

KIMCO REALTY CORP  
 Form 424B5  
 September 10, 2008

**Filed Pursuant to Rule 424(b)(5)**

**Registration No. 333-133908**

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**CALCULATION OF REGISTRATION FEE**

<b><u>Title of Each Class of Securities to be Registered</u></b>	<b><u>Amount to be Registered</u></b>	<b><u>Proposed Maximum Offering Price Per Security</u></b>	<b><u>Proposed Maximum Aggregate Offering Price</u></b>	<b><u>Amount of Registration Fee</u></b>
Common Stock	11,500,000(1)	\$ 37.10	\$ 426,650,000(1)	\$ 16,767.35(2)

(1) Assumes exercise in full of the underwriters' option to purchase up to 1,500,000 additional shares of common stock to cover over-allotments, if any.

(2) Calculated in accordance with Rule 457(r) under the Securities Act of 1933, as amended (the Securities Act). Payment of the registration fee at the time of filing of the registrant's registration statement on Form S-3, filed with the Securities and Exchange Commission on May 9, 2006 (File No. 333-133908), was deferred pursuant to Rules 456(b) and 457(r) under the Securities Act, and is paid herewith. This Calculation of Registration Fee table shall be deemed to update the Calculation of Registration Fee table in such registration statement.

**Prospectus Supplement**

**September 9, 2008**

**(To Prospectus dated May 8, 2006)**

10,000,000 Shares

Common Stock

We are offering 10,000,000 shares of our common stock to the public. Our common stock is listed on the New York Stock Exchange under the symbol KIM. The last reported sale price of our common stock on the New York Stock Exchange on September 9, 2008 was \$37.60 per share.

To preserve our status as a REIT for federal income tax purposes, our charter imposes certain restrictions on ownership of our common stock. See Description of Common Stock Restrictions on Ownership in the accompanying prospectus.

**Investing in our common stock involves risks. See Risk Factors beginning on page 5 of the accompanying prospectus and Risk Factors beginning on page 13 of our Annual Report on Form 10-K for the year ended December 31, 2007, incorporated by reference in this prospectus supplement and the accompanying prospectus.**

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

	Per Share	Total
Public offering price	\$ 37.10	\$ 371,000,000
Underwriting discounts	\$ 1.4469	\$ 14,469,000
Proceeds to Kimco (before expenses)	\$ 35.6531	\$ 356,531,000

We have granted the underwriters the right to purchase within 30 days from the date of this prospectus supplement up to an additional 1,500,000 shares of our common stock from us at the public offering price, less the underwriting discounts, to cover any over-allotments.

The underwriters expect to deliver the shares of our common stock to investors on September 15, 2008. The underwriters are offering the common stock as set forth under Underwriting.

*Joint Book-Running Managers*

UBS Investment Bank

Citi

Wachovia Securities

*Joint Lead Managers*

Deutsche Bank Securities

Morgan Stanley

Raymond James

RBC Capital Markets

*Co- Managers*

Banc of America  
Securities LLC

J.P.Morgan

Merrill Lynch &  
Co.

ABN AMRO  
Incorporated

BNY Mellon  
Capital  
Markets, LLC

Morgan Keegan  
& Company, Inc.

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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 common stock. The accompanying prospectus contains information about our securities generally, some of which does not apply to the common stock covered 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 the 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 Securities and Exchange Commission (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 common stock 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. Our business, financial condition, 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 majority-owned 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 common stock, Kimco Realty Corporation. Unless otherwise indicated, the information in this prospectus supplement assumes no exercise of the underwriters' over-allotment option.

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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 New York Stock Exchange ( 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 common stock 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, 2007;
- our Quarterly Reports on Form 10-Q for the fiscal quarters ended March 31, 2008 and June 30, 2008;
- our Current Reports on Form 8-K filed on March 11, 2008 and May 19, 2008; and
- our Proxy Statement filed on March 27, 2008, including the additional proxy materials filed on March 27, 2008 and April 22, 2008.

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 common stock. 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 or in 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 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 current expectations include, but are not limited to, those listed under the caption Risk Factors in the accompanying prospectus and in our Annual Report on Form 10-K for the year ended December 31, 2007, incorporated by reference in this prospectus supplement and the accompanying prospectus, as well as the following factors: (i) general economic and local real estate conditions, (ii) the inability of major tenants to continue paying their rent obligations due to bankruptcy, insolvency or general downturn in their business, (iii) financing risks, such as the inability to obtain equity, debt, or other sources of financing on favorable terms, (iv) changes in governmental laws and regulations, (v) the level and volatility of interest rates and foreign currency exchange rates, (vi) the availability of suitable acquisition opportunities and (vii) increases in operating costs. 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.



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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 common stock.*

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. As of June 30, 2008, we had interests in 1,928 properties, totaling approximately 180.0 million square feet of gross leaseable area ( GLA ) located in 45 states, Puerto Rico, Canada, Mexico, Chile, Brazil, and Peru. Our ownership interests in real estate consist of our consolidated portfolio and in portfolios where we own an economic interest, such as properties in our investment management programs, where we partner with institutional investors and also retain management responsibilities. 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 such a manner to qualify as a real estate investment trust ( 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 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. Historically, our distributions have exceeded, and we expect that our distributions will continue to exceed, our net 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.

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The Offering

Common stock offered by Kimco	10,000,000 shares (or 11,500,000 shares if the underwriters' over-allotment option is exercised fully).
Common stock to be outstanding after this offering	264,657,923 shares (or 266,157,923 shares if the underwriters' over-allotment option is exercised fully).
Use of Proceeds	We estimate that the net proceeds from this offering will be approximately \$356.0 million (or approximately \$409.5 million if the underwriters' over-allotment option is exercised in full). We expect to use the net proceeds received from this offering for general corporate purposes, which may include funding our investment activities. Pending use for our investment activities, we will partially repay existing indebtedness. See "Use of Proceeds" on page S-4 of this prospectus supplement.
New York Stock Exchange symbol	KIM

The number of shares of common stock to be outstanding after this offering is based upon 254,657,923 shares outstanding as of September 5, 2008. This number excludes shares of common stock reserved for issuance upon the exercise of options. Further, we have outstanding units that are convertible into common stock. If all such units were to be converted, we would issue 6,101,367 shares using September 5, 2008 as the valuation date.

For additional information regarding our common stock, see "Description of Common Stock" in accompanying prospectus.

Risk Factors

Investing in our common stock involves risks. Please read the section entitled "Risk Factors" beginning on page 5 of the accompanying prospectus and "Risk Factors" beginning on page 13 of our Annual Report on Form 10-K for the year ended December 31, 2007, incorporated by reference in this prospectus supplement and the accompanying prospectus.



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## Summary Consolidated and Other Financial Data

The summary consolidated and other financial data at each of the dates and for each of the periods presented below were derived from our audited and unaudited consolidated financial statements, which, except for the interim financial information as of and for the six months ended June 30, 2008 and 2007, have been audited by PricewaterhouseCoopers LLP, our independent registered public accounting firm. Because the information in this table is only a summary and does not provide all of the information contained in our financial statements, including the related notes, you should read Management's Discussion and Analysis of Financial Condition and Results of Operations and our consolidated financial statements contained in our Annual Report on Form 10-K for the fiscal year ended December 31, 2007 and our Quarterly Report on Form 10-Q for the fiscal quarter ended June 30, 2008, all of which are incorporated by reference in this prospectus supplement and the accompanying prospectus.

The Company believes that the book value of its real estate assets, which reflects the historical costs of such real estate assets less accumulated depreciation, is not indicative of the current market value of such assets. Historical operating results are not necessarily indicative of future operating performance.

	<b>Six Months Ended</b>		<b>Year Ended December 31, (1)</b>				
	<b>June 30,</b>						
	<b>2008</b>	<b>2007</b>	<b>2007</b>	<b>2006</b>	<b>2005</b>	<b>2004</b>	<b>2003</b>
	<b>(in thousands, except per share information)</b>						
Operating Data:							
Revenues from rental property (2)	\$ 373,938	\$ 326,312	\$ 681,553	\$ 587,547	\$ 501,569	\$ 488,021	\$ 446,096
Interest expense (3)	\$ 107,635	\$ 98,619	\$ 213,674	\$ 170,677	\$ 126,432	\$ 105,898	\$ 101,351
Depreciation and amortization (3)	\$ 99,428	\$ 87,642	\$ 189,650	\$ 139,263	\$ 100,517	\$ 94,651	\$ 78,817
Gain on sale of development properties (4)	\$ 29,590	\$ 12,837	\$ 40,099	\$ 37,276	\$ 33,636	\$ 16,835	\$ 17,495
Gain on transfer/sale of operating properties, net (3)	\$ 587	\$ 2,332	\$ 2,708	\$ 2,460	\$ 2,833	\$	\$ 3,177
Benefit for income taxes (5)	\$	\$ 26,399	\$ 30,346	\$	\$	\$	\$
Provision for income taxes (6)	\$ 20,108	\$	\$	\$ 17,253	\$ 10,989	\$ 8,320	\$ 8,514
Income from continuing operations (7)	\$ 188,920	\$ 202,129	\$ 361,934	\$ 345,309	\$ 324,894	\$ 273,393	\$ 234,195

Income per common share, from continuing operations:

Basic	\$ 0.65	\$ 0.78	\$ 1.36	\$ 1.39	\$ 1.38	\$ 1.17	\$ 0.99
Diluted	\$ 0.64	\$ 0.76	\$ 1.33	\$ 1.36	\$ 1.36	\$ 1.15	\$ 0.97

Weighted average number of shares of common stock:

Basic	253,336	251,721	252,129	239,552	226,641	222,859	214,184
Diluted	256,490	257,422	257,058	244,615	230,868	227,143	217,540
Cash dividends declared per common share	\$ 0.80	\$ 0.72	\$ 1.52	\$ 1.38	\$ 1.27	\$ 1.16	\$ 1.10

