

KIMCO REALTY CORP  
Form 424B5  
November 28, 2012

Filed Pursuant to Rule 424(b)(5)

Registration No. 333-180833

**The information in this preliminary prospectus supplement and the accompanying prospectus is not complete and may be changed. This preliminary prospectus supplement and the accompanying prospectus are not an offer to sell these securities and they are not soliciting an offer to buy these securities in any jurisdiction where the offer or sale is not permitted.**

**Subject to Completion**

**Preliminary Prospectus Supplement Dated November 28, 2012**

**Prospectus Supplement**

**November , 2012**

**(To Prospectus dated April 19, 2012)**

Shares

**Depositary Shares**

**Each Representing 1/1000 of a Share of % Class K**

**Cumulative Redeemable Preferred Stock**

(Liquidation Preference Equivalent to \$25.00 Per Depositary Share)

We are offering and selling of our depositary shares, each of which represents a 1/1000 interest in a share of our Class K cumulative redeemable preferred stock that we have deposited with Wells Fargo Bank, N.A. as depositary. We will receive the net proceeds from the sale of the depositary shares. As a holder of a depositary share, you will be entitled to proportional rights and preferences as if you held 1/1000 of a share of our Class K preferred stock.

Dividends on the Class K preferred stock represented by the depositary shares will be cumulative from, and including, the date of original issue and will be payable, subject to authorization by our Board of Directors, quarterly in arrears on January 15, April 15, July 15 and October 15 of each year, commencing April 15, 2013, at the rate of \_\_\_\_\_ % of the \$25,000.00 liquidation preference per year, or \$ \_\_\_\_\_ per share of our Class K preferred stock (equal to \$ \_\_\_\_\_ per year per depositary share).

Except in certain circumstances relating to the preservation of our status as a real estate investment trust ( REIT ), the Class K preferred stock and the depositary shares representing the Class K preferred stock are not redeemable until December \_\_\_\_\_, 2017. On or after December \_\_\_\_\_, 2017, we may redeem the Class K preferred stock (and cause the redemption of the depositary shares) for cash at our option, in whole or in part, at a redemption price of \$25,000.00 per share of Class K preferred stock (equal to \$25.00 per depositary share), plus any accrued and unpaid dividends, if any, to, but excluding, the date of redemption. The Class K preferred stock and the depositary shares have no maturity date and will remain outstanding indefinitely unless redeemed or otherwise repurchased by us.

Ownership of more than 9.8% of the outstanding depositary shares or Class K preferred stock is generally restricted in our Charter in order to preserve our status as a REIT for federal income tax purposes.

Currently, no market exists for the depositary shares. We intend to file an application to list the depositary shares on the New York Stock Exchange ( NYSE ). If the application is approved, trading of the depositary shares on the NYSE is expected to begin within 30 days after the date of initial delivery of the depositary shares.

**Investing in our depositary shares involves risks. See the information under the captions Risk Factors beginning on page S-5 of this prospectus supplement and beginning on page 3 of the accompanying prospectus, as well as the information under the caption Risk Factors in our Annual Report on Form 10-K for the year ended December 31, 2011, which is incorporated by reference in this prospectus supplement and the accompanying prospectus.**

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

	Per Depositary Share		Total
Public offering price (1)	\$ 25.00	\$	
Underwriting discount (retail/institutional)	\$ (2)	\$	(2)
Proceeds to Kimco Realty Corporation, before expenses (retail/institutional) (1)(3)	\$	\$	

(1) Plus accrued dividends, if any, from December \_\_\_\_\_, 2012 if settlement occurs after that date.

(2) The underwriting discount will equal \$ \_\_\_\_\_ per depositary share for each depositary share sold to retail accounts and \$ \_\_\_\_\_ per depositary share for each depositary share sold to institutional accounts. See Underwriting.

(3) Assumes no exercise of the underwriters' option to purchase additional depositary shares described below.

We have granted the underwriters the right to purchase up to an additional \_\_\_\_\_ depositary shares from us at the public offering price, less the underwriting discount, within 30 days of the date of this prospectus supplement solely to cover over-allotments, if any.

The depositary shares will be ready for delivery in book-entry only form through the facilities of The Depository Trust Company on or about December , 2012.

*Joint Book-Running Managers*

**BofA Merrill Lynch**

**Citigroup**

**UBS Investment Bank**

**Wells Fargo Securities**

*Joint Lead Managers*

**J.P. Morgan**

**RBC Capital Markets**

*Co-Managers*

**Barclays  
Deutsche Bank Securities**

**BNY Mellon Capital Markets, LLC  
Piper Jaffray**

**Credit Suisse  
Raymond James**

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## ABOUT THIS PROSPECTUS SUPPLEMENT

You should read this prospectus supplement along with the accompanying prospectus, as well as the information incorporated by reference herein and therein, carefully before you invest. These documents contain important information you should consider before making your investment decision. This prospectus supplement and the accompanying prospectus contain the terms of this offering of depositary shares. The accompanying prospectus contains information about our securities generally, some of which does not apply to the depositary shares offered by this prospectus supplement. This prospectus supplement may add, update or change information contained in or incorporated by reference in the accompanying prospectus. If the information in this prospectus supplement is inconsistent with any information contained in or incorporated by reference in the accompanying prospectus, the information in this prospectus supplement will apply and will supersede the inconsistent information contained in or incorporated by reference in the accompanying prospectus.

It is important for you to read and consider all information contained in this prospectus supplement and the accompanying prospectus in making your investment decision. You should also read and consider the additional information incorporated by reference in this prospectus supplement and the accompanying prospectus. See [Where You Can Find More Information](#) in this prospectus supplement.

**You should rely only on the information contained in or incorporated by reference in this prospectus supplement, the accompanying prospectus and any related free writing prospectus required to be filed with the SEC. Neither we nor the underwriters have authorized any other person to provide you with additional or different information. If anyone provides you with additional or different information, you should not rely on it. Neither we nor the underwriters are making an offer to sell the depositary shares in any jurisdiction where the offer or sale is not permitted. You should assume that the information appearing in this prospectus supplement, the accompanying prospectus, any such free writing prospectus and the documents incorporated by reference herein and therein is accurate only as of their respective dates or such other dates as may be specified in such documents. Our business, financial condition, liquidity, results of operations and prospects may have changed since those dates.**

As used in this prospectus supplement and the accompanying prospectus, all references to *we*, *us*, *our*, *Kimco*, and *Company* mean Kimco Realty Corporation, its consolidated subsidiaries and other entities controlled by Kimco Realty Corporation, except where it is clear from the context that the term means only the issuer of the depositary shares, Kimco Realty Corporation.

## WHERE YOU CAN FIND MORE INFORMATION

We file annual, quarterly and current reports, proxy statements and other information with the SEC. You may read and copy any materials we file with the SEC at its public reference room at 100 F Street, N.E., Washington, D.C. 20549. You may also obtain copies of this information by mail from the public reference room of the SEC, 100 F Street, N.E., Washington, D.C. 20549, at prescribed rates. Please call the SEC at 1-800-SEC-0330 for further information on the operation of the public reference facilities. Our SEC filings are also available to the public from commercial document retrieval services and at the web site maintained by the SEC at <http://www.sec.gov>. You may inspect information that we file with the NYSE, as well as our SEC filings, at the offices of the NYSE at 20 Broad Street, New York, New York 10005.

The SEC allows us to incorporate by reference certain information we file with the SEC, which means that we can disclose important information to you by referring to the other information we have filed with the SEC. The information that we incorporate by reference is considered a part of this prospectus supplement and information that we file later with the SEC prior to the termination of the offering of the depositary shares will automatically update and supersede the information contained in this prospectus supplement. We incorporate by reference the following documents we filed with the SEC pursuant to Section 13 of the Securities Exchange Act of 1934, as amended (the Exchange Act ):

•  
our Annual Report on Form 10-K for the fiscal year ended December 31, 2011 filed on February 27, 2012;

•  
our Quarterly Reports on Form 10-Q for the fiscal quarters ended March 31, 2012, June 30, 2012 and September 30, 2012 filed on May 10, 2012, August 3, 2012 and November 5, 2012, respectively;

•  
our Definitive Proxy Statement with respect to the 2012 Annual Meeting of Stockholders filed on March 20, 2012; and

•  
our Current Reports on Form 8-K filed on January 18, 2012, January 19, 2012, February 29, 2012, March 13, 2012, April 19, 2012, April 20, 2012, May 7, 2012, May 21, 2012, July 3, 2012, July 16, 2012, July 18, 2012, August 15, 2012 and October 24, 2012.

We are also incorporating by reference additional documents that we may file with the SEC under Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act after the date of this prospectus supplement and prior to the termination of the offering of the depositary shares. These documents include periodic reports, such as Annual Reports on Form 10-K, Quarterly Reports on Form 10-Q and Current Reports on Form 8-K, as well as Proxy Statements. Any statement contained in this prospectus supplement or the accompanying prospectus or in a document incorporated or deemed to be incorporated by reference herein or therein shall be deemed to be modified or superseded to the extent that a statement contained in this prospectus supplement, the accompanying prospectus or any other subsequently filed document which also is or is deemed to be incorporated by reference in this prospectus supplement and the accompanying prospectus modifies or supersedes such statement. Any such statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this prospectus supplement or the

accompanying prospectus.

Documents incorporated by reference in this prospectus supplement and the accompanying prospectus are available from us without charge, excluding all exhibits unless we have specifically incorporated by reference the exhibit in this prospectus supplement and the accompanying prospectus. You may obtain documents incorporated by reference in this prospectus supplement and the accompanying prospectus by requesting them in writing or by telephone from:

Kimco Realty Corporation

3333 New Hyde Park Road

New Hyde Park, New York 11042-0020

Attn: Bruce Rubenstein, Corporate Secretary

(516) 869-9000

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## FORWARD-LOOKING STATEMENTS

This prospectus supplement, the accompanying prospectus and the documents incorporated by reference in this prospectus supplement and the accompanying prospectus contain certain forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended (the Securities Act), and Section 21E of the Exchange Act. The Company intends such forward-looking statements to be covered by the safe harbor provisions for forward-looking statements contained in the Private Securities Litigation Reform Act of 1995 and includes this statement for purposes of complying with these safe harbor provisions. Forward-looking statements, which are based on certain assumptions and describe the Company's future plans, strategies and expectations, are generally identifiable by use of the words believe, expect, intend, anticipate, estimate, project or similar expressions. You should not rely on forward-looking statements since they involve known and unknown risks, uncertainties and other factors which are, in some cases, beyond the Company's control and which could materially affect actual results, performances or achievements. Factors which may cause actual results to differ materially from our current expectations include, but are not limited to, those discussed under the caption Risk Factors beginning on page S-5 of this prospectus supplement, page 3 of the accompanying prospectus and page 5 of our Annual Report on Form 10-K for the year ended December 31, 2011, which are incorporated by reference in this prospectus supplement and the accompanying prospectus, as well as the following additional factors: (i) general adverse economic and local real estate conditions, (ii) the inability of major tenants to continue paying their rent obligations due to bankruptcy, insolvency or a general downturn in their business, (iii) financing risks, such as the inability to obtain equity, debt or other sources of financing or refinancing on favorable terms, (iv) the Company's ability to raise capital by selling its assets, (v) changes in governmental laws and regulations, (vi) the level and volatility of interest rates and foreign currency exchange rates, (vii) risks related to our international operations, (viii) the availability of suitable acquisition and disposition opportunities, (ix) valuation and risks related to our joint venture and preferred equity investments, (x) valuation of marketable securities and other investments, (xi) increases in operating costs, (xii) changes in the dividend policy for the Company's common stock, (xiii) the reduction in the Company's income in the event of multiple lease terminations by tenants or a failure by multiple tenants to occupy their premises in a shopping center, (xiv) impairment charges and (xv) unanticipated changes in the Company's intention or ability to prepay certain debt prior to maturity and/or hold certain securities until maturity. Accordingly, there is no assurance that the Company's expectations will be realized.

We caution readers that any such statements are based on currently available operational, financial and competitive information, and they should not place undue reliance on these forward-looking statements, which reflect management's opinion only as of the date on which they were made. Except as required by law, we disclaim any obligation to review or update these forward-looking statements to reflect events or circumstances as they occur.



## SUMMARY

*This summary highlights information contained or incorporated by reference in this prospectus supplement and the accompanying prospectus and may not contain all of the information that is important to you. You should carefully read this entire prospectus supplement and the accompanying prospectus, as well as the documents incorporated by reference in this prospectus supplement and in the accompanying prospectus, before making an investment decision to purchase our depositary shares.*

### KIMCO REALTY CORPORATION

Kimco Realty Corporation, a Maryland corporation, is one of the nation's largest owners and operators of neighborhood and community shopping centers. We are a self-administered real estate investment trust ( REIT ) and have owned and operated neighborhood and community shopping centers for more than 50 years. We have not engaged, nor do we expect to retain, any REIT advisors in connection with the operation of our properties. As of September 30, 2012, we had interests in 922 shopping center properties, aggregating 134.7 million square feet of gross leasable area ( GLA ), and 894 other property interests, primarily through our preferred equity investments, other real estate investments and non-retail properties for a grand total of 1,816 properties aggregating 161.8 million square feet of GLA, located in 44 states, Puerto Rico, Canada, Mexico, Chile, Brazil and Peru. Our ownership interests in real estate consist of our consolidated portfolio and portfolios where we own an economic interest, such as properties in our investment real estate management programs, where we partner with institutional investors and also retain management. We believe our portfolio of neighborhood and community shopping center properties is the largest (measured by GLA) currently held by any publicly traded REIT.

We believe that we have operated, and we intend to continue to operate, in a manner that allows us to qualify for taxation as a REIT under the Internal Revenue Code of 1986, as amended (the Code ). Our executive officers are engaged in the day-to-day management and operation of our real estate exclusively, and we administer nearly all operating functions for our properties, including leasing, legal, construction, data processing, maintenance, finance and accounting.

In order to maintain our qualification as a REIT for federal income tax purposes, we are required to distribute to our stockholders at least 90% of our REIT taxable income, excluding capital gains, each year. Dividends on any preferred stock issued by us are included as distributions for this purpose. Historically, our distributions have exceeded, and we expect that our distributions will continue to exceed, our REIT taxable income each year. A portion of such distributions may constitute a return of capital. As a result of the foregoing, our consolidated net worth may decline. We, however, do not believe that consolidated stockholders' equity is a meaningful reflection of net real estate values.

Our executive offices are located at 3333 New Hyde Park Road, New Hyde Park, New York 11042-0020, and our telephone number is (516) 869-9000.

### The Offering

*The offering terms are summarized below solely for your convenience. This summary is not a complete description of our Class K preferred stock or the depositary shares representing our Class K preferred stock. You should read the full text and more specific details contained elsewhere in this prospectus supplement and the accompanying prospectus. For a more detailed description of our Class K preferred stock and the depositary shares representing our Class K preferred stock, see the discussion under the caption "Description of Class K Preferred Stock and Depositary Shares" beginning on page S-10 of this prospectus supplement.*

Issuer	Kimco Realty Corporation, a Maryland corporation.
Securities Offered	_____ depositary shares (or _____ depositary shares if the underwriters' over-allotment option is exercised in full), each representing 1/1000 of a share of _____ % Class K cumulative redeemable preferred stock.
Price per Depositary Share	\$25.00
Ranking	With respect to the payment of dividends and amounts upon liquidation, the Class K preferred stock represented by the depositary shares will rank senior to our common stock and will rank on a parity with respect to our Class H, Class I and Class J preferred stock. Shares of our Class H, our Class I, and our Class J preferred stock are our only outstanding shares of preferred stock. The Class K preferred stock represented by the depositary shares will rank junior to our currently outstanding and any future indebtedness. Additionally, our ability to make payments of dividends and other amounts due on the Class K preferred stock represented by the depositary shares will be structurally subordinated to the debt and other liabilities and any preferred equity of our subsidiaries and joint ventures. This means that creditors and preferred equity holders of our subsidiaries and joint ventures will be paid from the assets of these entities before we receive any cash flow from these entities for use in making payments to holders of depositary shares.
Dividend Rate and Payment Dates	Investors will be entitled to receive cumulative cash dividends on the Class K preferred stock represented by the depositary shares at the rate of _____ % of the \$25,000.00 per share liquidation preference per year, or \$ _____ per share of the Class K preferred stock (equal to \$ _____ per depositary share). Dividends on the Class K preferred stock will be payable, subject to authorization by our Board of Directors and declaration by us, quarterly in arrears on January 15, April 15, July 15 and October 15 of each year (or, if any such date is not a business day, on the next succeeding business day), commencing on April 15, 2013. Any dividend payable on our Class K preferred stock represented by the depositary shares shall be computed on the basis of a 360-day year consisting of twelve 30-day months.

Dividends on the Class K preferred stock represented by the depositary shares will be cumulative from, and including, the date of original issue of the depositary shares, which is expected to be December , 2012.

Dividends on our Class K preferred stock represented by the depositary shares will accumulate even if:

.

any of our agreements prohibit the current payment of dividends;

.

we do not have earnings or funds legally available to pay such dividends;  
or

.

we do not declare such dividends.

Liquidation Preference	If we liquidate, dissolve or wind up, holders of depositary shares will have a right to receive \$25.00 per depositary share, plus any accrued and unpaid dividends (whether or not declared) to, but excluding, the date of payment, before any payments are made to the holders of our common stock or other junior securities.
Optional Redemption / No Maturity	Except in certain circumstances relating to the preservation of our status as a REIT, we may not redeem the Class K preferred stock or the depositary shares representing the Class K preferred stock prior to December 31, 2017. On or after December 31, 2017, we may, at our option, redeem the Class K preferred stock (and the preferred stock depositary will redeem the number of depositary shares representing the Class K preferred stock redeemed) for cash, in whole or in part, at a redemption price of \$25,000.00 per share of the Class K preferred stock (equal to \$25.00 per depositary share), plus accrued and unpaid dividends, if any, to, but excluding, the redemption date. The Class K preferred stock and the depositary shares have no stated maturity date and will not be subject to any sinking fund or mandatory redemption (except in certain circumstances relating to the preservation of our status as a REIT).
Voting Rights	Holders of the depositary shares representing the Class K preferred stock generally have no voting rights. However, if and whenever dividends payable on the Class K preferred stock are in arrears for six or more dividend periods, whether or not consecutive, holders of the depositary shares representing Class K preferred stock (voting together as a class with holders of the depositary shares representing the Class H, Class I and Class J preferred stock and all other classes or series of preferred stock upon which like voting rights have been conferred and are exercisable) will be entitled to elect two additional directors to serve on our Board of Directors until we pay, or declare and set apart for payment, all cumulative dividends on the Class K preferred stock.
Conversion	The Class K preferred stock and the depositary shares representing Class K preferred stock are not convertible into or exchangeable for any other property or securities, except that, in limited circumstances, the Class K preferred stock and the depositary shares representing Class K preferred stock may be automatically converted into Class K excess preferred stock or depositary shares representing Class K excess preferred stock. See Description of Class K Preferred Stock and Depositary Shares Restrictions on Ownership.
Restrictions on Ownership and Transfer	Ownership of more than 9.8% of our outstanding Class K preferred stock or the outstanding depositary shares representing our Class K preferred stock is, subject to certain exceptions, restricted in our Charter in order to preserve our status as a REIT for federal income tax purposes. See Description of Class K Preferred Stock and Depositary Shares Restrictions on Ownership in this prospectus supplement as well as Description of Preferred Stock Restrictions on Ownership in the accompanying prospectus.

Trading

We intend to file an application to list the depositary shares on the NYSE. If the application is approved, trading of the depositary shares on the NYSE is expected to begin within 30 days after the date of initial delivery of the depositary shares. The underwriters have advised us that they intend to make a market in the depositary shares prior to commencement of any trading on the NYSE. However, the underwriters will have no obligation to do so, and no assurance can be given that a market for the depositary shares will develop prior to commencement of trading on the NYSE or, if developed, will be maintained.

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Use of Proceeds	<p>We estimate that the net proceeds from this offering, after deducting the underwriting discount and other estimated offering expenses payable by us, will be approximately \$            million, or approximately \$            million if the underwriters' over-allotment option is exercised in full, assuming all such over-allotment shares are sold to retail accounts. We intend to use the net proceeds from this offering for general corporate purposes, including (i) to repay in full the \$198.9 million in aggregate principal amount of our 6% Senior Unsecured Notes due November 30, 2012 and (ii) to reduce borrowings under our revolving credit facility maturing in October 2015. Borrowings under our revolving credit facility bear interest at a rate of one-month LIBOR plus 1.05% (1.26% as of September 30, 2012). As of September 30, 2012, we had \$14.5 million of outstanding indebtedness under our revolving credit facility. For information concerning certain potential conflicts of interest that may arise from the use of the net proceeds from this offering, see "Use of Proceeds and Underwriting (Conflicts of Interest) Other Relationships" in this prospectus supplement.</p>
Form	<p>The depositary shares will be issued and maintained in book-entry only form registered in the name of the nominee of The Depository Trust Company ( "DTC" ), except under limited circumstances.</p>
Settlement Date	<p>Delivery of the depositary shares will be made against payment therefor on or about December   , 2012.</p>
Risk Factors	<p>Investing in the depositary shares involves risks. Please read the sections entitled "Risk Factors" on page S-5 of this prospectus supplement, "Risk Factors" on page 3 of the accompanying prospectus and "Risk Factors" on page 5 of our Annual Report on Form 10-K for the year ended December 31, 2011, which are incorporated by reference in this prospectus supplement and the accompanying prospectus.</p>

## RISK FACTORS

*Investing in our depositary shares involves risks. In consultation with your financial and legal advisers, you should carefully consider, among other matters, the risks set forth below, as well as the information under the captions "Risk Factors" beginning on page 3 of the accompanying prospectus and "Risk Factors" beginning on page 5 of our Annual Report on Form 10-K for the year ended December 31, 2011, which are incorporated by reference in this prospectus supplement and the accompanying prospectus, before deciding whether an investment in our depositary shares is suitable for you.*

**The depositary shares are a new issue of securities and do not have an established trading market, which may negatively affect their market value and your ability to transfer or sell your shares.**

The depositary shares, each of which represents a 1/1000 fractional interest in a share of Class K preferred stock, are a new issue of securities with no established trading market. We intend to file an application to list the depositary shares on the NYSE. However, we cannot assure you that the depositary shares will be approved for listing on the NYSE. If the application is approved, trading of the depositary shares on the NYSE is expected to begin within 30 days after the date of initial delivery of the depositary shares. We cannot assure you that an active trading market on the NYSE for the depositary shares will develop or, even if one develops, will be maintained. As a result, the ability to transfer or sell the depositary shares and any trading price of the depositary shares could be adversely affected. We have been advised by the underwriters that they intend to make a market in the depositary shares, but they are not obligated to do so and may discontinue market-making at any time without notice.

