agreement.

Miscellaneous

The depositary will forward to holders of depositary receipts all reports and communications from us that are delivered to the depositary and that we are required to furnish to holders of our preferred stock. Neither we nor the depositary will be liable if it is prevented or delayed by law or any circumstance beyond its control in performing its obligations under the deposit agreement. Our obligations and those of the depositary under the deposit agreement will be limited to performance in good faith of our respective duties thereunder and neither we nor the depositary will be obligated to prosecute or defend any legal proceeding in respect of any depositary shares or preferred stock unless satisfactory indemnity is furnished. We and the depositary may rely upon written advice of counsel or accountants, or upon information provided by persons presenting our preferred stock for deposit, holders of depositary receipts or other persons believed to be competent and on documents believed to be genuine.

Resignation and Removal of Depositary

The depositary may resign at any time by delivering to us notice of its election to do so, and we may at any time remove the depositary in which event we will appoint a successor depositary after delivery of the notice of resignation or removal.

Restrictions on Ownership

In order to safeguard us against an inadvertent loss of our REIT status, the deposit agreement will contain provisions restricting the ownership and transfer of depositary shares. These restrictions will be described in the applicable prospectus supplement and will be referenced on the applicable depositary receipts.

Restrictions on Ownership and Transfer

To qualify as a REIT under the Internal Revenue Code, we must meet several requirements regarding the number of our stockholders and concentration of ownership of our shares. Our Charter contains provisions that restrict the ownership and transfer of our equity securities to assist us in complying with these Internal Revenue Code requirements. We refer to these restrictions as the ownership limit.

The ownership limit provides that, in general, no person may own more than 7.5% of the aggregate value of all outstanding stock of our Company. It also provides that:

a transfer that violates the limitation is void;

a transferee gets no rights to the shares that violate the limitation;

shares transferred to a stockholder in excess of the ownership limit are automatically exchanged, by operation of law, for shares of excess stock ; and

the excess stock will be held by us as trustee of a trust for the exclusive benefit of future transferees to whom the shares of stock will ultimately be transferred without violating the ownership limit.

Pursuant to authority under our Charter, our Board of Directors has determined that the ownership limit does not apply to Mr. Charles J. Urstadt, our Chairman and Chief Executive Officer, and his affiliates and associates who currently

own in the aggregate 39.2% and 1.5% of our outstanding common stock and Class A common stock, respectively. Such holdings represent approximately 35.3% of our outstanding voting interests. The ownership limitation may discourage a takeover or other transaction that some of our stockholders may otherwise believe to be desirable.

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Ownership of our stock is subject to attribution rules under the Internal Revenue Code, which may result in a person being deemed to own stock held by other persons. Our Board of Directors may waive the ownership limit if it determines that the waiver will not jeopardize our status as a REIT. As a condition of such a waiver, the Board of Directors may require an opinion of counsel satisfactory to it or undertakings or representations from the applicant with respect to preserving our REIT status. We required no such waiver, opinion or undertakings with respect to Mr. Urstadt's ownership rights.

Any person who acquires our stock must, on our demand, immediately provide us with any information we may request in order to determine the effect of the acquisition on our status as a REIT. If our Board of Directors determines that it is no longer in our best interests to qualify as a REIT the ownership limitation will not be relevant. Otherwise, the ownership limit may be changed only by an amendment to our Charter by a vote of two-thirds of the voting power of our common equity securities.

Our Charter provides that any purported transfer which results in a direct or indirect ownership of shares of stock in excess of the ownership limit or that would result in the loss of our Company's status as a REIT will be null and void, and the intended transferee will acquire no rights to the shares of stock. The foregoing restrictions on transferability and ownership will not be relevant if our Board of Directors determines that it is no longer in our best interests to attempt to qualify, or to continue to qualify, as a REIT. Our Board of Directors may, in its sole discretion, waive the ownership limit if evidence satisfactory to our Board of Directors and our tax counsel is presented that the changes in ownership will not then or in the future jeopardize our REIT status and our Board of Directors otherwise decides that such action is in our best interests. We have granted WFC Holdings and any subsequent holder of the Series E preferred stock a waiver, solely as to share of the Series E preferred stock, of the 7.5% ownership limitation.

Shares of stock owned, or deemed to be owned, or transferred to a stockholder in excess of the ownership limit will automatically be exchanged for shares of "excess stock" that will be transferred, by operation of law, to us as trustee of a trust for the exclusive benefit of the transferees to whom such shares of stock may be ultimately transferred without violating the ownership limit. While the excess stock is held in trust, it will not be entitled to vote, it will not be considered for purposes of any stockholder vote or the determination of a quorum for such vote, and except upon liquidation it will not be entitled to participate in dividends or other distributions. Any distribution paid to a proposed transferee of excess stock prior to the discovery by us that stock has been transferred in violation of the provision of our Charter is required to be repaid to us upon demand.

The excess stock is not treasury stock, but rather constitutes a separate class of our issued and outstanding stock. The original transferee-stockholder may, at any time the excess stock is held by us in trust, transfer the interest in the trust representing the excess stock to any person whose ownership of shares of capital stock exchanged for such excess stock would be permitted under the ownership limit, at a price not in excess of:

the price paid by the original transferee-stockholders for shares of stock that were exchanged into excess stock, or

if the original transferee-stockholder did not give value for such shares (e.g., the shares were received through a gift, devise or other transaction), the average closing price for the class of stock from which such shares of excess stock were exchanged for the ten days immediately preceding such sale, gift or other transaction.