	<b>Six Months Ended June 30,</b>		<b>Year Ended December 31, (1)</b>			
	<b>2008</b>	<b>2007</b>	<b>2006</b>	<b>2005</b>	<b>2004</b>	<b>2003</b>
<b>Balance Sheet Data:</b>						
Real estate before accumulated depreciation	\$ 7,695,107	\$ 7,325,035	\$ 6,001,319	\$ 4,560,406	\$ 4,092,222	\$ 4,174,664
Total assets	\$ 9,594,246	\$ 9,097,816	\$ 7,869,280	\$ 5,534,636	\$ 4,749,597	\$ 4,641,092
Total debt	\$ 4,739,773	\$ 4,216,415	\$ 3,587,243	\$ 2,691,196	\$ 2,118,622	\$ 2,154,948
Total stockholders equity	\$ 3,861,882	\$ 3,894,574	\$ 3,366,959	\$ 2,387,214	\$ 2,236,400	\$ 2,135,846
Cash flow provided by operations	\$ 271,301	\$ 665,989	\$ 455,569	\$ 410,797	\$ 365,176	\$ 308,632
Cash flow used for investing activities	\$ (507,752)	\$ (1,507,611)	\$ (246,221)	\$ (716,015)	\$ (299,597)	\$ (637,636)
Cash flow provided by (used for) financing activities	\$ 272,135	\$ 584,056	\$ 59,444	\$ 343,271	\$ (75,647)	\$ 341,330

(1) All years have been adjusted to reflect the impact of operating properties sold during the years ended December 31, 2007, 2006, 2005, 2004 and 2003 and properties classified as held for sale as of December 31, 2007, which are reflected in discontinued operations in our Consolidated Statements of Income.

(2) Does not include (i) revenues from rental property relating to unconsolidated joint ventures, (ii) revenues relating to the investment in retail stores leases and (iii) revenues from properties included in discontinued operations.

(3) Does not include amounts reflected in discontinued operations.

(4) Amounts exclude income taxes.

(5) Does not include amounts reflected in discontinued operations and extraordinary gain. Amounts include income taxes related to gain on sale of development properties, gain on transfer/sale of operating properties and adjustment for property carrying value.

(6) Amounts include income taxes related to gain on sale of development properties and gain on transfer/sale of operating properties.

(7) Amounts include gain on transfer/sale of operating properties, net of tax.

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USE OF PROCEEDS

We estimate that the net proceeds from this offering will be approximately \$356.0 million, or approximately \$409.5 million if the underwriters' over-allotment option is exercised in full. We expect to use the net proceeds received from this offering for general corporate purposes, which may include funding property acquisitions and development costs, including our developments in Mexico, investments in our institutional management programs and other investment activities as suitable opportunities arise. Pending such use, we will partially repay the \$800.0 million outstanding under our U.S. revolving credit facility, which is scheduled to mature in October 2011 and accrues interest at LIBOR plus 0.375% per annum. Affiliates of certain of the underwriters are lenders under our U.S. revolving credit facility and will receive their pro rata share of repayments thereunder. See Underwriting.

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## PRICE RANGE OF COMMON STOCK AND DIVIDENDS

Our common stock is listed on the NYSE under the symbol KIM. The table below sets forth, for the fiscal quarters indicated, high and low reported sales prices per share of our common stock on the NYSE and the cash dividends per share paid in such periods. The last reported sale price of our common stock on the NYSE on September 9, 2008 was \$37.60 per share.

	<b>Stock Price</b>		
	<b>High</b>	<b>Low</b>	<b>Dividends Paid</b>
<b>2006</b>			
First Quarter	\$ 42.00	\$ 32.02	\$ 0.33
Second Quarter	\$ 40.57	\$ 34.20	\$ 0.33
Third Quarter	\$ 43.15	\$ 36.18	\$ 0.36
Fourth Quarter	\$ 47.13	\$ 42.13	\$ 0.36 (a)
<b>2007</b>			
First Quarter	\$ 53.60	\$ 43.59	\$ 0.36
Second Quarter	\$ 50.36	\$ 36.92	\$ 0.36
Third Quarter	\$ 47.58	\$ 33.74	\$ 0.40
Fourth Quarter	\$ 47.69	\$ 34.74	\$ 0.40 (b)
<b>2008</b>			
First Quarter	\$ 40.18	\$ 29.00	\$ 0.40
Second Quarter	\$ 42.30	\$ 34.20	\$ 0.40
Third Quarter (through September 9, 2008)	\$ 40.14	\$ 29.54	(c)

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(a) Paid on January 16, 2007, to stockholders of record on January 2, 2007.

(b) Paid on January 15, 2008, to stockholders of record on January 2, 2008.

(c) On July 29, 2008, our Board of Directors declared a dividend of \$0.44 per common share, payable on October 15, 2008 to shareholders of record on October 3, 2008.



It has been our policy to declare dividends to the holders of shares of our common stock so as to comply with applicable provisions of the Code governing REITs.

Dividends are paid to common stockholders at the discretion of our Board of Directors and will depend on our earnings, funds from operations, financial condition, liquidity, capital requirements, contractual prohibitions or other limitations under our indebtedness and preferred stock, the annual distribution requirements under the REIT provisions of the Code, state law and such other factors as our Board of Directors deems relevant. Our preferred stock and debt instruments and agreements limit payment of dividends to holders of our common stock under certain circumstances. See [Description of Debt Securities](#) [Certain Covenants](#) [Restrictions on Dividends and Other Distributions](#) and [Description of Preferred Stock](#) [Dividends](#) in the accompanying prospectus.

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SUPPLEMENTAL MATERIAL UNITED STATES FEDERAL INCOME TAX CONSEQUENCES

The following is a general summary of the material United States federal income tax consequences to you of acquiring, owning and disposing of our common stock. This summary is a supplement to, and should be read in connection with, the accompanying prospectus (including the discussion in such prospectus under the heading "Material United States Federal Income Tax Considerations to Us of our REIT Election"). This summary is for general information only and is not tax advice.

The information in this summary is based on current law, including:

- the Internal Revenue Code of 1986, as amended, or the Code;
- current, temporary and proposed Treasury regulations promulgated under the Code;
- the legislative history of the Code;
- current administrative interpretations and practices of the Internal Revenue Service, or IRS; and
- court decisions,

in each case, as of the date of this prospectus supplement. In addition, the administrative interpretations and practices of the IRS include its practices and policies as expressed in private letter rulings that are not binding on the IRS except with respect to the particular taxpayers who requested and received those rulings. Future legislation, Treasury regulations, administrative interpretations and practices and/or court decisions may adversely affect the tax considerations contained in this discussion. Any such change could apply retroactively to transactions preceding the date of the change.

We have not requested and do not intend to request a ruling from the IRS that we qualify as a REIT, and the statements in this discussion are not binding on the IRS or any court. Thus, we can provide no assurance that the tax considerations contained in this summary will not be challenged by the IRS or will be sustained by a court if so challenged. This summary does not discuss any state, local or foreign tax consequences, or any United States federal alternative minimum tax consequences, associated with our election to be taxed as a REIT or the acquisition, ownership and disposition of our common stock.

**You are urged to consult the accompanying prospectus and your tax advisors regarding the specific tax consequences to you of:**

- **the acquisition, ownership, and/or sale or other disposition of the common stock offered under this prospectus supplement, including the federal, state, local, foreign and other tax consequences;**
- **our election to be taxed as a REIT for federal income tax purposes; and**
- **potential changes in the applicable tax laws.**

This summary deals only with our common stock held as a capital asset which is generally, property held for investment within the meaning of Section 1221 of the Code. Your tax treatment will vary depending on your particular situation, and this discussion does not address all the tax consequences that may be relevant to you in light of your particular circumstances. State, local and foreign income tax laws may differ substantially from the federal income tax laws discussed below, and this summary does not purport to describe any aspect of the tax laws of any state, local or foreign jurisdiction. In addition, this discussion does not address the tax consequences relevant to persons who receive special treatment under the United States federal income tax law, except to the extent discussed below under the headings Taxation of Tax-Exempt Stockholders and Taxation of Non-U.S. Stockholders. Holders of our common stock receiving special treatment include, without limitation:

- financial institutions, banks and thrifts;
- insurance companies;
- tax-exempt organizations;

· S corporations;

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- traders in securities that elect to mark to market;
  
- persons holding our common stock through a partnership or other pass-through entity;
  
- regulated investment companies and REITs;
  
- foreign corporations or partnerships, and persons who are not residents or citizens of the United States;
  
- broker-dealers or dealers in securities or currencies;
  
- United States expatriates;
  
- persons holding our common stock as a hedge against currency risks or as a position in a straddle; or
  
- United States persons whose functional currency is not the United States dollar.

New Legislation

On July 30, 2008, the American Housing Rescue and Foreclosure Prevention Act of 2008 (the Housing Act ) was enacted. The following is a brief summary of certain provisions of the Housing Act:

- Prior to the Housing Act, foreign currency exchange gain was not explicitly included or excluded from the statutory definitions of qualifying income for purposes of the 95% and 75% income tests. The Housing Act provides that most real estate-related foreign currency gain recognized after July 30, 2008 is excluded from the computation of the income tests (*i.e.*, such gain is excluded from the numerator and the denominator of the income test computations). However, foreign currency gain is treated as non-qualifying income if it is derived from substantial and regular trading or dealing in securities. These rules depart from previously issued IRS guidance that generally treated foreign

currency gains as qualifying income under the 95% and 75% income tests to the extent such gains were attributable to assets producing qualifying income. Certain conforming changes have also been made to the asset tests, foreclosure property and prohibited transaction provisions of the Code. See Material United States Federal Income Tax Considerations to Us of Our REIT Election Income Tests, Prohibited Transaction Income and Asset Tests in the accompanying prospectus.