**The market value of the depositary shares could be substantially affected by various factors.**

As with other publicly traded securities, the trading price of the depositary shares will depend on many factors, which may change from time to time, including:

- .
- prevailing interest rates, increases in which may have an adverse effect on the trading price of the depositary shares;
- .
- the market for similar securities issued by REITs;
- .
- general economic and financial market conditions;
- .
- our issuance of debt or preferred stock; and
- .
- our financial condition, liquidity, performance and prospects.

**Our future offerings of preferred stock may adversely affect the value of the depositary shares representing our Class K preferred stock.**

We may issue additional shares of Class K preferred stock and/or other classes or series of preferred stock. The issuance of additional shares of preferred stock (or depositary shares representing preferred stock) on parity with or senior to our Class K preferred stock with respect to the payment of dividends and the distribution of assets upon liquidation, dissolution or winding up could reduce the amounts we may have available for distribution to holders of the depositary shares representing our Class K preferred stock. None of the provisions relating to our Class K preferred stock or the depositary shares representing our Class K preferred stock contain any provisions affording holders of the depositary shares representing our Class K preferred stock protection in the event of a highly leveraged or other transaction, including a merger or the sale, lease or conveyance of all or substantially all of our assets or businesses, that might adversely affect the value of the depositary shares representing our Class K preferred stock.

**Our Class K preferred stock and the depositary shares representing our Class K preferred stock are subordinated to our existing and future indebtedness.**

Payment of dividends and other amounts due on the depositary shares representing our Class K preferred stock will be subordinated to all of our existing and future consolidated indebtedness. As of September 30, 2012, our total consolidated indebtedness was approximately \$4.2 billion. We and our subsidiaries may incur additional indebtedness in the future. The terms of our Class K preferred stock do not limit our ability to incur indebtedness. If we incur significant indebtedness, we may not have sufficient funds to make dividend or liquidation payments on the depositary shares representing our Class K preferred stock. In addition, in connection with our existing and future indebtedness, we may be subject to restrictive covenants or other provisions that may prevent our subsidiaries from distributing to us cash needed for payments on the depositary shares representing our Class K preferred stock or may otherwise limit our ability to make dividend or liquidation payments on the depositary shares representing our Class K preferred stock. Upon liquidation, our obligations to our creditors would rank senior to our obligations to holders of depositary shares representing our Class K preferred stock and would be required to be paid before any payments could be made to holders of the depositary shares representing our Class K preferred stock.



**Our ability to make payments of dividends and other amounts due on the depositary shares representing our Class K preferred stock will depend in large part upon our receipt of cash flow from our subsidiaries and joint ventures, and payments on the depositary shares will be structurally subordinated to the debt and other liabilities and any preferred equity of our subsidiaries and joint ventures.**

We conduct the substantial majority of our operations through subsidiaries and joint ventures that own a significant percentage of our consolidated assets. Consequently, our cash flow and our ability to make payments of dividends and other amounts due on the depositary shares representing our Class K preferred stock will depend in large part upon the cash flow of our subsidiaries and joint ventures and the payment of funds by our subsidiaries and joint ventures to us in the form of loans, dividends or otherwise. Neither our subsidiaries nor our joint ventures are obligated to make funds available to us for payments of amounts due on the depositary shares. In addition, the ability of our subsidiaries and joint ventures to distribute funds to us will depend on their earnings and cash flows, the terms of their financing, business and tax considerations and legal restrictions. As a result, payments of dividends and other amounts due on the depositary shares will be structurally subordinated to the debt and other liabilities and any preferred equity of our subsidiaries and joint ventures (including trade payables). This means that creditors and preferred equity holders of our subsidiaries and joint ventures will be paid from the assets of these entities before we receive any cash flow from these entities for use in making payments to holders of depositary shares. In the event of a bankruptcy, liquidation or dissolution of one of our subsidiaries or joint ventures, that subsidiary or joint venture may not have sufficient assets remaining to make payments to us as a shareholder or otherwise after payment of its liabilities and satisfaction of its obligations relating to any preferred equity. As of September 30, 2012, our consolidated subsidiaries had total indebtedness of approximately \$1.1 billion and our unconsolidated joint ventures had total indebtedness of approximately \$7.2 billion; as of such date our subsidiaries and joint ventures had no outstanding preferred equity.

**Ownership of the Class K preferred stock and the depositary shares representing Class K preferred stock is restricted to help preserve our REIT status.**

Ownership of the Class K preferred stock and the depositary shares representing Class K preferred stock is restricted to help preserve our REIT status. The provisions of the Articles Supplementary establishing the terms of the Class K preferred stock provide that, subject to certain exceptions, no holder of Class K preferred stock or depositary shares representing Class K preferred stock may own, or be deemed to own by virtue of the constructive ownership provisions of the Code, more than 9.8% of the outstanding Class K preferred stock or depositary shares representing Class K preferred stock. The provisions of the Articles Supplementary also provide that a transfer (i) that, subject to certain exceptions, results in a person actually or constructively owning more than 9.8% of the outstanding Class K preferred stock or depositary shares representing Class K preferred stock or (ii) which would cause us to be closely held within the meaning of the Code or would otherwise result in our failure to qualify as a REIT, will be null and void as to the intended transferee, and the intended transferee will acquire no rights or economic interest in those shares of Class K preferred stock or depositary shares representing Class K preferred stock. In addition, the shares of Class K preferred stock or depositary shares representing Class K preferred stock actually or constructively owned by a person in excess of the 9.8% limit (subject to certain exceptions), or which would otherwise cause us to be closely held within the meaning of the Code or would otherwise result in our failure to qualify as a REIT, will be automatically converted into Class K excess preferred stock or depositary shares representing Class K excess preferred stock, as applicable.

The Class K excess preferred stock and the depositary shares representing Class K excess preferred stock will be transferred, by operation of law, to us as trustee of a trust for the exclusive benefit of the transferee or transferees to whom the shares are ultimately transferred (without violating the ownership limit described above). The Class K excess preferred stock and the depositary shares representing Class K excess preferred stock will not be entitled to any dividends or other distributions (except in the case of distributions upon a liquidation), will not be transferable, will not be entitled to voting rights and will be subject to certain other restrictions. For further details on the restrictions on

ownership, see Description of Class K Preferred Stock and Depositary Shares Restrictions on Ownership in this prospectus supplement as well as Description of Preferred Stock Restrictions on Ownership in the accompanying prospectus.

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### USE OF PROCEEDS

We estimate that the net proceeds from this offering, after deducting the underwriting discount and other estimated offering expenses payable by us, will be approximately \$            million, or approximately \$            million if the underwriters' over-allotment option is exercised in full. We intend to use the net proceeds from this offering for general corporate purposes, including (i) to repay in full the \$198.9 million in aggregate principal amount of our 6% Senior Unsecured Notes due November 30, 2012 and (ii) to reduce borrowings under our revolving credit facility maturing in October 2015. Borrowings under our revolving credit facility bear interest at a rate of one-month LIBOR plus 1.05% (1.26% as of September 30, 2012). As of September 30, 2012, we had \$14.5 million of outstanding indebtedness under our revolving credit facility. Affiliates of the underwriters are lenders under our revolving credit facility. Since we intend to use a portion of the net proceeds from this offering to repay borrowings outstanding under our revolving credit facility, these lenders will receive a portion of the net proceeds from this offering through the repayment of such borrowings, which could exceed 5% for any individual affiliate. See "Underwriting (Conflicts of Interest) Other Relationships" in this prospectus supplement.

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**RATIOS OF EARNINGS TO TOTAL FIXED CHARGES AND EARNINGS TO  
COMBINED FIXED CHARGES AND PREFERRED STOCK DIVIDENDS**

	<b>Nine Months</b>					
	<b>Ended</b>					
	<b>September 30,</b>		<b>Year Ended December 31,</b>			
	<b>2012</b>	<b>2011</b>	<b>2010</b>	<b>2009</b>	<b>2008</b>	<b>2007</b>
Ratio of earnings to total fixed charges	2.1x	2.0x	1.8x	1.3x	2.0x	3.0x
Ratio of earnings to combined fixed charges and preferred stock dividends	1.6x	1.6x	1.5x	1.1x	1.7x	2.8x

Earnings consist of pretax income (loss) from continuing operations before adjustment for noncontrolling interests or income (loss) from equity investees plus interest on indebtedness (excluding capitalized interest), amortization of debt related expenses, the portion of rents representative of an interest factor and distributed income from equity investees. Fixed charges consist of interest on indebtedness (including capitalized interest), amortization of debt related expenses and the portion of rents representative of an interest factor. Preferred stock dividends consist of dividend requirements on outstanding preferred stock during the applicable period.

**CAPITALIZATION**

The following table sets forth our historical capitalization as of September 30, 2012 and our capitalization on an as adjusted basis to give effect to the completion of this offering and the application of the net proceeds therefrom as described under "Use of Proceeds" in this prospectus supplement as if this offering (assuming no exercise of the underwriters' over-allotment option) and such use of proceeds occurred on September 30, 2012.

	<b>Historical September 30, 2012</b>	<b>As Adjusted September 30, 2012</b>
(in thousands, except per share data)		
Debt:		
Notes Payable(1)	\$ 3,145,406	\$
Mortgages Payable(1)	1,015,313	1,015,313
Construction Loans Payable(1)	42,935	42,935
Credit Facility(1)	14,537	
Total Debt	4,218,191	
Stockholders' Equity:		
Preferred Stock, \$1.00 par value, authorized 5,791,200 shares (Actual) and        shares (As Adjusted)		
Class G Preferred Stock, \$1.00 par value, authorized 184,000 shares Issued and Outstanding 184,000 shares(2)	184	184
Aggregate Liquidation Preference \$460,000		
Class H Preferred Stock, \$1.00 par value, authorized 70,000 shares Issued and Outstanding 70,000 shares	70	70
Aggregate Liquidation Preference \$175,000		
Class I Preferred Stock, \$1.00 par value, authorized 18,400 shares Issued and Outstanding 16,000 shares	16	16
Aggregate Liquidation Preference \$400,000		
Class J Preferred Stock, \$1.00 par value, 9,000 shares authorized and Issued and Outstanding 9,000 shares	9	9
Aggregate Liquidation Preference \$225,000		
Class K Preferred Stock, \$1.00 par value, zero shares authorized and Issued and Outstanding (Actual);        shares authorized and Issued and Outstanding (As Adjusted)(3)	-	
Aggregate Liquidation Preference \$		
Common Stock, \$.01 par value, authorized 750,000,000 shares Issued and Outstanding 407,608,794 shares	4,076	4,076
Paid-In Capital	5,938,244	
Cumulative Distributions in Excess of Net Income	(813,097)	(813,097)
	5,129,502	
Accumulated Other Comprehensive Income	(56,785)	(56,785)

Total Stockholders Equity		5,072,717	
Total Capitalization	\$	9,290,908	\$

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(1) See Notes 13, 14 and 15 to our Consolidated Financial Statements contained in our 2011 Annual Report on Form 10-K and Notes 10, 11, and 12 to our Consolidated Financial Statements contained in our Quarterly Report on Form 10-Q for the quarter ended September 30, 2012, which are incorporated by reference in this prospectus supplement and the accompanying prospectus for information pertaining to the notes, mortgages and construction loans payable and the credit facility.

(2)

On August 15, 2012, we called for the redemption of all of our outstanding 18,400,000 depository shares of our 7.75% Class G Cumulative Redeemable Preferred Stock, \$1.00 par value per share. The aggregate redemption amount of \$460.0 million, before payment of accrued and unpaid dividends of \$8.5 million, was paid on October 10, 2012.

(3)

Assumes no exercise of the underwriters over-allotment option.

## DESCRIPTION OF CLASS K PREFERRED STOCK AND DEPOSITARY SHARES

Prior to the date of this prospectus supplement, we authorized the issuance of 70,000 shares of 6.90% Class H Cumulative Redeemable Preferred Stock, \$1.00 par value per share, 18,400 shares of 6.00% Class I Cumulative Redeemable Preferred Stock, \$1.00 par value per share, and 9,000 shares of 5.50% Class J Cumulative Redeemable Preferred Stock, \$1.00 par value per share. We also authorized the issuance of 70,000 shares of 6.90% Class H Excess Preferred Stock, \$1.00 par value per share, 18,400 shares of Class I Excess Preferred Stock, \$1.00 par value per share, and 9,000 shares of Class J Excess Preferred Stock, \$1.00 par value per share, which are reserved for issuance upon conversion of certain outstanding, Class H preferred stock, Class I preferred stock, or Class J preferred stock as the case may be, as necessary to preserve our status as a REIT. At September 30, 2012, 184,000 shares of Class G preferred stock, represented by 18,400,000 depositary shares, were outstanding, 70,000 shares of Class H preferred stock, represented by 7,000,000 depositary shares, were outstanding, 16,000 shares of Class I preferred stock, represented by 1,600,000 depositary shares, were outstanding, and 9,000 shares of Class J preferred stock, represented by 9,000,000 depositary shares, were outstanding. We are authorized to issue up to an additional 5,791,200 shares of Preferred Stock, \$1.00 par value per share, in one or more classes or one or more series, with such preferences and rights as will be stated and expressed in the Articles Supplementary establishing the terms of such shares adopted by our Board of Directors under the Maryland General Corporation Law. Out of the 5,791,200 shares of Preferred Stock that we are authorized to issue, we will reclassify \_\_\_\_\_ shares as Class K Cumulative Redeemable Preferred Stock and \_\_\_\_\_ shares as Class K Excess Preferred Stock.

### General

Our Board of Directors, or a duly authorized committee thereof, will adopt a form of Articles Supplementary to our Charter establishing the terms of the Class K preferred stock consisting of \_\_\_\_\_ shares, designated \_\_\_\_\_ % Class K Cumulative Redeemable Preferred Stock, \$1.00 par value per share. When issued, the Class K preferred stock will be validly issued, fully paid and nonassessable. Unless redeemed or otherwise repurchased by us, the Class K preferred stock has a perpetual term with no stated maturity date. The following summary of the terms and provisions of the Class K preferred stock does not purport to be complete and is qualified in its entirety by reference to the pertinent sections of our Charter, which includes the Articles Supplementary establishing the Class K preferred stock, which is available from us upon request.

The registrar, transfer agent and dividends disbursing agent for the Class K preferred stock will be Wells Fargo Bank, N.A.

Each depositary share represents a 1/1000 fractional interest in a share of Class K preferred stock. The Class K preferred stock will be deposited with Wells Fargo Bank, N.A., as depositary (referred to herein as the preferred stock depositary), under a deposit agreement between us, the preferred stock depositary and the holders from time to time of the depositary receipts issued by the preferred stock depositary thereunder. The depositary receipts will evidence the depositary shares. Subject to the terms of the deposit agreement, each holder of a depositary receipt representing a depositary share will be entitled to all the rights and preferences of a fractional interest in a share of Class K preferred stock (including dividends, voting, redemption and liquidation rights and preferences). See Description of Depositary Shares in the accompanying prospectus.

We intend to file an application to list the depositary shares on the NYSE. If such application is approved, trading of the depositary shares on the NYSE is expected to commence within 30 days after the date of initial delivery of the depositary shares. While the underwriters have advised us that they intend to make a market in the depositary shares prior to commencement of any trading on the NYSE, they are under no obligation to do so and no assurance can be given that a market for the depositary shares will develop prior to commencement of trading or, if developed, will be maintained.

## Ranking

With respect to the payment of dividends and distribution of our assets and rights upon liquidation, dissolution or winding up, the Class K preferred stock will rank (i) senior to our common stock and to all other equity securities that, by their terms, rank junior to the Class K preferred stock, (ii) on a parity with all equity securities issued by us other than those referred to in clause (i) or clause (iii), including our outstanding Class H, Class I and Class J preferred stock, and (iii) junior to all equity securities issued by us whose senior ranking is consented to by holders of at least two-thirds of the shares of the Class K preferred stock outstanding at the time. For these purposes, the term equity securities does not include convertible debt securities. We currently have no equity securities outstanding senior to the Class K preferred stock.

## Dividends

Holders of the Class K preferred stock shall be entitled to receive, when, as and if authorized by our Board of Directors and declared by us, out of assets legally available for payment, cumulative cash dividends at the rate of % of the \$25,000.00 liquidation preference per year (equivalent to an annual rate of \$ per depositary share).  
Dividends on the

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Class K preferred stock shall accrue and be cumulative from, and including, the date of original issue and shall be payable, subject to authorization by our Board of Directors and declaration by us, quarterly in arrears on January 15, April 15, July 15 and October 15 of each year, commencing on April 15, 2013, or, if any such date is not a business day, the succeeding business day. Dividends payable on the Class K preferred stock will be computed on the basis of a 360-day year consisting of twelve 30-day months. The preferred stock depository will distribute cash dividends received in respect of the Class K preferred stock to the record holders of the depository receipts as of the close of business on the applicable record date, which shall be the first day of the calendar month in which the applicable dividend payment date falls or such other date fixed by our Board of Directors for the payment of dividends that is not more than 30 nor less than 10 days prior to the dividend payment date.

No full dividends shall be authorized or paid or set apart for payment on any class or series of equity securities ranking, as to dividends, on a parity with or junior to our Class K preferred stock unless full cumulative dividends have been or contemporaneously are authorized and paid or a sum sufficient for the payment thereof set apart for that payment on the Class K preferred stock for all past dividend periods and the then current dividend period.

When dividends are not paid in full (or a sum sufficient for their full payment is not so set apart) on the Class K preferred stock and any other class or series of equity securities ranking on a parity as to dividends with the Class K preferred stock, all dividends declared upon the Class K preferred stock and any other such equity securities shall be declared pro rata so that the amount of dividends declared per share on the Class K preferred stock and all other such equity securities shall in all cases bear to each other the same ratio that accrued and unpaid dividends per share on the Class K preferred stock and all other such equity securities bear to each other.

Except as provided in the immediately preceding paragraph, unless full cumulative dividends on the Class K preferred stock have been or contemporaneously are declared and paid or declared and a sum sufficient for the payment thereof set apart for payment for all past dividend periods and the then current period, then no dividends (other than in the form of our common stock or any of our other equity securities ranking junior to the Class K preferred stock as to dividends and upon our liquidation, dissolution or winding up) shall be declared or paid or set apart for payment or other distribution shall be declared or made upon our common stock, excess stock or any of our other equity securities ranking junior to or on a parity with the Class K preferred stock as to dividends or upon liquidation, dissolution or winding up, nor shall any common stock, excess stock or any of our other equity securities ranking junior to or on a parity with the Class K preferred stock as to dividends or upon our liquidation, dissolution or winding up be redeemed, purchased or otherwise acquired for any consideration (or any moneys be paid to or made available for a sinking fund for the redemption of any such equity securities) by us (except by conversion into or exchange for other of our equity securities ranking junior to the Class K preferred stock as to dividends and upon our liquidation, dissolution or winding up).

No dividends on the Class K preferred stock shall be authorized by our Board of Directors or be paid or set apart for payment by us at such time as the terms and provisions of any agreement of ours, including any agreement relating to our indebtedness, prohibits the authorization, declaration, payment or setting apart for payment or provides that the authorization, declaration, payment or setting apart for payment would constitute a breach thereof or a default thereunder, or if the declaration or payment shall be restricted or prohibited by law.

Notwithstanding the foregoing, dividends on the Class K preferred stock will accrue whether or not we have earnings, whether or not there are funds legally available for the payment of the dividends and whether or not the dividends are authorized or declared. Accrued but unpaid dividends on the Class K preferred stock will not bear interest and holders of the Class K preferred stock will not be entitled to any dividends in excess of full cumulative dividends as described above.

Any dividend payment made on the Class K preferred stock shall first be credited against the earliest accrued but unpaid dividend due with respect to the shares which remains payable.

**Liquidation Preference**

In the event of any liquidation, dissolution or winding up of our affairs, the holders of the Class K preferred stock are entitled to be paid out of our assets legally available for distribution to our stockholders liquidating distributions in cash or property at its fair market value as determined by our Board of Directors in the amount of a liquidation preference of \$25,000.00 per share (equivalent to \$25.00 per depositary share), plus an amount equal to all accrued and unpaid dividends to, but excluding, the date of the liquidation, dissolution or winding up, before any distribution or payment shall be made to the holders of any common stock, excess stock or any other class or series of equity securities issued by us ranking junior to our Class K preferred stock as to liquidation rights. After payment of the full amount of the liquidating distributions to which they are entitled, the holders of the Class K preferred stock will have no right or claim to any of our remaining assets. Our

consolidation or merger with or into any other entity or the sale, lease, transfer or conveyance of all or substantially all of our property or business, individually or as part of a series of transactions, shall not be deemed to constitute a liquidation, dissolution or winding up of our affairs.

