

Wheeler Real Estate Investment Trust, Inc.

Form S-3

October 02, 2015

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**As filed with the Securities and Exchange Commission on October 2, 2015**

**Registration No. 333-**

**UNITED STATES**

**SECURITIES AND EXCHANGE COMMISSION**

**Washington, D.C. 20549**

**Form S-3**

**REGISTRATION STATEMENT**

***UNDER***

***THE SECURITIES ACT OF 1933***

**WHEELER REAL ESTATE INVESTMENT TRUST, INC.**

**(Exact Name of Registrant as Specified in its Charter)**

**Maryland**  
**(State or other Jurisdiction of**  
**Incorporation or Organization)**

**45-2681082**  
**(I.R.S. Employer**  
**Identification Number)**

**Riversedge North**

**2529 Virginia Beach Blvd., Suite 200**

**Virginia Beach, Virginia 23452**

**(757) 627-9088**

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

**CT Corporation System**

**111 Eighth Avenue**

**New York, New York 10011**

**(800) 624-0909**

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

***With copies to:***

**Bradley A. Haneberg, Esq.**

**Matthew B. Chmiel, Esq.**

**Haneberg, PLC**

**310 Granite Avenue**

**Richmond, Virginia 23226**

**(804) 814-2209**

Approximate date of commencement of proposed sale to the public: From time to time after the effective date of this Registration Statement.

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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, or the Securities Act, 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. ☐

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. (Check one):

Large accelerated filer ☐

Accelerated filer ☐

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

Smaller reporting company ☒

### CALCULATION OF REGISTRATION FEE

Title of Each Class of	Amount To Be	Proposed Maximum Offering	Proposed Maximum Aggregate Offering	Amount of Registration
Securities to be Registered	Registered(1)	Price Per Share(2)	Price(2)	Fee(3)
Common Stock, par value \$.01 per share	2,727,601	\$1.88	5,127,890	\$517

(1) In accordance with Rule 416 promulgated under the Securities Act of 1933, this Registration Statement shall be deemed to cover any additional number of shares of common stock to be offered or issued from stock splits, stock

dividends or similar transactions.

- (2) Estimated solely for purposes of the registration fee for this offering in accordance with Rule 457(c) of the Securities Act on the basis of the average of the high and low prices of the registrant's common stock on the Nasdaq Capital Market on September 28, 2015.
- (3) Calculated pursuant to Rule 457(c) based on the proposed maximum offering price. Paid previously.

**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 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 2, 2015**

**PROSPECTUS**

**2,727,601 Shares**

**Common Stock**

This Prospectus relates to the offer and sale from time to time (the "Offering") by the persons listed herein (the "Selling Stockholders"), of up to 2,727,601 shares of our common stock, \$0.01 par value per share (the "Common Stock"). Our operating partnership, Wheeler REIT, L.P., issued 4,553,977 units of limited partnership interests (the "Total Units"), in ten private transactions in partial or full consideration for the acquisition of fifteen retail properties on November 16, 2012, December 18, 2012, December 21, 2012, October 21, 2013, December 17, 2013, July 3, 2014, July 25, 2014, June 2, 2015 and July 10, 2015 and on October 24, 2014 for the acquisition of our operating companies, Wheeler Real Estate, LLC, Wheeler Interests, LLC and WHLR Management, LLC to become an internally-managed REIT. Each Total Unit is exchangeable for cash or one share of our Common Stock at our option. We may issue 2,727,601 shares of Common Stock to the Selling Stockholders, which hold 2,727,601 units (the "Units") of the Total Units, if and to the extent that such Selling Stockholders exchange their Units for shares of our Common Stock. The registration of the resale of the Common Stock does not necessarily mean that any of the shares of Common Stock will be offered or sold by the Selling Stockholders. We will not receive proceeds from any sales of the Common Stock, but we will incur expenses in connection with the offering.

Our Common Stock is listed on the Nasdaq Capital Market under the symbol "WHLR". On October 1, 2015, the last reported sale price of our Common Stock was \$1.90 per share.

Investing in our Common Stock involves significant risks. See **Risk Factors** on page 3 of this prospectus.