- The Housing Act expands the scope of the hedging exception by providing that the income tests will exclude any income from a hedging transaction entered into by the REIT after July 30, 2008 primarily to manage the risk of (1) interest rate changes with respect to borrowings made or to be made to acquire or carry real estate assets or (2) currency fluctuations with respect to an item of qualifying income under the 95% or 75% income test. Prior to this amendment, income from a hedging transaction was treated as nonqualifying income for purposes of the 75% income test, and the income from hedging transactions described under number (1) above was only excluded from the 95% income test. See Material United States Federal Income Tax Considerations to Us of Our REIT Election Income Tests in the accompanying prospectus.

- Under prior law, sales of property by a REIT were not treated as prohibited transactions if such sales came within certain safe harbors. Certain provisions of the Housing Act make it easier for a REIT to fit within these safe harbor provisions, including a reduction in the current four year safe harbor holding period to two years for sales occurring after July 30, 2008. See Material United States Federal Income Tax Considerations to Us of Our REIT Election Prohibited Transaction Income in the accompanying prospectus.

- Previously, not more than 20% of a REIT's total assets could be represented by securities of one or more of the REIT's taxable REIT subsidiaries. The Housing Act amends this rule by increasing the limitation to 25%. This change is effective for our taxable years beginning after December 31, 2008. See Material United States Federal Income Tax Considerations to Us of Our REIT Election Asset Tests in the accompanying prospectus.

The foregoing is not an exhaustive list of changes made by the Housing Act. You are urged to consult your tax advisors regarding the specific tax consequences to you of the changes resulting from the enactment of Housing Act.

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Taxable U.S. Stockholders Generally

If you are a U.S. stockholder, as defined below, this section applies to you. If you hold shares of our common stock and are not a U.S. stockholder, you are a non-U.S. stockholder and the section below entitled Taxation of Non-U.S. Stockholders applies to you.

*Definition of U.S. Stockholder.* A U.S. stockholder is a beneficial holder of capital stock who is:

- a citizen or resident of the United States;
  
- a corporation, including an entity treated as a corporation for United States federal income tax purposes, created or organized in or under the laws of the United States or of any state or in the District of Columbia;
  
- an estate which is required to pay United States federal income tax regardless of the source of its income; or
  
- a trust if a United States court can exercise primary supervision over the administration of the trust and one or more United States persons have authority to control all substantial decisions of the trust, or if the trust has a valid election in place to be treated as a United States person.

If a partnership or other flow-through entity is the owner of our common stock, the tax treatment of a partner in the partnership or an owner of the entity will depend upon the status of the partner or other owner and the activities of the partnership or other entity. Accordingly, partnerships and flow-through entities that hold our common stock and partners or owners of such partnerships or entities, as applicable, are encouraged to consult their tax advisors.

*Distributions Generally.* Distributions out of our current or accumulated earnings and profits will be treated as dividends, and other than with respect to capital gain dividends and certain amounts that have previously been subject to corporate level tax, discussed below, will be taxable to our taxable U.S. stockholders as ordinary income. See Tax Rates below. As long as we qualify as a REIT, these distributions will not be eligible for the dividends-received deduction in the case of U.S. stockholders that are corporations. For purposes of determining whether distributions to

holders of our common stock are out of current or accumulated earnings and profits, our earnings and profits will be allocated first to distributions on our outstanding preferred stock, and then to distributions on our outstanding common stock.

To the extent that we make distributions on our common stock in excess of our current and accumulated earnings and profits, these distributions will be treated first as a tax-free return of capital to a U.S. stockholder. This treatment will reduce the U.S. stockholder's adjusted tax basis in its shares of our common stock by the amount of the distribution, but not below zero. Distributions in excess of our current and accumulated earnings and profits and in excess of a U.S. stockholder's adjusted tax basis in its shares will be taxable as capital gains. Such gain will be taxable as long-term capital gain if the shares have been held for more than one year. Dividends we declare in October, November, or December of any year and which are payable to a stockholder of record on a specified date in any of these months will be treated as both paid by us and received by the stockholder on December 31 of that year, provided we actually pay the dividend on or before January 31 of the following year. U.S. stockholders may not include in their own income tax returns any of our net operating losses or capital losses.

*Capital Gain Dividends.* Dividends that we properly designate as capital gain dividends will be taxable to our taxable U.S. stockholders as a gain from the sale or disposition of a capital asset to the extent that such gain does not exceed our actual net capital gain for the taxable year. These gains may be taxable to non-corporate U.S. stockholders at a 15% or 25% rate. U.S. stockholders that are corporations may, however, be required to treat up to 20% of some capital gain dividends as ordinary income. If we properly designate any portion of a dividend as a capital gain dividend then, except as otherwise required by law, we presently intend to allocate a portion of the total capital gain dividends paid or made available to holders of all classes of our stock for the year to the holders of our common stock in proportion to the amount that our total dividends, as determined for United States federal income tax purposes, paid or made available to the holders of such common stock for the year bears to the total dividends, as determined for United States federal income tax purposes, paid or made available to holders of all classes of our stock for the year.



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*Retention of Net Capital Gains.* We may elect to retain, rather than distribute as a capital gain dividend, all or a portion of our net capital gains. If we make this election, we would pay tax on our retained net capital gains. In addition, to the extent we so elect, a U.S. stockholder generally would:

- include its pro rata share of our undistributed net capital gains in computing its long-term capital gains in its return for its taxable year in which the last day of our taxable year falls, subject to certain limitations as to the amount that is includable;
- be deemed to have paid the capital gains tax imposed on us on the designated amounts included in the U.S. stockholder's long-term capital gains;
- receive a credit or refund for the amount of tax deemed paid by it;
- increase the adjusted basis of its common stock by the difference between the amount of includable gains and the tax deemed to have been paid by it; and
- in the case of a U.S. stockholder that is a corporation, appropriately adjust its earnings and profits for the retained capital gains in accordance with Treasury regulations to be promulgated by the IRS.

*Passive Activity Losses and Investment Interest Limitations.* Distributions we make and gain arising from the sale or exchange by a U.S. stockholder of our shares will not be treated as passive activity income. As a result, U.S. stockholders generally will not be able to apply any passive losses against this income or gain. A U.S. stockholder may elect to treat capital gain dividends, capital gains from the disposition of stock and qualified dividend income as investment income for purposes of computing the investment interest limitation, but in such case, the stockholder will be taxed at ordinary income rates on such amount. Other distributions made by us, to the extent they do not constitute a return of capital, generally will be treated as investment income for purposes of computing the investment interest limitation.

*Dispositions of Our Common Stock.* If a U.S. stockholder sells or disposes of shares of our common stock to a person other than us, it will recognize gain or loss for federal income tax purposes in an amount equal to the difference between the amount of cash and the fair market value of any property received on the sale or other disposition and the

holder's adjusted basis in the shares for tax purposes. This gain or loss, except as provided below, will be long-term capital gain or loss if the holder has held the common stock for more than one year. If, however, a U.S. stockholder recognizes loss upon the sale or other disposition of our common stock that it has held for six months or less, after applying certain holding period rules, the loss recognized will be treated as a long-term capital loss to the extent the U.S. stockholder received distributions from us which were required to be treated as long-term capital gains.

#### Backup Withholding

We report to our U.S. stockholders and the IRS the amount of dividends paid during each calendar year, and the amount of any tax withheld. Under the backup withholding rules, a stockholder may be subject to backup withholding with respect to dividends paid unless the holder is a corporation or comes within certain other exempt categories and, when required, demonstrates this fact, or provides a taxpayer identification number, certifies as to no loss of exemption from backup withholding, and otherwise complies with applicable requirements of the backup withholding rules. A U.S. stockholder that does not provide us with its correct taxpayer identification number may also be subject to penalties imposed by the IRS. Backup withholding is not an additional tax. Any amount paid as backup withholding will be creditable against the stockholder's federal income tax liability. In addition, we may be required to withhold a portion of capital gain distributions to any stockholders who fail to certify their non-foreign status. See Taxation of Non-U.S. Stockholders.

#### Tax Rates

The maximum tax rate for non-corporate taxpayers for (1) capital gains, including certain capital gain dividends, has generally been reduced to 15% (although depending on the characteristics of the assets which produced these gains and on designations which we may make, certain capital gain dividends may be taxed at a 25% rate) and (2) qualified dividend income has generally been reduced to 15%. In general, dividends payable by REITs are not eligible for the reduced tax rate on corporate dividends, except to the extent that certain holding requirements have been met and the REIT's dividends are attributable to dividends received from taxable

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corporations (such as its taxable REIT subsidiaries) or to income that was subject to tax at the corporate/REIT level (for example, if it distributed taxable income that it retained and paid tax on in the prior taxable year). The currently applicable provisions of the United States federal income tax laws relating to the 15% tax rate are currently scheduled to sunset or revert to the provisions of prior law effective for taxable years beginning after December 31, 2010, at which time the capital gains tax rate will be increased to 20% and the rate applicable to dividends will be increased to the tax rate then applicable to ordinary income. U.S. stockholders that are corporations may, however, be required to treat up to 20% of some capital gain dividends as ordinary income.

### Taxation of Tax-Exempt Stockholders

Dividend income from us and gain arising upon a sale of our common stock generally will not be unrelated business taxable income to a tax-exempt stockholder, except as described below. Income or gain will be unrelated business taxable income, however, if a tax-exempt stockholder holds its shares as debt-financed property within the meaning of the Code or if the shares are used in a trade or business of the tax-exempt stockholder. Generally, debt-financed property is property, the acquisition or holding of which is financed through a borrowing by the tax-exempt stockholder.