In the event that, upon any such voluntary or involuntary liquidation, dissolution or winding up, our legally available assets are insufficient to pay the amount of the liquidating distributions on all outstanding shares of Class K preferred stock and the corresponding amounts payable on all other classes or series of equity securities issued by us ranking on a parity with the Class K preferred stock as to liquidation rights, then the holders of the depositary shares representing the Class K preferred stock and all other classes or series of equity securities issued by us ranking on a parity with the Class K preferred stock as to liquidation rights, including all other preferred stock, shall share ratably in any distribution of assets in proportion to the full liquidating distributions to which they would otherwise be respectively entitled.

### **Optional Redemption**

Shares of Class K preferred stock are not redeemable prior to December 31, 2017. On or after December 31, 2017, we may redeem, at our option upon not less than 30 nor more than 60 days written notice, the Class K preferred stock (and the preferred stock depositary will redeem the number of depositary shares representing the Class K preferred stock so redeemed), in whole or in part, at any time or from time to time, for cash at a redemption price of \$25,000.00 per share (equivalent to \$25.00 per depositary share), plus accrued and unpaid dividends thereon, if any, to, but excluding, the date fixed for redemption, without interest. If fewer than all of the outstanding shares of Class K preferred stock and depositary shares are to be redeemed, the shares of Class K preferred stock and depositary shares to be redeemed will be determined pro rata (as nearly as practicable without creating fractional shares) or in such other equitable manner prescribed by our Board of Directors that will not result in a violation of the restrictions specified below under Restrictions on Ownership or by the rules and procedures of DTC. In addition, we may redeem shares of Class K preferred stock at any time in certain circumstances relating to the maintenance of our ability to qualify as a REIT for federal income tax purposes.

We will give the preferred stock depositary prior written notice of redemption of the deposited Class K preferred stock. A similar notice will be mailed by the preferred stock depositary, postage prepaid, not less than 30 nor more than 60 days prior to the date fixed for redemption of the Class K preferred stock and the depositary shares, addressed to the respective holders of depositary shares to be redeemed at their respective addresses shown on the records of the preferred stock depositary. The notice of redemption may be contingent on the occurrence of a future event. No failure to give notice or any defect of the notice or in the mailing of the notice shall affect the validity of the proceedings for the redemption of any shares of Class K preferred stock except as to the holder to whom notice was defective or not given. Each notice shall state:

·  
the date fixed for redemption of the Class K preferred stock and the depositary shares;

·  
the redemption price;

·  
the number of shares of Class K preferred stock and the number of depositary shares to be redeemed;

the place or places where certificates representing the Class K preferred stock and the depositary receipts are to be surrendered for payment of the redemption price; and

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

The notice mailed to each holder shall also specify the number of shares of Class K preferred stock and depositary shares to be redeemed from each holder.

On or after the redemption date, each holder of Class K preferred stock to be redeemed must present and surrender the certificates representing the Class K preferred stock at the place designated in the redemption notice and then the redemption price of such Class K preferred stock and any accrued and unpaid dividends payable upon such redemption will be paid to the person who presented and surrendered such certificates and each surrendered certificate will be canceled. Similarly, on or after the redemption date, each holder of depositary receipts representing depositary shares to be redeemed must present and surrender the depositary receipts representing depositary shares at the place designated in the redemption notice and then the redemption price of such depositary shares and any accrued and unpaid dividends payable upon such redemption will be paid to the person who presented and surrendered such depositary receipts and each surrendered depositary receipt will be canceled. In the event that fewer than all the shares of Class K preferred stock or depositary shares represented by any certificate or depositary receipt are to be redeemed, a new certificate or depositary receipt will be issued representing the unredeemed shares of preferred stock or depositary shares, as the case may be.

At our election, we may, prior to the redemption date, irrevocably deposit cash in an amount equal to the redemption price (including accrued and unpaid dividends) of the Class K preferred stock called for redemption in trust for the holders thereof with a bank or trust company, in which case the notice to holders of the Class K preferred stock and depositary shares to be redeemed will:

·  
specify the office of such bank or trust company as the place of payment of the redemption price; and

·  
call upon such holders to surrender the certificates or depositary receipts, as the case may be, representing such shares at such place on or about the date fixed in such redemption notice (which may not be later than the redemption date) against payment of the redemption price (including all accrued and unpaid dividends up to, but excluding, the redemption date). Any moneys deposited which remain unclaimed at the end of two years after the redemption date will be returned to us by such bank or trust company.

The holders of depositary shares at the close of business on a record date of any dividend will be entitled to receive the dividend payable with respect to the Class K preferred stock represented thereby on the corresponding payment date notwithstanding the redemption thereof between such dividend record date and the corresponding dividend payment date. Except as provided above, we will make no payment or allowance for unpaid dividends, whether or not in arrears, on shares of Class K preferred stock to be redeemed.

If notice of redemption of any shares of Class K preferred stock has been given and if the funds necessary for that redemption have been set apart by us in trust for the benefit of the holders of any shares of Class K preferred stock so called for redemption, then from and after the redemption date dividends will cease to accrue on those shares of Class K preferred stock, those shares of Class K preferred stock will no longer be deemed outstanding and such shares will not thereafter be transferred (except with our consent) on our books and all rights of the holders of those shares will terminate, except the right to receive the redemption price (including all accrued and unpaid dividends up to, but excluding, the redemption date).

Notwithstanding the foregoing, unless full cumulative dividends on all outstanding shares of Class K preferred stock have been paid or declared and a sum sufficient for the payment set apart for payment for all past dividend periods and the then current dividend period, no shares of Class K preferred stock or depositary shares representing Class K preferred stock will be redeemed unless all outstanding shares of Class K preferred stock and depositary shares representing Class K preferred stock are simultaneously redeemed. Unless full cumulative dividends on all outstanding Class K preferred stock and depositary shares representing Class K preferred stock have been paid or declared and a sum sufficient for the payment thereof set apart for payment for all past dividend periods and the then current dividend period, we will not purchase or otherwise acquire, directly or indirectly, any shares of Class K preferred stock or depositary shares representing Class K preferred stock (except by conversion into or exchange for equity securities ranking junior to the Class K preferred stock as to dividend and liquidation rights). However, the foregoing will not prevent the purchase or acquisition of shares of Class K preferred stock or depositary shares representing Class K preferred stock pursuant to a purchase or exchange offer made on the same terms to holders of all outstanding shares of Class K preferred stock and depositary shares representing Class K preferred stock.

The Class K preferred stock and the depositary shares have no stated maturity date and will not be subject to any sinking fund or mandatory redemption provisions (except in connection with the preservation of our REIT status).

## **Voting Rights**

Except as indicated below or in the accompanying prospectus, the holders of the depositary shares representing the Class K preferred stock will have no voting rights. On any matter on which the Class K preferred stock is entitled to vote, each share of Class K preferred stock shall be entitled to one thousand votes. As a result, each depositary share will be entitled to one vote on each matter for which the holders of shares of Class K preferred stock are entitled to vote.

If and whenever dividends payable on the Class K preferred stock are in arrears for six or more dividend periods, whether or not consecutive, holders of the depositary shares representing the Class K preferred stock (voting together as a class with holders of the depositary shares representing the Class H preferred stock, the Class I preferred stock and the Class J preferred stock and all other classes or series of preferred stock upon which like voting rights have been conferred and are exercisable) will be entitled to elect two additional directors to serve on our Board of Directors until we pay all cumulative dividends on the Class K preferred stock or declare such dividends and set apart for payment a sum sufficient for the payment thereof.

So long as any depositary shares representing Class K preferred stock remain outstanding, we will not, without the affirmative vote or consent of the holders of at least two-thirds of the depositary shares representing the Class K preferred stock outstanding at the time, given in person or by proxy, either in writing or at a meeting (with the holders of the depositary

shares representing the Class K preferred stock voting separately as a class): (i) authorize or create, or increase the authorized or issued amount of, any class or series of equity securities issued by us that rank senior to Class K preferred stock with respect to payment of dividends or the distribution of assets upon our liquidation, dissolution or winding-up, or reclassify any of our authorized stock into such equity securities or create, authorize or issue any obligation or security convertible into or evidencing the right to purchase any such equity securities; or (ii) amend, alter or repeal the provisions of the Charter, whether by merger, consolidation, or otherwise, so as to materially and adversely affect any right, preference, privilege or voting power of the holders of the depositary shares representing Class K preferred stock; except that (1) with respect to the occurrence of any of the events described in (ii) above, so long as the Class K preferred stock remains outstanding with the terms of the Class K preferred stock materially unchanged or is converted into a security in another entity with the terms materially unchanged, the occurrence of such event will not be deemed to materially and adversely affect the rights, preferences, privileges or voting powers of holders of the depositary shares representing Class K preferred stock and (2) (A) any increase in the amount of the authorized shares of Class K preferred stock or the authorization or issuance of any other class or series of equity securities or (B) any increase in the number of authorized shares of Class K preferred stock or any other class or series of equity securities, in each case ranking on a parity with or junior to the Class K preferred stock with respect to the payment of dividends and the distribution of assets upon our liquidation, dissolution or winding up, will not be deemed to materially and adversely affect such rights, preferences, privileges or voting powers.

The foregoing voting provisions will not apply if, at or prior to the time when the act with respect to which the vote would otherwise be required shall be effected, all outstanding shares of Class K preferred stock shall have been redeemed or called for redemption and sufficient funds shall have been deposited in trust to effect the redemption.

### **Conversion**

The Class K preferred stock and the depositary shares representing Class K preferred stock are not convertible into or exchangeable for any other property or securities, except that, in limited circumstances, the Class K preferred stock and the depositary shares representing Class K preferred stock may be automatically converted into Class K excess preferred stock or depositary shares representing Class K excess preferred stock, as applicable. See [Restrictions on Ownership](#).

### **Stockholder Liability**

Applicable Maryland law provides that no stockholder, including holders of Class K preferred stock and holders of depositary shares representing Class K preferred stock, shall be personally liable for our acts and obligations and that our funds and property shall be the only recourse for such acts or obligations.

### **Restrictions on Ownership**

For us to qualify as a REIT under the Code, not more than 50% in value of our outstanding stock may be owned, actually or constructively, by five or fewer individuals (as defined in the Code to include certain entities) during the last half of a taxable year. Our stock also must be beneficially owned by 100 or more persons during at least 335 days of a taxable year of 12 months (or during a proportionate part of a shorter taxable year). In addition, rent from related party tenants (generally, a tenant of a REIT owned, actually or constructively, 10% or more by the REIT, or a 10% or more owner of the REIT) is not qualifying income for purposes of the gross income tests under the Code.

To assist us in preserving our status as a REIT under the Code, the Articles Supplementary provide that, subject to certain exceptions, no holder of Class K preferred stock or depositary shares representing Class K preferred stock may own, or be deemed to own by virtue of the constructive ownership provisions of the Code, more than 9.8% of the outstanding Class K preferred stock or depositary shares representing Class K preferred stock. The provisions of the

Articles Supplementary also provide that a transfer of our Class K preferred stock or depositary shares representing Class K preferred stock, as the case may be, (i) that, subject to certain exceptions, results in a person actually or constructively owning more than 9.8% of the outstanding Class K preferred stock or depositary shares representing Class K preferred stock, as the case may be, or (ii) which would cause us to be closely held within the meaning of the Code or would otherwise result in our failure to qualify as a REIT, will be null and void as to the intended transferee, and the intended transferee will acquire no rights or economic interest in those shares of Class K preferred stock or depositary shares representing Class K preferred stock, as the case may be. In addition, the shares of Class K preferred stock or depositary shares representing Class K preferred stock actually or constructively owned by a person in excess of the 9.8% limit (subject to certain exceptions), or which would otherwise cause us to be closely held within the meaning of the Code or would otherwise result in our failure to qualify as a REIT, will be automatically converted into Class K excess preferred stock or depositary shares representing Class K excess preferred stock, as applicable.

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The Class K excess preferred stock and the depositary shares representing Class K excess preferred stock will be transferred, by operation of law, to us as trustee of a trust for the exclusive benefit of the transferee or transferees to whom the shares are ultimately transferred (without violating the ownership limit described above). The shares of Class K excess preferred stock will not be entitled to any dividends or other distributions, except in the case of distributions upon a liquidation. In addition, the shares of Class K excess preferred stock will not be transferable, will not be entitled to voting rights and will be subject to certain other restrictions. The shares of Class K excess preferred stock will be registered in the form of depositary shares with each depositary share representing a 1/1000 fractional interest in a share of Class K excess preferred stock. For further details on the restrictions on ownership, see Description of Preferred Stock Restrictions on Ownership in the accompanying prospectus.

### **Book-Entry System**

The depositary shares will be issued as global securities. DTC will be the depository with respect to the depositary shares. The depositary shares will be issued as fully registered securities in the name of Cede & Co., DTC's partnership nominee, and will be deposited with DTC. DTC will keep a computerized record of its participants (for example, your broker) whose clients have purchased the depositary shares. The participant would then keep a record of its clients who purchased the depositary shares. A global security may not be transferred, except that DTC, its nominees and their successors may transfer an entire global security to one another.

The depositary shares will be in book-entry only form, and we will not deliver securities in certificated form to individual purchasers of the depositary shares, and no person owning a beneficial interest in a global security will be treated as a holder of such global security for any purpose. Accordingly, owners of such beneficial interests must rely on the procedures of DTC and the participant through which such person owns its interest in order to exercise any rights of a holder under such global security. Beneficial interests in global securities will be shown on, and transfers of global securities will be made only through, records maintained by DTC and its participants. The laws of some jurisdictions require that certain purchasers of securities take physical delivery of such securities in certificated form. Such limits and laws may impair the ability to transfer beneficial interests in a global security.

DTC has provided us with the following information: DTC is a limited-purpose trust company organized under the New York Banking Law, a banking organization within the meaning of the New York Banking Law, a member of the United States Federal Reserve System, a clearing corporation within the meaning of the New York Uniform Commercial Code and a clearing corporation registered under Section 17A of the Exchange Act. DTC holds securities that its participants ( Direct Participants ) deposit with DTC. DTC also facilitates the settlement among Direct Participants of securities transactions, such as transfers and pledges, in deposited securities through computerized records for Direct Participants' accounts. This eliminates the need to exchange certificates. Direct Participants include securities brokers and dealers, banks, trust companies, clearing corporations and certain other organizations.

Other organizations, such as securities brokers and dealers, banks and trust companies that work through a Direct Participant, also use DTC's book-entry system. The rules that apply to DTC and its participants are on file with the SEC.

A number of Direct Participants, together with the NYSE and the Financial Industry Regulatory Authority, own DTC.

If applicable, redemption notices shall be sent to DTC. If less than all of the book-entry depositary shares within an issue are being redeemed, DTC's practice is to determine by lot the amount of the interest of each Direct Participant in such issue to be redeemed.

We will wire dividend and redemption payments to DTC's nominee. We will treat DTC's nominee as the owner of the global securities for all purposes. Accordingly, we will have no direct responsibility or liability to pay any amounts in

respect of the depositary shares to owners of beneficial interests in the global securities.

It is DTC's current practice, when it receives any dividend or redemption payment, to credit Direct Participants accounts on the payment date according to their respective holdings of beneficial interests in the global securities as shown on DTC's records. In addition, it is DTC's current practice to assign any consenting or voting rights to Direct Participants whose accounts are credited with securities on a record date, by using an omnibus proxy. Customary practices between the participants and owners of beneficial interests, as in the case with securities held for the account of customers registered in street name, will govern payments by participants to owners of beneficial interests in the global securities, and voting by participants. However, these payments will be the responsibility of the participants and not of DTC or us.

Depositary shares represented by a global security will be exchangeable for depositary shares in certificated form with the same terms in authorized denominations only if:

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DTC notifies us that it is unwilling or unable to continue as depository or if DTC ceases to be a clearing agency registered under applicable law and we do not appoint a successor depository within 90 days; or

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we determine at any time that all depositary shares shall no longer be represented by a global security.

DTC's ability to perform properly its services is also dependent upon other parties, including, but not limited to, issuers and their agents, as well as DTC's participants, third party vendors from whom DTC licenses software and hardware, and third party vendors on whom DTC relies for information or the provision of services, including telecommunication and electrical utility service providers, among others.

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

We may decide to discontinue use of the system of book-entry transfers through DTC (or a successor securities depository). In that event, securities in certificated form will be printed and delivered.

The information in this section concerning DTC and DTC's system has been obtained from sources that we believe to be reliable, but we take no responsibility for the accuracy thereof.

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## SUPPLEMENTAL UNITED STATES FEDERAL INCOME TAX CONSIDERATIONS

This discussion is a supplement to, and is intended to be read together with, the discussion under the heading "United States Federal Income Tax Considerations" included in our Registration Statement on Form S-3 (File No. 333-180833), which we refer to as the Registration Statement. This summary is for general information only and is not tax advice.

*The following is a supplement to, and should be read together with, the discussion under the heading "United States Federal Income Tax Considerations - Taxation of Our Company" in the Registration Statement.*

### *Proposed Treasury Regulations Regarding Certain Asset Dispositions*

If we acquire any asset from a corporation which is or has been a C corporation in a transaction in which the basis of the asset in our hands is less than the fair market value of the asset, in each case determined at the time we acquired the asset, and we subsequently recognize gain on the disposition of the asset during the ten-year period beginning on the date on which we acquired the asset, then as described in the accompanying prospectus under the heading

"Taxation of Our Company - General," we generally will be required to pay tax at the highest regular corporate tax rate on this gain to the extent of the excess of (a) the fair market value of the asset over (b) our adjusted basis in the asset, in each case determined as of the date on which we acquired the asset. The results described in this paragraph with respect to the recognition of gain assume that the C corporation refrains from making an election to receive different treatment under existing Treasury Regulations on its tax return for the year in which we acquire the asset from the C corporation.

The IRS has issued Proposed Treasury Regulations which would exclude from the application of this built-in gains tax any gain from the sale of property acquired by us in an exchange under Section 1031 (a like kind exchange) or 1033 (an involuntary conversion) of the Code. These Proposed Treasury Regulations will not be effective unless they are issued in final form, and as of the date of this prospectus supplement, it is not possible to determine whether the Proposed Treasury Regulations will be finalized in their current form or at all.

*The following discussion supersedes the first three paragraphs in the discussion under the heading "United States Federal Income Tax Considerations - Taxation of Our Company - Annual Distribution Requirements" in the accompanying prospectus.*

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

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90% of our REIT taxable income ; and

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

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the excess of the sum of specified items of our non-cash income over 5% of our REIT taxable income as described below.

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

Also, our REIT taxable income will be reduced by any taxes we are required to pay on any gain we recognize from the disposition of any asset we acquired from a corporation which is or has been a C corporation in a transaction in which our basis in the asset is less than the fair market value of the asset, in each case determined at the time we acquired the asset, within the ten-year period following our acquisition of such asset. See Proposed Treasury Regulations Regarding Certain Asset Dispositions above.

***The following discussion should replace, in its entirety, the discussion under the heading Foreign Accounts in the accompanying prospectus.***

Withholding taxes may apply to certain types of payments made to foreign financial institutions (as defined in the Code) and certain other non-United States entities. Specifically, a 30% withholding tax may be imposed on dividends and interest on, and gross proceeds from the sale or other disposition of, our capital stock or debt securities paid to a foreign financial institution or to a non-financial foreign entity, unless (1) the foreign financial institution undertakes certain diligence and reporting, (2) the non-financial foreign entity either certifies it does not have any substantial United States owners or furnishes identifying information regarding each substantial United States owner, or (3) the foreign financial institution or non-financial foreign entity otherwise qualifies for an exemption from these rules. If the payee is a foreign

financial institution and is subject to the diligence and reporting requirements in clause (1) above, it must enter into an agreement with the United States Treasury requiring, among other things, that it undertake to identify accounts held by certain United States persons or United States-owned foreign entities, annually report certain information about such accounts, and withhold 30% on payments to non-compliant foreign financial institutions and certain other account holders.

Although these rules currently apply to applicable payments made after December 31, 2012 (other than interest payments made on certain debt securities discussed below), the IRS has issued Proposed Treasury Regulations and subsequent guidance providing that the withholding provisions described above will generally apply to payments of dividends or interest made on or after January 1, 2014 and to payments of gross proceeds from a sale or other disposition of stock or debt securities on or after January 1, 2017. Because we may not know the extent to which a distribution is a dividend for United States federal income tax purposes at the time it is made, for purposes of these withholding rules we may treat the entire distribution as a dividend. In addition, although these rules currently would apply to debt securities issued after March 18, 2012, the Proposed Treasury Regulations indicate that this withholding tax would not apply to debt securities outstanding on January 1, 2013 (and not materially modified after December 31, 2012).

The Proposed Treasury Regulations and related guidance described above will not be effective until final regulations are issued. Prospective investors should consult their tax advisors regarding these withholding provisions.

**UNDERWRITING (CONFLICTS OF INTEREST)**

Subject to the terms and conditions contained in the underwriting agreement and related terms agreement, each dated the date of this prospectus supplement, we have agreed to sell to each of the underwriters named below, for whom Merrill Lynch, Pierce, Fenner & Smith Incorporated, Wells Fargo Securities, LLC, UBS Securities LLC and Citigroup Global Markets Inc. are acting as joint book-running managers, and each of the underwriters has severally agreed to purchase from us, the respective number of depositary shares set forth after its name below.

<u>Underwriters</u>	<b>Number of Depositary Shares</b>
Merrill Lynch, Pierce, Fenner & Smith Incorporated	
Citigroup Global Markets Inc.	
UBS Securities LLC	
Wells Fargo Securities, LLC	
J.P. Morgan Securities LLC	
RBC Capital Markets, LLC	
Barclays Capital Inc.	
BNY Mellon Capital Markets, LLC	
Credit Suisse Securities (USA) LLC	
Deutsche Bank Securities Inc.	
Piper Jaffray & Co.	
Raymond James & Associates, Inc.	
Total	

The obligations of the underwriters are subject to certain conditions. The underwriters must purchase all of the depositary shares offered hereby (other than those covered by the underwriters' over-allotment option) if any are purchased.