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

**The date of this prospectus is October , 2015**

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We have not authorized any dealer, salesperson or other person to give any information or to make any representation other than those contained or incorporated by reference in this prospectus. You must not rely upon any information or representation not contained or incorporated by reference in this prospectus. This prospectus does not constitute an offer to sell or the solicitation of an offer to buy any securities other than the registered securities to which it relates, nor does this prospectus constitute an offer to sell or the solicitation of an offer to buy securities in any jurisdiction to any person to whom it is unlawful to make such offer or solicitation in such jurisdiction. You should not assume that the information contained in this prospectus is accurate on any date subsequent to the date set forth on its front cover or that any information we have incorporated by reference is correct on any date subsequent to the date of the document incorporated by reference, even though this prospectus is delivered or securities are sold on a later date.

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**CAUTIONARY STATEMENT REGARDING FORWARD-LOOKING STATEMENTS**

This prospectus contains forward-looking statements, including discussion and analysis of our financial condition, anticipated capital expenditures required to complete projects, amounts of anticipated cash distributions to our stockholders in the future and other matters. These forward-looking statements are not historical facts but are the intent, belief or current expectations of our management based on its knowledge and understanding of our business and industry. Forward-looking statements are typically identified by the use of terms such as may, will, should, potential, predicts, anticipates, expects, intends, plans, believes, seeks, estimates, or the negative of these variations of these words and similar expressions. These statements are not guarantees of future performance and are subject to risks, uncertainties and other factors, some of which are beyond our control, are difficult to predict and could cause actual results to differ materially from those expressed or forecasted in the forward-looking statements.

Forward-looking statements that were true at the time made may ultimately prove to be incorrect or false. You are cautioned to not place undue reliance on forward-looking statements, which reflect our management's view only as of the date of this prospectus. We undertake no obligation to update or revise forward-looking statements to reflect changed assumptions, the occurrence of unanticipated events or changes to future operating results, except as required by applicable law. Factors that could cause actual results to differ materially from any forward-looking statements made in this prospectus include, among others:

use of proceeds of any offering;

our business and investment strategy;

our projected operating results;

actions and initiatives of the U.S. government and changes to U.S. government policies and the execution and impact of these actions, initiatives and policies;

the state of the U.S. economy generally or in specific geographic areas;

economic trends and economic recoveries;

our ability to obtain and maintain financing arrangements;

financing and advance rates for our target assets;

our expected leverage;



availability of investment opportunities in real estate-related investments;

changes in the values of our assets;

our ability to make distributions to our stockholders in the future;

our expected investments and investment decisions;

changes in interest rates and the market value of our target assets;

our ability to renew leases at amounts and terms comparable to existing lease agreements;

our ability to consummate the acquisition of real estate investment properties and the terms upon which we are able to consummate such acquisition;

our ability to proceed with potential development opportunities for us and third-parties;

effects of hedging instruments on our target assets;

our expected financing terms for the acquisition of real estate investment properties;

the degree to which our hedging strategies may or may not protect us from interest rate volatility;

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impact of and changes in governmental regulations, tax law and rates, accounting guidance and similar matters;

our ability to maintain our qualification as a real estate investment trust, or REIT, under the Internal Revenue Code of 1986, as amended, or the Code;

our ability to maintain our exemption from registration under the Investment Company Act of 1940, as amended;

availability of qualified personnel and management team;

the ability of our operating partnership and each of our other partnerships and limited liability companies to be classified as partnerships or disregarded entities for U.S. federal income tax purposes;

our ability to amend our charter to increase or decrease the aggregate number of authorized shares of stock, to authorize us to issue additional authorized but unissued shares of our preferred stock and to classify or reclassify unissued shares of our preferred stock;

our understanding of our competition; and

market trends in our industry, interest rates, real estate values or the general economy.

The forward-looking statements are based on our beliefs, assumptions and expectations of our future performance, taking into account all information currently available to us. You should not place undue reliance on these forward-looking statements. These beliefs, assumptions and expectations can change as a result of many possible events or factors, not all of which are known to us. Some of these factors are described in this prospectus under the section entitled "Wheeler Real Estate Investment Trust, Inc. and Management's Discussion and Analysis of Financial Condition and Results of Operations" as included in our latest Annual Report on Form 10-K, as filed on March 25, 2015, which is incorporated by reference into this prospectus. If a change occurs, our business, financial condition, liquidity and results of operations may vary materially from those expressed in our forward-looking statements. Any forward-looking statement speaks only as of the date on which it is made. New risks and uncertainties arise over time and it is not possible for us to predict those events or how they may affect us. Except as required by law, we are not obligated to, and do not intend to, update or revise any forward-looking statements, whether as a result of new information, future events or otherwise.