For tax-exempt stockholders which are social clubs, voluntary employee benefit associations, supplemental unemployment benefit trusts, or qualified group legal services plans exempt from federal income taxation under Sections 501(c)(7), (c)(9), (c)(17) or (c)(20) of the Code, respectively, income from an investment in our shares will constitute unrelated business taxable income unless the organization is able to properly claim a deduction for amounts set aside or placed in reserve for specific purposes so as to offset the income generated by its investment in our shares. These prospective investors are urged to consult their tax advisors concerning these set aside and reserve requirements.

Notwithstanding the above, a portion of the dividends paid by a pension-held REIT may be treated as unrelated business taxable income as to certain trusts that hold more than 10%, by value, of the interests in the REIT. A REIT will not be a pension-held REIT if it is able to satisfy the not closely held requirement without relying on the look-through exception with respect to certain trusts or if such REIT is not predominantly held by qualified trusts. As a result of limitations on the transfer and ownership of stock contained in our charter, we do not expect to be classified as a pension-held REIT, and as a result, the tax treatment described in this paragraph should be inapplicable to our stockholders. However, because our stock will be publicly traded, we cannot guarantee that this is or will always be the case.

### Taxation of Non-U.S. Stockholders

The following discussion addresses the rules governing United States federal income taxation of the ownership and disposition of our common stock by non-U.S. stockholders. These rules are complex, and no attempt is made herein to provide more than a brief summary. Accordingly, the discussion does not address all aspects of United States federal income taxation that may be relevant to a non-U.S. stockholder in light of its particular circumstances and does not address any state, local or foreign tax consequences. We urge non-U.S. stockholders to consult their tax advisors to determine the impact of federal, state, local and foreign income tax laws on the purchase, ownership, and disposition of shares of our common stock, including any reporting requirements.

*Distributions Generally.* Distributions that are neither attributable to gain from our sale or exchange of United States real property interests nor designated by us as capital gain dividends will be treated as dividends of ordinary income to the extent they are made out of our current or accumulated earnings and profits. Such distributions ordinarily will be subject to withholding of United States federal income tax at a 30% rate or such lower rate as may be specified by an applicable income tax treaty unless the distributions are treated as effectively connected with the conduct by the non-U.S. stockholder of a United States trade or business. Under certain treaties, however, lower withholding rates generally applicable to dividends do not apply to dividends from a REIT. Certain certification and disclosure requirements must be satisfied in order for distributions to be exempt from withholding under the effectively connected income exemption. Dividends that are treated as effectively connected with such a trade or business will be subject to tax on a net basis at graduated rates, in the same manner as dividends paid to U.S. stockholders, and are generally not subject to withholding. Any such dividends received by a non-U.S. stockholder that is a corporation may also be subject to an additional branch profits tax at a 30% rate or such lower rate as may be specified by an applicable income tax treaty.

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Distributions in excess of our current and accumulated earnings and profits will not be taxable to a non-U.S. stockholder to the extent that such distributions do not exceed the non-U.S. stockholder's adjusted basis in our common stock, but rather will reduce the adjusted basis of such common stock. To the extent that these distributions exceed a non-U.S. stockholder's adjusted basis in our common stock, they will give rise to gain from the sale or exchange of such stock. The tax treatment of this gain is described below.

For withholding purposes, we expect to treat all distributions as made out of our current or accumulated earnings and profits. Except with respect to certain distributions attributable to the sale of United States real property interests as described below, we expect to withhold United States income tax at the rate of 30% on any distributions made to a non-U.S. stockholder unless:

- a lower treaty rate applies and the non-U.S. stockholder files with us an IRS Form W-8BEN evidencing eligibility for that reduced treaty rate; or
  
- the non-U.S. stockholder files an IRS Form W-8ECI with us claiming that the distribution is income effectively connected with a United States trade or business of the non-U.S. stockholder.

However, amounts withheld should generally be refundable if it is subsequently determined that the distribution was, in fact, in excess of our current and accumulated earnings and profits, provided certain conditions are met.

*Capital Gain Dividends and Distributions Attributable to a Sale or Exchange of United States Real Property Interests.*

Distributions to a non-U.S. stockholder that we properly designate as capital gain dividends, other than those arising from the disposition of a United States real property interest, generally should not be subject to United States federal income taxation, unless:

- (1) the investment in our common stock is treated as effectively connected with the non-U.S. stockholder's United States trade or business, in which case the non-U.S. stockholder will be subject to the same treatment as U.S. stockholders with respect to such gain, except that a non-U.S. stockholder that is a foreign corporation may also be subject to the 30% branch profits tax, as discussed above; or

(2) the non-U.S. stockholder is a nonresident alien individual who is present in the United States for 183 days or more during the taxable year and certain other conditions are met, in which case the nonresident alien individual will be subject to a 30% tax on the individual's capital gains.

Pursuant to the Foreign Investment in Real Property Tax Act, which is referred to as FIRPTA, distributions to a non-U.S. stockholder that are attributable to gain from our sale or exchange of United States real property interests (whether or not designated as capital gain dividends) will cause the non-U.S. stockholder to be treated as recognizing such gain as income effectively connected with a United States trade or business. Non-U.S. stockholders would generally be taxed at the same rates applicable to U.S. stockholders, subject to a special alternative minimum tax in the case of nonresident alien individuals. We also will be required to withhold and to remit to the IRS 35% (or 15% to the extent provided in Treasury regulations) of any distribution to non-U.S. stockholders that is designated as a capital gain dividend, or, if greater, 35% (or 15% to the extent provided in Treasury regulations) of a distribution to the non-U.S. stockholders that could have been designated as a capital gain dividend. The amount withheld is creditable against the non-U.S. stockholder's United States federal income tax liability. However, any distribution with respect to any class of stock which is regularly traded on an established securities market located in the United States is not subject to FIRPTA, and therefore, not subject to the 35% U.S. withholding tax described above, if the non-U.S. stockholder did not own more than 5% of such class of stock at any time during the one-year period ending on the date of the distribution. Instead, such distributions generally will be treated in the same manner as ordinary dividend distributions.

*Retention of Net Capital Gains.* Although the law is not clear on the matter, it appears that amounts designated by us as retained capital gains in respect of the common stock held by U.S. stockholders generally should be treated with respect to non-U.S. stockholders in the same manner as actual distributions by us of capital gain dividends. Under this approach, a non-U.S. stockholder would be able to offset as a credit against its United States federal income tax liability resulting from its proportionate share of the tax paid by us on such retained capital gains, and to receive from the IRS a refund to the extent the non-U.S. stockholder's proportionate share of such tax paid by us exceeds its actual United States federal income tax liability.

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*Sale of Our Common Stock.* Gain recognized by a non-U.S. stockholder upon the sale or exchange of our common stock generally will not be subject to United States taxation unless such stock constitutes a United States real property interest within the meaning of FIRPTA. Our common stock will not constitute a United States real property interest so long as we are a domestically-controlled qualified investment entity. A domestically-controlled qualified investment entity includes a REIT if at all times during a specified testing period, less than 50% in value of such REIT's stock is held directly or indirectly by non-U.S. stockholders. We believe, but cannot guarantee, that we have been a domestically-controlled qualified investment entity, and because our capital stock is publicly traded, no assurance can be given that we will continue to be a domestically-controlled qualified investment entity.

Notwithstanding the foregoing, gain from the sale or exchange of our common stock not otherwise subject to FIRPTA will be taxable to a non-U.S. stockholder if either (1) the investment in our common stock is treated as effectively connected with the non-U.S. stockholder's United States trade or business or (2) the non-U.S. stockholder is a nonresident alien individual who is present in the United States for 183 days or more during the taxable year and certain other conditions are met. In addition, even if we qualify as a domestically controlled qualified investment entity, upon disposition of our common stock (subject to the 5% exception applicable to regularly traded stock described above), a non-U.S. stockholder may be treated as having gain from the sale or exchange of United States real property interest if the non-U.S. stockholder (1) disposes of our common stock within a 30-day period preceding the ex-dividend date of a distribution, any portion of which, but for the disposition, would have been treated as gain from the sale or exchange of a United States real property interest and (2) acquires, or enters into a contract or option to acquire, other shares of our common stock within the 61-day period beginning with the first day of the 30-day period described in clause (1).

Even if we do not qualify as a domestically-controlled qualified investment entity at the time a non-U.S. stockholder sells or exchanges our common stock, gain arising from such a sale or exchange would not be subject to United States taxation under FIRPTA as a sale of a United States real property interest if:

(1) our common stock is regularly traded, as defined by applicable Treasury regulations, on an established securities market such as the NYSE; and

(2) such non-U.S. stockholder owned, actually and constructively, 5% or less of our common stock throughout the five-year period ending on the date of the sale or exchange.

If gain on the sale or exchange of our common stock were subject to taxation under FIRPTA, the non-U.S. stockholder would be subject to regular United States federal income tax with respect to such gain in the same manner as a taxable U.S. stockholder (subject to any applicable alternative minimum tax and a special alternative minimum

tax in the case of nonresident alien individuals). In addition, if the sale or exchange of our common stock were subject to taxation under FIRPTA, and if shares of our common stock were not regularly traded on an established securities market, the purchaser of such common stock would be required to withhold and remit to the IRS 10% of the purchase price. If amounts withheld on a sale, redemption, repurchase, or exchange of our common stock exceed the holder's substantive tax liability resulting from such disposition, such excess may be refunded or credited against such non-U.S. stockholder's United States federal income tax liability, provided that the required information is provided to the IRS on a timely basis. Amounts withheld on any such sale, exchange or other taxable disposition of our common stock may not satisfy a non-U.S. stockholder's entire tax liability under FIRPTA, and such non-U.S. stockholder remains liable for the timely payment of any remaining tax liability.

*Backup Withholding Tax and Information Reporting.* Generally, we must report annually to the IRS the amount of dividends paid to a non-U.S. stockholder, such holder's name and address, and the amount of tax withheld, if any. A similar report is sent to the non-U.S. stockholder. Pursuant to tax treaties or other agreements, the IRS may make its reports available to tax authorities in the non-U.S. stockholder's country of residence.