The underwriters are offering the depositary shares, subject to prior sale, when, as and if issued to and accepted by them, subject to approval of legal matters by counsel, including the validity of the depositary shares, and other conditions contained in the underwriting agreement and related terms agreement, such as the receipt by the underwriters of officers' certificates and legal opinions. The underwriters reserve the right to withdraw, cancel or modify offers to the public and to reject orders in whole or in part.

The underwriters have advised us that they propose initially to offer the depositary shares to the public at the public offering price set forth on the cover page of this prospectus supplement and to dealers at that price less a concession not in excess of \$ \_\_\_\_\_ per share sold to retail accounts and \$ \_\_\_\_\_ per share sold to institutional accounts. The underwriters may allow, and these dealers may re-allow, a concession of not more than \$ \_\_\_\_\_ per share to other dealers. After the initial offering, the public offering price and other selling terms may be changed.

We have granted to the underwriters an option, exercisable within 30 days from the date of this prospectus supplement, to purchase up to \_\_\_\_\_ additional depositary shares at the public offering price less the underwriting discount set forth on the cover page of this prospectus supplement. The underwriters may exercise this option only to

cover over-allotments made in connection with the sale of the depositary shares offered by this prospectus supplement. To the extent that the underwriters exercise this option, each of the underwriters will become obligated, subject to conditions, to purchase approximately the same percentage of these additional depositary shares as the number of depositary shares to be purchased by it in the above table bears to the depositary shares offered by this prospectus supplement. We will be obligated, pursuant to the option, to sell these additional depositary shares to the underwriters to the extent the option is exercised. If any additional depositary shares are purchased, the underwriters will offer the additional shares on the same terms as those on which the depositary shares are being offered.

We will pay an underwriting discount equal to % of the public offering price of \$25.00 per depositary share for each depositary share sold to retail accounts and an underwriting discount equal to % of the public offering price of \$25.00 per depositary share for each depositary share sold to institutional accounts. The following table sets forth the total underwriting discount that we are to pay to the underwriters in connection with this offering, assuming no exercise and full exercise of the underwriters over-allotment option, based on the initial distribution of the depositary shares sold to retail and institutional accounts and, with respect to the over-allotment depositary shares, assuming that all such shares are sold to retail accounts.

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	<b>Without</b>		<b>With</b>
	<b>Over-Allotment</b>		<b>Over-Allotment</b>
	<b>Option</b>		<b>Option</b>
Per Depositary Share	\$	(1)	\$
Total	\$		\$ (1)

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(1) The underwriting discount will equal \$ \_\_\_\_\_ per depositary share for each depositary share sold to retail accounts and \$ \_\_\_\_\_ per depositary share for each depositary share sold to institutional accounts.

We estimate that the total expenses related to this offering, excluding the underwriting discount, will be approximately \$600,000 and are payable by us.

Until the distribution of the depositary shares is completed, rules of the SEC may limit the ability of the underwriters to bid for and purchase depositary shares. As an exception to these rules, the underwriters are permitted to engage in certain transactions that stabilize, maintain or otherwise affect the market price of the depositary shares.

The underwriters may over-allot the depositary shares in connection with this offering, thus creating a short position for their own account. Short sales involve the sale by the underwriters of a greater number of depositary shares than they are committed to purchase in this offering. A short position may involve either covered short sales or naked short sales. Covered short sales are sales made in an amount not greater than the underwriters' over-allotment option to purchase additional depositary shares as described above. The underwriters must close out any short position by either exercising their over-allotment option or purchasing depositary shares in the open market. In determining the source of shares to close the covered short position, the underwriters will consider, among other things, the price of depositary shares available for purchase in the open market as compared to the price at which they may purchase depositary shares from us through the over-allotment option. Naked short sales are sales in excess of the over-allotment option. The underwriters must close out any naked short position by purchasing shares in the open market. A naked short position may be created if the underwriters are concerned that there may be downward pressure on the price of the depositary shares in the open market after pricing that could adversely affect investors who purchase in this offering.

Accordingly, to cover these short sale positions or to stabilize the market price of the depositary shares, the underwriters may bid for, and purchase, depositary shares in the open market. These transactions may be effected on the NYSE or otherwise. Additionally, a representative, on behalf of the underwriters, may also reclaim selling concessions allowed to another underwriter or dealer. Similar to other purchase transactions, the underwriters' purchases to cover the syndicate short sales or to stabilize the market price of our depositary shares may have the effect of raising or maintaining the market price of our depositary shares or preventing or mitigating a decline in the market price of our depositary shares. As a result, the price of the depositary shares may be higher than the price that might otherwise exist in the open market. No representation is made as to the magnitude or effect of any such stabilization or other activities. The underwriters are not required to engage in these activities and, if commenced, may discontinue any of these activities at any time.

We intend to file an application to list the depositary shares on the NYSE. If the application is approved, trading of the depositary shares on the NYSE is expected to begin within 30 days after the date of initial delivery of the depositary shares. The underwriters have advised us that they intend to make a market in the depositary shares prior to the commencement of trading on the NYSE. The underwriters will have no obligation to make a market in the depositary shares, however, and if they begin to make a market they may cease market-making activities at any time.

We have agreed to indemnify the underwriters against certain liabilities, including liabilities under the Securities Act, or to contribute to payments the underwriters may be required to make in respect thereof.

We expect that delivery of the depositary shares will be made against payment therefor on or about December , 2012, which will be the seventh business day following the date of this prospectus supplement. Pursuant to Rule 15c6-1 under the Exchange Act, trades in the secondary market generally are required to settle within three business days, unless the parties to any such trade expressly agree otherwise. Accordingly, purchasers who wish to trade the depositary shares before the fourth business day following the date of this prospectus supplement (or December , 2012) will be required, by virtue of the fact that any such trade would otherwise settle before the close of this offering, to specify an alternate settlement cycle at the time of any such trade to prevent a failed settlement, and should consult their own advisor with respect to these matters.

## Other Relationships

In the ordinary course of their business, the underwriters and their affiliates have engaged in, and may in the future engage in, commercial banking and investment banking transactions with us for which they have received or will receive customary fees and expense reimbursements. In addition, we have joint venture investments with an affiliate of UBS Securities LLC in which we have non-controlling interests ranging from 15% to 20%.

Affiliates of the underwriters are lenders under our revolving credit facility maturing in October 2015. Since we intend to use a portion of the net proceeds from this offering to reduce borrowings outstanding under our revolving credit facility, these lenders will receive a portion of the net proceeds from this offering through the repayment of such borrowings, which could exceed 5% for any individual affiliate. In addition, certain of the underwriters or their affiliates, including UBS Securities LLC, hold or may hold interests in the 6% Senior Unsecured Notes due November 30, 2012 being repaid with the net proceeds from this offering.

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

## **LEGAL MATTERS**

Latham & Watkins LLP, New York, New York, will pass upon certain matters relating to this offering for us. Sidley Austin LLP, New York, New York, will act as counsel to the underwriters. Venable LLP, Baltimore, Maryland, will pass upon certain matters of Maryland law. Latham & Watkins LLP and Sidley Austin LLP may rely upon Venable LLP with respect to matters governed by Maryland law. Certain members of Latham & Watkins LLP and their families own beneficial interests in less than 1% of our common stock.

## **EXPERTS**

The consolidated financial statements and management's assessment of the effectiveness of internal control over financial reporting (which is included in Management's Report on Internal Control Over Financial Reporting) incorporated in this prospectus supplement by reference to the Annual Report on Form 10-K for the year ended December 31, 2011 have been so incorporated in reliance on the report of PricewaterhouseCoopers LLP, an independent registered public accounting firm, given on the authority of said firm as experts in auditing and accounting.

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**PROSPECTUS**

**KIMCO REALTY CORPORATION**  
**Debt Securities, Preferred Stock,**  
**Depository Shares, Common Stock and Common Stock Warrants**

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We may from time to time offer the following securities on terms to be determined at the time of the offering:

·  
Unsecured Senior Debt Securities;

·  
Shares or Fractional Shares of Preferred Stock, par value \$1.00 per share;

·  
Depository Shares representing Shares of Preferred Stock;

·  
Shares of Common Stock, par value \$.01 per share; and

·  
Warrants to Purchase Common Stock.

Our common stock is traded on the New York Stock Exchange, or the NYSE, under the symbol KIM. We will make applications to list any shares of common stock sold pursuant to a supplement to this prospectus on the NYSE. We have not determined whether we will list any other securities we may offer on any exchange or over-the-counter market. If we decide to seek listing of any securities, the supplement to this prospectus will disclose the exchange or market.

Our debt securities, preferred stock, depository shares representing shares of preferred stock, common stock and common stock warrants may be offered separately, together or as units, in separate classes or series, in amounts, at

prices and on terms to be set forth in a supplement to this prospectus. When we offer securities, we will provide specific terms of such securities in supplements to this prospectus.

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

The securities offered by this prospectus 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 the securities offered by this prospectus, their names, and any applicable purchase price, fee, commission or discount arrangement between or among them, will be set forth, or will be calculable from the information set forth, in the applicable prospectus supplement. None of the securities offered by this prospectus may be sold without delivery of the applicable prospectus supplement describing the method and terms of the offering of those securities.

Each prospectus supplement will also contain information, where applicable, about United States federal income tax considerations and any legend or statement required by state law or the Securities and Exchange Commission.

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**Investing in our securities involves risks. See Risk Factors beginning on page 3.**

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

The date of this Prospectus is April 19, 2012.

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**You should rely only on the information contained in or incorporated by reference in this prospectus and in any 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. We are not making an offer to sell, or soliciting an offer to buy, securities in any state where the offer or sale is not permitted. You should not assume that the information contained in this prospectus or in any prospectus supplement or in the documents incorporated herein and therein is accurate as of any date other than the date of this prospectus or such other documents, even though this prospectus and such prospectus supplement or supplements are delivered or securities are sold pursuant to the prospectus and such prospectus supplement or supplements at a later date. Since the respective dates of the prospectus contained in liquidity, this registration statement and any accompanying prospectus supplement, our business, financial condition, results of operations and prospects might have changed.**

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*When used in this prospectus, the Company, we, us, or our refers to Kimco Realty Corporation and its direct and indirect subsidiaries on a consolidated basis.*

## **ABOUT THIS PROSPECTUS**

This prospectus is part of an automatic shelf registration statement that we filed with the Securities and Exchange Commission, or SEC, as a well-known seasoned issuer as defined in Rule 405 under the Securities Act of 1933, as amended, or the Securities Act. Under the automatic shelf registration process, we may, over time, sell any combination of the securities described in this prospectus or in any applicable prospectus supplement in one or more offerings. This prospectus provides you with a general description of the securities we may offer. As allowed by SEC rules, this prospectus does not contain all the information you can find in the registration statement or the exhibits to the registration statement. Each time we sell securities, we will provide a prospectus supplement that will contain specific information about the terms of that offering. A prospectus supplement may also add, update or change information contained in this prospectus. You should read both this prospectus and any prospectus supplement together with additional information described under the next heading **Where You Can Find More Information** before considering an investment in the securities offered by that prospectus supplement.

## **WHERE CAN YOU FIND MORE INFORMATION**

We file annual, quarterly and special reports, proxy statements and other information with the Securities and Exchange Commission. Our SEC filings are available to the public over the Internet at the SEC's web site at <http://www.sec.gov>. You may also read and copy any document we file with the SEC at the SEC's public reference room at 100 F Street, N.E., Washington, DC 20549.

You may also obtain copies of our SEC filings at prescribed rates by writing to the Public Reference Section of the SEC at 100 F Street, N.E., Washington, DC 20549. Please call 1-800-SEC-0330 for further information on the operations at the public reference room. Our SEC filings are also available at the offices of the New York Stock Exchange, 20 Broad Street, New York, New York 10005.

Statements contained in this prospectus as to the contents of any contract or other document are not necessarily complete, and in each instance reference is made to the copy of that contract or other document filed as an exhibit to the registration statement, each such statement being qualified in all respects by that reference and the exhibits and schedules thereto. For further information about us and the securities offered by this prospectus, you should refer to the registration statement and such exhibits and schedules which may be obtained from the SEC at its principal office in Washington, D.C. upon payment of any fees prescribed by the SEC.

## **INCORPORATION OF CERTAIN DOCUMENTS BY REFERENCE**

The documents listed below have been filed by us under the Securities Exchange Act of 1934, as amended (the Securities Exchange Act), with the SEC and are incorporated by reference in this prospectus:

Annual Report on Form 10-K for the year ended December 31, 2011 (including information specifically incorporated by reference therein from our Definitive Proxy Statement for our 2012 Annual Meeting);

Current Reports on Form 8-K filed on January 18, 2012; January 19, 2012; February 29, 2012; and March 13, 2012;

Definitive Proxy Statement on Schedule 14A filed on March 20, 2012;

The description of the Class F Preferred Stock and Depositary Shares contained in our Registration Statement on Form 8-A (File No. 001-10889), filed on June 3, 2003, including any subsequently filed amendments and reports filed for the purpose of updating the description;

The description of the Class G Preferred Stock and Depositary Shares contained in our Registration Statement on Form 8-A12B (File No. 001-10899), filed on October 9, 2007, including any subsequently filed amendments and reports filed for the purpose of updating the description;

The description of the Class H Preferred Stock and Depositary Shares contained in our Registration Statement on Form 8-A12B (File No. 001-10899), filed on August 24, 2010, including any subsequently filed amendments and reports filed for the purpose of updating the description; and

The description of the Class I Preferred Stock and Depositary Shares contained in our Registration Statement on Form 8-A12B (File No. 001-10899), filed on March 13, 2012, including any subsequently filed amendments and reports filed for the purpose of updating the description.

We are also incorporating by reference into this prospectus all documents that we have filed or will file with the SEC as prescribed by Sections 13(a), 13(c), 14 or 15(d) of the Securities Exchange Act since the date of this prospectus and prior to the termination of the sale of the securities offered by this prospectus and the accompanying prospectus supplement.

This means that important information about us appears or will appear in these documents and will be regarded as appearing in this prospectus. To the extent that information appearing in a document filed later is inconsistent with prior information, the later statement will control and the prior information, except as modified or superseded, will no longer be a part of this prospectus.

Copies of all documents which are incorporated by reference in this prospectus and the applicable prospectus supplement (not including the exhibits to such information, unless such exhibits are specifically incorporated by reference) will be provided without charge to each person, including any beneficial owner of the securities offered by this prospectus, to whom this prospectus or the applicable prospectus supplement is delivered, upon written or oral request. Requests should be directed to our Secretary, 3333 New Hyde Park Road, New Hyde Park, New York 11042-0020 (telephone number: (516) 869-9000). You may also obtain copies of these filings, at no cost, by accessing our website at <http://www.kimcorealty.com>; however, the information found on our website is not considered part of this prospectus or any accompanying prospectus supplement.

#### **DISCLOSURE REGARDING FORWARD-LOOKING STATEMENTS**

This prospectus, together with other statements and information we publicly disseminate, contains certain 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 intend such forward-looking statements to be covered by the safe harbor provisions for forward-looking statements contained in the Private Securities Litigation Reform Act of 1995 and include this statement for purposes of complying with these safe harbor provisions. Forward-looking statements, which are based on certain assumptions and describe our future plans, strategies and expectations, are generally identifiable by use of the words believe, expect, intend, anticipate, estimate, project or similar ex

You should not rely on forward-looking statements since they involve known and unknown risks, uncertainties and other factors which are, in some cases, beyond our control and which could materially affect actual results, performances or achievements. Factors which may cause actual results to differ materially from current expectations include, but are not limited to, (i) general adverse economic and local real estate conditions, (ii) the inability of major tenants to continue paying their rent obligations due to bankruptcy, insolvency or a general downturn in their business, (iii) financing risks, such as the inability to obtain equity, debt or other sources of financing or refinancing on favorable terms, (iv) the Company's ability to raise capital by selling its assets, (v) changes in governmental laws and regulations, (vi) the level and volatility of interest rates and foreign currency exchange rates, (vii) the availability of suitable acquisition and disposition opportunities, (viii) valuation of joint venture investments, (ix) valuation of marketable securities and other investments, (x) increases in operating costs, (xi) changes in the dividend policy for the Company's common stock, (xii) the reduction in the Company's income in the event of multiple lease terminations by tenants or a failure by multiple tenants to occupy their premises in a shopping center, (xiii) impairment charges and (xiv) unanticipated changes in the Company's intention or ability to prepay certain debt prior to maturity and/or hold certain securities until maturity. Accordingly, there is no assurance that our expectations will be realized.

We caution readers that any such statements are based on currently available operational, financial and competitive information, and they should not place undue reliance on these forward-looking statements, which reflect management's opinion only as of the date on which they were made. Except as required by law, we disclaim any obligation to review or update these forward-looking statements to reflect events or circumstances as they occur.



## THE COMPANY

### Overview

Kimco Realty Corporation is one of the nation's largest publicly-traded owners and operators of neighborhood and community shopping centers. As of December 31, 2011, the Company had interests in 946 shopping center properties, aggregating 138.1 million square feet of gross leasable area (GLA), and 845 other property interests, primarily through the Company's preferred equity investments, other real estate investments and non-retail properties, totaling approximately 34.1 million square feet of GLA, for a grand total of 1,791 properties aggregating 172.2 million square feet of GLA, located in 44 states, Puerto Rico, Canada, Mexico, Chile, Brazil and Peru.

The Company is self-administered and self-managed through present management, which has owned and managed neighborhood and community shopping centers for over 50 years. The executive officers are engaged in the day-to-day management and operation of real estate exclusively with the Company, with nearly all operating functions, including leasing, asset management, maintenance, construction, legal, finance and accounting administered by the Company.

The Company's vision is to be the premier owner and operator of shopping centers with its core business operations focusing on owning and operating neighborhood and community shopping centers through investments in North America.

We believe that we have operated, and we intend to continue to operate, in such a manner to qualify as a REIT under the Internal Revenue Code of 1986, as amended (the Code). We have not engaged, nor do we expect to retain, any REIT advisors in connection with the operation of our properties. Our executive officers are engaged in the day-to-day management and operation of our real estate exclusively, and we administer nearly all operating functions for our properties, including leasing, asset management, maintenance, construction, legal, finance and accounting. Our executive offices are located at 3333 New Hyde Park Road, New Hyde Park, New York 11042-0020 and our telephone number is (516) 869-9000.

In order to maintain our qualification as a REIT for federal income tax purposes, we are required to distribute at least 90% of our net taxable income, excluding capital gains, each year. Dividends on any preferred stock issued by us are included as distributions for this purpose.

## RISK FACTORS

You should carefully consider the risks and uncertainties incorporated by reference herein from our most recent Annual Report on Form 10-K, any subsequent Quarterly Reports on Form 10-Q or Current Reports on Form 8-K and in our reports we file with the SEC under Sections 13(a), 13(c), 14 or 15(d) of the Securities Exchange, as well as the risk factors set forth below and all of the information set forth in this prospectus and any accompanying prospectus supplement before investing in our securities.

### Anti-takeover Effect of Restrictions on Ownership

For us to qualify as a REIT under the Code, not more than 50% in value of our outstanding stock may be owned, actually or constructively, by five or fewer individuals (as defined in the Code to include certain entities) during the last half of a taxable year. Our stock also must be beneficially owned by 100 or more persons during at least 335 days of a taxable year of 12 months or during a proportionate part of a shorter taxable year. In addition, rent from related party tenants (generally, a tenant of a REIT owned, actually or constructively, 10% or more by the REIT, or a 10% owner of the REIT) is not qualifying income for purposes of the income tests under the Code.

Subject to the exceptions specified in our charter, no holder may own, or be deemed to own by virtue of the constructive ownership provisions of the Code, more than 9.8% in value of the outstanding shares of our common stock or any currently authorized and outstanding class of our preferred stock. Our charter also contains restrictions relating to ownership of our shares which would cause our shares to be beneficially owned by less than 100 persons, cause us to be closely held within the meaning of the Code or otherwise result in our failure to qualify as a REIT. See

Description of Common Stock Restrictions on Ownership and Description of Preferred Stock Restrictions on Ownership. These ownership limits and other provisions restricting the ownership our common stock and preferred stock could delay or prevent a transaction or a change in control of the Company that might involve a premium price for the stock or otherwise be in the best interest of the stockholders.

**We could classify and reclassify unissued preferred stock and issue stock without stockholder approval.**

Our board of directors has the power under our charter to authorize us to issue authorized but unissued shares of our common stock or preferred stock and to classify or reclassify any unissued shares of our preferred stock into one or more classes or series of stock and set the terms of such newly classified or reclassified shares. Although our board of directors has no such intention at the present time, it could establish a class or series of preferred stock that could, depending on the terms of such series, delay, defer or prevent a transaction or a change of control that might involve a premium price for our securities or that our stockholders otherwise believe to be in their best interests.

Certain provisions of Maryland law could inhibit changes in control, which may discourage third parties from conducting a tender offer or seeking other change of control transactions that our stockholders otherwise believe to be in their best interests.

Certain provisions of the Maryland General Corporation Law, may have the effect of inhibiting a third party from making a proposal to acquire us or of impeding a change of control under circumstances that otherwise could be in the best interest of our stockholders, including:

business combination provisions that, subject to limitations, prohibit certain business combinations between us and an interested stockholder (defined generally as any person who beneficially owns 10% or more of the voting power of our shares or an affiliate thereof or an affiliate or associate of ours who was the beneficial owner, directly or indirectly, of 10% or more of the voting power of our then outstanding voting stock at any time within the two-year period immediately prior to the date in question) for five years after the most recent date on which the stockholder becomes an interested stockholder, and thereafter impose fair price and/or supermajority and stockholder voting requirements on these combinations; and

control share provisions that provide that control shares of our company (defined as shares that, when aggregated with other shares controlled by the stockholder, entitle the stockholder to exercise one of three increasing ranges of voting power in electing directors) acquired in a control share acquisition (defined as the direct or indirect acquisition of ownership or control of issued and outstanding control shares) have no voting rights except to the extent approved by our stockholders by the affirmative vote of at least two-thirds of all the votes entitled to be cast on the matter, excluding all interested shares.