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**WHEELER REAL ESTATE INVESTMENT TRUST, INC.**

*Unless the context otherwise requires or indicates, references to the company , we , our or us refers to Wheeler Real Estate Investment Trust, Inc., a Maryland corporation, together with its consolidated subsidiaries, including Wheeler REIT, L.P., a Virginia limited partnership, of which we are the sole general partner, or the Operating Partnership.*

We are a fully-integrated, self-managed commercial real estate investment company focused on acquiring and managing income-producing retail properties with a primary focus on grocery-anchored centers. Our strategy is to opportunistically acquire and reinvigorate well-located, potentially dominant retail properties in secondary and tertiary markets that generate attractive risk-adjusted returns, with a particular emphasis on grocery-anchored retail centers. We target competitively protected properties in communities that have stable demographics and have historically exhibited favorable trends, such as strong population and income growth. We generally lease our properties to national and regional retailers that offer consumer goods and generate regular consumer traffic. We believe our tenants carry goods that are less impacted by fluctuations in the broader U.S. economy and consumers' disposable income, generating more predictable property level cash flows.

We have an integrated team of professionals with experience across all stages of the real estate investment, development and re-development cycle. We internally handle, among other duties:

performing and administering our day-to-day operations;

determining investment criteria in conjunction with our Board of Directors;

sourcing, analyzing and executing asset acquisitions, sales and financings;

performing asset management duties;

performing property management duties;

performing leasing duties;

in-house and third-party development; and

performing financial and accounting management.

We were organized as a Maryland corporation on June 23, 2011 and elected to be taxed as a REIT under Sections 856 through 860 of the Code beginning with our taxable year ended December 31, 2012. We conduct substantially all of our business through the Operating Partnership, of which we are the sole general partner. We are structured as an UPREIT, which means that we own all of our properties through our Operating Partnership and its subsidiaries. As an

UPREIT, we may be able to acquire properties on more attractive terms from sellers who can defer tax obligations by contributing properties to our Operating Partnership in exchange for Operating Partnership units, which will be redeemable for cash or exchangeable for shares of our Common Stock at our election.

Our headquarters is located at Riversedge North, 2529 Virginia Beach Boulevard, Suite 200, Virginia Beach, Virginia 23452. Our telephone number is (757) 627-9088. Our website is located at [www.WHLR.us](http://www.WHLR.us). Our website and the information contained therein or connected thereto do not constitute a part of this prospectus or any amendment or supplement hereto.

## **RISK FACTORS**

Investing in our Common Stock involves significant risks. Before you decide whether to purchase our Common Stock, in addition to the other information set forth or incorporated by reference in this prospectus and any applicable prospectus supplement, you should carefully consider the risk factors in our filings with the Securities and Exchange Commission ( SEC ), pursuant to the Securities Exchange Act of 1934, as amended (the Exchange Act ), which are incorporated by reference herein.

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**USE OF PROCEEDS**

The Selling Stockholders will receive all of the proceeds from the sale of shares of Common Stock under this prospectus. We will not receive any proceeds from these sales. The Selling Stockholders will pay any underwriting discounts and agent's commissions and expenses they incur for brokerage, accounting, tax or legal services or any other expenses they incur in disposing of the shares. We will bear all other costs, fees and expenses incurred in effecting the registration of the shares covered by this prospectus. These may include, without limitation, all registration and filing fees, Nasdaq Capital Market listing fees, fees and expenses of our counsel and accountants, and any blue sky fees and expenses.

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We may issue up to 2,727,601 shares of Common Stock to the Selling Stockholders, if and to the extent that the Selling Stockholders exchange their Units and we issue the Selling Stockholders shares of Common Stock in connection therewith. The following table provides the names of the Selling Stockholders, the number of shares of Common Stock to be owned upon exchange of all Units held by the Selling Stockholders before the offering to which this prospectus relates, and the number of shares of Common Stock offered by the Selling Stockholders. Since the Selling Stockholders may sell all, some or none of the Common Stock, no estimate can be made of the number of shares of Common Stock that will be sold by the Selling Stockholders or that will be owned by the Selling Stockholders upon completion of the offering. There is no assurance that the Selling Stockholders will sell any of the Common Stock. The Common Stock represents approximately 4.12% of the total shares of Common Stock outstanding as of October 1, 2015 and assuming the exchange of all outstanding Units held by the Selling Stockholders for shares of Common Stock. Ann McKinney is a director of the company. Jon Wheeler, our company's Chief Executive Officer and Chairman is the managing member of the Selling Shareholders listed in the footnotes below. None of the other Selling Stockholders held any position, office or had any other material relationship with our company within the past three years. Additionally, the Selling Stockholder identified in footnote 14 is an affiliate of a broker-dealer, however, it may obtain the shares being registered in the ordinary course of business in exchange for Units that have been pledged to it by a holder of our Units as security for a loan. In addition, this Selling Stockholder has no agreements or understandings, directly or indirectly, with any person to distribute the shares. No Selling Stockholder is a broker-dealer.