Payments of dividends or of proceeds from the disposition of stock made to a non-U.S. stockholder may be subject to information reporting and backup withholding unless such holder establishes an exemption, for example, by properly certifying its non-United States status on an IRS Form W-8BEN or another appropriate version of IRS Form W-8. Notwithstanding the foregoing, backup withholding and information reporting may apply if either we or our paying agent has actual knowledge, or reason to know, that a non-U.S. stockholder is a United States person.



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Backup withholding is not an additional tax. Rather, the United States income tax liability of persons subject to backup withholding will be reduced by the amount of tax withheld. If withholding results in an overpayment of taxes, a refund or credit may be obtained, provided that the required information is furnished to the IRS.

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## UNDERWRITING

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 UBS Securities LLC, Citigroup Global Markets Inc. and Wachovia Capital Markets, LLC are acting as joint book-running managers and representatives, and each of the underwriters has severally agreed to purchase from us, the respective number of shares of common stock set forth after its name below.

<b><u>Underwriter</u></b>	<b>Number of Shares</b>
UBS Securities LLC	2,150,000
Citigroup Global Markets Inc	2,150,000
Wachovia Capital Markets, LLC	1,900,000
Deutsche Bank Securities Inc	600,000
Morgan Stanley & Co. Incorporated	600,000
Raymond James & Associates, Inc	600,000
RBC Capital Markets Corporation	600,000
Banc of America Securities LLC	400,000
J.P. Morgan Securities Inc.	400,000
Merrill Lynch, Pierce, Fenner & Smith Incorporated	300,000
ABN AMRO Incorporated	100,000
BNY Mellon Capital Markets, LLC	100,000
Morgan Keegan & Company, Inc.	100,000
Total	10,000,000

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

The underwriters are offering the shares of common stock, 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 shares of common stock, 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.

We have agreed to indemnify the underwriters against certain liabilities, including liabilities under the Securities Act of 1933, or to contribute to payments the underwriters may be required to make in respect thereof.

Commissions and Discounts

The underwriters have advised us that they propose initially to offer the shares of common stock 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 \$0.8681 per share. After the initial offering, the public offering price and other selling terms may be changed.

The following table shows the per share and total public offering price, underwriting discounts and proceeds, before expenses, to us, assuming either no exercise or full exercise by the underwriters of the over-allotment option described below.

	Per Share	Without Exercise of the Over-allotment option	Total	With Full Exercise of the Over-allotment option
Public offering price	\$ 37.10	\$ 371,000,000	\$	426,650,000
Underwriting discounts	\$ 1.4469	\$ 14,469,000	\$	16,639,350
Proceeds to Kimco, before expenses	\$ 35.6531	\$ 356,531,000	\$	410,010,650

We estimate that the total expenses related to this offering, excluding underwriting discounts, will be approximately \$500,000 and are payable by us.

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### Over-allotment Option

We have granted to the underwriters an option, exercisable within 30 days from the date of this prospectus supplement, to purchase up to 1,500,000 additional shares of common stock at the public offering price less the underwriting discounts 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 shares of common stock 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 shares of common stock as the number of shares to be purchased by it in the above table bears to the 10,000,000 shares of common stock offered by this prospectus supplement. We will be obligated, pursuant to the option, to sell these additional shares of common stock to the underwriters to the extent the option is exercised. If any additional shares of common stock are purchased, the underwriters will offer the additional shares on the same terms as those on which the 10,000,000 shares of common stock are being offered.

### No Sales of Similar Securities

We have agreed with UBS Securities LLC, Citigroup Global Markets Inc. and Wachovia Capital Markets, LLC not to offer, sell, contract to sell, hedge or otherwise dispose of, directly or indirectly, any of our shares of common stock or securities convertible into or exchangeable for shares of common stock during the period from the date of this prospectus supplement continuing through the date 30 days after the date of this prospectus supplement, without the prior written consent of UBS Securities LLC, Citigroup Global Markets Inc. and Wachovia Capital Markets, LLC (subject to certain customary exceptions, including in connection with the acquisition or development of a property and representing less than 3% of the Company's common stock). This consent may be given at any time without public notice.

### New York Stock Exchange Listing

Our common stock is listed on the NYSE under the symbol KIM.

### Price Stabilization and Short Positions

Until the distribution of the shares of common stock is completed, rules of the SEC may limit the ability of the underwriters to bid for and purchase shares of common stock. 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 shares of common stock.

The underwriters may over-allot the shares of common stock 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 shares of common stock 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 shares of common stock as described above. The underwriters may close out any covered short position by either exercising their over-allotment option or purchasing shares of common stock 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 shares of common stock available for purchase in the open market as compared to the price at which they may purchase shares of common stock 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 is more likely to be created if the underwriters are concerned that there may be downward pressure on the price of the shares of common stock in the open market after pricing that could adversely affect investors who purchase in this offering.

Accordingly, to cover these short sales positions or to stabilize the market price of the shares of common stock, the underwriters may bid for, and purchase, shares of common stock 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 shares of common stock may have the effect of raising or maintaining the market price of our shares of common stock or preventing or mitigating a decline in the market price of our shares of common stock. As a result, the price of the shares of common stock 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 have been advised that, on September 9, 2008 prior to purchasing

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the common stock being offered pursuant to this prospectus supplement, one of the underwriters purchased, on behalf of the syndicate, 37,500 shares of our common stock at a price of \$37.10 per share in compliance with Rule 104 of Regulation M.

### 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 expenses. 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 certain of the underwriters are lenders under our U.S. revolving credit facility, and will receive their pro rata share of the amount of our U.S. revolving credit facility to be repaid with the net proceeds of the offering.

### Sales Outside the United States

No action has been taken in any jurisdiction (except in the United States) that would permit a public offering of the shares of common stock, or the possession, circulation or distribution of this prospectus supplement, the accompanying prospectus or any other material relating to us or the shares in any jurisdiction where action for that purpose is required. Accordingly, the shares of common stock may not be offered or sold, directly or indirectly, and none of this prospectus supplement, the accompanying prospectus or any other offering material or advertisements in connection with the shares may be distributed or published, in or from any country or jurisdiction except in compliance with any applicable rules and regulations of any such country or jurisdiction.

Each of the underwriters may arrange to sell shares of common stock offered hereby in certain jurisdictions outside the United States, either directly or through affiliates, where they are permitted to do so. In that regard, Wachovia Capital Markets, LLC may arrange to sell shares in certain jurisdictions through an affiliate, Wachovia Securities International Limited, or WSIL. WSIL is a wholly-owned indirect subsidiary of Wachovia Corporation and an affiliate of Wachovia Capital Markets, LLC. WSIL is a U.K. incorporated investment firm regulated by the Financial Services Authority. Wachovia Securities is the trade name for the corporate and investment banking services of Wachovia Corporation and its affiliates, including Wachovia Capital Markets, LLC and WSIL.

**United Kingdom.** If the securities are to be offered and sold in the United Kingdom, each underwriter that acts in connection with such offer or sale of securities will represent and agree that:

- it has only communicated or caused to be communicated and will only communicate or cause to be communicated an invitation or inducement to engage in investment activity (within the meaning of Section 21 of the Financial Services and Markets Act 2000 (the FSMA )) received by it in connection with the issue or sale of the securities in circumstances in which Section 21(1) of the FSMA does not apply to us; and
- it has complied and will comply with all applicable provisions of the FSMA with respect to anything done by it in relation to the securities in, from or otherwise involving the United Kingdom.

**Switzerland.** Each underwriter or broker-dealer that acts in connection with the offer or sales of the securities will agree that the securities will not be offered, directly or indirectly, to the public in Switzerland and none of this prospectus supplement, the accompanying prospectus or any other offering material relating to the securities constitute

a public offering prospectus as that term is understood pursuant to article 652a or 1156 of the Swiss Federal Code of Obligations.

**France.** Each underwriter or broker-dealer that acts in connection with the sale of the securities will agree that the securities (i) will not be offered or sold, directly or indirectly, to the public (*appel public à l'épargne*) in the Republic of France and (ii) offers and sales of the securities in the Republic of France (a) will only be made to qualified investors (*investisseurs qualifiés*) as defined in, and in accordance with, Articles L 411-1, L 411-2 and D 411-1 to D 411-3 of the French Code monétaire et financier or (b) will be made in any other circumstances which do not require the publication by us of a prospectus pursuant to Article L 411-2 of the Code monétaire et financier and Article 211-2 of the Règlement Général of the Autorité des marchés financiers.

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Investors are informed that none of this prospectus supplement, the accompanying prospectus or any other offering material relating to the securities has been admitted to the clearance procedures of the Autorité des marchés financiers, and that any subsequent direct or indirect circulation to the public of the securities so acquired may not occur without meeting the conditions provided for in Articles L 411-1, L 411-2, L412-2 and L 621-8 to L 621-8-2 of the Code Monétaire et Financier.

In addition, we represent and agree that we have not distributed or caused to be distributed and will not distribute or cause to be distributed in the Republic of France, this prospectus supplement, the accompanying prospectus or any other offering material relating to the securities other than to those investors (if any) to whom offers and sales of the securities in the Republic of France may be made as described above.

**Italy.** The offering of the securities has not been registered pursuant to the Italian securities legislation and, accordingly, each underwriter or broker-dealer that acts in connection with the offer or sales of the securities will represent and agree that it has not offered or sold, and will not offer or sell, any of the securities in the Republic of Italy in a solicitation to the public, and that sales of the securities in the Republic of Italy shall be effected in accordance with all Italian securities, tax and exchange control and other applicable laws and regulations. In any case, the securities cannot be offered or sold to any individuals in the Republic of Italy either in the primary market or the secondary market.