We have not elected to opt-out of the business combination provisions of the Maryland General Corporation Law. As permitted by the Maryland General Corporation Law, we have elected, pursuant to a provision in our bylaws, to exempt any acquisition of our stock from the control share provisions of the Maryland General Corporation Law. However, our board of directors may by amendment to our bylaws opt into the control share provisions of the Maryland General Corporation Law at any time in the future.

Certain provisions of the Maryland General Corporation Law permit our board of directors, without stockholder approval and regardless of what is currently provided in our charter or bylaws, to implement certain corporate governance provisions, some of which (for example, a classified board) are not currently applicable to us. These provisions may have the effect of limiting or precluding a third party from making an unsolicited acquisition proposal for us or of delaying, deferring or preventing a change in control of us under circumstances that otherwise could be in

the best interest of our stockholders. See Provisions of Maryland Law and Our Charter and Bylaws.

**Our rights and the rights of our stockholders to take action against our directors and officers are limited.**

Our charter eliminates the liability of our directors and officers to us and our stockholders for money damages, except for liability resulting from:

.

actual receipt of an improper benefit or profit in money, property or services; or

.

a final judgment based upon a finding of active and deliberate dishonesty by the director or officer that was material to the cause of action adjudicated.

In addition, our charter authorizes us to obligate Kimco, and our bylaws require Kimco, to indemnify our directors and officers for actions taken by them in those and certain other capacities to the maximum extent permitted by Maryland law. As a result, we and our stockholders may have more limited rights against our directors and officers than might otherwise exist. See Provisions of Maryland Law and Our Charter and Bylaws.



**The ability of our board of directors to revoke our REIT qualification without stockholder approval may cause adverse consequences to our stockholders.**

Our charter provides that our board of directors may revoke or otherwise terminate our REIT election, without the approval of our stockholders, if it determines that it is no longer in our best interest to continue to qualify as a REIT. If we cease to be a REIT, we would become subject to federal income tax on our taxable income and would no longer be required to distribute most of our taxable income to our stockholders, which may have adverse consequences on the total return to our stockholders.

### **USE OF PROCEEDS**

Unless otherwise described in the applicable prospectus supplement, we intend to use the net proceeds from the sale of the securities offered by this prospectus for general corporate purposes, which may include the acquisition of neighborhood and community shopping centers as suitable opportunities arise, the expansion and improvement of certain properties in our portfolio, or the repayment or refinancing of indebtedness outstanding at that time including the repayment or reduction of indebtedness on our outstanding line of credit which may be re-borrowed at a later time.

The factors which we will consider in any refinancing will include the amount and characteristics of any debt securities issued and may include, among others, the impact of such refinancing on our interest coverage, debt-to-capital ratio, liquidity and earnings per share. If we identify any specific use for the net proceeds from the sale of securities, we will describe such use in the accompanying prospectus supplement.

### **RATIOS OF EARNINGS TO FIXED CHARGES**

All periods presented below have been adjusted to reflect the impact of operating properties sold and classified as discontinued operations during the year ended December 31, 2011 and for properties classified as held for sale as of December 31, 2011, in accordance with the Financial Accounting Standards Board's (FASB) Property, Plant and Equipment guidance.

Our ratios of earnings to fixed charges for the years ended December 31, 2011, 2010, 2009, 2008 and 2007 were 2.0, 1.8, 1.3, 2.0 and 3.0, respectively. Our ratios of earnings to combined fixed charges and preferred stock dividend requirements for the years ended December 31, 2011, 2010, 2009, 2008 and 2007 were 1.6, 1.5, 1.1, 1.7 and 2.8, respectively.

For purposes of computing these ratios, earnings have been calculated by adding fixed charges (excluding capitalized interest), amortization of capitalized interest and distributed income of equity investees to pre-tax income from continuing operations before adjustment for noncontrolling interests in consolidated subsidiaries or income/loss from unconsolidated partnerships. Fixed charges consist of interest costs, whether expensed or capitalized, the interest component of rental expense, and amortization of debt discounts and issue costs, whether expensed or capitalized.

### **DESCRIPTION OF DEBT SECURITIES**

Our unsecured senior debt securities are to be issued under an indenture, dated as of September 1, 1993, as amended by the first supplemental indenture, dated as of August 4, 1994, the second supplemental indenture, dated as of April 7, 1995, the third supplemental indenture, dated as of June 2, 2006, the fourth supplemental indenture, dated as of April 26, 2007, the fifth supplemental indenture, dated as of September 24, 2009, and as further amended or supplemented from time to time, between us and The Bank of New York Mellon (successor by merger to IBJ Schroder Bank & Trust Company), as trustee. The indenture has been filed as an exhibit to the registration statement of which this prospectus is a part and is available for inspection at the corporate trust office of the trustee at 101

Barclay Street, 8th Floor, New York, New York 10286 or as described above under [Where You Can Find More Information](#). The indenture is subject to, and governed by, the Trust Indenture Act of 1939, as amended. The statements made hereunder relating to the indenture and the debt securities to be issued thereunder are summaries of some of the provisions thereof and do not purport to be complete and are subject to, and are qualified in their entirety by reference to, all provisions of the indenture and the debt securities. All section references appearing herein are to sections of the indenture.

## **General**

The debt securities will be our direct, unsecured obligations and will rank equally with all of our other unsecured and unsubordinated indebtedness. The indenture provides that the debt securities may be issued without limit as to aggregate principal amount, in one or more series, in each case as established from time to time in or pursuant to authority granted by a resolution of our board of directors or as established in one or more indentures supplemental to the indenture. All debt securities of one series need not be issued at the same time and, unless otherwise provided, a series may be reopened, without the consent of the holders of the debt securities of such series, for issuances of additional debt securities of that series (Section 301).

The indenture provides that there may be more than one trustee thereunder, each with respect to one or more series of debt securities. Any trustee under the indenture may resign or be removed with respect to one or more series of debt securities, and a successor trustee may be appointed to act with respect to that series (Section 608). In the event that two or more persons are acting as trustee with respect to different series of debt securities, each trustee shall be a trustee of a trust under the indenture separate and apart from the trust administered by any other trustee (Section 609), and, except as otherwise indicated herein, any action described herein to be taken by the trustee may be taken by each trustee with respect to, and only with respect to, the one or more series of debt securities for which it is trustee under the indenture.

For a detailed description of a specific series of debt securities, you should consult the prospectus supplement for that series. The prospectus supplement may contain any of the following information, where applicable:

(1)

the title and series designation of those debt securities;

(2)

the aggregate principal amount of those debt securities and any limit on the aggregate principal amount;

(3)

if other than the principal amount thereof, the portion of the principal amount thereof payable upon declaration of acceleration of the maturity thereof, or (if applicable) the portion of the principal amount of those debt securities which is convertible into our common stock or our preferred stock, or the method by which any portion shall be determined;

(4)

if convertible, any applicable limitations on the ownership or transferability of our common stock or our preferred stock into which those debt securities are convertible which exist to preserve our status as a REIT;

(5)

the date or dates, or the method for determining the date or dates, on which the principal of those debt securities will be payable;

(6)

the rate or rates (which may be fixed or variable), or the method by which the rate or rates shall be determined, at which those debt securities will bear interest, if any;

(7)

the date or dates, or the method for determining the date or dates, from which any interest will accrue, the interest payment dates on which that interest will be payable, the regular record dates for the interest payment dates, or the method by which that date shall be determined, the person to whom that interest shall be payable, and the basis upon which interest shall be calculated if other than that of a 360-day year of twelve 30-day months;

(8)

the place or places where (a) the principal of (and premium, if any) and interest, if any, on those debt securities will be payable, (b) those debt securities may be surrendered for conversion or registration of transfer or exchange and (c) notices or demands to or upon us in respect of those debt securities and the indenture may be served;

(9)

the period or periods within which, the price or prices at which, and the terms and conditions upon which those debt securities may be redeemed, as a whole or in part, at our option, if we are to have that option;

(10)

our obligation, if any, to redeem, repay or purchase those debt securities pursuant to any sinking fund or analogous provision or at the option of a holder of those debt securities and the period or periods within which, the price or prices at which and the terms and conditions upon which those debt securities will be redeemed, repaid or purchased, as a whole or in part, pursuant to that obligation;

(11)

if other than U.S. dollars, the currency or currencies in which those debt securities are denominated and payable, which may be units of two or more foreign currencies or a composite currency or currencies, and the terms and conditions relating thereto;

(12)

whether the amount of payments of principal of (and premium, if any) or interest, if any, on those debt securities may be determined with reference to an index, formula or other method (which index, formula or method may, but need not be, based on a currency, currencies, currency unit or units or composite currency or currencies) and the manner in which those amounts shall be determined;

(13)

any additions to, modifications of or deletions from the terms of those debt securities with respect to the events of default or covenants set forth in the indenture;

(14)

whether those debt securities will be issued in certificated or book-entry form or both;

(15)

whether those debt securities will be in registered or bearer form and, if in registered form, their denominations if other than \$1,000 and any integral multiple of \$1,000 and, if in bearer form, their denominations and the terms and conditions relating thereto;



(16)

the applicability, if any, of the defeasance and covenant defeasance provisions of article fourteen of the indenture;

(17)

if those debt securities are to be issued upon the exercise of debt warrants, the time, manner and place for those debt securities to be authenticated and delivered;

(18)

the terms, if any, upon which those debt securities may be convertible into our common stock or our preferred stock and the terms and conditions upon which that conversion will be effected, including, without limitation, the initial conversion price or rate and the conversion period;

(19)

whether and under what circumstances we will pay additional amounts as contemplated in the indenture on those debt securities in respect of any tax, assessment or governmental charge and, if so, whether we will have the option to redeem those debt securities in lieu of making such payment; and

(20)

any other terms of those debt securities not inconsistent with the provisions of the indenture (Section 301).

The debt securities may provide for less than the entire principal amount thereof to be payable upon declaration of acceleration of their maturity. We refer to this type of debt securities as original issue discount securities. Any material or applicable special U.S. federal income tax, accounting and other considerations applicable to original issue discount securities will be described in the applicable prospectus supplement.

Except as described under Merger, Consolidation or Sale, the indenture does not contain any other provisions that would limit our ability to incur indebtedness or to substantially reduce or eliminate our assets, which may have an adverse effect on our ability to service our indebtedness (including the debt securities) or that would afford holders of the debt securities protection in the event of:

(1)

a highly leveraged or similar transaction involving us, our management, or any affiliate of any of those parties,

(2)

a change of control, or

(3)

a reorganization, restructuring, merger or similar transaction involving us that may adversely affect the holders of our debt securities.

Furthermore, subject to the limitations set forth under Merger, Consolidation or Sale, we may, in the future, enter into certain transactions, such as the sale of all or substantially all of our assets or a merger or consolidation involving us, that would increase the amount of our indebtedness or substantially reduce or eliminate our assets, which may have an adverse effect on our ability to service our indebtedness, including the debt securities. In addition, restrictions on ownership and transfers of our common stock and our preferred stock are designed to preserve our status as a REIT and, therefore, may act to prevent or hinder a change of control. You should refer to the applicable prospectus supplement for information with respect to any deletions from, modifications of or additions to the events of default or our covenants that are described below, including any addition of a covenant or other provision providing event risk or similar protection.

A significant number of our properties are owned through our subsidiaries or joint ventures. Therefore, our rights and those of our creditors, including holders of debt securities, to participate in the assets of those subsidiaries or joint ventures upon the liquidation or recapitalization of those subsidiaries or joint ventures or otherwise will be subject to the prior claims of those entities respective creditors (except to the extent that our claims as a creditor may be recognized).

#### **Denominations, Interest, Registration and Transfer**

Unless otherwise described in the applicable prospectus supplement, the debt securities of any series will be issuable in denominations of \$1,000 and integral multiples of \$1,000 (Section 302).

Unless otherwise specified in the applicable prospectus supplement, the principal of (and premium, if any) and interest on any series of debt securities will be payable at the corporate trust office of the trustee, initially located at 101 Barclay Street, 8th Floor, New York, New York 10286, provided that, at our option, payment of interest may be made by check mailed to the address of the person entitled thereto as it appears in the security register or by wire transfer of funds to that person at an account maintained within the United States (Sections 301, 305, 306, 307 and 1002).

Any interest not punctually paid or duly provided for on any interest payment date with respect to a debt security will forthwith cease to be payable to the holder of that debt security on the applicable regular record date and may either be paid to the person in whose name that debt security is registered at the close of business on a special record date for the payment of the interest not punctually paid or duly provided for to be fixed by the trustee, notice whereof shall be given to the holder of that debt security not less than 10 days prior to the special record date, or may be paid at any time in any other lawful manner, all as more completely described in the indenture.

Subject to certain limitations imposed upon debt securities issued in book-entry form, the debt securities of any series will be exchangeable for other debt securities of the same series and of a like aggregate principal amount and tenor of different authorized denominations upon surrender of those debt securities at the corporate trust office of the trustee.

In addition, subject to certain limitations imposed upon debt securities issued in book-entry form, the debt securities of any series may be surrendered for conversion or registration of transfer or exchange thereof at the corporate trust office of the trustee. Every debt security surrendered for conversion, registration of transfer or exchange shall be duly endorsed or accompanied by a written instrument of transfer. No service charge will be imposed for any registration of transfer or exchange of any debt securities, but we may require payment of a sum sufficient to cover any tax or other governmental charge payable in connection with the registration of transfer or exchange of debt securities (Section 305). If the applicable prospectus supplement refers to any transfer agent (in addition to the trustee) initially designated by us with respect to any series of debt securities, we may at any time rescind the designation of that transfer agent or approve a change in the location through which that transfer agent acts, except that we will be required to maintain a transfer agent in each place of payment for that series. We may at any time designate additional transfer agents with respect to any series of debt securities (Section 1002).

Neither we nor any trustee shall be required to:

(1)

issue, register the transfer of or exchange debt securities of any series during a period beginning at the opening of business 15 days before any selection of debt securities of that series to be redeemed and ending at the close of business on the day of mailing of the relevant notice of redemption;

(2)

register the transfer of or exchange any debt security, or portion thereof, called for redemption, except the unredeemed portion of any debt security being redeemed in part; or

(3)

issue, register the transfer of or exchange any debt security which has been surrendered for repayment at the option of the holder of that debt security, except the portion, if any, of that debt security not to be so repaid (Section 305).

### **Merger, Consolidation or Sale**

We may consolidate with, or sell, lease or convey all or substantially all of our assets to, or merge with or into, any other corporation, provided that:



(1)

either we shall be the continuing corporation, or the successor corporation (if other than us) formed by or resulting from that consolidation or merger or which shall have received the transfer of our assets, shall expressly assume payment of the principal of (and premium, if any) and interest on all of the debt securities and the due and punctual performance and observance of all of the covenants and conditions contained in the indenture;

(2)

immediately after giving effect to that transaction and treating any indebtedness which becomes an obligation of ours or of any of our subsidiaries as a result thereof as having been incurred by us or that subsidiary at the time of that transaction, no event of default under the indenture, and no event which, after notice or the lapse of time, or both, would become an event of default, shall have occurred and be continuing; and

(3)

an officer's certificate and legal opinion covering the above conditions shall be delivered to the trustee (Sections 801 and 803).

#### **Certain Covenants**

Existence. Except as permitted under Merger, Consolidation or Sale, we will do or cause to be done all things necessary to preserve and keep in full force and effect our corporate existence, rights (charter and statutory) and franchises; provided, however, that we will not be required to preserve any right or franchise if we determine that the preservation of that right or franchise is no longer desirable in the conduct of our business and that the loss of that right or franchise is not disadvantageous in any material respect to the holders of the debt securities (Section 1006).

**Maintenance of Properties.** We will cause all of our properties used or useful in the conduct of our business or the business of any of our subsidiaries to be maintained and kept in good condition, repair and working order and supplied with all necessary equipment and will cause to be made all necessary repairs, renewals, replacements, betterments and improvements to those properties, all as in the board's judgment may be necessary so that the business carried on in connection with those properties may be properly and advantageously conducted at all times; provided, however, that we and our subsidiaries will not be prevented from selling or otherwise disposing for value our respective properties in the ordinary course of business (Section 1007).

**Insurance.** We will, and will cause each of our subsidiaries to, keep all of our insurable properties insured against loss or damage at least in an amount equal to their then full insurable value with insurers of recognized responsibility and having a rating of at least A: VIII in Best's Key Rating Guide (Section 1008).

**Payment of Taxes and Other Claims.** We will pay or discharge or cause to be paid or discharged, before the same shall become delinquent,

(1)

all taxes, assessments and governmental charges levied or imposed upon us or any of our subsidiaries or upon our income, profits or property or the income, profits or property of any of our subsidiaries, and

(2)

all lawful claims for labor, materials and supplies which, if unpaid, might by law become a lien upon our property or the property of any of our subsidiaries; provided, however, that we will not be required to pay or discharge or cause to be paid or discharged any tax, assessment, charge or claim whose amount, applicability or validity is being contested in good faith by appropriate proceedings (Section 1009).

**Provision of Financial Information.** Whether or not we are subject to Section 13 or 15(d) of the Securities Exchange Act, we will, to the extent permitted under the Securities Exchange Act, file with the SEC the annual reports, quarterly reports and other documents which we would have been required to file with the SEC pursuant to Section 13 or 15(d) of the Securities Exchange Act if we were so subject, those documents to be filed with the SEC on or prior to the respective dates by which we would have been required so to file those documents if we were so subject. We will also in any event:

(1) within 15 days of each date by which we would have been required to file those documents with the SEC pursuant to Section 13 or 15(d) of the Securities Exchange Act:

a.

transmit by mail to all holders of debt securities, as their names and addresses appear in the security register, without cost to the holders of debt securities, copies of the annual reports and quarterly reports which we would have been required to file with the SEC pursuant to Section 13 or 15(d) of the Securities Exchange Act if we were subject to those Sections, and

b.

file with the trustee copies of the annual reports, quarterly reports and other documents which we would have been required to file with the SEC pursuant to Section 13 or 15(d) of the Securities Exchange Act if we were subject to those Sections, and

(2) if filing those documents by us with the SEC is not permitted under the Securities Exchange Act, promptly upon written request and payment of the reasonable cost of duplication and delivery, supply copies of those documents to any prospective holder of debt securities (Section 1010).

### **Events of Default, Notice and Waiver**

The indenture provides that the following events are events of default with respect to any series of debt securities issued thereunder:

(1)

default for 30 days in the payment of any installment of interest on any debt security of that series;

(2)

default in the payment of the principal of (or premium, if any, on) any debt security of that series at its maturity;

(3)

default in making any sinking fund payment as required for any debt security of that series;

(4)

default in the performance of any of our other covenants contained in the indenture (other than a covenant added to the indenture solely for the benefit of a series of debt securities issued thereunder other than that series), continued for 60 days after written notice as provided in the indenture;

(5)

default in the payment of an aggregate principal amount exceeding \$10,000,000 of any evidence of our indebtedness or any mortgage, indenture or other instrument under which indebtedness is issued or by which that indebtedness is secured, that default having occurred after the expiration of any applicable grace period and having resulted in the acceleration of the maturity of that indebtedness, but only if that indebtedness is not discharged or that acceleration is not rescinded or annulled;

(6)

certain events of bankruptcy, insolvency or reorganization, or court appointment of a receiver, liquidator or trustee of ours or any of our significant subsidiaries (as defined in Regulation S-X promulgated under the Securities Act) or either of our properties; and

(7)

any other event of default provided with respect to a particular series of debt securities (Section 501).

If an event of default under the indenture with respect to debt securities of any series at the time outstanding occurs and is continuing, then in all of those cases the trustee or the holders of not less than 25% in principal amount of the outstanding debt securities of that series may declare the principal amount (or, if the debt securities of that series are original issue discount securities or indexed securities, that portion of the principal amount as may be specified in the terms thereof) of all of the debt securities of that series to be due and payable immediately by written notice thereof to us (and to the trustee if given by the holders of debt securities). However, at any time after a declaration of acceleration with respect to debt securities of that series (or of all debt securities then outstanding under the indenture, as the case may be) has been made, but before a judgment or decree for payment of the money due has been obtained by the trustee, the holders of not less than a majority in principal amount of outstanding debt securities of that series (or of all debt securities then outstanding under the indenture, as the case may be) may rescind and annul that declaration and its consequences if:

(1)

we shall have deposited with the trustee all required payments of the principal of (and premium, if any) and interest on the debt securities of that series (or of all debt securities then outstanding under the indenture, as the case may be), plus certain fees, expenses, disbursements and advances of the trustee, and

(2)

all events of default, other than the non-payment of accelerated principal (or specified portion thereof), with respect to debt securities of that series (or of all debt securities then outstanding under the indenture, as the case may be) have been cured or waived as provided in the indenture (Section 502). The indenture also provides that the holders of not less than a majority in principal amount of the outstanding debt securities of any series (or of all debt securities then outstanding under the indenture, as the case may be) may waive any past default with respect to that series and its consequences, except a default:

a.

in the payment of the principal of (or premium, if any) or interest on any debt security of that series, or

b.

in respect of a covenant or provision contained in the indenture that cannot be modified or amended without the consent of the holder of each outstanding debt security affected thereby (Section 513).

The trustee is required to give notice to the holders of debt securities within 90 days of a default under the indenture; provided, however, that the trustee may withhold notice to the holders of any series of debt securities of any default with respect to that series (except a default in the payment of the principal of (or premium, if any) or interest on any debt security of that series or in the payment of any sinking fund installment in respect of any debt security of that series) if the responsible officers of the trustee consider that withholding to be in the interest of those holders of debt securities (Section 601).

