

PREFERRED APARTMENT COMMUNITIES INC

Form S-3/A

October 04, 2013

As filed with the Securities and Exchange Commission on October 4, 2013

Registration No. 333-183355

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UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

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Pre-Effective Amendment No. 2 to Form S-3

REGISTRATION STATEMENT UNDER

THE SECURITIES ACT OF 1933

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PREFERRED APARTMENT  
COMMUNITIES, INC.

(Exact Name of Registrant as Specified in its Charter)

Maryland

(State or other jurisdiction of incorporation or organization)

27-1712193

(I.R.S. Employer Identification Number)

3625 Cumberland Boulevard, Suite 1150

Atlanta, Georgia 30339

(770) 818-4100

(Address, Including Zip Code, and Telephone Number, Including Area Code, of Registrant's Principal Executive Offices)

John A. Williams

PREFERRED APARTMENT COMMUNITIES, INC.

3625 Cumberland Boulevard, Suite 1150

Atlanta, Georgia 30339

(770) 818-4100

(Name, Address, Including Zip Code, and Telephone Number, Including Area Code, of Agent for Service)

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Approximate date of commencement of proposed sale to the public: From time to time after the effective date of this registration statement as determined by the registrant.

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

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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, other than securities offered only in connection with dividend or interest reinvestment plans, check the following box.

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.

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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. "

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. "

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. "

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.

Large accelerated filer " Accelerated filer " Non-accelerated filer  Smaller reporting company "

CALCULATION OF REGISTRATION FEE

| Title of Each Class of Securities To Be Registered  | Proposed Maximum Aggregate Offering Price <sup>(1)</sup> | Amount of Registration Fee |
|---|--|----------------------------|
| Units, each Unit consisting of one share of Series A Redeemable Preferred Stock, par value \$0.01 per share, and one Warrant to purchase 20 shares of Common Stock, par value \$0.01 per share <sup>(2)</sup> | \$900,000,000  | \$104,230.00               |
| Series A Redeemable Preferred Stock included as part of the Units <sup>(3)</sup>  | -  | -                          |
| Warrants included as part of the Units <sup>(4)</sup>   | -  | -(5)                       |
| Common Stock issuable upon exercise of the Warrants <sup>(8)</sup>  | \$162,000,000  | \$18,761.40 <sup>(6)</sup> |
| Common Stock issuable upon redemption of the Series A Redeemable Preferred Stock <sup>(7)(8)</sup>  | -  | -                          |
| Total   | \$1,062,000,000  | \$122,991.40*              |

(1) Estimated solely for purposes of calculating the registration fee in accordance with Rule 457(o) under the Securities Act of 1933, as amended, or the Securities Act.

(2) We are registering hereunder 900,000 Units.

(3) We are registering hereunder 900,000 shares of Series A Redeemable Preferred Stock.

(4) We are registering hereunder Warrants to purchase 18,000,000 shares of Common Stock.

(5) No separate registration fee required pursuant to Rule 457(g) of the Securities Act.

Includes the offering price attributable to shares of Common Stock issuable upon exercise of the Warrants, (6) assuming an exercise price of \$9.00 per share. The registration fee has been calculated in accordance with Rule 457(i) of the Securities Act.

We also are registering hereunder an indeterminate number of shares of Common Stock that may be issuable upon the redemption of the Series A Redeemable Preferred Stock. The shares of Common Stock issuable upon (7) redemption of the Series A Redeemable Preferred Stock will be issued for no additional consideration, and therefore no registration fee is required pursuant to Rule 457(i) of the Securities Act.

Pursuant to Rule 416 of the Securities Act, such number of shares of Common Stock registered hereby also shall include an indeterminate number of shares of Common Stock that may be issued in connection with stock splits, (8) stock dividends, recapitalizations or similar events or adjustments in the number of shares issuable as provided in the Warrants and in the articles supplementary setting forth the rights, preferences and limitations of the Series A Redeemable Preferred Stock.

\*\$114,943.80 was previously paid in August 2012 to register 850,000 shares of Series A Redeemable Preferred Stock and Warrants to purchase 17,000,000 shares of Common Stock and \$8,047.60 was paid in August 2013 to register the additional 50,000 shares of Series A Redeemable Preferred Stock and Warrants to purchase an additional

1,000,000 shares of Common Stock.