Each underwriter or broker-dealer that acts in connection with the offer or sales of securities will represent and agree that it will not offer, sell or deliver any of the securities or distribute copies of this prospectus supplement, the accompanying prospectus or any other document relating to the securities in the Republic of Italy except:

- to Professional Investors, as defined in Article 31.2 of CONSOB Regulation No. 11522 of 2 July 1998 as amended ( Regulation No. 11522 ), pursuant to Article 30.2 and 100 of Legislative Decree No. 58 of 24 February 1998 as amended ( Decree No. 58 ), or in any other circumstances where an expressed exemption to comply with the solicitation restrictions provided by Decree No. 58 or Regulation No. 11971 of 14 May 1999 as amended applies, provided, however, that any such offer, sale or delivery of the securities or distribution of copies of this prospectus supplement, the accompanying prospectus or any other document relating to the securities in the Republic of Italy must be:
- made by investment firms, banks or financial intermediaries permitted to conduct such activities in the Republic of Italy in accordance with Legislative Decree No. 385 of 1 September 1993 as amended ( Decree No. 385 ), Decree No. 58, CONSOB Regulation No. 11522 and any other applicable laws and regulations;
- in compliance with Article 129 of Decree No. 385 and the implementing instructions of the Bank of Italy, pursuant to which the issue, trading or placement of the securities in Italy is subject to a prior notification to the Bank of Italy, unless an exemption, depending, inter alia, on the aggregate amount and the characteristics of the securities issued or offered in the Republic of Italy, applies; and
- in compliance with any other applicable notification requirement or limitation which may be imposed by CONSOB or the Bank of Italy.

**European Economic Area.** In relation to each Member State of the European Economic Area that has implemented the Prospectus Directive (each, a Relevant Member State ), each underwriter that acts in connection with the sale of these securities will represent and agree that an offer to the public of any securities which are subject of the offering contemplated by this prospectus supplement and the accompanying prospectus may not be made in that Relevant Member State except that an offer to the public in that Relevant Member State of any securities may be made at any time under the following exemptions under the Prospectus Directive, if they have been implemented in that Relevant Member State:



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- to legal entities which are authorized or regulated to operate in the financial markets or, if not so authorized or regulated, whose corporate purpose is solely to invest in securities;
- to any legal entity which has two or more of (1) an average of at least 250 employees during the last financial year; (2) a total balance sheet of more than €43,000,000; and (3) an annual net turnover of more than €50,000,000, as shown in its last annual or consolidated accounts;
- by the underwriters to fewer than 100 natural or legal persons (other than qualified investors as defined in the Prospectus Directive) subject to obtaining the prior consent of the representatives of the underwriters for any such offer; or
- in any other circumstances falling within Article 3(2) of the Prospectus Directive,

provided that no such offer of securities shall result in a requirement for the publication by the issuer or any underwriter of a prospectus pursuant to Article 3 of the Prospectus Directive.

Each person in a Relevant Member State who receives any communication in respect of, or who acquires any securities under, the offers contemplated in this prospectus supplement and the accompanying prospectus will be deemed to have represented, warranted and agreed to and with us and each underwriter that acts in connection with the offer or sale of the securities that:

- it is a qualified investor within the meaning of the law in that Relevant Member State implementing Article 2(1)(e) of the Prospectus Directive; and
- in the case of any securities acquired by it as a financial intermediary, as that term is used in Article 3(2) of the Prospectus Directive, (1) the securities acquired by it in the offer have not been acquired on behalf of, nor have they been acquired with a view to their offer or resale to, persons in any Relevant Member State other than qualified investors, as that term is defined in the Prospectus Directive, or in circumstances in which the prior consent of the underwriter has been given to the offer or resale; or (2) where securities have been acquired by it on behalf of persons in any Relevant Member State other than qualified investors, the offer of those securities to it is not treated under the Prospectus Directive as having been made to such persons.

For the purposes of the provisions in the two immediately preceding paragraphs, the expression an offer of the securities to the public in relation to the securities in any Relevant Member State means the communication in any form and by any means of sufficient information on the terms of the offer and the securities to be offered so as to enable an investor to decide to purchase or subscribe for the securities, as the same may be varied in the Relevant Member State by any measure implementing the Prospectus Directive in that Relevant Member State, and the expression Prospectus Directive means Directive 2003/71/EC and includes any relevant implementing measure in each Relevant Member State.

**Hong Kong.** Our securities may not be offered or sold in Hong Kong, by means of this prospectus supplement, the accompanying prospectus or any document other than to persons whose ordinary business is to buy or sell shares, whether as principal or agent, or in circumstances which do not constitute an offer to the public within the meaning of the Companies Ordinance (Cap.32, Laws of Hong Kong). No advertisement, invitation or document relating to our securities may be issued or may be in the possession of any person other than with respect to the securities which are or are intended to be disposed of only to persons outside Hong Kong or only to professional investors within the meaning of the Securities and Futures Ordinance (Cap. 571, Laws of Hong Kong) and any rules made thereunder.

**Singapore.** This prospectus supplement and the accompanying prospectus have not been registered as a prospectus with the Monetary Authority of Singapore. Accordingly, this prospectus supplement, the accompanying prospectus and any other document or material in connection with the offer or sale, or invitation for subscription or purchase, of our securities may not be circulated or distributed, nor may our securities be offered or sold, or be made the subject of an invitation for subscription or purchase, whether directly or indirectly, to persons in Singapore other than (i) to an institutional investor under Section 274 of the Securities and Futures Act, Chapter 289 of Singapore, or

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SFA, (ii) to a relevant person pursuant to Section 275(1), or any person pursuant to Section 275(1A), and in accordance with the conditions specified in Section 275 of the SFA or (iii) otherwise pursuant to, and in accordance with the conditions of, any other applicable provision of the SFA, in each case subject to compliance with conditions set forth in the SFA.

Where our securities are subscribed or purchased under Section 275 by a relevant person which is: (a) a corporation (which is not an accredited investor as defined in Section 4A of the SFA) the sole business of which is to hold investments and the entire share capital of which is owned by one or more individuals, each of whom is an accredited investor; or (b) a trust (where the trustee is not an accredited investor) whose sole purpose is to hold investments and each beneficiary of the trust is an individual who is an accredited investor; shares of that corporation or the beneficiaries' rights and interest (howsoever described) in that trust shall not be transferable for six months after that corporation or that trust has acquired the shares under Section 275 of the SFA, except: (1) to an institutional investor (for corporations under Section 274 of the SFA) or to a relevant person defined in Section 275(2) of the SFA, or any person pursuant to an offer that is made on terms that such shares of that corporation or such rights and interest in that trust are acquired at a consideration of not less than S\$200,000 (or its equivalent in a foreign currency) for each transaction, whether such amount is to be paid for in cash or by exchange of securities or other assets, and further for corporations, in accordance with the conditions, specified in Section 275 of the SFA; (2) where no consideration is given for the transfer; or (3) where the transfer is by operation of law.

**Japan.** Our securities have not been and will not be registered under the Securities and Exchange Law of Japan (the Securities and Exchange Law) and our securities will not be offered or sold, directly or indirectly, in Japan, or to, or for the benefit of, any resident of Japan (which term as used herein means any person resident in Japan, including any corporation or other entity organized under the laws of Japan), or to others for re-offering or resale, directly or indirectly, in Japan, or to a resident of Japan, except pursuant to an exemption from the registration requirements of, and otherwise in compliance with, the Securities and Exchange Law and any other applicable laws, regulations and ministerial guidelines of Japan.

**Australia.** This prospectus supplement and the accompanying prospectus are not a formal disclosure document and have not been lodged with the Australian Securities and Investments Commission. They do not purport to contain all information that an investor or their professional advisers would expect to find in a product disclosure statement for the purposes of Part 7.9 of the Corporations Act 2001 (Australia) in relation to the securities.

The securities are not being offered in Australia to "retail clients" as defined in section 761G of the Corporations Act 2001 (Australia). This offering is being made in Australia solely to "wholesale clients" as defined in section 761G of the Corporations Act 2001 (Australia) and as such no product disclosure statement in relation to the securities has been prepared.

This prospectus supplement and the accompanying prospectus do not constitute an offer in Australia other than to wholesale clients. By submitting an application for our securities, you represent and warrant to us that you are a

wholesale client. If any recipient is not a wholesale client, no applications for our securities will be accepted from such recipient. Any offer to a recipient in Australia, and any agreement arising from acceptance of such offer, is personal and may only be accepted by the recipient. In addition, by applying for our securities you undertake to us that, for a period of 12 months from the date of issue of the securities, you will not transfer any interest in the securities to any person in Australia other than a wholesale client.

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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 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 by reference to the Annual Report on Form 10-K of Kimco Realty Corporation for the year ended December 31, 2007 and the audited combined statements of revenues and certain expenses included in Kimco Realty Corporation's Current Report on Form 8-K dated March 11, 2008 have been so incorporated in reliance on the reports 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**

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

Warrants to Purchase Common Stock;

Our common stock is traded on the New York Stock Exchange 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.

**Investing in our securities involves risks. See Risk Factors beginning on page 5.**

**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 May 8, 2006.

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We have not authorized any dealer, salesman or other person to give any information or to make any representation other than those contained or incorporated by reference in this prospectus and the accompanying supplement to this prospectus. You must not rely upon any information or representation not contained or incorporated by reference in this prospectus or the accompanying prospectus supplement. This prospectus and the accompanying supplement to this prospectus do not constitute an offer to sell or the solicitation of an offer to buy any securities other than the registered securities to which they relate, nor do this prospectus and the accompanying supplement to this prospectus constitute an offer to sell or the solicitation of an offer to buy securities in any jurisdiction to any person to whom it is unlawful to make such offer or solicitation in such jurisdiction. The information contained in this prospectus and the supplement to this prospectus is accurate as of the dates on their covers. When we deliver this prospectus or a supplement or make a sale pursuant to this prospectus or a supplement, we are not implying that the information is current as of the date of the delivery or sale.