The indenture provides that no holders of debt securities of any series may institute any proceedings, judicial or otherwise, with respect to the indenture or for any remedy thereunder, except in the case of failure of the trustee, for 60 days, to act after it has received a written request to institute proceedings in respect of an event of default from the holders of not less than 25% in principal amount of the outstanding debt securities of that series, as well as an offer of indemnity reasonably satisfactory to it (Section 507). This provision will not prevent, however, any holder of debt securities from instituting suit for the enforcement of payment of the principal of (and premium, if any) and interest on those debt securities at the respective due dates thereof (Section 508).

Subject to provisions in the indenture relating to its duties in case of default, the trustee is under no obligation to exercise any of its rights or powers under the indenture at the request or direction of any holders of any series of debt securities then outstanding under the indenture, unless those holders shall have offered to the trustee reasonable security or indemnity satisfactory to it (Section 602). The holders of not less than a majority in principal amount of the outstanding debt securities of any series (or of all debt securities then outstanding under the indenture, as the case may be) shall have the right to direct the time, method and place of conducting any proceeding for any remedy available to the trustee, or of exercising any trust or power conferred upon the trustee. However, the trustee may refuse to follow any direction which is in conflict with any law or the indenture, which may involve the trustee in personal liability or which may be unduly prejudicial to the holders of debt securities of those series not joining therein (Section 512).

Within 120 days after the close of each fiscal year, we must deliver to the trustee a certificate, signed by one of several specified officers, stating whether or not that officer has knowledge of any default under the indenture and, if so, specifying each of those defaults and the nature and status thereof (Section 1011).

### **Modification**

Modifications and amendments of the indenture and debt securities may be made only with the consent of the holders of not less than a majority in principal amount of all outstanding debt securities which are affected by such modification or amendment; provided, however, that no modification or amendment may, without the consent of the holder of each of the debt securities affected thereby,

(1)

change the stated maturity of the principal of, or any installment of interest (or premium, if any) on, any debt security;

(2)

reduce the principal amount of, or the rate or amount of interest on, or any premium payable on redemption of, any debt security, or reduce the amount of principal of an original issue discount security that would be due and payable upon declaration of acceleration of the maturity thereof or would be provable in bankruptcy, or adversely affect any right of repayment of the holder of any debt security;

(3)

change the place of payment, or the coin or currency, for payment of principal of (or premium, if any) or interest on any debt security;

(4)

impair the right to institute suit for the enforcement of any payment on or with respect to any debt security;

(5)

reduce the above-stated percentage of outstanding debt securities of any series necessary to modify or amend the indenture, to waive compliance with certain provisions thereof or certain defaults and consequences thereunder or to reduce the quorum or voting requirements set forth in the indenture; or

(6)

modify any of the foregoing provisions or any of the provisions relating to the waiver of certain past defaults or certain covenants, except to increase the required percentage to effect that action or to provide that certain other provisions may not be modified or waived without the consent of the holder of that debt security (Section 902).

The holders of not less than a majority in principal amount of outstanding debt securities have the right to waive compliance by us with some of the covenants in the indenture (Section 1013).

Modifications and amendments of the indenture may be made by us and the trustee without the consent of any holder of debt securities for any of the following purposes:

(1)

to evidence the succession of another person to us as obligor under the indenture;

(2)

to add to our covenants for the benefit of the holders of all or any series of debt securities or to surrender any right or power conferred upon us in the indenture;

(3)

to add events of default for the benefit of the holders of all or any series of debt securities;

(4)

to add or change any provisions of the indenture to facilitate the issuance of, or to liberalize some of the terms of, debt securities in bearer form, or to permit or facilitate the issuance of debt securities in uncertificated form, provided that such action shall not adversely affect the interests of the holders of the debt securities of any series in any material respect;

(5)

to change or eliminate any provisions of the indenture, provided that any of those changes or elimination shall become effective only when there are no debt securities outstanding of any series created prior thereto which are entitled to the benefit of that provision;

(6)

to secure the debt securities;

(7)

to establish the form or terms of debt securities of any series, including the provisions and procedures, if applicable, for the conversion of those debt securities into our common stock or our preferred stock;

(8)

to provide for the acceptance of appointment by a successor trustee or facilitate the administration of the trusts under the indenture by more than one trustee;

(9)

to cure any ambiguity, defect or inconsistency in the indenture, provided that such action shall not adversely affect the interests of the holders of debt securities of any series in any material respect; or

(10)

to supplement any of the provisions of the indenture to the extent necessary to permit or facilitate defeasance and discharge of any series of those debt securities, provided that such action shall not adversely affect the interests of the holders of the debt securities of any series in any material respect (Section 901).



The indenture provides that in determining whether the holders of the requisite principal amount of outstanding debt securities of a series have given any request, demand, authorization, direction, notice, consent or waiver thereunder or whether a quorum is present at a meeting of holders of debt securities,

(1)

the principal amount of an original issue discount security that shall be deemed to be outstanding shall be the amount of the principal thereof that would be due and payable as of the date of that determination upon declaration of acceleration of the maturity thereof,

(2)

the principal amount of a debt security denominated in a foreign currency that shall be deemed outstanding shall be the U.S. Dollar equivalent, determined on the issue date for that debt security, of the principal amount (or, in the case of an original issue discount security, the U.S. Dollar equivalent on the issue date of that debt security of the amount determined as provided in (1) above),

(3)

the principal amount of an indexed security that shall be deemed outstanding shall be the principal face amount of that indexed security at original issuance, unless otherwise provided with respect to that indexed security pursuant to Section 301 of the indenture, and

(4)

debt securities owned by us or any other obligor upon the debt securities or any of our affiliates or of that other obligor shall be disregarded (Section 101).

The indenture contains provisions for convening meetings of the holders of debt securities of a series (Section 1501). A meeting may be called at any time by the trustee, and also, upon request, by us or the holders of at least 10% in principal amount of the outstanding debt securities of that series, in any of those cases upon notice given as provided in the indenture (Section 1502). Except for any consent that must be given by the holder of each debt security affected by certain modifications and amendments of the indenture, any resolution presented at a meeting or adjourned meeting duly reconvened at which a quorum is present may be adopted by the affirmative vote of the holders of a majority in principal amount of the outstanding debt securities of that series; provided, however, that, except as referred to above, any resolution with respect to any request, demand, authorization, direction, notice, consent, waiver or other action that may be made, given or taken by the holders of a specified percentage, which is less than a majority, in principal amount of the outstanding debt securities of a series may be adopted at a meeting or adjourned meeting duly reconvened at which a quorum is present by the affirmative vote of the holders of that specified percentage in principal amount of the outstanding debt securities of that series. Any resolution passed or decision taken at any meeting of holders of debt securities of any series duly held in accordance with the indenture will be binding on all holders of debt securities of that series. The quorum at any meeting called to adopt a resolution, and at any reconvened meeting, will be persons holding or representing a majority in principal amount of the outstanding debt securities of a series; provided, however, that if any action is to be taken at that meeting with respect to a consent or waiver which may be given by the holders of not less than a specified percentage in principal amount of the outstanding debt securities of a series, the persons holding or representing that specified percentage in principal amount of the outstanding debt securities of that series will constitute a quorum (Section 1504).

Notwithstanding the foregoing provisions, if any action is to be taken at a meeting of holders of debt securities of any series with respect to any request, demand, authorization, direction, notice, consent, waiver or other action that the indenture expressly provides may be made, given or taken by the holders of a specified percentage in principal amount of all outstanding debt securities affected thereby, or of the holders of that series and one or more additional series:

(1)

there shall be no minimum quorum requirement for that meeting, and

(2)

the principal amount of the outstanding debt securities of that series that vote in favor of that request, demand, authorization, direction, notice, consent, waiver or other action shall be taken into account in determining whether that request, demand, authorization, direction, notice, consent, waiver or other action has been made, given or taken under the indenture (Section 1504).

#### Discharge, Defeasance and Covenant Defeasance

We may discharge certain obligations to holders of any series of debt securities that have not already been delivered to the trustee for cancellation and that either have become due and payable or will become due and payable within one year (or scheduled for redemption within one year) by irrevocably depositing with the trustee, in trust, funds in the currency or currencies, currency unit or units or composite currency or currencies in which those debt securities are payable in an amount sufficient to pay the entire indebtedness on those debt securities in respect of principal (and premium, if any) and interest to the date of that deposit (if those debt securities have become due and payable) or to the stated maturity or redemption date, as the case may be (Section 401).

The indenture provides that, if the provisions of article fourteen of the indenture are made applicable to the debt securities of or within any series pursuant to Section 301 of the indenture, we may elect either:

(1)

to defease and be discharged from any and all obligations with respect to those debt securities (except for the obligation to pay additional amounts, if any, upon the occurrence of certain events of tax, assessment or governmental charge with respect to payments on those debt securities and the obligations to register the transfer or exchange of those debt securities, to replace temporary or mutilated, destroyed, lost or stolen debt securities, to maintain an office or agency in respect of those debt securities and to hold moneys for payment in trust) ( defeasance ) (Section 1402); or

(2)

to be released from its obligations with respect to those debt securities under Sections 1004 to 1010, inclusive, and Section 1014 of the indenture (being the restrictions described under Certain Covenants ) or, if provided pursuant to Section 301 of the indenture, its obligations with respect to any other covenant, and any omission to comply with those obligations shall not constitute a default or an event of default with respect to those debt securities ( covenant defeasance ) (Section 1403),

in either case upon the irrevocable deposit by us with the trustee, in trust, of an amount, in the currency or currencies, currency unit or units or composite currency or currencies in which those debt securities are payable at stated maturity, or Government Obligations (as defined below), or both, applicable to those debt securities which through the scheduled payment of principal and interest in accordance with their terms will provide money in an amount sufficient to pay the principal of (and premium, if any) and interest on those debt securities, and any mandatory sinking fund or analogous payments thereon, on the scheduled due dates therefor.

That type of trust may only be established if, among other things, we have delivered to the trustee an opinion of counsel to the effect that the holders of those debt securities will not recognize income, gain or loss for U.S. federal income tax purposes as a result of that defeasance or covenant defeasance and will be subject to U.S. federal income tax on the same amounts, in the same manner and at the same times as would have been the case if that defeasance or covenant defeasance had not occurred, and that opinion of counsel, in the case of defeasance, must refer to and be based upon a ruling of the Internal Revenue Service or a change in applicable U.S. federal income tax law occurring after the date of the indenture (Section 1404).

*Government Obligations* means securities which are:

(1)

direct obligations of the United States of America or the government which issued the foreign currency in which the debt securities of a particular series are payable, for the payment of which its full faith and credit is pledged, or

(2)

obligations of a person controlled or supervised by and acting as an agency or instrumentality of the United States of America or that government which issued the foreign currency in which the debt securities of that series are payable,

the payment of which is unconditionally guaranteed as a full faith and credit obligation by the United States of America or that other government,

which, in either case, are not callable or redeemable at the option of the issuer thereof, and shall also include a depository receipt issued by a bank or trust company as custodian with respect to that Government Obligation or a specific payment of interest on or principal of that Government Obligation held by the custodian for the account of the holder of a depository receipt, provided that (except as required by law) the custodian is not authorized to make any deduction from the amount payable to the holder of the depository receipt from any amount received by the custodian in respect of the Government Obligation or the specific payment of interest on or principal of the Government Obligation evidenced by the depository receipt (Section 101).

Unless otherwise provided in the applicable prospectus supplement, if after we have deposited funds or Government Obligations or both to effect defeasance or covenant defeasance with respect to debt securities of any series,

(1)

the holder of a debt security of that series is entitled to, and does, elect pursuant to Section 301 of the indenture or the terms of that debt security to receive payment in a currency, currency unit or composite currency other than that in which the deposit has been made in respect of that debt security, or

(2)

a Conversion Event (as defined below) occurs in respect of the currency, currency unit or composite currency in which the deposit has been made,

then, the indebtedness represented by that debt security shall be deemed to have been, and will be, fully discharged and satisfied through the payment of the principal of (and premium, if any) and interest on that debt security as they become due out of the proceeds yielded by converting the amount so deposited in respect of that debt security into the currency, currency unit or composite currency in which that debt security becomes payable as a result of that election or cessation of usage based on the applicable market exchange rate (Section 1405). Conversion Event means the cessation of use of:

(1)

a currency, currency unit or composite currency both by the government of the country which issued that currency and for the settlement of transactions by a central bank or other public institutions of or within the international banking community,

(2)

the European Currency Unit, or ECU, both within the European Monetary System and for the settlement of transactions by public institutions of or within the European Communities, or

(3)

any currency unit or composite currency other than the ECU for the purposes for which it was established.

Unless otherwise provided in the applicable prospectus supplement, all payments of principal of (and premium, if any) and interest on any debt security that is payable in a foreign currency that ceases to be used by its government of issuance shall be made in U.S. Dollars (Section 101).

In the event we effect covenant defeasance with respect to any debt securities and those debt securities are declared due and payable because of the occurrence of any event of default other than the event of default described in clause (4) under Events of Default, Notice and Waiver with respect to Sections 1004 to 1010, inclusive, and Section 1014 of the indenture (which Sections would no longer be applicable to those debt securities) or described in clause (7) under Events of Default, Notice and Waiver with respect to any other covenant as to which there has been covenant defeasance, the amount in such currency, currency unit or composite currency in which those debt securities are payable, and Government Obligations on deposit with the trustee, will be sufficient to pay amounts due on those debt securities at the time of their stated maturity but may not be sufficient to pay amounts due on those debt securities at the time of the acceleration resulting from that event of default. However, we would remain liable to make payment of those amounts due at the time of acceleration.

The applicable prospectus supplement may further describe the provisions, if any, permitting that defeasance or covenant defeasance, including any modifications to the provisions described above, with respect to the debt securities of or within a particular series.

### **Conversion Rights**

The terms and conditions, if any, upon which the debt securities are convertible into other debt securities, our common stock or our preferred stock will be set forth in the applicable prospectus supplement relating thereto. Those terms will include whether those debt securities are convertible into other debt securities, our common stock or our preferred stock, the conversion price (or manner of calculation thereof), the conversion period, provisions as to whether

conversion will be at our option or the option of the holders of debt securities, the events requiring an adjustment of the conversion price and provisions affecting conversion in the event of the redemption of those debt securities.

### **Global Securities**

The debt securities of a series may be issued in whole or in part in the form of one or more global securities that will be deposited with, or on behalf of, a depositary identified in the applicable prospectus supplement relating to that series. Global securities may be issued in either registered or bearer form and in either temporary or permanent form.

The specific terms of the depositary arrangement with respect to a series of debt securities will be described in the applicable prospectus supplement relating to that series.

### **DESCRIPTION OF COMMON STOCK**

We have the authority to issue 750,000,000 shares of common stock, par value \$.01 per share, and 384,046,000 shares of excess stock, par value \$.01 per share. At March 2, 2012, we had outstanding 407,617,533 shares of common stock and no shares of excess stock. Prior to August 4, 1994, we were incorporated as a Delaware corporation. On August 4, 1994, we reincorporated as a Maryland corporation pursuant to an Agreement and Plan of Merger approved by our stockholders.

The following description of our common stock sets forth certain general terms and provisions of the common stock to which any prospectus supplement may relate, including a prospectus supplement providing that common stock will be issuable upon conversion of our debt securities or our preferred stock or upon the exercise of common stock warrants issued by us. The statements below describing the common stock are in all respects subject to and qualified in their entirety by reference to the applicable provisions of our charter and bylaws.

Holders of our common stock will be entitled to receive dividends when, as and if authorized by our board of directors and declared by us, out of assets legally available therefor. Payment and declaration of dividends on the common stock and purchases of shares thereof by us will be subject to certain restrictions if we fail to pay dividends on our preferred stock. Upon our liquidation, dissolution or winding up, holders of common stock will be entitled to share equally and ratably in any assets available for distribution to them, after payment or provision for payment of our debts and other liabilities and the preferential amounts owing with respect to any of our outstanding preferred stock. The common stock will possess voting rights in the election of directors and in respect of certain other corporate matters, with each share entitling the holder thereof to one vote. Holders of shares of common stock will not have cumulative voting rights in the election of directors, which means that holders of more than 50% of all of the shares of our common stock voting for the election of directors will be able to elect all of the directors if they choose to do so and, accordingly, the holders of the remaining shares will be unable to elect any directors. Holders of shares of common stock will not have preemptive rights, which means they have no right to acquire any additional shares of common stock that may be issued by us at a subsequent date. The common stock will, when issued, be fully paid and nonassessable and will not be subject to preemptive or similar rights.

Under Maryland law, a distribution (whether by dividend, redemption or other acquisition of shares) to holders of shares of common stock may be made only if, after giving effect to the distribution, we are able to pay our indebtedness as it becomes due in the usual course of business and our total assets are greater than the sum of our total liabilities plus the amount necessary to satisfy the preferential rights upon dissolution of stockholders whose preferential rights on dissolution are superior to the holders of common stock, unless the terms of the stock held by such holders with preferred rights provide otherwise. We have complied with these requirements in all of our prior distributions to holders of common stock.

### **Restrictions on Ownership**

For us to qualify as a REIT under the Code, not more than 50% in value of our outstanding stock may be owned, actually or constructively, by five or fewer individuals (as defined in the Code to include certain entities) during the last half of a taxable year. Our stock also must be beneficially owned by 100 or more persons during at least 335 days of a taxable year of 12 months or during a proportionate part of a shorter taxable year. In addition, rent from related party tenants (generally, a tenant of a REIT owned, actually or constructively, 10% or more by the REIT, or a 10% owner of the REIT) is not qualifying income for purposes of the income tests under the Code.

Subject to the exceptions specified in our charter, no holder may beneficially own, or be deemed to own by virtue of the constructive ownership provisions of the Code, more than 9.8% in value of the outstanding shares of our common stock. The constructive ownership rules under the Code are complex and may cause common stock owned actually or constructively by a group of related individuals or entities or both to be deemed constructively owned by one individual or entity. As a result, the acquisition of less than 9.8% of our common stock (or the acquisition of an interest in an entity which owns, actually or constructively, our common stock) by an individual or entity could cause that individual or entity (or another individual or entity) to own constructively in excess of 9.8% of our common stock, and thus subject such common stock to the ownership limit.

In addition, because rent from related party tenants is not qualifying rent for purposes of the gross income tests under the Code, our charter provides that no individual or entity may own, or be deemed to own by virtue of the attribution provisions of the Code (which differ from the attribution provisions applied to the ownership limit), in excess of 9.8% in value of our outstanding common stock. We refer to this ownership limitation as the related party limit. Our board

of directors may waive the ownership limit and the related party limit with respect to a particular stockholder if evidence satisfactory to our board of directors and our tax counsel is presented that such ownership will not then or in the future jeopardize our status as a REIT. As a condition of that waiver, our board of directors may require opinions of counsel satisfactory to it or an undertaking or both from the applicant with respect to preserving our REIT status.

The foregoing restrictions on transferability and ownership will not apply 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. If shares of common stock in excess of the ownership limit or the related party limit, or shares which would otherwise cause the REIT to be beneficially owned by less than 100 persons or which would otherwise cause us to be closely held within the meaning of the Code or would otherwise result in our failure to qualify as a REIT, are issued or transferred to any person, that issuance or transfer shall be null and void to the intended transferee, and the intended transferee would acquire no rights to the stock. Shares transferred in excess of the ownership limit or the related party limit, or shares which would otherwise cause us to be closely held within the meaning



of the Code or would otherwise result in our failure to qualify as a REIT, will automatically be exchanged for shares of a separate class of stock, which we refer to as excess stock, that will be transferred by operation of law to us as trustee for the exclusive benefit of the person or persons to whom the shares are ultimately transferred, until that time as the intended transferee retransfers the shares. While these shares are held in trust, they will not be entitled to vote or to share in any dividends or other distributions (except upon liquidation). The shares may be retransferred by the intended transferee to any person who may hold those shares at a price not to exceed either:

(1)

the price paid by the intended transferee, or

(2)

if the intended transferee did not give value for such shares, a price per share equal to the market value of the shares on the date of the purported transfer to the intended transferee, at which point the shares will automatically be exchanged for ordinary common stock. In addition, such shares of excess stock held in trust are purchasable by us for a 90-day period at a price equal to the lesser of the price paid for the stock by the intended transferee and the market price for the stock on the date we determine to purchase the stock. This period commences on the date of the violative transfer if the intended transferee gives us notice of the transfer, or the date our board of directors determines that a violative transfer has occurred if no notice is provided.

All certificates representing shares of common stock will bear a legend referring to the restrictions described above.

All persons who own, directly or by virtue of the attribution provisions of the Code, more than a specified percentage of the outstanding shares of common stock must give written notice to us containing the information specified in our charter within 30 days after January 1 of each year. In addition, each common stockholder shall upon demand be required to disclose to us such information with respect to the actual and constructive ownership of shares as our board of directors deems necessary to comply with the provisions of the Code applicable to a REIT or to comply with the requirements of any taxing authority or governmental agency.

The registrar and transfer agent for our common stock is Computershare Shareowner Services LLC.

## **DESCRIPTION OF COMMON STOCK WARRANTS**

We may issue common stock warrants for the purchase of our common stock. Common stock warrants may be issued independently or together with any of the other securities offered by this prospectus that are offered by any prospectus supplement and may be attached to or separate from the securities offered by this prospectus. Each series of common stock warrants will be issued under a separate warrant agreement to be entered into between us and a warrant agent specified in the applicable prospectus supplement. The warrant agent will act solely as our agent in connection with the common stock warrants of such series and will not assume any obligation or relationship of agency or trust for or with any holders or beneficial owners of common stock warrants.

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

(1)

the title of those common stock warrants;

(2)

the aggregate number of those common stock warrants;

(3)

the price or prices at which those common stock warrants will be issued;

(4)

the designation, number and terms of the shares of common stock purchasable upon exercise of those common stock warrants;

(5)

the designation and terms of the other securities offered by this prospectus with which the common stock warrants are issued and the number of those common stock warrants issued with each security offered by this prospectus;

(6)

the date, if any, on and after which those common stock warrants and the related common stock will be separately transferable;

(7)

the price at which each share of common stock purchasable upon exercise of those common stock warrants may be purchased;

(8)

the date on which the right to exercise those common stock warrants shall commence and the date on which that right shall expire;

(9)

the minimum or maximum amount of those common stock warrants which may be exercised at any one time;

(10)

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

(11)

a discussion of federal income tax considerations; and

(12)

any other material terms of those common stock warrants, including terms, procedures and limitations relating to the exchange and exercise of those common stock warrants.

### **DESCRIPTION OF PREFERRED STOCK**

We are authorized to issue 5,114,000 shares of preferred stock, \$1.00 par value per share, 700,000 shares of 6.65% Class F Cumulative Redeemable Preferred Stock, \$1.00 par value per share, 184,000 shares of 7.75% Class G Cumulative Redeemable Preferred Stock, \$1.00 par value per share, 70,000 shares of 6.90% Class H Cumulative Redeemable Preferred Stock, par value \$1.00 per share, and 16,000 shares of 6.00% Class I Cumulative Redeemable Preferred Stock, par value \$1.00 per share. We are also authorized to issue 700,000 shares of Class F Excess Preferred Stock, \$1.00 par value per share, 184,000 shares of Class G Excess Preferred Stock, \$1.00 par value per share, 70,000 shares of 6.90% Class H Excess Preferred Stock, par value \$1.00 per share, and 16,000 shares of 6.00% Class I Excess Preferred Stock, par value \$1.00 per share, which are reserved for issuance upon conversion of certain outstanding Class F preferred stock, Class G preferred stock, Class H preferred stock, or Class I preferred stock, as the case may be, as necessary to preserve our status as a REIT. At April 18, 2012, 700,000 shares of Class F Cumulative Redeemable Preferred Stock, represented by 7,000,000 depositary shares, were outstanding, 184,000 shares of Class G Cumulative Redeemable Preferred Stock, represented by 18,400,000 depositary shares, were outstanding, 70,000 shares of Class H Cumulative Redeemable Preferred Stock, represented by 7,000,000 depositary shares, and 16,000 shares of Class I Cumulative Redeemable Preferred Stock, represented by 16,000,000 depositary shares, were outstanding.

Under our charter, our board of directors may from time to time establish and issue one or more classes or series of preferred stock and fix the designations, powers, preferences and rights of the shares of such classes or series and the qualifications, limitations or restrictions thereon, including, but not limited to, the fixing of the dividend rights, dividend rate or rates, conversion rights, voting rights, rights and terms of redemption (including sinking fund provisions) and the liquidation preferences.

The following description of our preferred stock sets forth certain general terms and provisions of our preferred stock to which any prospectus supplement may relate. The statements below describing the preferred stock are in all respects subject to and qualified in their entirety by reference to the applicable provisions of our charter (including the applicable articles supplementary) and bylaws.

**General**

Subject to limitations prescribed by Maryland law and our charter, our board of directors is authorized to fix the number of shares constituting each class or series of preferred stock and the designations and powers, preferences and relative, participating, optional or other special rights and qualifications, limitations or restrictions thereof, including those provisions as may be desired concerning voting, redemption, dividends, dissolution or the distribution of assets, conversion or exchange, and those other subjects or matters as may be fixed by resolution of our board of directors or duly authorized committee thereof. The preferred stock will, when issued, be fully paid and nonassessable and, except as may be determined by our board of directors and set forth in the articles supplementary setting forth the terms of any class or series of preferred stock, will not have, or be subject to, any preemptive or similar rights.

You should refer to the prospectus supplement relating to the class or series of preferred stock offered thereby for specific terms, including:

(1)

The class or series, title and stated value of that preferred stock;

(2)

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

(3)

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

(4)

Whether dividends on that preferred stock shall be cumulative or not and, if cumulative, the date from which dividends on that preferred stock shall accumulate;

(5)

The procedures for any auction and remarketing, if any, for that preferred stock;

(6)

Provisions for a sinking fund, if any, for that preferred stock;

(7)

Provisions for redemption, if applicable, of that preferred stock;

(8)

Any listing of that preferred stock on any securities exchange;

(9)

The terms and conditions, if applicable, upon which that preferred stock will be convertible into our common stock, including the conversion price (or manner of calculation thereof);

(10)

Whether interests in that preferred stock will be represented by our depositary shares;

(11)

The relative ranking and preference of the preferred stock as to distribution rights and rights upon our liquidation, dissolution or winding up if other than as described in this prospectus;

(12)

Any limitations on issuance of any other series of preferred stock ranking senior to or on a parity with the preferred stock as to distribution rights and rights upon our liquidation, dissolution or winding up;

(13)

A discussion of certain federal income tax considerations applicable to that preferred stock;

(14)

Any limitations on actual, beneficial or constructive ownership and restrictions on transfer of that preferred stock and, if convertible, the related common stock, in each case as may be appropriate to preserve our status as a REIT; and

(15)

Any other material terms, preferences, rights, limitations or restrictions of that preferred stock.

### **Rank**

Unless otherwise specified in the applicable prospectus supplement and the articles supplementary setting forth the terms of any class or series of preferred stock, the preferred stock will, with respect to rights to the payment of dividends and distribution of our assets and rights upon our liquidation, dissolution or winding up, rank:

(1)

senior to all classes or series of our common stock and excess stock and to all of our equity securities the terms of which provide that those equity securities are junior to the preferred stock;

(2)

on a parity with all of our equity securities other than those referred to in clauses (1) and (3); and

(3)

junior to all of our equity securities the terms of which provide that those equity securities will rank senior to it.

For these purposes, the term "equity securities" does not include convertible debt securities.

### **Dividends**

Holders of shares of our preferred stock of each class or series shall be entitled to receive, when, as and if authorized by our board of directors and declared by us, out of our assets legally available for payment, cash dividends at rates and on dates that will be set forth in the applicable prospectus supplement and the articles supplementary setting forth the terms of any class or series of preferred stock. Each dividend shall be payable to holders of record as they appear on our stock transfer books on the record dates as shall be fixed by our board of directors.

Dividends on any class or series of our preferred stock may be cumulative or non-cumulative, as provided in the applicable prospectus supplement and the articles supplementary setting forth the terms of any class or series of preferred stock. Dividends, if cumulative, will accumulate from and after the date set forth in the applicable prospectus supplement and the articles supplementary setting forth the terms of any class or series of preferred stock.

If our board of directors fails to authorize a dividend payable on a dividend payment date on any class or series of our preferred stock for which dividends are noncumulative, then the holders of that class or series of our preferred stock will have no right to receive a dividend in respect of the dividend period ending on that dividend payment date, and we will have no obligation to pay the dividend accrued for that period, whether or not dividends on that class or series are declared payable on any future dividend payment date.



If any shares of our preferred stock of any class or series are outstanding, no full dividends shall be declared or paid or set apart for payment on our preferred stock of any other class or series ranking, as to dividends, on a parity with or junior to the preferred stock of that class or series for any period unless:

(1)

if that class or series of preferred stock has a cumulative dividend, full cumulative dividends have been or contemporaneously are declared and paid or declared and a sum sufficient for the payment thereof set apart for that payment on the preferred stock of that class or series for all past dividend periods, or

(2)

if that class or series of preferred stock does not have a cumulative dividend, full dividends for the then current dividend period have been or contemporaneously are declared and paid or declared and a sum sufficient for the payment thereof set apart for that payment on the preferred stock of that class or series.

When dividends are not paid in full (or a sum sufficient for their full payment is not so set apart) upon the shares of preferred stock of any class or series and the shares of any other class or series of preferred stock ranking on a parity as to dividends with the preferred stock of that class or series, all dividends declared upon shares of preferred stock of that class or series and any other class or series of preferred stock ranking on a parity as to dividends with that preferred stock shall be declared pro rata so that the amount of dividends declared per share on the preferred stock of that class or series and that other class or series of preferred stock shall in all cases bear to each other the same ratio that accrued and unpaid dividends per share on the shares of preferred stock of that class or series (which shall not include any accumulation in respect of unpaid dividends for prior dividend periods if that preferred stock does not have a cumulative dividend) and that other class or series of preferred stock bear to each other. No interest, or sum of money in lieu of interest, shall be payable in respect of any dividend payment or payments on preferred stock of that series that may be in arrears.

Except as provided in the immediately preceding paragraph, unless: (1) if that class or series of preferred stock has a cumulative dividend, full cumulative dividends on the preferred stock of that class or series have been or contemporaneously are declared and paid or declared and a sum sufficient for the payment thereof set apart for payment for all past dividend periods; and (2) if that class or series of preferred stock does not have a cumulative dividend, full dividends on the preferred stock of that class or series have been or contemporaneously are declared and paid or declared and a sum sufficient for the payment thereof set aside for payment for the then current dividend period, then no dividends (other than in our common stock or other stock ranking junior to the preferred stock of that class or series as to dividends and upon our liquidation, dissolution or winding up) shall be declared or paid or set aside for payment or other distribution shall be declared or made upon our common stock, excess stock or any of our other stock ranking junior to or on a parity with the preferred stock of that class or series as to dividends or upon our liquidation, nor shall any common stock, excess stock or any of our other stock ranking junior to or on a parity with the preferred stock of such class or series as to dividends or upon our liquidation, dissolution or winding up be redeemed, purchased or otherwise acquired for any consideration (or any moneys be paid to or made available for a sinking fund for the redemption of any shares of that stock) by us (except by conversion into or exchange for other of our stock ranking junior to the preferred stock of that class or series as to dividends and upon our liquidation, dissolution or winding up).

Any dividend payment made on shares of a class or series of preferred stock shall first be credited against the earliest accrued but unpaid dividend due with respect to shares of that class or series which remains payable.



## **Redemption**

If the applicable prospectus supplement and the articles supplementary setting forth the terms of any class or series of preferred stock so states, the shares of preferred stock will be subject to mandatory redemption or redemption at our option, in whole or in part, in each case on the terms, at the times and at the redemption prices set forth in that prospectus supplement and the articles supplementary setting forth the terms of any class or series of preferred stock.

The prospectus supplement relating to a class or series of preferred stock that is subject to mandatory redemption will specify the number of shares of that preferred stock that shall 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 all accrued and unpaid dividends thereon (which shall not, if that preferred stock does not have a cumulative dividend, include any accumulation in respect of unpaid dividends for prior dividend periods) to the date of redemption. The redemption price may be payable in cash or other property, as specified in the applicable prospectus supplement. If the redemption price for preferred stock of any series is payable only from the net proceeds of the issuance of our stock, the terms of that preferred stock may provide that, if no such stock shall have been issued or to the extent the net proceeds from any issuance are insufficient to pay in full the aggregate redemption price then due, that preferred stock shall automatically and mandatorily be converted into shares of our applicable stock pursuant to conversion provisions specified in the applicable prospectus supplement. Notwithstanding the foregoing, unless:

(1)

if that class or series of preferred stock has a cumulative dividend, full cumulative dividends on all outstanding shares of any class or series of preferred stock shall have been or contemporaneously are declared and paid or declared and a sum sufficient for the payment thereof set apart for payment for all past dividend periods and the then current dividend period; and

(2)

if that class or series of preferred stock does not have a cumulative dividend, full dividends on the preferred stock of any class or series have been or contemporaneously are declared and paid or declared and a sum sufficient for the payment thereof set apart for payment for the then current dividend period.

Unless otherwise specified in the applicable prospectus supplement and the articles supplementary setting forth the terms of any class or series of preferred stock no shares of any class or series of preferred stock shall be redeemed unless all outstanding shares of preferred stock of that class or series are simultaneously redeemed; provided, however, that the foregoing shall not prevent the purchase or acquisition of shares of preferred stock of that class or series pursuant to a purchase or exchange offer made on the same terms to holders of all outstanding shares of preferred stock of that class or series.

In addition, unless:

(1)

if that class or series of preferred stock has a cumulative dividend, full cumulative dividends on all outstanding shares of any class or series of preferred stock have been or contemporaneously are declared and paid or declared and a sum sufficient for the payment thereof set apart for payment for all past dividend periods and the then current dividend period; and

(2)

if that class or series of preferred stock does not have a cumulative dividend, full dividends on the preferred stock of any class or series have been or contemporaneously are declared and paid or declared and a sum sufficient for the payment thereof set apart for payment for the then current dividend period;

we shall not purchase or otherwise acquire directly or indirectly any shares of preferred stock of that class or series (except by conversion into or exchange for our stock ranking junior to the preferred stock of that class or series as to dividends and upon our liquidation, dissolution or winding up).

If fewer than all of the outstanding shares of preferred stock of any class or series are to be redeemed, the number of shares to be redeemed will be determined by us and those shares may be redeemed pro rata from the holders of record of those shares in proportion to the number of those shares held by those holders (with adjustments to avoid redemption of fractional shares) or by any other equitable method determined by us that will not result in the issuance

of any excess preferred stock.

Notice of redemption will be mailed at least 30 days but not more than 60 days before the redemption date to each holder of record of a share of preferred stock of any class or series to be redeemed at the address shown on our stock transfer books. Each notice shall state:

(1)

the redemption date;

(2)

the number of shares and class or series of the preferred stock to be redeemed;

(3)

the redemption price;

(4)

the place or places where certificates for that preferred stock are to be surrendered for payment of the redemption price;

(5)

that dividends on the shares to be redeemed will cease to accrue on that redemption date; and

(6)

the date upon which the holder's conversion rights, if any, as to those shares shall terminate.

If fewer than all the shares of preferred stock of any class or series are to be redeemed, the notice mailed to each holder thereof shall also specify the number of shares of preferred stock to be redeemed from each holder. If notice of redemption of any shares of preferred stock has been given and if the funds necessary for that redemption have been set apart by us in trust for the benefit of the holders of any shares of preferred stock so called for redemption, then from and after the redemption date dividends will cease to accrue on those shares of preferred stock, those shares of preferred stock shall no longer be deemed outstanding and all rights of the holders of those shares will terminate, except the right to receive the redemption price.

## **Liquidation Preference**

Upon our voluntary or involuntary liquidation, dissolution or winding up, then, before any distribution or payment shall be made to the holders of any common stock, excess stock or any other class or series of our stock ranking junior to that class or series of preferred stock in the distribution of assets upon our liquidation, dissolution or winding up, the holders of each class or series of preferred stock shall be entitled to receive out of our assets legally available for distribution to stockholders liquidating distributions in the amount of the liquidation preference per share (set forth in the applicable prospectus supplement), plus an amount equal to all dividends accrued and unpaid thereon (which shall not include any accumulation in respect of unpaid dividends for prior dividend periods if that class or series of preferred stock does not have a cumulative dividend). After payment of the full amount of the liquidating distributions to which they are entitled, the holders of that class or series of preferred stock will have no right or claim to any of our remaining assets. If, upon our voluntary or involuntary liquidation, dissolution or winding up, our legally available assets are insufficient to pay the amount of the liquidating distributions on all outstanding shares of that class or series of preferred stock and the corresponding amounts payable on all shares of other classes or series of our stock ranking on a parity with that class or series of preferred stock in the distribution of assets upon our liquidation, dissolution or winding up, then the holders of that class or series of preferred stock and all other classes or series of stock shall share ratably in that distribution of assets in proportion to the full liquidating distributions to which they would otherwise be respectively entitled.

If liquidating distributions shall have been made in full to all holders of shares of that class or series of preferred stock, our remaining assets shall be distributed among the holders of any other classes or series of stock ranking junior to that class or series of preferred stock upon our liquidation, dissolution or winding up, according to their respective rights and preferences and in each case according to their respective number of shares. For those purposes, neither our consolidation or merger with or into any other corporation, trust or other entity nor the sale, lease, transfer or conveyance of all or substantially all of our property or business shall be deemed to constitute our liquidation, dissolution or winding up.

## **Voting Rights**

Except as set forth below or as otherwise from time to time required by law or as indicated in the applicable prospectus supplement and the articles supplementary setting forth the terms of any class or series of preferred stock, holders of preferred stock will not have any voting rights.

Whenever dividends on any shares of that class or series of preferred stock shall be in arrears for six or more quarterly periods, regardless of whether those quarterly periods are consecutive, the holders of those shares of that class or series of preferred stock (voting separately as a class with all other classes or series of preferred stock upon which like voting rights have been conferred and are exercisable) will be entitled to vote for the election of two additional directors to our board of directors (and our entire board of directors will be increased by two directors) at a special meeting called by one of our officers at the request of a holder of that class or series of preferred stock or, if that special meeting is not called by that officer within 30 days, at a special meeting called by a holder of that class or series of preferred stock designated by the holders of record of at least 10% of the shares of any of those classes or series of preferred stock (unless that request is received less than 90 days before the date fixed for the next annual or special meeting of the stockholders), or at the next annual meeting of stockholders, and at each subsequent annual meeting until:

(1)

if that class or series of preferred stock has a cumulative dividend, all dividends accumulated on those shares of preferred stock for the past dividend periods and the then current dividend period shall have been fully paid or

declared and a sum sufficient for the payment thereof set apart for payment, or

(2)

if that class or series of preferred stock does not have a cumulative dividend, four consecutive quarterly dividends shall have been fully paid or declared and a sum sufficient for the payment thereof set apart for payment.

Unless provided otherwise for any series of preferred stock, so long as any shares of preferred stock remain outstanding, we shall not, without the affirmative vote or consent of the holders of at least two-thirds of the shares of each class or series of preferred stock outstanding at the time, given in person or by proxy, either in writing or at a meeting (that class or series voting separately as a class):

(1)

authorize or create, or increase the authorized or issued amount of, any class or series of stock ranking senior to that class or series of preferred stock with respect to payment of dividends or the distribution of assets upon our liquidation, dissolution or winding up or reclassify any of our authorized stock into those shares, or create, authorize or issue any obligation or security convertible into or evidencing the right to purchase those shares; or

(2)

amend, alter or repeal the provisions of the charter in respect of that class or series of preferred stock, whether by merger, consolidation or otherwise, so as to materially and adversely affect any right, preference, privilege or voting power of that class or series of preferred stock; provided, however, that any increase in the amount of the authorized preferred stock or the creation or issuance of any other class or series of preferred stock, or any increase in the number of authorized shares of that class or series, in each case ranking on a parity with or junior to the preferred stock of that class or series with respect to payment of dividends and the distribution of assets upon our liquidation, dissolution or winding up, shall not be deemed to materially and adversely affect those rights, preferences, privileges or voting powers.

The foregoing voting provisions will not apply if, at or prior to the time when the act with respect to which that vote would otherwise be required shall be effected, all outstanding shares of that class or series of preferred stock shall have been redeemed or called for redemption upon proper notice and sufficient funds shall have been irrevocably deposited in trust to effect that redemption.

### **Conversion Rights**

The terms and conditions, if any, upon which shares of any class or series of preferred stock are convertible into common stock, debt securities or another series of preferred stock will be set forth in the applicable prospectus supplement relating thereto and the articles supplementary setting forth the terms of any class or series of preferred stock. Such terms will include the number of shares of common stock or those other series of preferred stock or the principal amount of debt securities into which the preferred stock is convertible, the conversion price (or manner of calculation thereof), the conversion period, provisions as to whether conversion will be at our option or at the option of the holders of that class or series of preferred stock, the events requiring an adjustment of the conversion price and provisions affecting conversion in the event of the redemption of that class or series of preferred stock.

### **Restrictions on Ownership**

As discussed above under Description of Common Stock Restrictions on Ownership, for us to qualify as a REIT under the Code, not more than 50% in value of our outstanding stock may be owned, actually or constructively, by five or fewer individuals (as defined in the Code to include certain entities) during the last half of a taxable year. Our stock also must be beneficially owned by 100 or more persons during at least 335 days of a taxable year of 12 months (or during a proportionate part of a shorter taxable year). In addition, rent from related party tenants (generally, a tenant of a REIT owned, actually or constructively 10% or more by the REIT, or a 10% owner of the REIT) is not qualifying income for purposes of the gross income tests under the Code. Therefore, the applicable articles supplementary for each class or series of preferred stock will typically contain certain provisions restricting the ownership and transfer of that class or series of preferred stock. Except as otherwise described in the applicable prospectus supplement relating thereto, the provisions of each applicable articles supplementary relating to the ownership limit for any class or series of preferred stock will provide that, subject to some exceptions, no holder of that class or series of preferred stock may beneficially own, or be deemed to own by virtue of the constructive ownership provisions of the Code, preferred stock in excess of the preferred stock ownership limit, which will be equal to 9.8% of the outstanding preferred stock of any class or series. The constructive ownership rules under the Code are complex and may cause preferred stock owned actually or constructively by a group of related individuals and/or entities to be deemed to be constructively owned by one individual or entity. As a result, the acquisition of less than 9.8% of any class or series of our preferred stock (or the acquisition of an interest in an entity which owns, actually or constructively, preferred stock) by an individual or entity could cause that individual or entity (or another individual or entity) to own constructively in excess of 9.8% of

that class or series of preferred stock, and thus subject that preferred stock to the preferred stock ownership limit.

Our board of directors will be entitled to waive the preferred stock ownership limit with respect to a particular stockholder if evidence satisfactory to our board of directors, with advice of our tax counsel, is presented that the ownership will not then or in the future jeopardize our status as a REIT. As a condition of that waiver, our board of directors may require opinions of counsel satisfactory to it or an undertaking or both from the applicant with respect to preserving our REIT status.

## DESCRIPTION OF DEPOSITARY SHARES

### General

We may issue depositary shares, each of which will represent a fractional interest of a share of a particular class or series of our preferred stock, as specified in the applicable prospectus supplement. Shares of a class or series of preferred stock represented by depositary shares will be deposited under a separate deposit agreement among us, the depositary named therein and the holders from time to time of the depositary receipts issued by the preferred stock depositary which will evidence the depositary shares. Subject to the terms of the deposit agreement, each owner of a depositary receipt will be entitled, in proportion to the fractional interest of a share of a particular class or series of preferred stock represented by the depositary shares evidenced by that depositary receipt, to all the rights and preferences of the class or series of preferred stock represented by those depositary shares (including dividend, voting, conversion, redemption and liquidation rights).

The depositary shares will be evidenced by depositary receipts issued pursuant to the applicable deposit agreement. Immediately following the issuance and delivery of a class or series of preferred stock by us to the preferred stock depositary, we will cause the preferred stock depositary to issue, on our behalf, the depositary receipts. Copies of the applicable form of deposit agreement and depositary receipt may be obtained from us upon request, and the statements made hereunder relating to the deposit agreement and the depositary receipts to be issued thereunder are summaries of certain provisions thereof and do not purport to be complete and are subject to, and qualified in their entirety by reference to, all of the provisions of the applicable deposit agreement and related depositary receipts.

### Dividends and Other Distributions

The preferred stock depositary will distribute all cash dividends or other cash distributions received in respect of a class or series of preferred stock to the record holders of depositary receipts evidencing the related depositary shares in proportion to the number of those depositary receipts owned by those holders, subject to certain obligations of holders to file proofs, certificates and other information and to pay certain charges and expenses to the preferred stock depositary.

In the event of a distribution other than in cash, the preferred stock depositary will distribute property received by it to the record holders of depositary receipts entitled thereto, subject to certain obligations of holders to file proofs, certificates and other information and to pay certain charges and expenses to the preferred stock depositary, unless the preferred stock depositary determines that it is not feasible to make that distribution, in which case the preferred stock depositary may, with our approval, sell that property and distribute the net proceeds from that sale to those holders.

No distribution will be made in respect of any depositary share to the extent that it represents any class or series of preferred stock converted into excess preferred stock or otherwise converted or exchanged.

### Withdrawal of Preferred Stock

Upon surrender of the depositary receipts at the corporate trust office of the preferred stock depositary (unless the related depositary shares have previously been called for redemption or converted into excess preferred stock or otherwise), the holders thereof will be entitled to delivery at that office, to or upon that holder's order, of the number of whole or fractional shares of the class or series of preferred stock and any money or other property represented by the depositary shares evidenced by those depositary receipts. Holders of depositary receipts will be entitled to receive whole or fractional shares of the related class or series of preferred stock on the basis of the proportion of preferred stock represented by each depositary share as specified in the applicable prospectus supplement, but holders of those shares of preferred stock will not thereafter be entitled to receive depositary shares therefor. If the depositary receipts delivered by the holder evidence a number of depositary shares in excess of the number of depositary shares representing the number of shares of preferred stock to be withdrawn, the preferred stock depositary will deliver to



that holder at the same time a new depositary receipt evidencing the excess number of depositary shares.

**Redemption**

Whenever we redeem shares of a class or series of preferred stock held by the preferred stock depositary, the preferred stock depositary will redeem as of the same redemption date the number of depositary shares representing shares of the class or series of preferred stock so redeemed, provided we shall have paid in full to the preferred stock depositary the redemption price of the preferred stock to be redeemed plus an amount equal to any accrued and unpaid dividends thereon to the date fixed for redemption. The redemption price per depositary share will be equal to the corresponding proportion of the redemption price and any other amounts per share payable with respect to that class or series of preferred stock. If fewer than all the depositary shares are to be redeemed, the depositary shares to be redeemed will be selected pro rata (as nearly as may be practicable without creating fractional depositary shares) or by any other equitable method determined by us that will not result in the issuance of any excess preferred stock.

From and after the date fixed for redemption, all dividends in respect of the shares of a class or series of preferred stock so called for redemption will cease to accrue, the depositary shares so called for redemption will no longer be deemed to be outstanding and all rights of the holders of the depositary receipts evidencing the depositary shares so called for redemption will cease, except the right to receive any moneys payable upon their redemption and any money or other property to which the holders of those depositary receipts were entitled upon their redemption and surrender thereof to the preferred stock depositary.

### **Voting**

Upon receipt of notice of any meeting at which the holders of a class or series of preferred stock deposited with the preferred stock depositary are entitled to vote, the preferred stock depositary will mail the information contained in that notice of meeting to the record holders of the depositary receipts evidencing the depositary shares which represent that class or series of preferred stock. Each record holder of depositary receipts evidencing depositary shares on the record date (which will be the same date as the record date for that class or series of preferred stock) will be entitled to instruct the preferred stock depositary as to the exercise of the voting rights pertaining to the amount of preferred stock represented by that holder's depositary shares. The preferred stock depositary will vote the amount of that class or series of preferred stock represented by those depositary shares in accordance with those instructions, and we will agree to take all reasonable action which may be deemed necessary by the preferred stock depositary in order to enable the preferred stock depositary to do so. The preferred stock depositary will abstain from voting the amount of that class or series of preferred stock represented by those depositary shares to the extent it does not receive specific instructions from the holders of depositary receipts evidencing those depositary shares. The preferred stock depositary shall not be responsible for any failure to carry out any instruction to vote, or for the manner or effect of any vote made, as long as that action or non-action is in good faith and does not result from negligence or willful misconduct of the preferred stock depositary.

### **Liquidation Preference**

In the event of our liquidation, dissolution or winding up, whether voluntary or involuntary, the holders of each depositary receipt will be entitled to the fraction of the liquidation preference accorded each share of preferred stock represented by the depositary shares evidenced by that depositary receipt, as set forth in the applicable prospectus supplement.

### **Conversion**

The depositary shares, as such, are not generally convertible into our common stock or any of our other securities or property, except in connection with certain conversions in connection with the preservation of our status as a REIT. Nevertheless, if so specified in the applicable prospectus supplement relating to an offering of depositary shares, the depositary receipts may be surrendered by holders thereof to the preferred stock depositary with written instructions to the preferred stock depositary to instruct us to cause conversion of a class or series of preferred stock represented by the depositary shares evidenced by those depositary receipts into whole shares of our common stock, other shares of a class or series of preferred stock (including excess preferred stock) or other shares of stock, and we have agreed that upon receipt of those instructions and any amounts payable in respect thereof, we will cause the conversion thereof utilizing the same procedures as those provided for delivery of preferred stock to effect that conversion. If the depositary shares evidenced by a depositary receipt are to be converted in part only, a new depositary receipt or receipts will be issued for any depositary shares not to be converted. No fractional shares of common stock will be issued upon conversion, and if that conversion would result in a fractional share being issued, an amount will be paid in cash by us equal to the value of the fractional interest based upon the closing price of the common stock on the last business day prior to the conversion.

### **Amendment and Termination of the Deposit Agreement**

The form of depositary receipt evidencing the depositary shares which represent the preferred stock and any provision of the deposit agreement may at any time be amended by agreement between us and the preferred stock depositary. However, any amendment that materially and adversely alters the rights of the holders of depositary receipts or that would be materially and adversely inconsistent with the rights granted to the holders of the related class or series of preferred stock will not be effective unless that amendment has been approved by the existing holders of at least two-thirds of the depositary shares evidenced by the depositary receipts then outstanding. No amendment shall impair the right, subject to certain exceptions in the deposit agreement, of any holder of depositary receipts to surrender any depositary receipt with instructions to deliver to the holder the related class or series of preferred stock and all money and other property, if any, represented t hereby, except in order to comply with law. Every holder of an outstanding depositary receipt at the time any of those types of amendments becomes effective shall be deemed, by continuing to hold that depositary receipt, to consent and agree to that amendment and to be bound by the deposit agreement as amended thereby.

We may terminate the deposit agreement upon not less than 30 days prior written notice to the preferred stock depositary if:

(1)

such termination is necessary to preserve our status as a REIT, or

(2)

a majority of each class or series of preferred stock subject to that deposit agreement consents to that termination, whereupon the preferred stock depositary shall deliver or make available to each holder of depositary receipts, upon surrender of the depositary receipts held by that holder, that number of whole or fractional shares of each class or series of preferred stock as are represented by the depositary shares evidenced by those depositary receipts together with any other property held by the preferred stock depositary with respect to those depositary receipts.

We have agreed that if the deposit agreement is terminated to preserve our status as a REIT, then we will use our best efforts to list each class or series of preferred stock issued upon surrender of the related depositary shares on a national securities exchange. In addition, the deposit agreement will automatically terminate if-

(1)

all outstanding depositary shares issued thereunder shall have been redeemed,

(2)

there shall have been a final distribution in respect of each class or series of preferred stock subject to that deposit agreement in connection with our liquidation, dissolution or winding up and that distribution shall have been distributed to the holders of depositary receipts evidencing the depositary shares representing that class or series of preferred stock, or

(3)

each share of preferred stock subject to that deposit agreement shall have been converted into our stock not so represented by depositary shares.

### **Charges of Preferred Stock Depositary**

We will pay all transfer and other taxes and governmental charges arising solely from the existence of the deposit agreement. In addition, we will pay the fees and expenses of the preferred stock depositary in connection with the performance of its duties under the deposit agreement. However, holders of depositary receipts will pay the fees and expenses of the preferred stock depositary for any duties requested by those holders to be performed which are outside of those expressly provided for in the deposit agreement.

### **Resignation and Removal of Preferred Stock Depositary**

The preferred stock depositary may resign at any time by delivering notice to us of its election to do so, and we may at any time remove the preferred stock depositary, that resignation or removal to take effect upon the appointment of a successor preferred stock depositary. A successor preferred stock depositary must be appointed within 60 days after delivery of the notice of resignation or removal and must be a bank or trust company having its principal office in the United States and having a combined capital and surplus of at least \$50,000,000.

### **Miscellaneous**

The preferred stock depositary will forward to holders of depositary receipts any reports and communications from us which are received by it with respect to the related preferred stock.

Neither we nor the preferred stock depositary will be liable if it is prevented from or delayed in, by law or any circumstances beyond its control, performing its obligations under the deposit agreement. Our obligations and those of the preferred stock depositary under the deposit agreement will be limited to performing our respective duties thereunder in good faith and without negligence (in the case of any action or inaction in the voting of a class or series of preferred stock represented by the depositary shares), gross negligence or willful misconduct, and neither we nor the preferred stock depositary will be obligated to prosecute or defend any legal proceeding in respect of any depositary receipts, depositary shares or shares of a class or series of preferred stock represented thereby unless satisfactory indemnity is furnished. We and the preferred stock depositary may rely on written advice of counsel or accountants, or information provided by persons presenting shares of a class or series of preferred stock represented thereby for deposit, holders of depositary receipts or other persons believed in good faith to be competent to give that information, and on documents believed in good faith to be genuine and signed by a proper party.

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

## **PROVISIONS OF MARYLAND LAW AND OUR CHARTER AND BYLAWS**

The following paragraphs summarize provisions of Maryland law and describe our charter and bylaws. This is a summary, and does not completely describe Maryland law, our charter or our bylaws. For a complete description, we refer you to the Maryland General Corporation Law, our charter and our bylaws. We have incorporated by reference our charter and bylaws as exhibits to the registration statement of which this prospectus is a part.

### **Election of Directors**

Under the Maryland General Corporation Law, a corporation must have at least one director. Subject to this provision, a corporation's bylaws may alter the number of directors and authorize a majority of the entire board of directors to alter within specified limits the number of directors set by the corporation's charter or its bylaws.

Our bylaws provide that the number of directors shall not be less than three nor more than 15 and that the number of directors may be changed by a majority vote of the entire board of directors. Our board of directors currently consists of nine directors. Each director serves a one-year term and until his or her successor is duly elected and qualifies. There is no cumulative voting on the election of directors. Consequently, at each annual meeting of stockholders, the holders of a majority of the outstanding shares of our common stock can elect all of our directors. A vacancy resulting from an increase in the number of directors may be filled by a majority vote of the entire board of directors. Other vacancies may be filled by the vote of a majority of the remaining directors.

Each nominee for director shall be elected by a majority of the votes cast. A majority of the votes cast means the affirmative vote of a majority of the total votes cast for and against such nominee. Notwithstanding the foregoing, a nominee for director shall be elected by a plurality of the votes cast if the number of nominees exceeds the number of directors to be elected. If an incumbent director fails to receive the required vote for re-election, under our current Bylaws he or she is required to offer to resign from the board and the nominating and corporate governance committee will consider such offer to resign, determine whether to accept such director's resignation, and will submit such recommendation for prompt consideration by the board.

### **Removal of Directors**

Under the Maryland General Corporation Law, unless the corporation's charter provides otherwise, which ours does not, the stockholders of a corporation may remove any director with or without cause, by the affirmative vote of a majority of all the votes entitled to be cast for the election of directors.

### **Business Combinations**

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

.  
any person who beneficially owns ten percent or more of the voting power of the corporation's outstanding voting stock; or  
.

an affiliate or associate of the corporation who, at any time within the two-year period prior to the date in question, was the beneficial owner of ten percent or more of the voting power of the then outstanding voting stock of the corporation.

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

.

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

.

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

These super-majority vote requirements do not apply if the corporation's common stockholders receive a minimum price, as defined under Maryland law, for their shares in the form of cash or other consideration in the same form as previously paid by the interested stockholder for its shares. None of these provisions of the Maryland law will apply, however, to business combinations that are approved or exempted by the board of directors of the corporation prior to the time that the interested stockholder becomes an interested stockholder.

We have not elected to opt-out of the business combination provisions of the Maryland General Corporation Law.

### **Control Share Acquisitions**

Maryland law provides that a holder of control shares of a Maryland corporation acquired in a control share acquisition has no voting rights with respect to those shares except to the extent approved by a vote of two-thirds of the votes entitled to be cast on the matter. Shares of stock owned by the acquiror, by officers or by directors who are employees of the corporation are excluded from shares entitled to vote on the matter. Control shares are voting shares of stock which, if aggregated with all other shares of stock owned by the acquiror or shares of stock for which the acquiror is able to exercise or direct the exercise of voting power except solely by virtue of a revocable proxy, would entitle the acquiror to exercise voting power in electing directors within one of the following ranges of voting power:

.  
one-tenth or more but less than one-third;

.  
one-third or more but less than a majority; or

.  
a majority or more of all voting power.

Control shares do not include shares the acquiring person is then entitled to vote as a result of having previously obtained stockholder approval. Except as otherwise specified in the statute, a control share acquisition means the acquisition of issued and outstanding control shares.

Once a person who has made or proposes to make a control share acquisition has undertaken to pay expenses and satisfied other conditions, the person may compel the board of directors to call a special meeting of stockholders to be held within 50 days of demand to consider the voting rights of the shares. If no request for a meeting is made, the corporation may itself present the question at any stockholders meeting.

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



for purposes of these appraisal rights may not be less than the highest price per share paid by the acquiror in the control share acquisition. Some of the limitations and restrictions otherwise applicable to the exercise of dissenters rights do not apply in the context of a control share acquisition.

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

Our Bylaws contain a provision exempting from the control share acquisition statute any and all acquisitions by any person of shares of our stock. There can be no assurance that this provision will not be amended or eliminated at any time in the future.

#### **Duties of Directors with Respect to Unsolicited Takeovers**

Maryland law provides protection for Maryland corporations against unsolicited takeovers by limiting, among other things, the duties of the directors in unsolicited takeover situations. Under the Maryland General Corporation Law, the duties of directors of Maryland corporations do not require them to, among other things, (a) accept, recommend or respond to any proposal by a person seeking to acquire control of the corporation, (b) make a determination under the Maryland business combination or control share acquisition statutes described above or (c) act or fail to act solely because of the effect the act or failure to act may have on an acquisition or potential acquisition of control of the corporation or the amount or type of

consideration that may be offered or paid to the stockholders in an acquisition. Moreover, under the Maryland General Corporation Laws, the act of a director of a Maryland corporation relating to or affecting an acquisition or potential acquisition of control is not subject to any higher duty or greater scrutiny than is applied to any other act of a director. Maryland law also contains a statutory presumption that an act of a director of a Maryland corporation satisfies the applicable standards of conduct for directors under Maryland law.

### **Subtitle 8**

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

.

a classified board,

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a two-thirds vote requirement for removing a director,

.

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

.

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

.

a majority requirement for the calling of a special meeting of stockholders.

Through provisions in our charter and Bylaws unrelated to Subtitle 8, we already vest in the board the exclusive power to fix the number of directorships and require, unless called by our chairman of the board, our president, our chief executive officer or the board, the request of holders of a majority of outstanding shares to call a special meeting.

### **Amendments to the Charter**

The Maryland General Corporation Law generally allows amendment of a corporation's charter if its board of directors adopts a resolution setting forth the amendment proposed, declaring its advisability and directing that it be submitted to the stockholders for consideration, and the stockholders thereafter approve such proposed amendment either at a special meeting called by the board for the purpose of approval of such amendment by the stockholders or, if so directed by the board, at the next annual stockholders meeting by the affirmative vote of two-thirds of all votes entitled to be cast on the matter.

Most amendments to our charter must be approved by the board of directors and by the vote of at least two-thirds of the votes entitled to be cast at a meeting of stockholders.

#### **Amendment to the Bylaws**

Under the Maryland General Corporation Law, the power to amend the bylaws may be left with the stockholders, vested exclusively in the directors or shared by both groups.

Our bylaws provide that stockholders have the power to adopt, alter or repeal any bylaws or to make new bylaws, and that the board of directors shall have the power to do the same, except that the board of directors shall not alter or repeal the section of the bylaws governing amendment or any bylaws made by the stockholders.

#### **Dissolution of Kimco Realty Corporation**

Under Maryland law, a dissolution must be approved by our board of directors and by a vote of at least two-thirds of the outstanding shares of common stock of Kimco.

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

Our Bylaws provide that with respect to an annual meeting of stockholders, nominations of individuals for election to the Board of Directors and the proposal of business to be considered by stockholders may be made only (i) pursuant to our notice of the meeting, (ii) by or at the direction of the Board of Directors or (iii) by a stockholder who is a stockholder of record both at the time of giving the advance notice required by the Bylaws and at the time of the meeting, who is entitled to vote at the meeting and who has complied with the advance notice procedures of the Bylaws. With respect to special meetings of stockholders, only the business specified in our notice of the meeting may be brought before the meeting. Nominations of individuals for election to the Board of Directors at a special meeting may be made only (i) by or at the

direction of the Board of Directors or (ii) provided that the special meeting has been called in accordance with the Bylaws for the purpose of electing directors, by a stockholder who is a stockholder of record both at the time of giving the advance notice required by the Bylaws and at the time of the meeting, who is entitled to vote at the meeting and who has complied with the advance notice provisions of the Bylaws.

### **Anti-takeover Effect of Certain Provisions of Maryland Law and Our Charter and Bylaws**

The restrictions on ownership and transfer of our stock, the business combination provisions of the Maryland General Corporation Law and the advance notice provisions of our bylaws could delay, defer or prevent a transaction or a change of control of us that might involve a premium price for our stock or that our stockholders otherwise believe to be in their best interests. Likewise, if our board of directors were to elect to be subject to the provisions of Subtitle 8 or if the provision in our bylaws opting out of the control share acquisition provisions of the Maryland General Corporation Law were amended or rescinded, these provisions of the Maryland General Corporation Law could have similar anti-takeover effects.

### **Limitation of Liability and Indemnification**

Under Maryland law, a Maryland corporation may include in its charter a provision limiting the liability of directors and officers to the corporation and its stockholders for money damages, except for liability resulting from (a) actual receipt of an improper benefit or profit in money, property or services or (b) active and deliberate dishonesty established by a final judgment and which is material to the cause of action. Our charter contains a provision which eliminates directors and officers liability to the maximum extent permitted by Maryland law.

The Maryland General Corporation Law requires a corporation (unless its charter provides otherwise, which our charter does not) to indemnify a director or officer who has been successful, on the merits or otherwise, in the defense of any proceeding to which he is made or threatened to be made a party by reason of his service in that capacity. The Maryland General Corporation Law permits a corporation to indemnify its present and former directors and officers, among others, against judgments, penalties, fines, settlements and reasonable expenses actually incurred by them in connection with any proceeding to which they may be made or threatened to be made a party by reason of their service in those or other capacities unless it is established that (a) the act or omission of the director or officer was material to the matter giving rise to the proceeding and (i) was committed in bad faith or (ii) was the result of active and deliberate dishonesty, (b) the director or officer actually received an improper personal benefit in money, property or services or (c) in the case of any criminal proceeding, the director or officer had reasonable cause to believe that the act or omission was unlawful. However, a Maryland corporation may not indemnify for an adverse judgment in a suit by or in the right of the corporation or for a judgment of liability on the basis that personal benefit was improperly received, unless in either case a court orders indemnification and then only for expenses.

In addition, the Maryland General Corporation Law permits a Maryland corporation to advance reasonable expenses to a director or officer upon the corporation's receipt of: (a) a written affirmation by the director or officer of his or her good faith belief that he or she has met the standard of conduct necessary for indemnification by the corporation; and (b) a written unsecured undertaking by the director or officer or on his or her behalf to repay the amount paid or reimbursed by the corporation if it is ultimately determined that he or she did not meet the standard of conduct.

Our charter authorizes us, to the maximum extent permitted by Maryland law, to obligate Kimco to indemnify any present or former director or officer of Kimco or any individual who, while a director of Kimco and at the request of Kimco, serves or has served another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise as a director, officer, partner or trustee and to pay or reimburse his or her reasonable expenses in advance of final disposition of a proceeding. Our bylaws obligate us, to the maximum extent permitted by Maryland law, to indemnify any present or former director or officer of Kimco or any individual who, while a director or officer of the Kimco and at our request, serves or has served another corporation, real estate investment trust, partnership, joint venture, trust, employee benefit plan or other enterprise as a director, officer, partner or trustee and who is made or

threatened to be made a party to the proceeding by reason of his or her service in that capacity from and against any claim or liability to which that individual may become subject or which that individual may incur by reason of his or her status as a present or former director or officer of Kimco and to pay or reimburse his or her reasonable expenses in advance of final disposition of a proceeding.

Our charter and bylaws also permit us, with the approval of our board of directors, to indemnify and advance expenses to any person who served a predecessor of ours in any of the capacities described above and to any employee or agent of ours or a predecessor of ours.

On February 25, 2009, our Board o