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 an amendment that specifically states that this registration statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933, as amended or until the registration statement shall become effective on such date as the Securities and Exchange 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. No person may sell these securities until the registration statement filed with the Securities and Exchange Commission is effective. This preliminary 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 4, 2013  
PRELIMINARY PROSPECTUS

Maximum of 900,000 Units consisting of 900,000 Shares of Series A Redeemable Preferred Stock and Warrants to Purchase 18,000,000 Shares of Common Stock

(Liquidation Preference \$1,000 per share of Series A Redeemable Preferred Stock (subject to adjustment))

Preferred Apartment Communities, Inc. is an externally managed Maryland corporation incorporated on September 18, 2009 and formed primarily to acquire and operate multifamily properties in select targeted markets throughout the United States.

We are offering a maximum of 900,000 shares of our Series A Redeemable Preferred Stock, par value \$0.01 per share, referred to as our Series A Redeemable Preferred Stock, and warrants, referred to as the Warrants, to purchase a maximum of 18,000,000 shares of our common stock in this offering. This prospectus also covers the shares of common stock that are issuable from time to time upon exercise of the Warrants and that may be issuable upon redemption of the Series A Redeemable Preferred Stock. The Series A Redeemable Preferred Stock and the Warrants will be sold in units, or Units, with each Unit consisting of (i) one share of Series A Redeemable Preferred Stock with an initial stated value of \$1,000 per share, and (ii) one Warrant to purchase 20 shares of common stock, exercisable by the holder at an exercise price that is set at a 20% premium to the current market price per share of our common stock determined using the volume weighted average price of our common stock for the 20 trading days prior to the date of issuance of such Warrant, subject to a minimum exercise price of \$9.00 per share (subject to adjustment). Each Unit will be sold at a public offering price of \$1,000 per Unit. Units will not be issued or certificated. The shares of Series A Redeemable Preferred Stock and the Warrants are immediately detachable and will be issued separately. The Warrants are not exercisable until one year from the date of issuance and expire four years from the date of issuance. The Series A Redeemable Preferred Stock will rank senior to our common stock with respect to payment of dividends and distribution of amounts upon liquidation, dissolution or winding up. Holders of our Series A Redeemable Preferred Stock will have no voting rights. On November 18, 2011, the Securities and Exchange Commission, or SEC, declared effective our registration statement on Form S-11 (File No. 333-176604), or as the same may be amended from time to time, the Primary Series A Registration Statement, for our offering of up to 150,000 Units. The offering under the Primary Series A Registration Statement is referred to herein as the Primary Series A Offering. The Primary Series A Offering will terminate on the earlier of December 31, 2013 and the date we sell an aggregate of 150,000 Units under the Primary Series A Offering. The offering under this prospectus is a follow-on offering to the Primary Series A Offering and, except as described in this prospectus, the terms of the Primary Series A Offering are substantially similar to the offering under this prospectus.

Our common stock trades on the NYSE MKT under the symbol "APTS." On October 3, 2013, the last reported sale price of our common stock on the NYSE MKT was \$8.26 per share. There is no established trading market for our Series A Redeemable Preferred Stock or any of the Warrants and we do not expect a market to develop. We do not intend to apply for a listing of the Series A Redeemable Preferred Stock or any of the Warrants on any national securities exchange.

We have elected and qualified to be taxed as a real estate investment trust for U.S. federal income tax purposes, or REIT, commencing with our tax year ended December 31, 2011.

Investing in our securities involves significant risks. You should carefully read and consider "Risk Factors" included in our most recent Annual Report on Form 10-K and any subsequent Quarterly Reports on Form 10-Q, on page 11 of this prospectus and in any applicable prospectus supplement before investing in our securities.

We impose certain restrictions on the ownership and transfer of our capital stock. You should read the information under the section entitled "Description of Capital Stock and Securities Offered — Restrictions on Ownership and

Transfer" in this prospectus for a description of these restrictions.

Neither the SEC, the Attorney General of the State of New York, nor any state securities commission has approved or disapproved of these securities, determined if this prospectus is truthful or complete or passed on or endorsed the merits of this offering. Any representation to the contrary is a criminal offense.

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|                                       | Per Unit   | Maximum Offering | (1 ) |
|---------------------------------------|------------|------------------|------|
| Public offering price                 | \$1,000.00 | 900,000,000      |      |
| Selling commissions <sup>(2)(3)</sup> | \$70.00    | \$63,000,000     |      |
| Dealer manager fee <sup>(2)(3)</sup>  | \$30.00    | \$27,000,000     |      |
| Proceeds, before expenses, to us      | \$900.00   | \$810,000,000    |      |

- (1) Initial gross proceeds. If the Warrants are exercised in full at the minimum exercise price of \$9.00 per share of common stock, the company will receive additional gross proceeds equal to \$162.0 million. Selling commissions and the dealer manager fee will equal 7% and 3% of aggregate gross proceeds, respectively. Each is payable to our dealer manager. We or our affiliates also may provide permissible forms of non-cash compensation to registered representatives of our dealer manager and the participating broker-dealers. The value of such items will be considered underwriting compensation in connection with this offering, and the corresponding
- (2) payments of our dealer manager fee will be reduced by the aggregate value of such items. The combined selling commissions, dealer manager fee and such non-cash compensation for this offering will not exceed 10% of the aggregate gross proceeds of this offering, which is referred to as FINRA's 10% cap. Our dealer manager will repay to the company any excess payments made to our dealer manager over FINRA's 10% cap if this offering is abruptly terminated before reaching the maximum amount of offering proceeds.
- We expect our dealer manager to authorize other broker-dealers that are members of FINRA, which we refer to as participating broker-dealers, to sell our Units. Our dealer manager may reallow all or a portion of its selling commissions attributable to a participating broker-dealer. In addition, our dealer manager also may reallow a
- (3) portion of its dealer manager fee earned on the proceeds raised by a participating broker-dealer, to such participating broker-dealer as a non-accountable marketing or due diligence allowance. The amount of the reallowance to any participating broker-dealer will be determined by the dealer manager in its sole discretion.

The dealer manager of this offering is International Assets Advisory, LLC, or IAA. The dealer manager is not required to sell any specific number or dollar amount of Units, but will use its "reasonable best efforts" to sell the Units offered. The minimum permitted purchase is generally \$5,000, but purchases of less than \$5,000 may be made in the discretion of the dealer manager. We expect to sell up to 900,000 Units in this offering by \_\_\_\_\_, 2015, which may be extended through \_\_\_\_\_, 2016, in our sole discretion. If we extend the offering period beyond \_\_\_\_\_, 2015, we will supplement this prospectus accordingly. We may terminate this offering at any time or may offer Units pursuant to a new registration statement.

We will sell Units through Depository Trust Company, or DTC, settlement, or DTC Settlement; or, under special circumstances, through Direct Registration System settlement, or DRS Settlement. See the section entitled "Plan of Distribution" in this prospectus for a description of these settlement methods.

INTERNATIONAL ASSETS ADVISORY, LLC

as Dealer Manager

The date of this prospectus is \_\_\_\_\_, 2013

PREFERRED APARTMENT COMMUNITIES, INC.  
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You should rely only on the information contained in or incorporated by reference into this prospectus, in any free writing prospectus prepared by us or information to which we have referred you. We have not, and the dealer manager has not, authorized any dealer, salesperson or other person to provide you with different or additional information. If anyone provides you with different or inconsistent information, you should not rely on it. We are not, and the dealer manager and dealers are not, making an offer to sell these securities in any jurisdiction where the offer or sale is not permitted. You should assume that the information contained in or incorporated by reference into this prospectus and any free writing prospectus prepared by us is accurate only as of their respective dates or on the date or dates which are specified in these documents. Our business, financial condition, liquidity, results of operations and prospects may have changed since those dates.



**MARKET AND INDUSTRY DATA AND FORECASTS**

In this prospectus, we present certain economic and industry data and forecasts derived from cited third party sources, which data and forecasts are publicly available for free or upon payment as part of a subscription service. None of such data and forecasts was prepared specifically for us. No third party source that has prepared such information has reviewed or passed upon our use of the information in this prospectus, and no third party source is quoted or summarized in this prospectus as an expert. All statements contained in this prospectus in connection with or related to such data and forecasts are attributed to us, and not to any such third party source or any other person.

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## PROSPECTUS SUMMARY

This summary highlights some of the information in this prospectus. It does not contain all the information that you should consider before investing in our securities. You should read carefully the detailed information set forth in the section entitled "Risk Factors" and other information included in this prospectus, and the information incorporated by reference into this prospectus, including our audited consolidated financial statements and the accompanying notes in our latest Annual Report on Form 10-K and our consolidated financial statements and the accompanying notes in our subsequent Quarterly Reports on Form 10-Q. Except where the context suggests otherwise, the terms "company," "we," "us," and "our" refer to Preferred Apartment Communities, Inc., a Maryland corporation, together with its consolidated subsidiaries, including Preferred Apartment Communities Operating Partnership, L.P., a Delaware limited partnership of which we are the sole general partner, which we refer to in this prospectus as "our operating partnership", "our manager" refers to Preferred Apartment Advisors, LLC, a Delaware limited liability company which is our external manager and advisor and a related party, and references to securities, including the Series A Redeemable Preferred Stock, Warrants and common stock, mean the securities of Preferred Apartment Communities, Inc., excluding its subsidiaries.

### Our Company

We are a Maryland corporation formed primarily to acquire and operate multifamily properties in select targeted markets throughout the United States. As part of our business strategy, we may enter into forward purchase contracts or purchase options for to-be-built multifamily communities and we may make mezzanine loans, provide deposit arrangements, or provide performance assurances, as may be necessary or appropriate, in connection with the construction of multifamily communities and other properties. As a secondary strategy, we also may acquire or originate senior mortgage loans, subordinate loans or mezzanine debt secured by interests in multifamily properties, membership or partnership interests in multifamily properties and other multifamily related assets and invest not more than 10% of our total assets in other real estate related investments, as determined by our manager as appropriate for us. We collectively refer to these asset classes as our target assets. We elected to be taxed as a REIT under the Internal Revenue Code of 1986, as amended, or the Code, effective with our tax year ended December 31, 2011. We conduct substantially all of our operations through our operating partnership. We are externally managed and advised by our manager pursuant to the management agreement (as defined and described below).

### Market Opportunities

As a result of the recent United States financial crisis and downturn in the United States economy, multifamily assets saw a dramatic drop in their value after 2008. A combination of higher capitalization rates and downward pressure on renter incomes had adversely affected owners of multifamily assets and limited their options. Many transactions completed between 2005 and 2008 were highly leveraged with favorable initial financing terms. In many instances, the initial terms of these financings have expired or are about to expire or the debt is about to mature. These owners may have difficulty refinancing these assets given the volatile state of the real estate credit markets and their options may be limited to a sale at a discount to their original investment or foreclosure. We believe our investments will benefit from the following:

- the measured levels of new supply projected for the next several years;
- the continuing rebound in the general economy;
- the continual introduction of the "echo boom" generation into the market (see "Preferred Apartment Communities - Market Opportunities" included elsewhere in this prospectus); and
- the decline in homeownership rates.

We believe these existing and expected factors in the market should create multiple opportunities for investments.

### Our Competitive Strengths

We believe that we distinguish ourselves from our competitors through the following competitive advantages:

- experienced management team with significant expertise in real estate and real estate-related debt investments and capital markets;
- access to a pipeline of investment opportunities
- benefits from our relationship with our manager and its affiliates; and
- dedicated asset management team.

#### Our Investment Strategy

Our investment strategy includes, without limitation, the following:

- acquiring real-estate related assets where such assets or the owners of such assets are overleveraged or where such owners may be struggling to meet current debt service obligations on such assets, or, in certain circumstances, where such owners are financial institutions or conduits under either legal or economic compulsion to sell;
- acquiring multifamily properties which we believe will generate sustainable cash flow from operations sufficient to allow us to cover the dividends that we expect to declare and pay and which we believe will have the potential for capital appreciation;
- taking advantage of supply constraints in multifamily housing in part as a result of a lack of new construction over the past several years; and
- taking advantage of favorable financing available from the Federal Home Loan Mortgage Corporation, or Freddie Mac, and the Federal National Mortgage Association, or Fannie Mae.

### Our Target Markets

Generally, we expect to target metropolitan statistical areas, or MSAs, of approximately one million people or more with favorable economic conditions. The conditions of a market we may monitor include, but are not limited to, job growth, household income, the pipeline of new supply for multifamily units, the pipeline of new supply for single family units, current and forecasted occupancy for multifamily units, current and forecasted rental rate growth for multifamily units, and other statistics that may be relevant to individual markets. In addition, we will analyze forecast data from our manager's affiliates gathered in their operations to support our assumptions. We also will utilize our management team's network of industry contacts and relationships to generate significant information about current and future market conditions. See the section entitled "Preferred Apartment Communities -- Our Target Markets" included elsewhere in this prospectus for a detailed discussion of our target markets.

### Our Branding and Marketing Strategy

Our manager has registered "A Preferred Apartment Community" as a trademarked logo with the United States Patent and Trademark Office. Our manager has branded, and in the future will continue to brand, all apartment communities owned by the company as "A Preferred Apartment Community" and has made it the ultimate tagline for each of our communities that we believe signifies our brand and management standards. This strategy allows each individual community to be part of a centralized marketing and advertising campaign, in addition to property level marketing and advertising campaigns. We expect that these campaigns will further enhance each individual property's presence in the marketplace, and we believe that this will allow our communities to be perceived as premier over other properties within the marketplace. Our manager has entered into a non-exclusive license agreement with the company, as licensee, with respect to all intellectual property of the manager other than trademarks. The license agreement will terminate automatically upon termination of our management agreement or will terminate upon a material breach of the license agreement that remains uncured for more than 30 days after receipt of notice of such breach. Our manager has entered into a separate non-exclusive license agreement with the company, as licensee, with respect to the manager's trademarks on substantially similar terms as the initial intellectual property license agreement.

### Our Financing Strategy

We intend to utilize leverage in making our investments. The number of different investments we will acquire will be affected by numerous factors, including the amount of funds available to us. By operating on a leveraged basis, we will have more funds available for our investments. This will allow us to make more investments than would otherwise be possible, resulting in a larger and more diversified portfolio. See the "Risk Factors" section of this prospectus for more information about the risks related to operating on a leveraged basis.

We intend to target leverage levels (secured and unsecured) between 50% and 65% of the value of our tangible assets (including our real estate assets, real estate loans and other real estate-related investments, accounts receivable and cash and cash equivalents) on a portfolio basis based on fair market value. As of June 30, 2013, our outstanding debt (both secured and unsecured) was approximately 47.2% of the value of our tangible assets on a portfolio basis based on fair market value. Neither our charter nor our by-laws contain any limitation on the amount of leverage we may use. Our investment guidelines, which can be amended by our Board of Directors without stockholder approval, limit our borrowings (secured and unsecured) to 75% of the cost of our tangible assets at the time of any new borrowing. These targets, however, will not apply to individual real estate assets or investments. Other than in connection with forward purchase contracts or purchase option agreements where we have provided a mezzanine loan for development, at the date of acquisition of each asset, we anticipate that the cost of investment for such asset will be substantially similar to its fair market value. However, subsequent events, including changes in the fair market value of our assets, could result in our exceeding these limits. In addition, we intend to acquire all our properties through separate single purpose entities and we intend to finance each of these properties using debt financing techniques for that property alone without any cross-collateralization to our other multifamily communities or any guarantees by us or our operating partnership. We intend to have no long-term unsecured debt at the company or operating partnership levels, except for our \$30.0 million senior secured revolving credit facility, or our credit facility. See the section

entitled "Liquidity and Capital Resources" included in our most recent Annual Report on Form 10-K, any subsequent Quarterly Reports on Form 10-Q and SEC reports on Form 8-K, which are incorporated, or deemed to be incorporated, by reference into this prospectus, for a detailed discussion of our borrowing policies.

Our secured and unsecured aggregate borrowings are intended by us to be reasonable in relation to our net assets and are reviewed by our Board of Directors at least quarterly. In determining whether our borrowings are reasonable in relation to our net assets, our Board of Directors considers many factors, including without limitation, the lending standards of government-sponsored enterprises, such as Fannie Mae, Freddie Mac and other companies for loans in connection with the financing of multifamily properties, the leverage ratios of publicly traded and non-traded REITs with similar investment strategies, cash flow coverage, whether we have positive leverage (in that, our Board of Directors will compare the capitalization rates of our properties to the interest rates on the indebtedness of such properties) and general market and economic conditions. There is no limitation on the amount that we may borrow for any single investment.

## Risk Management

Risk management is a fundamental principle in our manager's construction of our portfolio and in the management of each investment. Diversification of our portfolio by investment size and location is critical to controlling portfolio-level risk. Over the long term, we intend that no single asset will exceed 15% of our total assets and that we will not have more than 25% of our total assets invested in any single MSA. However, until a sufficient number of investments are acquired, we anticipate that we will have single assets in excess of 15% of our total assets and more than 25% of our assets in a single MSA.

Management Agreement.

## Management Agreement

We are externally managed and advised by our manager. Our manager is subject to the supervision and oversight of our Board of Directors at all times and has only such functions and authority as we delegate to it. We do not expect to have any employees.

We have entered into a third amended and restated management agreement, or the management agreement, with our manager. Pursuant to the management agreement, our manager provides us with a management team and appropriate support personnel to implement our business strategy and perform certain services for us, subject to oversight by our Board of Directors. Our manager is responsible for, among other duties, (1) performing and administering all our day-to-day operations, (2) determining investment criteria in conjunction with our Board of Directors, (3) sourcing, analyzing and executing asset acquisitions, sales and financings, (4) performing asset management duties, (5) performing property management duties, and (6) performing financial and accounting management. Our manager has an investment committee that oversees our investment guidelines, our investment portfolio and its compliance with our investment guidelines and policies.

The initial term of the management agreement expires on April 5, 2016 and will be automatically renewed for a one-year term on each anniversary date thereafter unless previously terminated as described below. Our independent directors will review our manager's performance and fees that may be payable to our manager annually, and, following the initial term, the management agreement may be terminated annually upon the affirmative vote of at least 75% of our independent directors, based upon (1) unsatisfactory performance that is materially detrimental to us, or (2) our determination that the fees payable to our manager are not in accordance with market rates, subject to our manager's right to prevent such termination due to above-market fees by accepting a reduction of fees to at or below market rates agreed to by at least 75% of our independent directors. We must provide 180 days' prior written notice of any such termination. We also may terminate the management agreement at any time, including during the initial term, without the payment of any termination fee, with at least 30 days' prior written notice from our Board of Directors for cause, as defined in the management agreement, in the absence of our manager's cure. We do not have the right to decline to renew the management agreement. Our manager may decline to renew the management agreement by providing us with 180 days' prior written notice. Our manager may terminate the management agreement for good reason, with at least 60 days' prior written notice, in the absence of our cure. Unless the manager declines to renew the management agreement or the management agreement is terminated for cause, our manager will be paid accrued fees upon termination as described in the table below.

The following table summarizes the fees and expense reimbursements that we will pay to our manager (or persons affiliated with or related to our manager, including our officers):

| Type of Compensation | Determination of Amount  |
|----------------------|--|
|                      | Offering, Acquisition and Operation Stage  |
| Acquisition Fees     | Fees payable to our manager in the amount of 1.0% of the gross contract purchase price of the property, loan or other real estate-related investment purchased or made, as applicable, for services in connection with selecting, evaluating and acquiring or making |

such investment. For purposes of this prospectus, "gross contract purchase price" means the amount actually paid or allocated in respect of the purchase of a property or the amount actually paid or allocated in respect of the purchase or origination of loans or other real-estate related assets, in each case inclusive of acquisition expenses and any indebtedness assumed or incurred in respect of such investment but exclusive of acquisition fees.

Acquisition Expenses <sup>(1)</sup>

We will reimburse our manager for expenses actually incurred (including personnel costs) related to selecting, evaluating and making investments on our behalf, regardless of whether we actually make the related investment. Personnel costs associated with providing such services will be determined based on the amount of time incurred by the applicable employee of our manager and the corresponding payroll and payroll related costs incurred by our manager. In addition, we also will pay third parties, or reimburse our manager or its affiliates, for any investment-related expenses due to third parties, including, but not limited to, legal fees and expenses, travel and communications expenses, costs of appraisals, accounting fees and expenses, third-party brokerage or finder's fees, title insurance expenses, survey expenses, property inspection expenses and other closing costs, regardless of whether we make the related investment.

|  |   |
|--|---|
| Asset Management Fee <sup>(2)</sup>                          | <p>We will pay our manager a monthly fee equal to one-twelfth of 0.50% of the total value of our assets (including cash or cash equivalents) based on the adjusted cost of our assets and amounts actually paid or allocated in respect of the issuance of loans, before reduction for depreciation, amortization, impairment charges and cumulative acquisition costs charged to expense in accordance with generally accepted accounting principles, or GAAP (adjusted cost will include the purchase price, acquisition expenses, capital expenditures and other customarily capitalized costs). This fee will be payable monthly in arrears, based on assets held by us on the last date of the prior month, adjusted for appropriate closing dates for individual investments.</p>   |
| Property Management and Leasing Fee <sup>(2)</sup>           | <p>We will pay our manager a monthly fee equal to 4% of the monthly gross revenues of our properties managed, for services in connection with the rental, leasing, operation and management of our properties and the supervision of any third parties that are engaged by our manager to provide such services. Our manager may subcontract the performance of its property management and leasing services duties to third parties or affiliates and pay all or a portion of its property management fee to such persons with whom it contracts for these services. Our manager will be responsible for all fees payable to third parties or affiliates in connection with subcontracted property management and leasing duties. The property management and leasing fee will be payable monthly in arrears, based on the actual gross revenues for the prior month.</p>              |
| General and Administrative Expenses Fee <sup>(1)(2)(3)</sup> | <p>We will pay our manager a monthly fee equal to 2% of our monthly gross revenues in connection with the administration of our day-to-day operations and the performance and supervision of the performance of such other administrative functions necessary for our management.</p>   |
| Disposition Fee on Sale of Assets                            | <p>We may pay our manager a commission upon the sale of one or more of our properties or other assets in an amount equal to the lesser of (a) one-half of the commission that would be reasonable, customary and competitive in light of the size, type and location of the asset, and (b) 1% of the sale price of the asset. Payment of such fee may be made only if the manager provides a substantial amount of services in connection with the sale of the asset as determined by a majority of our independent directors. In addition, the amount paid when added to all other commissions paid to unaffiliated parties in connection with such sale shall not exceed the lesser of (1) the commission that would be reasonable, customary and competitive in light of the size, type and location of the asset and (2) an amount equal to 6% of the sale price of such asset.</p> |
| Construction Fee, Development Fee and Landscaping Fee        | <p>We will pay our manager a construction fee, development fee and landscaping fee at market rates customary and competitive in light of the size, type and location of the asset in connection with the construction, development or landscaping of a property.</p>  |
| Accrued Fees Upon Termination                                | <p>If the management agreement is terminated by reason of a change of control of the company by us without cause (upon the vote of at least 75% of our independent directors) in connection with the expiration of a renewal term, by the manager for good reason or upon our liquidation, the manager will be entitled to receive payment of any earned but unpaid compensation and expense reimbursements accrued as of the date of termination.</p>  |
| Special Limited Partnership Interest                         | <p>Liquidation Stage<br/>Our manager has a special limited partnership interest in our operating partnership entitling it to distributions from our operating partnership equal to 15% of any net sale proceeds from an asset (which equals the proceeds actually received by us from the sale of such asset after paying off outstanding debt related to the sold asset and paying any seller related closing costs, including any commission paid to our manager in connection</p>  |



with the sale of the asset, less expenses allocable to the sold asset) remaining after the payment of (i) the capital and expenses allocable to all realized investments (including the sold asset), and (ii) a 7% priority annual return on such capital and expenses; provided, however, that all accrued and unpaid dividends on our preferred stock have been paid in full. This distribution with respect to the special limited partnership interest is payable upon the sale of an asset even if holders of our preferred stock have not received a return of their capital, but only after the holders of our preferred stock have received payment in full of all accrued and unpaid dividends on their preferred stock. It is also possible that holders of common stock will receive additional distributions from the sale of a property (in excess of their capital attributable to the asset sold) before the holders of Series A Redeemable Preferred Stock receive a return of their capital.

The special limited partner shall be entitled to tax distributions, at our sole discretion as the general partner, provided such distributions do not prevent us from satisfying the requirements for qualification as a REIT. Any tax distributions shall offset future distributions to which the special limited partner is entitled.

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(1) Amounts paid in respect of acquisition expenses and the general and administrative expenses fee include our portion of any expenses incurred by our manager on behalf of joint ventures in which we are a participant.

(2) The total amount of the asset management, property management and leasing and general and administrative fees and expenses paid or reimbursed to our manager will be capped at 1.5% of total value of our assets (including cash and cash equivalents) based on the adjusted cost of our assets before reduction for depreciation, amortization, impairment charges expense in accordance with GAAP (adjusted cost will include the purchase price, acquisition expenses, capital expenditures and other customarily capitalized costs).

(3) In addition to the general and administrative expenses fee, we may reimburse our manager for certain costs and expenses it incurs in connection with the services it provides to us, including, but not limited to, personnel costs. See the note to our financial statements entitled "Related Party Transactions" included in our most recent Annual Report on Form 10-K, any subsequent Quarterly Reports on Form 10-Q and SEC reports on Form 8-K, which are incorporated, or deemed to be incorporated, by reference into this prospectus for details relating to these additional costs and expenses.

#### Operating and Regulatory Structure

##### REIT Qualification

We have elected and qualified to be taxed as a REIT commencing with our tax year ended December 31, 2011. In addition, we may hold certain of our assets through taxable REIT subsidiaries, or TRSs, which may be subject to corporate-level income tax at regular rates. Our qualification as a REIT depends on our ability to meet, on a continuing basis, through actual investment and operating results, various complex requirements under the Code, relating to, among other things, the sources of our gross income, the composition and values of our assets, our distribution levels and the concentration of ownership of our shares of capital stock. We believe that we have been organized in conformity with the requirements for qualification and taxation as a REIT under the Code, and that our proposed method of operation will enable us to meet the requirements for qualification and taxation as a REIT. So long as we qualify as a REIT, we generally will not be subject to U.S. federal income tax on our REIT taxable income we distribute currently to our stockholders. Under the Code, REITs are subject to numerous organizational and operational requirements, including a requirement that they distribute annually to their stockholders at least 90% of their REIT taxable income (which does not equal net income as calculated in accordance with GAAP), determined without regard to the deduction for dividends paid and excluding any net capital gain. If we fail to qualify for taxation as a REIT in any taxable year, and the statutory relief provisions of the Code do not apply, we will be subject to U.S. federal income tax at regular corporate rates and may be precluded from qualifying as a REIT for the subsequent four taxable years following the year during which we lost our REIT qualification. Distributions to stockholders in any year in which we are not a REIT would not be deductible by us, nor would they be required to be made. Even if we qualify for taxation as a REIT, we may be subject to certain state and local taxes on our income or property and to U.S. federal income and excise taxes on our undistributed income.

##### Restrictions on Ownership and Transfer of our Securities

To assist us in complying with the limitations on the concentration of ownership of a REIT imposed by the Code, among other purposes, our charter prohibits, with certain exceptions, any stockholder from beneficially or constructively owning, applying certain attribution rules under the Code, more than 9.8% in value of the aggregate of our outstanding shares of stock or more than 9.8% (in value or number of shares, whichever is more restrictive) of any class or series of shares of our stock. Our Board of Directors may, in its sole discretion, waive (prospectively or retroactively) the 9.8% ownership limit with respect to a particular stockholder if it is presented with certain representations and undertakings required by our charter and other evidence satisfactory to it that such ownership will not then or in the future jeopardize our qualification as a REIT.

Our charter also prohibits any person from, among other things:

- beneficially or constructively owning shares of our capital stock that would result in our being "closely held" under Section 856(h) of the Code, or otherwise cause us to fail to qualify as a REIT;
- transferring shares of our capital stock if such transfer would result in our capital stock being beneficially owned by fewer than 100 persons.

In addition, our charter provides that any ownership or purported transfer of our capital stock in violation of the foregoing restrictions will result in the shares so owned or transferred being automatically transferred to a charitable trust for the benefit of a charitable beneficiary (or, in the case of a transfer that would result in our capital stock being beneficially owned by fewer than 100 persons, be void), and the purported owner or transferee acquiring no rights in

such shares. If a transfer to a charitable trust would be ineffective for any reason to prevent a violation of the restriction, the transfer resulting in such violation will be void from the time of such purported transfer.

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## Distribution Policy

We intend to make regular quarterly distributions to holders of our common stock. U.S. federal income tax law generally requires that a REIT distribute annually to its stockholders at least 90% of its REIT taxable income (which does not equal net income as calculated in accordance with GAAP), determined without regard to the deduction for dividends paid and excluding net capital gain, and that it pay tax at regular corporate rates to the extent that it annually distributes less than 100% of its net taxable income. We generally intend to pay, over time, dividends in an amount equal to 100% of our REIT taxable income.

Holders of Series A Redeemable Preferred Stock are entitled to receive, when and as authorized by our Board of Directors and declared by us out of legally available funds, cumulative cash dividends on each share of Series A Redeemable Preferred Stock at an annual rate of six percent (6%) of the initial stated value of \$1,000 per share, or the Stated Value. Dividends on each share of Series A Redeemable Preferred Stock will begin accruing on, and will be cumulative from, the date of issuance. We paid the initial dividend on our Series A Redeemable Preferred Stock in May 2012 to stockholders of record as of April 30, 2012, and thereafter have consistently paid monthly dividends on the Series A Redeemable Preferred Stock. We expect to continue to pay dividends on the Series A Redeemable Preferred Stock monthly, unless our results of operations, our general financing conditions, general economic conditions, applicable provisions of Maryland law or other factors make it imprudent to do so. We also expect to continue to authorize and declare dividends on the shares of Series A Redeemable Preferred Stock on a monthly basis payable on the 20<sup>th</sup> day of the month following the month for which the dividend was declared (or the next business day if the 20<sup>th</sup> day is not a business day). The timing and amount of such dividends will be determined by our Board of Directors, in its sole discretion, and may vary from time to time.

Any distributions we make will be at the discretion of our Board of Directors and will depend upon, among other things, our actual results of operations. These results and our ability to pay distributions will be affected by various factors, including the net income from our portfolio of investments, our operating expenses and any other expenditure. For more information, see the section entitled "Description of Securities - Distribution Policy and Distributions" included elsewhere in this prospectus.

We cannot assure you that we will make any distributions to our stockholders.

### Primary Series A Offering

On November 18, 2011, the SEC declared effective the Primary Series A Offering Registration Statement for our offering of up to 150,000 Units in the Primary Series A Offering. The Primary Series A Offering will terminate on the earlier of December 31, 2013 and the date we sell an aggregate of 150,000 Units under the Primary Series A Offering. The offering under this prospectus is a follow-on offering to the Primary Series A Offering and, except as described in this prospectus, the terms of the Primary Series A Offering are substantially similar to the offering under this prospectus.

### The Offering

Series A Redeemable Preferred Stock offered by us

A maximum of 900,000 shares of Series A Redeemable Preferred Stock will be offered as part of the Units through our dealer manager in this offering on a reasonable best efforts basis.

**Ranking.** The Series A Redeemable Preferred Stock ranks senior to our common stock with respect to payment of dividends and rights upon liquidation, dissolution or winding up. Investors in the Series A Redeemable Preferred Stock should note that holders of common stock will receive additional distributions from the sale of a property (in excess of their capital attributable to the asset sold) before the holders of Series A Redeemable Preferred Stock receive a return of their capital.