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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., Room 1580, 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., Room 1580, 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, 2005;

Current Reports on Form 8-K filed on January 12, 2006, February 3, 2006, February 13, 2006, March 10, 2006, March 30, 2006, April 25, 2006 and May 8, 2006;

Definitive proxy statement filed on April 12, 2006; and

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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.

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

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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.

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**DISCLOSURE REGARDING FORWARD-LOOKING STATEMENTS**

This prospectus, including the documents that we incorporate by reference, contains certain historical and 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. 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 expressions. Our ability to predict results or the actual effect of future plans or strategies is inherently uncertain. Factors which may cause actual results to differ materially from current expectations include, but are not limited to, (i) changes in general economic and local real estate conditions, (ii) the inability of major tenants to continue paying their rent obligations due to bankruptcy, insolvency or general downturn in their business, (iii) financing risks, such as the inability to obtain equity or debt financing on favorable terms, (iv) changes in governmental laws and regulations (including changes to laws governing the taxation of REITs), (v) the level and volatility of interest rates, (vi) the availability of suitable acquisition opportunities and (vii) increases in operating costs. The forward-looking statements included in this prospectus are made only as of the date of this prospectus and we undertake no obligation to publicly update these forward-looking statements to reflect new information, future events or otherwise. In light of these risks, uncertainties and assumptions, the forward-looking events might or might not occur. Accordingly, there is no assurance that our expectations will be realized.

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**THE COMPANY**

**Overview**

We began operations through a predecessor in 1966, and today are one of the nation's largest publicly-traded owners and operators of neighborhood and community shopping centers (measured by gross leasable area, which we refer to as GLA).

As of April 21, 2006, we owned interests in 1,117 properties, totaling approximately 143.2 million square feet of GLA located in 45 states, Canada, Mexico and Puerto Rico.

Our ownership interests in real estate consist of our consolidated portfolio and in portfolios in which we own an economic interest, such as Kimco Income REIT, the RioCan Venture, Kimco Retail Opportunity Portfolio and other properties or portfolios where we 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 such a manner to qualify as a REIT under the Internal Revenue Code of 1986, as amended (the Code). We are self-administered and self-managed through present management, which has owned and managed neighborhood and community shopping centers for more than 35 years. We have not engaged, nor do we expect to retain, any external 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, legal, construction, data processing, maintenance, 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. Historically, our distributions have exceeded, and we expect that our distributions will continue to exceed, our net 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.

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**RISK FACTORS**

*You should carefully consider the risks and uncertainties described below and in our reports we file with the SEC under Sections 13(a), 13(c), 14 or 15(d) of the Securities Exchange Act that are incorporated by reference herein, as well as all of the information set forth in this prospectus and any accompanying prospectus supplement before investing in our securities.*

***Loss of our tax status as a real estate investment trust would have significant adverse consequences to us and the value of our securities.***

We elected to be taxed as a REIT for federal income tax purposes under the Code commencing with our taxable year beginning January 1, 1992. We currently intend to operate so as to qualify as a REIT and believe that our current organization and method of operation comply with the rules and regulations promulgated under the Code to enable us to qualify as a REIT.

Qualification as a REIT involves the application of highly technical and complex Code provisions for which there are only limited judicial and administrative interpretations. The determination of various factual matters and circumstances not entirely within our control may affect our ability to qualify as a REIT. For example, in order to qualify as a REIT, at least 95% of our gross income in any year must be derived from qualifying sources, and we must satisfy a number of requirements regarding the composition of our assets. Also, we must make distributions to stockholders aggregating annually at least 90% of our net taxable income, excluding capital gains. In addition, new legislation, regulations, administrative interpretations or court decisions could significantly change the tax laws with respect to qualification as a REIT, the federal income tax consequences of such qualification or the desirability of an investment in a REIT relative to other investments. Although we believe that we are organized and have operated in such a manner, we can give no assurance that we have qualified or will continue to qualify as a REIT for tax purposes.

If we lose our REIT status, we will face serious tax consequences that will substantially reduce the funds available to make payment of principal and interest on the debt securities we issue and to pay dividends to our stockholders. If we fail to qualify as a REIT:

we would not be allowed a deduction for distributions to stockholders in computing our taxable income and would be subject to federal income tax at regular corporate rates;

we also could be subject to the federal alternative minimum tax and possibly increased state and local taxes; and

unless we are entitled to relief under statutory provisions, we could not elect to be subject to tax as a REIT for four taxable years following the year during which we were disqualified.

In addition, if we fail to qualify as a REIT, we would not be required to make distributions to stockholders. As a result of all these factors, our failure to qualify as a REIT also could impair our ability to expand our business and raise capital, and would adversely affect the value of our securities.

***Adverse market conditions and competition may impede our ability to generate sufficient income to pay expenses and maintain properties.***

The economic performance and value of our properties are subject to all of the risks associated with owning and operating real estate including:

changes in the national, regional and local economic climate;

local conditions, including an oversupply of space in properties like those that we own, or a reduction in demand for properties like those that we own;

the attractiveness of our properties to tenants;



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the ability of tenants to pay rent;

competition from other available properties;

changes in market rental rates;

the need to periodically pay for costs to repair, renovate and re-let space;

changes in operating costs, including costs for maintenance, insurance and real estate taxes;

the fact that the expenses of owning and operating properties are not necessarily reduced when circumstances such as market factors and competition cause a reduction in income from the properties; and

changes in laws and governmental regulations, including those governing usage, zoning, the environment and taxes.

***Downturns in the retailing industry likely will have a direct impact on our performance.***

Our properties consist primarily of community and neighborhood shopping centers and other retail properties. Our performance therefore is linked to economic conditions in the market for retail space generally. The market for retail space has been or could be adversely affected by weakness in the national, regional and local economies, the adverse financial condition of some large retailing companies, the ongoing consolidation in the retail sector, the excess amount of retail space in a number of markets, and increasing consumer purchases through catalogues and the internet. To the extent that any of these conditions occur, they are likely to impact market rents for retail space.

***Failure by any anchor tenant with leases in multiple locations to make rental payments to us, because of a deterioration of its financial condition or otherwise, could impact our performance.***

Our performance depends on our ability to collect rent from tenants. At any time, our tenants may experience a downturn in their business that may significantly weaken their financial condition. As a result, our tenants may delay a number of lease commencements, decline to extend or renew leases upon expiration, fail to make rental payments when due, close stores or declare bankruptcy. Any of these actions could result in the termination of the tenant's leases and the loss of rental income attributable to the terminated leases. In addition, lease terminations by an anchor tenant or a failure by that anchor tenant to occupy the premises could result in lease terminations or reductions in rent by other tenants in the same shopping centers under the terms of some leases. In that event, we may be unable to re-lease the vacated space at attractive rents or at all. The occurrence of any of the situations described above, particularly if it involves a substantial tenant with leases in multiple locations, could impact our performance.

***We may be unable to collect balances due from any tenants in bankruptcy.***

We cannot assure you that any tenant that files for bankruptcy protection will continue to pay us rent. A bankruptcy filing by or relating to one of our tenants or a lease guarantor would bar all efforts by us to collect pre-bankruptcy debts from the tenant or the lease guarantor, or their property, unless we receive an order permitting us to do so from the bankruptcy court. A tenant or lease guarantor bankruptcy could delay our efforts to collect past due balances under the relevant leases, and could ultimately preclude collection of these sums. If a lease is assumed by the tenant in bankruptcy, all pre-bankruptcy balances due under the lease must be paid to us in full. However, if a lease is rejected by a tenant in bankruptcy, we would have only a general unsecured claim for damages. Any unsecured claim we hold may be paid only to the extent that funds are available and only in the same percentage as is paid to all other holders of unsecured claims, and there are restrictions under bankruptcy laws which limit the amount of the claim we can

make if a lease is rejected. As a result, it is likely that we will recover substantially less than the full value of any unsecured claims we hold.

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***Real estate property investments are illiquid, and therefore we may not be able to dispose of properties when appropriate or on favorable terms.***

Real estate property investments generally cannot be disposed of quickly. In addition, the federal tax code imposes a penalty tax on a REIT's disposition of certain properties that are not applicable to other types of real estate companies. Therefore, we may not be able to vary our portfolio in response to economic or other conditions promptly or on favorable terms.

***We do not have exclusive control over our joint venture investments, so we are unable to ensure that our objectives will be pursued.***

We have invested in some cases as a co-venturer or partner in properties, instead of owning directly. These investments involve risks not present in a wholly owned ownership structure. In these investments, we do not have exclusive control over the development, financing, leasing, management and other aspects of these investments. As a result, the co-venturer or partner might have interests or goals that are inconsistent with our interests or goals, take action contrary to our interests or otherwise impede our objectives. The coventurer or partner also might become insolvent or bankrupt.

***Our financial covenants may restrict our operating and acquisition activities.***

Our revolving credit facility and the indenture under which our senior unsecured debt is issued contain certain financial and operating covenants, including, among other things, certain coverage ratios, as well as limitations on our ability to incur secured and unsecured debt, make dividend payments, sell all or substantially all of our assets and engage in mergers and consolidations and certain acquisitions. These covenants may restrict our ability to pursue certain business initiatives or certain acquisition transactions. In addition, failure to meet any of the financial covenants could cause an event of default under and/or accelerate some or all of our indebtedness, which would have a material adverse effect on us.

***We may be subject to environmental regulations.***

Under various federal, state, and local laws, ordinances and regulations, we may be considered an owner or operator of real property and may be responsible for paying for the disposal or treatment of hazardous or toxic substances released on or in our property or disposed of by us, as well as certain other potential costs which could relate to hazardous or toxic substances (including governmental fines and injuries to persons and property). This liability may be imposed whether or not we knew about, or were responsible for, the presence of hazardous or toxic substances.