Name	Shares Owned Immediately	Shares Being Offered for Resale Under this Prospectus	Immediately Following the Offering (1)	
	Prior to the Offering (2)		Shares Owned	Percentage (3)
Albert E. Drake Jr.	8,022	45	7,977	*
Ann L. McKinney	28,795	4,787	24,008	*
ASI Investments, Inc. (4)	4,380	4,380	0	*
Barry D. Crawford Living Trust (5)	12,926	6,570	6,356	*
BRA Management, LLC (6)	38,645	38,645	0	*
Charles R. Ferrer and Elizabeth Ferrer	1,351	1,351	0	*
Charles E. Land	6,499	45	6,454	*
Club Forest Brook Run, LLC (7)	8,759	8,759	0	*
Club Forest CSA, LLC (8)	16,036	16,036	0	*
CSA Management, LLC (9)	29,431	29,431	0	*
Donald M. Faulkner, Jr.	32,472	20,060	12,412	*
Domingo C. Tan	3,208	3,208	0	*
Dudley Cooper Family Trust FBO (10)	13,139	13,139	0	*
Fidelity Group, LLC (11)	30,622	30,622	0	*
Francina J. Baker Revocable Living Trust (12)	16,216	16,216	0	*
George and Mary Ellen McVey	22,914	22,914	0	*
Gregorio C. Uy	6,414	6,414	0	*
Harold Cooper	6,000	113	5,887	*
Howard Kaye	24,510	14,976	9,534	*

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J. David Craig	13,513	13,513	0	*
Jack Mavromatis	25,199	10,912	14,287	*
Jack H. Ragland	14,113	2,275	11,838	*
James P. Carreras	17,961	6,570	11,391	*
James A. Cummings	6,414	6,414	0	*
Janet S. Keene Living Trust dated August 11, 2011 (13)	21,262	21,262	0	*
Jerry Reed	2,400	45	2,355	*
Jesse W. St. Clair, III	3,208	3,208	0	*
Kevin E. Riggins	3,208	3,208	0	*
KeyBank National Association (14)	1,585,819	1,585,819	0	*

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Name	Shares Owned Immediately Prior to the Offering (2)	Shares Being Offered for Resale Under this Prospectus	Immediately Following the Offering (1)	
			Shares Owned	Percentage (3)
Lester Veltman	4,799	90	4,709	*
Lira Investments, LLC (15)	19,003	19,003	0	*
Louis Mavromatis	33,347	21,823	11,524	*
Madeline E. Uy	6,414	6,414	0	*
Marcia November	3,285	3,285	0	*
Mary T. Cooper Family Trust FBO (16)	13,139	13,139	0	*
Milton G. and Ann L. McKinney	8,807	6,757	2,050	*
MLD Investments (17)	3,208	3,208	0	*
Multiple Holdings LLC (18)	19,249	961	18,288	*
Nancy Embrec	8,108	8,108	0	*
Peter H. Carlson, Jr.	13,513	13,513	0	*
Randolph C. Harrell	6,414	6,414	0	*
Roy, Larsen, Carnes & Romm, PC (19)	27,026	27,026	0	*
R. M. Mahoney	15,873	8,729	7,144	*
R. Paul Speece	4,811	4,811	0	*
Robert C. Rowland Jr. Revocable Trust (20)	3,208	3,208	0	*
Robert F. Salsitz	3,285	3,285	0	*
Robert M. Wenger Revocable Trust (21)	116,637	48,023	68,614	*
Roger L. Frost	147,245	12,999	134,246	*
Ronald L. Cooper Revocable Trust (22)	81,161	24,012	57,149	*
S. Grey Folkes, Jr.	79,258	12,828	66,430	*
Sander and Lyne T. Genser	487,204	337,662	149,542	*
SCS Family Limited Partnership (23)	2,190	2,190	0	*
Stuart R. Baker	10,811	10,811	0	*
Susan K. Pleasants	2,171	405	1,766	*
Thomas A. Stafford	16,711	68	16,643	*
Trifecta Associates, LLC (24)	2,163	2,163	0	*
Walker W. Shivar	6,414	6,414	0	*
William H. May	6,414	6,414	0	*
William H. Overton	24,757	13,513	11,244	*
Windsor Associates, LLC (25)	2,163	2,163	0	*
Woodside Capital, LLC (26)	180,199	180,199	0	*
3GM, LLC (27)	27,026	27,026	0	*
<b>Total</b>	<b>3,389,449</b>	<b>2,727,601</b>	<b>661,848</b>	<b>1.0%</b>

\* Less than one percent of Common Stock outstanding.

(1) Assumes the Selling Stockholders sell all of the Common Stock being offered by this prospectus.

(2) The number shown includes shares of Common Stock issuable upon redemption by the Selling Stockholders of Units of the Operating Partnership.

(3) Percentage calculated based upon the assumption of the exchange of all outstanding Units held by the Selling Stockholders for shares of Common Stock.



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- (4) Milton G. McKinney, the President of ASI Investments, Inc., maintains sole voting and investment control over the shares held by ASI, Inc.
- (5) Barry D. Crawford, trustee, maintains sole voting and investment control over the shares held by the Barry D. Crawford Living Trust.
- (6) Jon Wheeler, the managing member of BRA Management, LLC, maintains sole voting and investment control over the shares held by BRA Management, LLC.
- (7) Lawrence L. Steingold, the managing member of Club Forest Brook Run, LLC, maintains sole voting and investment control over the shares held by Club Forest Brook Run, LLC.
- (8) Lawrence L. Steingold, the managing member of Club Forest CSA, LLC, maintains sole voting and investment control over the shares held by Club Forest CSA, LLC.
- (9) Jon Wheeler, the managing member of CSA Management, LLC, maintains sole voting and investment control over the shares held by CSA Management, LLC.
- (10) Charles N. Cooper, trustee, maintains sole voting and investment control over the shares held by the Dudley Cooper Family Trust FBO.

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- (11) Barry D. Crawford, the President of Fidelity Group, LLC, maintains sole voting and investment control over the shares held by Fidelity Group, LLC.
- (12) Francina J. Baker, trustee, maintains sole voting and investment control over the shares held by the Francina J. Baker Revocable Living Trust.
- (13) Janet S. Keene, trustee, maintains sole voting and investment control over the shares held by the Janet S. Keene Living Trust Dated August 11, 2011.
- (14) Mark Whitham, the CFO of KeyBank National Association, maintains sole voting and investment control over the shares underlying the Units pledged to KeyBank National Association, by a holder of our Units as security for a loan.
- (15) Rand E. Shapiro, the managing member of Lira Investments, LLC, maintains sole voting and investment control over the shares held by Lira Investments, LLC.
- (16) Charles N. Cooper, trustee, maintains sole voting and investment control over the shares held by the Mary T. Cooper Family Trust FBO.
- (17) W.A. Prince, the general partner of MLD Investments, maintains sole voting and investment control over the shares held by MLD Investments.
- (18) Jon Wheeler, the managing member of Multiple Holdings, LLC, maintains sole voting and investment control over the shares held by Multiple Holdings, LLC.
- (19) Gregory Larsen, partner of Roy, Larsen, Carnes & Romm, PC, maintains sole voting and investment control over the shares held by Roy, Larsen, Carnes & Romm, PC.
- (20) Robert C. Rowland, Jr., trustee, maintains sole voting and investment control over the shares held by the Robert C. Rowland, Jr. Revocable Trust.
- (21) Robert M. Wenger, trustee, maintains sole voting and investment control over the shares held by the Robert M. Wenger Revocable Trust.
- (22) Ronald L. Cooper, trustee, maintains sole voting and investment control over the shares held by the Ronald L. Cooper Revocable Trust.
- (23) Price Shapiro, the managing member of SCS Family Limited Partnership, maintains sole voting and investment control over the shares held by SCS Family Limited Partnership.
- (24) Jon Wheeler, the managing member of Trifecta Associates, LLC, maintains sole voting and investment control over the shares held by Trifecta Associates, LLC.
- (25) Jon Wheeler, the managing member of Windsor Associates, LLC, maintains sole voting and investment control over the shares held by Windsor Associates, LLC.
- (26) Jon Wheeler, the managing member of Woodside Capital, LLC, maintains the sole voting and investment control over the shares held by Woodside Capital, LLC.
- (27) Stephen E. Gottlieb, the managing member of 3GM, LLC, maintains sole voting and investment control over the shares held by 3GM, LLC.

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**DESCRIPTION OF SECURITIES**

**General**

Our charter, as amended, provides that we may issue a maximum of 150,000,000 shares