***Our ability to lease or develop properties is subject to competitive pressures.***

We face competition in the acquisition, development, operation and sale of real property from individuals and businesses who own real estate, fiduciary accounts and plans and other entities engaged in real estate investment. Some of these competitors have greater financial resources than we do. This results in competition for the acquisition of properties, for tenants who lease or consider leasing space in our existing and subsequently acquired properties and for other real estate investment opportunities.

***Changes in market conditions could adversely affect the market price of our publicly traded securities.***

As with other publicly traded securities, the market price of our publicly traded securities depends on various market conditions, which may change from time to time. Among the market conditions that may affect the market price of our publicly traded securities are the following:

the extent of institutional investor interest in the Company;

the reputation of REITs generally and the reputation of REITs with portfolios similar to ours;

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the attractiveness of the securities of REITs in comparison to securities issued by other entities (including securities issued by other real estate companies);

our financial condition and performance;

the market's perception of our growth potential and potential future cash dividends;

an increase in market interest rates, which may lead prospective investors to demand a higher distribution rate in relation to the price paid for our shares; and

general economic and financial market conditions.

***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 class or series 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.

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**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, and the repayment or refinancing of indebtedness outstanding at that 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, 2005 and for properties classified as held for sale as of December 31, 2005, in accordance with SFAS No. 144, *Accounting for the Impairment or Disposal of Long-Lived Assets*.

Our ratios of earnings to fixed charges for the years ended December 31, 2005, 2004, 2003, 2002 and 2001 were 3.3, 3.4, 3.2, 3.4 and 3.3, respectively. Our ratios of earnings to combined fixed charges and preferred stock dividend requirements for the years ended December 31, 2005, 2004, 2003, 2002 and 2001 were 3.0, 3.1, 2.8, 2.8 and 2.6, 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 minority 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, and as further amended or supplemented from time to time, between us and The Bank of New York (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

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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;





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(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 **Certain Covenants** **Limitations on Incurrence of Debt** and 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

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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. Therefore, our rights and those of our creditors, including holders of debt securities, to participate in the assets of those subsidiaries upon the liquidation or recapitalization of those subsidiaries or otherwise will be subject to the prior claims of those subsidiaries' 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

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(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**

*Limitations on Incurrence of Debt.* We will not, and will not permit any of our subsidiaries to, incur any Debt (as defined below) if, immediately after giving effect to the incurrence of that additional Debt, the aggregate principal amount of all outstanding Debt of ours and of our subsidiaries on a consolidated basis determined in accordance with generally accepted accounting principles is greater than 65% of the sum of:

(1) our Undepreciated Real Estate Assets (as defined below) as of the end of the calendar quarter covered in our annual report on Form 10-K or quarterly report on Form 10-Q, as the case may be, most recently filed with the SEC (or, if that filing is not permitted under the Securities Exchange Act, with the trustee) prior to the incurrence of that additional Debt; and

(2) the purchase price of any real estate assets acquired by us or any of our subsidiaries since the end of that calendar quarter, including those obtained in connection with the incurrence of that additional Debt (Section 1004).

In addition to the foregoing limitation on the incurrence of Debt, we will not, and will not permit any of our subsidiaries to, incur any Debt secured by any mortgage, lien, charge, pledge, encumbrance or security interest of any kind upon any of our property or the property of any of our subsidiaries if, immediately after giving effect to the incurrence of that additional Debt, the aggregate principal amount of all of our outstanding Debt and the outstanding Debt of our subsidiaries on a consolidated basis which is secured by any mortgage, lien, charge, pledge, encumbrance or security interest on our property or the property of any of our subsidiaries is greater than 40% of the sum of:

(1) our Undepreciated Real Estate Assets as of the end of the calendar quarter covered in our annual report on Form 10-K or quarterly report on Form 10-Q, as the case may be, most recently filed with the SEC (or, if such filing is not permitted under the Securities Exchange Act, with the trustee) prior to the incurrence of that additional Debt; and

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(2) the purchase price of any real estate assets acquired by us or any of our subsidiaries since the end of that calendar quarter, including those obtained in connection with the incurrence of that additional Debt (Section 1004).

In addition to the foregoing limitations on the incurrence of Debt, we will not, and will not permit any of our subsidiaries to, incur any Debt if Consolidated Income Available for Debt Service (as defined below) for any 12 consecutive calendar months within the 15 calendar months immediately preceding the date on which that additional Debt is to be incurred shall have been less than 1.5 times the Maximum Annual Service Charge (as defined below) on our Debt and the Debt of all of our subsidiaries to be outstanding immediately after the incurring of that additional Debt (Section 1004).

*Restrictions on Dividends and Other Distributions.* We will not, in respect of any shares of any class of our stock:

- (1) declare or pay any dividends (other than dividends payable in the form of our stock) on our stock;
- (2) apply any of our property or assets to the purchase, redemption or other acquisition or retirement of our stock;
- (3) set apart any sum for the purchase, redemption or other acquisition or retirement of our stock; or
- (4) make any other distribution, by reduction of capital or otherwise if, immediately after that declaration or other action referred to above, the aggregate of all those declarations and other actions since the date on which the indenture was originally executed shall exceed the sum of:
  - (a) Funds from Operations (as defined below) from June 30, 1993 until the end of the calendar quarter covered in our annual report on Form 10-K or quarterly report on Form 10-Q, as the case may be, most recently filed with the SEC (or, if that filing is not permitted under the Securities Exchange Act, with the trustee) prior to that declaration or other action; and
  - (b) \$26,000,000; provided, however, that the foregoing limitation shall not apply to any declaration or other action referred to above which is necessary to maintain our status as a REIT under the Code if the aggregate principal amount of all our outstanding Debt and the outstanding Debt of our subsidiaries at that time is less than 65% of our Undepreciated Real Estate Assets as of the end of the calendar quarter covered in our annual report on Form 10-K or quarterly report on Form 10-Q, as the case may be, most recently filed with the SEC (or, if that filing is not permitted under the Securities Exchange Act, with the trustee) prior to that declaration or other action (Section 1005).

Notwithstanding the foregoing, we will not be prohibited from making the payment of any dividend within 30 days of the declaration of that dividend if at the date of declaration that payment would have complied with the provisions of the immediately preceding paragraph (Section 1005).

*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 our judgment may be necessary so that the





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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).

*Maintenance of Unencumbered Total Asset Value.* We will at all times maintain an Unencumbered Total Asset Value in an amount of not less than one hundred percent (100%) of the aggregate principal amount of all our outstanding Debt and the outstanding Debt of our subsidiaries that is unsecured (Section 1014).

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**Definitions Used for the Debt Securities**

As used in the Indenture and the descriptions thereof herein,

*Consolidated Income Available for Debt Service* for any period means our Consolidated Net Income (as defined below) and the Consolidated Net Income of our subsidiaries plus amounts which have been deducted for:

- (1) interest on our Debt and interest on the Debt of our subsidiaries,
- (2) provision for our taxes and the taxes of our subsidiaries based on income,
- (3) amortization of debt discount,
- (4) property depreciation and amortization, and
- (5) the effect of any noncash charge resulting from a change in accounting principles in determining Consolidated Net Income for that period.

*Consolidated Net Income* for any period means the amount of our consolidated net income (or loss) and the consolidated net income (or loss) of our subsidiaries for that period determined on a consolidated basis in accordance with generally accepted accounting principles.

*Debt* of ours or any of our subsidiaries means any indebtedness of ours or any of our subsidiaries, whether or not contingent, in respect of:

- (1) borrowed money or evidenced by bonds, notes, debentures or similar instruments,
- (2) indebtedness secured by any mortgage, pledge, lien, charge, encumbrance or any security interest existing on property owned by us or any of our subsidiaries,
- (3) letters of credit or amounts representing the balance deferred and unpaid of the purchase price of any property except any balance that constitutes an accrued expense or trade payable, or
- (4) any lease of property by us or any of our subsidiaries as lessee which is reflected on our consolidated balance sheet as a capitalized lease in accordance with generally accepted accounting principles,

in the case of items of indebtedness under (1) through (3) above to the extent that those items (other than letters of credit) would appear as a liability on our consolidated balance sheet in accordance with generally accepted accounting principles, and also includes, to the extent not otherwise included, any obligation by us or any of our subsidiaries to be liable for, or to pay, as obligor, guarantor or otherwise (other than for purposes of collection in the ordinary course of business), indebtedness of another person (other than us or any of our subsidiaries) (it being understood that Debt shall be deemed to be incurred by us or any of our subsidiaries whenever we or that subsidiary shall create, assume, guarantee or otherwise become liable in respect thereof).

*Funds from Operations* for any period means our Consolidated Net Income and the Consolidated Net Income of our subsidiaries for that period without giving effect to depreciation and amortization, gains or losses from extraordinary items, gains or losses on sales of real estate, gains or losses on investments in marketable securities and any provision/benefit for income taxes for that period, plus funds from operations of unconsolidated joint ventures, all determined on a consistent basis for that period.

*Maximum Annual Service Charge* as of any date means the maximum amount which may become payable in any period of 12 consecutive calendar months from that date for interest on, and required amortization of, Debt. The amount payable for amortization shall include the amount of any sinking fund or other analogous fund

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for the retirement of Debt and the amount payable on account of principal on any Debt which matures serially other than at the final maturity date of that Debt.

*Total Assets* as of any date means the sum of (1) our Undepreciated Real Estate Assets and (2) all our other assets determined in accordance with generally accepted accounting principles (but excluding goodwill and amortized debt costs).

*Undepreciated Real Estate Assets* as of any date means the amount of our real estate assets and the real estate assets of our subsidiaries on that date, before depreciation and amortization determined on a consolidated basis in accordance with generally accepted accounting principles.

*Unencumbered Total Asset Value* as of any date means the sum of our Total Assets which are unencumbered by any mortgage, lien, charge, pledge or security interest that secures the payment of any obligations under any Debt.

## **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

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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).



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**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: