KIMCO REALTY CORP
Form 424B5
September 18, 2009

Pursuant to Rule 424(b)(5)

File No. 333-158762

Prospectus Supplement

September 17, 2009

(To Prospectus dated April 24, 2009)

$300,000,000

6.875% Notes due 2019

Interest on the notes will be payable semi-annually in arrears on April 1 and October 1 of each year, beginning on April 1, 2010. The notes will mature on October 1, 2019. We may redeem some or all of the notes at any time or from time to time before maturity at the make-whole price described under the caption Description of the Notes Optional Redemption.

The notes will be unsecured obligations and will rank equally with all of our other unsecured and unsubordinated indebtedness from time to time outstanding.

Investing in the notes involves risks. See Supplemental Risk Factors beginning on page S-4 of this prospectus supplement, Risk Factors beginning on page 3 of the accompanying prospectus and Risk Factors beginning on page 11 of our Annual Report on Form 10-K for the year ended December 31, 2008 as supplemented by Risk Factors beginning on page 32 and page 35, respectively, of our Quarterly Reports on Form 10-Q for the quarters ended March 31, 2009 and June 30, 2009, incorporated by reference in this prospectus supplement and the accompanying prospectus.

	Per Note	Total
Public offering price(1)	99.840%	$ 299,520,000
Underwriting discounts	0.65%	$ 1,950,000
Proceeds to Kimco (before expenses)	99.190%	$ 297,570,000

(1) Plus accrued interest, if any, from September 24, 2009, if settlement occurs after that date.

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

The notes will be ready for delivery in book-entry only form through the facilities of The Depository Trust Company, Clearstream Banking, société anonyme and Euroclear Bank S.A./N.V, on or about September 24, 2009.

Joint Book-Running Managers

J.P. Morgan **Morgan Stanley** **Wells Fargo Securities**

Co-Managers

Barclays Capital **RBC Capital Markets** **RBS** **Scotia Capital**

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ABOUT THIS PROSPECTUS SUPPLEMENT

You should carefully read this prospectus supplement along with the accompanying prospectus, as well as the information incorporated by reference herein and therein, before you invest in our notes. 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 notes. The accompanying prospectus contains information about our securities generally, some of which does not apply to the notes 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 before 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, or 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 notes 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, liquidity, results of operations and prospects may have changed since those dates.

As used in this prospectus supplement and the accompanying prospectus, all references to we, us, our, Kimco, and Company mean Kimco Realty Corporation, its 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 notes, Kimco Realty Corporation.

WHERE YOU CAN FIND MORE INFORMATION

We file annual, quarterly and current reports, proxy statements and other information with the SEC. You may read and copy any materials we file with the SEC at its public reference room at 100 F Street, N.E., Washington, D.C. 20549. You may also obtain copies of this information by mail from the public reference room of the SEC, 100 F Street, N.E., Washington, D.C. 20549, at prescribed rates. Please call the SEC at 1-800-SEC-0330 for further information on the operation of the SEC s 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, or 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 the accompanying prospectus and information that we file later with the SEC prior to the termination of the offering of the notes will automatically update and supersede the information contained in this prospectus supplement and the accompanying prospectus. 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, or the Exchange Act:

Annual Report on Form 10-K for the fiscal year ended December 31, 2008;

Quarterly Reports on Form 10-Q for the fiscal quarters ended March 31, 2009 and June 30, 2009;

Definitive Proxy Statement with respect to the 2009 Annual Meeting of Stockholders filed on March 27, 2009; and

Current Report on Form 8-K filed on January 7, 2009, Item 1.01 of the Current Report on Form 8-K filed on April 7, 2009, the Current Report on Form 8-K filed on April 22, 2009 and the Current Report on Form 8-K filed on September 17, 2009.

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 notes. These documents include periodic reports, such as Annual Reports on Form 10-K, Quarterly Reports on Form 10-Q and Current Reports on Form 8-K, as well as Proxy Statements. Any statement contained in this prospectus supplement or the accompanying prospectus or in a document incorporated or deemed to be incorporated by reference herein or therein shall be deemed to be modified or superseded to the extent that a statement contained in this prospectus supplement, the accompanying prospectus or any other subsequently filed document which also is or is deemed to be incorporated by reference in this prospectus supplement and the accompanying prospectus modifies or supersedes such statement. Any such statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this prospectus supplement or the accompanying prospectus.

Documents incorporated by reference in this prospectus supplement and the accompanying prospectus are available from us without charge, excluding all exhibits unless we have specifically incorporated by reference the exhibit in this prospectus supplement and the accompanying prospectus, 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

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, or 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 n 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 Supplemental Risk Factors in this prospectus supplement and Risk Factors in the accompanying prospectus and in our Annual Report on Form 10-K for the year ended December 31, 2008 and our Quarterly Reports on Form 10-Q for the quarters ended March 31, 2009 and June 30, 2009 incorporated by reference in this prospectus supplement and the accompanying prospectus, as well as the following factors: (i) general adverse economic and local real estate conditions, including the current economic recession, (ii) the inability of major tenants to continue paying their rent obligations due to bankruptcy, insolvency or a general downturn in their business, (iii) financing risks, such as the inability to obtain equity, debt, or other sources of financing or refinancing on favorable terms, (iv) the Company s ability to raise capital by selling its assets, (v) changes in governmental laws and regulations, (vi) the level and volatility of interest rates and foreign currency exchange rates, (vii) the availability of suitable acquisition opportunities, (viii) valuation of joint venture investments, (ix) valuation of marketable securities and other investments, (x) increases in operating costs, (xi) changes in the dividend policy for our common stock, (xii) the reduction in our income in the event of multiple lease terminations by tenants or a failure by multiple tenants to occupy their premises in a shopping center, and (xiii) impairment charges. Accordingly, there is no assurance that the Company s expectations will be realized.

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

SUMMARY

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

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, 2009, we had interests in 1,941 properties, including 1,466 retail shopping center properties and 475 non-retail properties, totaling approximately 180.0 million square feet of gross leasable area (GLA) located in 45 states, Canada, Mexico, Puerto Rico and South America. 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 program, 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 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.

The Offering

The offering terms are summarized below solely for your convenience. This summary is not a complete description of the notes. You should read the full text and more specific details contained elsewhere in this prospectus supplement and the accompanying prospectus. For a more detailed description of the notes, see the discussion under the caption Description of the Notes beginning on page S-7 in this prospectus supplement and Description of Debt Securities in the accompanying prospectus.

Issuer	Kimco Realty Corporation, a Maryland corporation.
Securities Offered	$300,000,000 aggregate principal amount of 6.875% notes due 2019
Ranking	The notes will rank equally with all of our other unsecured and unsubordinated indebtedness from time to time outstanding. The notes will not be obligations of or guaranteed by any of our subsidiaries or any of our joint ventures. As a result, the notes will be structurally subordinated to all debt and other liabilities (including trade payables) and preferred equity of our subsidiaries and our joint ventures to the extent of the assets of those subsidiaries or of those joint ventures, which means that creditors (including trade creditors) and third-party preferred equity holders of our subsidiaries and of our joint ventures will be paid from their assets before holders of the notes would have any claims to those assets. In the event of a bankruptcy, liquidation or dissolution of a subsidiary or of a joint venture, that subsidiary or joint venture may not have sufficient assets remaining to make payments to us as a shareholder or other equity holder or otherwise after payment of its liabilities and third-party preferred equity. As of June 30, 2009, our subsidiaries had outstanding $2.0 billion of total liabilities, including $1.7 billion of debt (excluding, in each case, intercompany liabilities). Our subsidiaries currently have no preferred equity outstanding.
Interest Rate	6.875% per annum
Maturity	October 1, 2019
Interest Payment Dates	Interest on the notes will be payable semi-annually in arrears on April 1 and October 1 of each year, beginning on April 1, 2010.
Optional Redemption	We may redeem all or a portion of the notes at our option at any time or from time to time at the make-whole redemption price equal to the greater of (1) 100% of the aggregate principal amount of the notes being redeemed, plus accrued and unpaid interest to, but excluding, the redemption date, and (2) the sum, as determined by an independent investment banker, of the remaining scheduled payments of principal and interest in respect of the notes being redeemed (exclusive of any interest accrued to, but excluding, the redemption date) discounted to the redemption date on a semi-annual basis at the treasury rate plus 50 basis points, plus accrued and unpaid interest to, but excluding, the redemption date. See Description of the Notes Optional Redemption in this prospectus supplement.
Covenants	

	The indenture governing the notes will include restrictions on mergers, consolidations and transfers of all or substantially all of our assets, as well as restrictions on our and our subsidiaries ability to incur additional indebtedness, incur liens on our property, pay dividends or make other distributions.
Denominations	The notes will be issued in minimum denominations of $2,000 and integral multiples of $1,000 in excess thereof.

Form of Notes	The notes will be issued as fully registered notes in the form of one or more global notes deposited with The Depository Trust Company (DTC) or its nominee. Investors may elect to hold interests in the global notes through the facilities of any of the DTC, Clearstream Banking, société anonyme or Euroclear Bank S.A./N.V.
Use of Proceeds	We estimate that the net proceeds from this offering will be approximately $297.3 million, after deducting the underwriting discounts and other offering expenses payable by us. We expect to use the net proceeds received from this offering to repay $220.0 million of existing indebtedness. The remaining proceeds will be used for general corporate purposes which may include the repayment of other indebtedness as such indebtedness comes due, is prepayable or is otherwise negotiated with the lenders. See Use of Proceeds on page S-6 of this prospectus supplement.
Trustee	The Bank of New York Mellon.

Risk Factors

Investing in the notes involves risks. See Supplemental Risk Factors beginning on page S-4 of this prospectus supplement, Risk Factors beginning on page 3 of the accompanying prospectus and Risk Factors beginning on page 11 of our Annual Report on Form 10-K for the year ended December 31, 2008 as supplemented by Risk Factors beginning on page 32 and on page 35, respectively, of our Quarterly Reports on Form 10-Q for the quarters ended March 31, 2009 and June 30, 2009, incorporated by reference in this prospectus supplement and the accompanying prospectus.

SUPPLEMENTAL RISK FACTORS

You should carefully consider the supplemental risks described below in addition to the risks described under Risk Factors in the accompanying prospectus, in our Annual Report on Form 10-K for the year ended December 31, 2008 and as supplemented by our Quarterly Reports on Form 10-Q for the quarters ended March 31, 2009 and June 30, 2009, each of which is incorporated by reference in this prospectus supplement and the accompanying prospectus, as well as the other information contained in or incorporated by reference in this prospectus supplement and the accompanying prospectus, before investing in the notes. You could lose part or all of your investment.

A liquid trading market for the notes may not develop or be maintained.

The notes constitute a new issue of securities for which there is no existing market. We do not intend to apply for listing of the notes on any securities exchange or for quotation of the notes in any automated dealer quotation system. We cannot provide you with any assurance regarding whether a liquid trading market for the notes will develop or be maintained, the ability of holders of the notes to sell their notes or the price at which holders may be able to sell their notes. The underwriters have advised us that they currently intend to make a market in the notes. However, the underwriters are not obligated to do so, and any market-making with respect to the notes may be discontinued at any time without notice. If a liquid trading market does not develop or is not maintained, you may be unable to resell your notes at a price that exceeds the price you paid or at all.

Changes in our credit ratings or the debt markets could adversely affect the market value of the notes.

The market value for the notes depends on many factors, including:

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our credit ratings with major credit rating agencies;

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the prevailing interest rates being paid by or the market price for similar securities issued by REITs;

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general economic and financial market conditions;

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our issuance of debt or preferred stock; and

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our financial condition, liquidity, leverage, financial performance and prospects.

The condition of the financial markets and prevailing interest rates have fluctuated in the past and are likely to fluctuate in the future. Such fluctuations could have an adverse effect on the market value of the notes.

In addition, credit rating agencies continually review their ratings for the companies that they follow, including us. The credit rating agencies also evaluate our industry as a whole and may change their credit rating for us based on their overall view of our industry. A negative change in our rating could have an adverse effect on the market value of the notes.

Our financial covenants may restrict our operating and acquisition activities.

The supplemental indenture under which the notes will be issued contains certain financial and operating covenants, including, among other things, certain coverage ratios, as well as limitations on our and our subsidiaries ability to incur secured and unsecured debt, make dividend payments, sell all or substantially all of our assets, engage in mergers and consolidations and certain acquisitions and to take certain other actions. These covenants may restrict our ability to pursue certain business initiatives or certain acquisition transactions that would otherwise be in our best interest. 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. Furthermore, you will not be protected in the event of a highly leveraged transaction, reorganization, change of control, restructuring, merger or similar transaction, any of which could adversely affect you, except to the extent described under Description of the Notes Merger, Consolidation or Sale in this prospectus supplement.

The notes will not be guaranteed by any of our subsidiaries and will be structurally subordinated to the debt and other liabilities (including trade payables) and third-party preferred equity of our subsidiaries or of our joint ventures to the extent of the assets of those subsidiaries or of those joint ventures, which means that creditors (including trade creditors) and third-party preferred equity holders of our subsidiaries or of our joint ventures will be paid from their assets before holders of the notes would have any claims to those assets.

We conduct the substantial majority of our operations through subsidiaries and joint ventures that own a significant percentage of our consolidated assets. Consequently, our cash flow and our ability to meet our debt service obligations depend in large part upon the cash flow of our subsidiaries and of our joint ventures and the payment of funds by our subsidiaries and by our joint ventures to us in the form of loans, dividends or otherwise. Our subsidiaries are and our joint ventures not obligated to make funds available to us for payment of our debt securities or otherwise. In addition, their ability to make any payments will depend on their earnings and cash flow, the terms of their financing arrangements, business and tax considerations and legal restrictions.

The notes will be obligations exclusively of Kimco Realty Corporation and will not be guaranteed by any of our subsidiaries or our joint ventures. As a result, the notes will be structurally subordinated to all debt and other liabilities (including trade payables) and third-party preferred equity of our subsidiaries and of our joint ventures to the extent of the assets of those subsidiaries or of those joint ventures, which means that creditors (including trade creditors) and third-party preferred equity holders of our subsidiaries or of our joint ventures will be paid from their assets before holders of the notes would have any claims to those assets. In the event of a bankruptcy, liquidation or dissolution of a subsidiary or of a joint venture, that subsidiary or joint venture may not have sufficient assets remaining to make payments to us as a shareholder or other equity holder or otherwise after payment of its liabilities and third-party preferred equity. As of June 30, 2009, our subsidiaries had outstanding $2.0 billion of total liabilities, including $1.7 billion of debt (excluding, in each case, intercompany liabilities). Our subsidiaries currently have no preferred equity outstanding.

USE OF PROCEEDS

We estimate that the net proceeds from this offering will be approximately $297.3 million, after deducting the underwriting discounts and other offering expenses payable by us. We expect to use the net proceeds received from this offering to repay $220.0 million of existing term loans. The term loans we are repaying were originally incurred in April 2009, are unsecured and at September 15, 2009, bore floating interest at a rate of 6.65% per annum (calculated as LIBOR (subject to a 2% LIBOR floor) plus a spread of 465 basis points). The term loans have a scheduled maturity of April 2011. The remaining proceeds will be used for general corporate purposes which may include the repayment of other indebtedness as such indebtedness comes due, is prepayable or is otherwise negotiated with the lenders. Affiliates of certain of the underwriters are lenders under the term loans and will receive their pro rata share of repayments thereunder from the net proceeds of this offering. See Underwriting.

DESCRIPTION OF THE NOTES

The notes will be issued as a series of debt securities under an Indenture, dated as of September 1, 1993, as amended, between us and The Bank of New York Mellon (as successor to IBJ Schroder Bank & Trust Company), as trustee. In this prospectus supplement we refer to that Indenture, as amended, as the Indenture. The Indenture is subject to, and governed by, the Trust Indenture Act of 1939, as amended. The following description of the particular terms of the notes offered hereby supplements and, to the extent inconsistent, replaces the description of the general terms and provisions of debt securities set forth in the accompanying prospectus under the caption Description of Debt Securities, to which reference is hereby made. The following description does not purport to be complete and is qualified in its entirety by reference to the actual provisions of the notes and the Indenture. Capitalized terms not defined in this prospectus supplement will have the meanings given to them in the accompanying prospectus, the notes or the Indenture, as the case may be. The term debt securities, as used in this prospectus supplement, refers to all of our debt securities, including the notes, issued and issuable from time to time under the Indenture.

General

The notes will be limited initially to $300,000,000 million aggregate principal amount. We may in the future, without the consent of holders, issue additional notes on the same terms and conditions and with the same CUSIP number as the notes being offered hereby, except for the issue date, public offering price and the first payment of interest following the issue date of such further notes. The notes and any additional notes subsequently issued under the Indenture would be treated as a single series for all purposes under the Indenture.

The notes will bear interest at 6.875% per year and will mature on October 1, 2019, unless redeemed or repurchased in whole as described below. We will pay interest on the notes in U.S. dollars semi-annually in arrears on April 1 and October 1 of each year, commencing April 1, 2010, to the holders of the notes on the preceding March 15 or September 15, as the case may be. We will also pay the principal of, and premium, if any, and (to the extent applicable) interest on, each note payable at maturity or earlier redemption.

The notes will be issued in minimum denominations of $2,000 and integral multiples of $1,000 in excess thereof.

The notes will not be entitled to the benefit of, or be subject to, any sinking fund.

Ranking

The notes will be our direct, unsecured obligations and will rank equally with all of our existing and future unsecured and unsubordinated obligations. However, the notes are effectively subordinated to our mortgages and other secured indebtedness to the extent of our assets securing the same and to the liabilities of our subsidiaries to the extent of the assets of those subsidiaries.

The notes will not be guaranteed by any of our subsidiaries or of our joint ventures. As a result, the notes will be structurally subordinated to all debt and other liabilities (including trade payables) and third-party preferred equity of our subsidiaries and of our joint ventures to the extent of the assets of those subsidiaries or of those joint ventures, which means that creditors (including trade creditors) and third-party preferred equity holders of our subsidiaries or of our joint ventures will be paid from their assets before holders of the notes would have any claims to those assets. In the event of a bankruptcy, liquidation or dissolution of a subsidiary or of a joint venture, that subsidiary or joint venture may not have sufficient assets remaining to make payments to us as a shareholder or other equity holder or otherwise after payment of its liabilities and third-party preferred equity. As of June 30, 2009, our subsidiaries had outstanding $2.0 billion of total liabilities, including $1.7 billion of debt (excluding, in each case, intercompany liabilities). Our subsidiaries currently have no preferred equity outstanding.

Optional Redemption

We may redeem all or a portion of the notes at our option at any time or from time to time as set forth below. We will mail notice to registered holders of such notes of our intent to redeem at least 30 days and not more than 60 days prior to the date set for redemption. We may redeem such notes at a redemption price equal to the greater of:

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100% of the aggregate principal amount of such notes to be redeemed plus accrued and unpaid interest to, but excluding, the redemption date; and

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the sum, as determined by an Independent Investment Banker, of the remaining scheduled payments of principal and interest in respect of the notes being redeemed (exclusive of any interest accrued to, but excluding, the redemption date) discounted to the redemption date on a semi-annual basis (assuming a 360-day year consisting of twelve 30-day months) at the Treasury Rate plus 50 basis points, plus accrued and unpaid interest to, but excluding, the redemption date.

Notwithstanding the foregoing redemption provisions, we will pay the interest installment due on any interest payment date that occurs on or before a redemption date to the holders of the notes as of the close of business on the record date immediately preceding that interest payment date.

If money sufficient to pay the redemption price of all of the notes (or portions thereof) to be redeemed on the redemption date is deposited with the trustee or paying agent on or before the redemption date and certain other conditions are satisfied, then on and after such redemption date, interest will cease to accrue on such notes (or such portion thereof) called for redemption.

Comparable Treasury Issue means the United States Treasury security selected by an Independent Investment Banker as having a maturity comparable to the remaining term (Remaining Life) of the notes to be redeemed that would be utilized, at the time of selection and in accordance with customary financial practice, in pricing new issues of corporate debt securities of comparable maturity to the Remaining Life.

Comparable Treasury Price means, with respect to any redemption date, (1) the average of three Reference Treasury Dealer Quotations for such redemption date, after excluding the highest and lowest such Reference Treasury Dealer Quotations, or (2) if the Independent Investment Banker obtains fewer than five Reference Treasury Dealer Quotations, the average of all such Reference Treasury Dealer Quotations.

Independent Investment Banker means an independent investment banking institution of national standing appointed by us, which may be one of the Reference Treasury Dealers.

Reference Treasury Dealer means (1) J.P. Morgan Securities Inc., Morgan Stanley & Co. Incorporated and a Primary Treasury Dealer (as defined below) selected by Wells Fargo Securities, LLC, and their respective successors, *provided* that if any of the foregoing shall cease to be a primary U.S. government securities dealer in the United States (a Primary Treasury Dealer), we will substitute therefor another primary treasury dealer and (2) any other Primary Treasury Dealer selected by us.

Reference Treasury Dealer Quotation means, with respect to each Reference Treasury Dealer and any redemption date, the average, as determined by the Independent Investment Banker, of the bid and asked prices for the Comparable Treasury Issue (expressed in each case as a percentage of its principal amount) quoted in writing to the Independent Investment Banker by such Reference Treasury Dealer at 5:00 p.m., New York City time, on the third business day preceding such redemption date.

Treasury Rate means, with respect to any redemption date, the rate per year equal to (1) the yield, under the heading which represents the average for the immediately preceding week, appearing in the most recently published statistical release designated H.15(519) or any successor publication which is published weekly by the Board of Governors of the Federal Reserve System and which establishes yields on actively traded United States Treasury securities adjusted to constant maturity under the caption Treasury Constant Maturities, for the maturity most closely corresponding to the Comparable Treasury Issue (it being understood that if no maturity is within three months before or after the Remaining Life of the notes to be redeemed, yields for the two published maturities most closely corresponding to the comparable treasury issue shall be determined and the treasury rate shall be interpolated or extrapolated from such yields on a straight line basis, rounding to the nearest month), or (2) if such release (or any successor release) is not published during the week preceding the calculation date or does not contain such yields, the rate per annum equal to the semi-annual equivalent yield to maturity of the Comparable Treasury Issue, calculated using a price for the Comparable Treasury Issue (expressed as a percentage of its principal amount) equal to the Comparable Treasury Price for such redemption date. The Treasury Rate shall be calculated on the third business day preceding the redemption date.

If less than all of the notes are to be redeemed at any time, the trustee will select notes for redemption on a *pro rata* basis (or, in the case of notes issued in global form as discussed under " Book-Entry System," based on a method that most nearly approximates a *pro rata* selection as the trustee deems fair and appropriate) unless otherwise required by law or applicable stock exchange or depositary requirements.

We may at any time, and from time to time, purchase the notes at any price or prices in the open market or otherwise, subject to compliance with all applicable laws and regulations.

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 Person (if other than us) formed by or resulting from that consolidation or merger or which shall have received the transfer of our assets, shall be an entity organized or existing under the laws of the United States, any state of the United States or the District of Columbia that expressly assumes payment of the principal of (and premium, if any) and interest on all of the notes and the due and punctual performance and observance of all of the covenants and conditions contained in the Indenture; and, if such entity is not a corporation, a co-obligor of the notes is a corporation organized or existing under any such laws;

(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.

Certain Covenants

Limitations on Incurrence of Debt. We will not, and will not permit any of our subsidiaries to, incur any Debt, if, immediately after giving effect to the incurrence of such 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 our Total 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 Exchange Act, with the Trustee) prior to the incurrence of that additional Debt.

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, whether owned at the date hereof or hereafter acquired, 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 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 our Total 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 Exchange Act, with the trustee) prior to the incurrence of that additional Debt.

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 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 on our Debt and the Debt of all of our subsidiaries to be outstanding immediately after the incurring of that additional Debt.

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 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 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 Exchange Act, with the trustee) prior to that declaration or other action.

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.

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.

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 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.

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.

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.

Provision of Financial Information. Whether or not we are subject to Section 13 or 15(d) of the Exchange Act, we will, to the extent permitted under the 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 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, if not already filed with the SEC for public availability:

(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 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 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 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 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.

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 fifty percent (150%) of the aggregate principal amount of all our outstanding Debt and the outstanding Debt of our subsidiaries that is unsecured.

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 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.

C*onsolidated 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 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.

Person shall have the meaning set forth in the Indenture and includes a person or group as these terms are used in Section 13(d)(3) of the Exchange Act.

Total Assets as of any date means the sum of (i) our Undepreciated Real Estate Assets and (ii) 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.

Governing Law

The Indenture and the notes will provide that they are to be governed by and construed in accordance with the laws of the State of New York.

Book-Entry System

DTC, which we refer to along with its successors in this capacity as the depositary, will act as securities depositary for the notes. The notes will be issued only as fully registered securities registered in the name of Cede & Co., the depositary s nominee. One or more fully registered global security certificates, representing the total aggregate principal amount of the notes, will be issued and will be deposited with the depositary or its custodian and will bear a legend regarding the restrictions on exchanges and registration of transfer referred to below.

The laws of some jurisdictions may require that some purchasers of securities take physical delivery of securities in definitive form. These laws may impair the ability to transfer beneficial interests in the notes so long as the notes are represented by global security certificates.

Investors may elect to hold interests in the global notes through either DTC in the United States or Clearstream Banking, société anonyme (Clearstream, Luxembourg) or Euroclear Bank S.A./N.V., as operator (the Euroclear operator) of the Euroclear system (the Euroclear system), in Europe if they are participants of such systems, or indirectly through organizations which are participants in such systems. Clearstream, Luxembourg and the Euroclear system will hold interests on behalf of their participants through customers securities accounts in Clearstream, Luxembourg s and the Euroclear system s names on the books of their respective depositaries, which in turn will hold such interests in customers securities accounts in the depositaries names on the books of DTC. Citibank N.A. will act as depositary for Clearstream, Luxembourg and JPMorgan Chase Bank will act as depositary for the Euroclear system (in such capacities, the U.S. depositaries). Because the depositary can act only on behalf of participants, which in turn act on behalf of indirect participants and certain banks, the ability of a person having a beneficial interest in a global note to pledge such interest to persons or entities that do not participate in the depositary system, or otherwise take actions in respect of such interests, may be affected by the lack of physical certificate evidencing such interests.

DTC advises that it is a limited-purpose trust company organized under the New York Banking Law, a banking organization within the meaning of the New York Banking Law, a member of the Federal Reserve System, a clearing corporation within the meaning of the New York Uniform Commercial Code and a clearing agency registered pursuant to the provisions of Section 17A of the Exchange Act. The depositary holds securities that its participants deposit with the depositary. The depositary also facilitates the settlement among participants of securities transactions, including transfers and pledges, in deposited securities through electronic computerized book-entry changes in participants accounts, thereby eliminating the need for physical movement of securities certificates. Direct participants include securities brokers and dealers, banks, trust companies, clearing corporations and certain other organizations. The depositary is owned by a number of its direct participants and by the New York Stock Exchange and the Financial Industry Regulatory Authority, Inc. Access to the depositary s system is also available to others, including securities brokers and dealers, banks and trust companies that clear transactions through or maintain a direct or indirect custodial relationship with a direct participant either directly, or indirectly. Persons who are not participants may beneficially own securities held by or on behalf of the depositary only through participants or indirect participants. The ownership interest and transfer of ownership interest of each actual purchaser of each security held by or on behalf of the depositary are recorded on the records of the participants and indirect participants. The rules applicable to the depositary and its participants are on file with the SEC.

Clearstream, Luxembourg advises that it is incorporated under the laws of Luxembourg as a professional depositary. Clearstream, Luxembourg holds securities for its participating organizations (Clearstream participants) and facilitates the clearance and settlement of securities transactions between Clearstream participants through electronic book-entry changes in accounts of Clearstream participants, thereby eliminating the need for physical movement of certificates. Clearstream, Luxembourg provides to Clearstream participants, among other things, services for safekeeping, administration, clearance and settlement of internationally traded securities and securities lending and borrowing. Clearstream, Luxembourg interfaces with domestic markets in several countries. As a professional depositary, Clearstream, Luxembourg is subject to regulation by the Luxembourg Monetary Institute. Clearstream participants are recognized financial institutions around the world, including underwriters, securities brokers and dealers, banks, trust companies, clearing corporations and certain other organizations and may include the underwriters. Indirect access to Clearstream, Luxembourg is also available to others, such as banks, brokers, dealers and trust companies that clear through or maintain a custodial relationship with a Clearstream participant, either directly or indirectly.

Distributions with respect to interests in the notes held beneficially through Clearstream, Luxembourg will be credited to cash accounts of Clearstream participants in accordance with its rules and procedures, to the extent received by the U.S. depositary for Clearstream, Luxembourg.

The Euroclear system advises that it was created in 1968 to hold securities for participants of the Euroclear system (Euroclear participants) and to clear and settle transactions between Euroclear participants through simultaneous electronic book-entry delivery against payment, thereby eliminating the need for physical movement of certificates and any risk from lack of simultaneous transfers of securities and cash. The Euroclear system includes various other services, including securities lending and borrowing and interfaces with domestic markets in several countries. The Euroclear system operates under contract with Euroclear plc, a U.K. corporation. All operations are conducted by the Euroclear system, and all Euroclear system securities clearance accounts and Euroclear system cash accounts are accounts with the Euroclear system, not the Euroclear operator. The Euroclear operator establishes policy for the Euroclear system on behalf of Euroclear participants. Euroclear participants include banks (including central banks), securities brokers and dealers and other professional financial intermediaries and may include the underwriters. Indirect access to the Euroclear system is also available to other firms that clear through or maintain a custodial relationship with a Euroclear participant, either directly or indirectly. The Euroclear system is a Belgian bank. As such it is regulated by the Belgian Banking and Finance Commission.

Securities clearance accounts and cash accounts with the Euroclear operator are governed by the Terms and Conditions Governing Use of Euroclear and the related Operating Procedures of the Euroclear system, and applicable Belgian law (collectively, the terms and conditions). The terms and conditions govern transfers of securities and cash within the Euroclear system, withdrawals of securities and cash from the Euroclear system, and receipts of payments with respect to securities in the Euroclear system. All securities in the Euroclear system are held on a fungible basis without attribution of specific certificates to specific securities clearance accounts. The Euroclear operator acts under the terms and conditions only on behalf of Euroclear participants, and has no records of or relationship with persons holding through Euroclear participants.

Distributions with respect to each series of notes held beneficially through the Euroclear system will be credited to the cash accounts of Euroclear participants in accordance with the terms and conditions, to the extent received by the U.S. depositary for the Euroclear system.

We will issue the notes in definitive certificated form if the depositary notifies us that it is unwilling or unable to continue as depositary or the depositary ceases to be a clearing agency registered under the Exchange Act and a successor depositary is not appointed by us within 90 days. In addition, beneficial interests in a global security certificate may be exchanged for definitive certificated notes upon request by or on behalf of the depositary in accordance with customary procedures following the request of a beneficial owner seeking to exercise or enforce its rights under such notes. If we determine at any time that the notes shall no longer be represented by global security certificates, we will inform the depositary of such determination who will, in turn, notify participants of their right to withdraw their beneficial interest from the global security certificates, and if such participants elect to withdraw their beneficial interests, we will issue certificates in definitive form in exchange for such beneficial interests in the global security certificates. Any global note, or portion thereof, that is exchangeable pursuant to this paragraph will be exchangeable for note certificates, as the case may be, registered in the names directed by the depositary. We expect that these instructions will be based upon directions received by the depositary from its participants with respect to ownership of beneficial interests in the global security certificates.

As long as the depositary or its nominee is the registered owner of the global security certificates, the depositary or its nominee, as the case may be, will be considered the sole owner and holder of the global security certificates and all notes represented by these certificates for all purposes under the notes and the Indenture. Except in the limited circumstances referred to above, owners of beneficial interests in global security certificates:

- will not be entitled to have the notes represented by these global security certificates registered in their names,

- will not be entitled to receive physical delivery of notes in certificated form, and

- will not be considered to be owners or holders of the global security certificates or any notes represented by these certificates for any purpose under the notes or the Indenture.

All payments on the notes represented by the global security certificates and all transfers and deliveries of related notes will be made to the depositary or its nominee, as the case may be, as the holder of the securities. Under the terms of the Indenture, we and the trustee will treat the persons in whose names the global notes are registered as the owners thereof for the purpose of receiving such payments and for any and all other purposes whatsoever.

Ownership of beneficial interests in the global security certificates will be limited to participants or persons that may hold beneficial interests through institutions that have accounts with the depositary or its nominee. Upon deposit of the global notes, the depositary will credit the accounts of participants designated by the underwriters with portions of the principal amount of global notes. Ownership of beneficial interests in global security certificates will be shown only on, and the transfer of those ownership interests will be effected only through, records maintained by the depositary or its nominee, with respect to participants interests, or any participant, with respect to interests of persons held by the participant on their behalf. Payments, transfers, deliveries, exchanges and other matters relating to beneficial interests in global security certificates may be subject to various policies and procedures adopted by the depositary from time to time. Neither we nor the trustee will have any responsibility or liability for any aspect of the depositary s or any participant s records relating to, or for payments made on account of, beneficial interests in global security certificates, or for maintaining, supervising or reviewing any of the depositary s records or any participant s records relating to these beneficial ownership interests.

We believe the depositary s current practice is, upon receipt of any payment in respect of securities such as the notes (including principal and interest), to credit the accounts of the relevant participants with the payment on the payment date, in amounts proportionate to their respective holdings in principal amount of beneficial interests in the relevant security such as the global notes as shown on the records of the depositary. Payments by participants and the indirect participants to the beneficial owners of notes will be governed by standing instructions and customary practices and will not be the responsibility of the depositary, the trustee or us. Neither we nor the trustee will be liable for any delay by the depositary or its participants in identifying the beneficial owners of the notes, and we and the trustee may rely conclusively on and will be protected in relying on instructions from the depositary or its nominee as the registered owner of the global notes for all purposes.

Although the depositary has agreed to the foregoing procedures in order to facilitate transfers of interests in the global security certificates among participants, the depositary is under no obligation to perform or continue to perform these procedures, and these procedures may be discontinued at any time. We will not have any responsibility for the performance by the depositary or its direct participants or indirect participants under the rules and procedures governing the depositary.

The information in this section concerning DTC, its book-entry system, Clearstream, Luxembourg and the Euroclear system has been obtained from sources that we believe to be reliable, but we have not attempted to verify the accuracy of this information.

Global Clearance and Settlement Procedures

Initial settlement for the notes will be made in immediately available funds. Secondary market trading between DTC participants will occur in the ordinary way in accordance with DTC rules and will be settled in immediately available funds using DTC s Same-Day Funds Settlement System. Secondary market trading between Clearstream participants and/or Euroclear participants will occur in the ordinary way in accordance with the applicable rules and operating procedures of Clearstream, Luxembourg and the Euroclear system, as applicable.

Clearstream, Luxembourg and the Euroclear system will record the ownership interests of their participants in much the same way as the depositary, and the depositary will record the total ownership of each of the U.S. agents of Clearstream, Luxembourg and the Euroclear system, as participants in the depositary. When notes are to be transferred from the account of a depositary participant to the account of a Clearstream participant or a Euroclear participant, the purchaser must send instructions to Clearstream, Luxembourg or the Euroclear system through a participant at least one day prior to settlement. Clearstream, Luxembourg or the Euroclear system, as the case may be, will instruct its U.S. agent to receive notes against payment. After settlement, Clearstream, Luxembourg or the Euroclear system will credit its participant's account. Credit for the notes will appear on the next day (European time).

Because settlement is taking place during New York business hours, depositary participants will be able to employ their usual procedures for sending notes to the relevant U.S. agent acting for the benefit of Clearstream or Euroclear participants. The sale proceeds will be available to the depositary seller on the settlement date. As a result, to the depositary participant, a cross-market transaction will settle no differently than a trade between two depositary participants.

When a Clearstream or Euroclear participant wishes to transfer notes to a depositary participant, the seller will be required to send instructions to Clearstream, Luxembourg or the Euroclear system through a participant at least one business day prior to settlement. In these cases, Clearstream, Luxembourg or the Euroclear system will instruct its U.S. agent to transfer these notes against payment for them. The payment will then be reflected in the account of the Clearstream or Euroclear participant the following day, with the proceeds back valued to the value date, which would be the preceding day, when settlement occurs in New York, if settlement is not completed on the intended value date, that is, the trade fails, proceeds credited to the Clearstream or Euroclear participant's account will instead be valued as of the actual settlement date. Clearstream participants and Euroclear participants may not deliver instructions directly to their respective U.S. depositaries.

You should be aware that you will only be able to make and receive deliveries, payments and other communications involving the notes through Clearstream, Luxembourg and the Euroclear system on the days when those clearing systems are open for business. Those systems may not be open for business on days when banks, brokers and other institutions are open for business in the United States. Because of time-zone differences, credits of notes received in Clearstream, Luxembourg or the Euroclear system as a result of a transaction with a DTC participant will be made during subsequent securities settlement processing and dated the business day following the DTC settlement date. Such credits or any transactions in such notes settled during such processing will be reported to the relevant Euroclear participant or Clearstream participant on such business day. Cash received in Clearstream, Luxembourg or the Euroclear system as a result of sales of the notes by or through a Clearstream participant or a Euroclear participant to a DTC participant will be received with value on the DTC settlement date but will be available in the relevant Clearstream, Luxembourg or the Euroclear system cash account only as of the business day following settlement in DTC.

Although DTC, Clearstream, Luxembourg and the Euroclear system have agreed to the foregoing procedures in order to facilitate transfers of notes among participants of DTC, Clearstream, Luxembourg and the Euroclear system, they are under no obligation to perform or continue to perform such procedures and such procedures may be discontinued or changed at any time.

UNDERWRITING

Subject to the terms and conditions stated in the underwriting agreement and related terms agreement, each dated the date of this prospectus supplement, each underwriter named below has severally agreed to purchase from us, and we have agreed to sell to that underwriter, the principal amount of notes set forth opposite its name in the table below:

Underwriter		Principal Amount of Notes
J.P. Morgan Securities Inc.	$	84,000,000
Morgan Stanley & Co. Incorporated		78,000,000
Wells Fargo Securities, LLC		78,000,000
Barclays Capital Inc.		15,000,000
RBC Capital Markets Corporation		15,000,000
RBS Securities Inc.		15,000,000
Scotia Capital (USA) Inc.		15,000,000
Total	$	300,000,000

The underwriting agreement provides that the obligations of the underwriters to purchase the notes included in this offering are subject to the approval of certain legal matters by counsel and to certain other conditions. The underwriting agreement also provides that the underwriters will purchase all of the notes if any of the notes are purchased. If an underwriter defaults, the underwriting agreement provides that the purchase commitments of the non-defaulting underwriters may be increased or the underwriting agreement and the related terms agreement may be terminated.

The underwriters initially propose to offer the notes to the public at the public offering price set forth on the cover page of this prospectus supplement. The underwriters may offer the notes to selected dealers at the public offering price minus a concession of up to 0.40 % of the principal amount of the notes. In addition, the underwriters may allow, and those selected dealers may reallow, a concession of up to 0.25 % of the principal amount of the notes to certain other dealers. After the initial offering of the notes to the public, the underwriters may change the public offering price and any other selling terms.

In the underwriting agreement, we have agreed that:

.

We will pay our expenses related to this offering, which we estimate will be approximately $250,000.

.

We will indemnify the underwriters against certain liabilities, including liabilities under the Securities Act, or contribute to payments that the underwriters may be required to make in respect of those liabilities.

The following table summarizes the discount that we will pay to the underwriters in connection with the offering:

	Underwriting Discount Paid by Us
Per Note	0.65%
Total	$ 1,950,000

The notes are a new issue of securities, and there is currently no established trading market for the notes. We do not intend to apply for the notes to be listed on any securities exchange or to arrange for the notes to be quoted on any quotation system. The underwriters have advised us that they intend to make a market in the notes, but they are not obligated to do so. The underwriters may discontinue any market making in the notes at any time without notice in their sole discretion. Accordingly, we cannot assure you that a liquid trading market will develop or be maintained for the notes, that you will be able to sell your notes at a particular time, or at all, or that the price that you may receive upon any sale of the notes will exceed the price you paid for such notes.

In connection with the offering of the notes, the underwriters are permitted to and may engage in over-allotment, stabilizing transactions and syndicate covering transactions. Over-allotment involves sales in excess of the offering size, which creates a short position for the underwriters. Stabilizing transactions involve bids to purchase the notes in the open market for the purpose of pegging, fixing or maintaining the price of the notes. Syndicate covering transactions involve purchases of the notes in the open market after the distribution has been completed in order to cover short positions. The underwriters also may impose a penalty bid. Penalty bids permit the underwriters to reclaim a selling concession from a syndicate member when the representatives, in covering syndicate short positions or making stabilizing purchases, repurchase notes originally sold by that syndicate member.

Any of these activities may have the effect of preventing or retarding a decline in the market price of the notes. They may also cause the price of the notes to be higher than the price that otherwise would exist in the open market in the absence of these transactions. The underwriters may conduct these transactions in the over-the-counter market or otherwise. If the underwriters commence any of these transactions, they may discontinue them at any time without notice.

In the ordinary course of their business, certain of the underwriters and their affiliates perform various financial advisory, investment banking and commercial banking services from time to time for us and our affiliates for which they have received and are expected to continue to receive customary fees.

Delivery of the Notes

We expect that delivery of the notes will be made against payment therefor on or about the closing date specified on the cover page of this prospectus supplement, which will be the fifth business day following the date of this prospectus supplement (this settlement cycle being referred to as T + 5). Under Rule 15c6-1 of the SEC under the Securities Exchange Act, trades in the secondary market generally are required to settle in three business days, unless the parties to any such trade expressly agree otherwise. Accordingly, purchasers who wish to trade notes on the date of this prospectus supplement or the next business day will be required, by virtue of the fact that the notes initially will settle in T + 5, to specify an alternate settlement cycle at the time of any such trade to prevent a failed settlement. Purchasers of notes who wish to trade notes on the date hereof or the next five succeeding business days should consult their own advisor.

Selling Restrictions

European Economic Area

In relation to each Member State of the European Economic Area which has implemented the Prospectus Directive, as defined below (each, a Relevant Member State), each underwriter has represented and agreed that with effect from and including the date on which the Prospectus Directive is implemented in that Relevant Member State it has not made and will not make an offer of notes which are the subject of the offering contemplated by this prospectus supplement to the public in that Relevant Member State other than:

(a)

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;

(b)

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;

(c)

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 written consent of J.P. Morgan Securities Inc.; or

(d)

in any other circumstances falling within Article 3(2) of the Prospectus Directive,

provided that no such offer of notes shall require the Company or any underwriter to publish a prospectus pursuant to Article 3 of the Prospectus Directive.

For the purposes of this provision, the expression an offer of notes to the public in relation to any notes 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 notes to be offered so as to enable an investor to decide to purchase or subscribe the notes, as the same may be varied in that Member State by any measure implementing the Prospectus Directive in that Member State and the expression Prospectus Directive means Directive 2003/71/ EC and includes any relevant implementing measure in each Relevant Member State.

United Kingdom

Each underwriter has represented and agreed that:

(a)

it has only communicated or caused to be communicated and will only communicate or cause to be communicated any invitation or inducement to engage in investment activity (within the meaning of Section 21 of the Financial Services and Markets Acts 2000 (FSMA) received by it in connection with the issue or sale of the notes in circumstances in which Section 21(1) of the FSMA does not apply to us; and

(b)

it has complied and will comply with all applicable provisions of the FSMA with respect to anything done by it in relation to the notes in, from or otherwise involving the United Kingdom.

Without limitation to the other restrictions referred to herein, this prospectus supplement is directed only at persons located or resident outside the United Kingdom or, in the case of persons located or resident inside the United Kingdom, to (i) persons having professional experience in matters relating to investments who fall within the definition of investment professionals in Article 19(5) of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 (the Order); (ii) high net worth entities, and other persons to whom it may be lawfully communicated, falling within Article 49(2)(a) to (d) of the Order; or (iii) persons to whom this prospectus supplement may otherwise lawfully be communicated in accordance with the Order. Without limitation to the other restrictions referred to herein, any investment or investment activity to which this prospectus supplement relates is available only to, and will be engaged in only with, such persons, and persons located or resident inside the United Kingdom who receive this communication (other than persons who fall within (i), (ii) or (iii) above) should not rely or act upon this communication.

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 supplement and the accompanying prospectus by reference to the Annual Report on Form 10-K for the year ended December 31, 2008 have been so incorporated in reliance on the report(s) of PricewaterhouseCoopers LLP, an independent registered public accounting firm, given on the authority of said firm as experts in auditing and accounting.

PROSPECTUS

KIMCO REALTY CORPORATION

Debt Securities, Preferred Stock,

Depositary 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:

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Unsecured Senior Debt Securities;

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

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Depositary Shares representing Shares of Preferred Stock;

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

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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, depositary 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 3.

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

The date of this Prospectus is April 24, 2009.

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., Washington, DC 20549.

You may also obtain copies of our SEC filings at prescribed rates by writing to the Public Reference Section of the SEC at 100 F Street, N.E., Washington, DC 20549. Please call l-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:

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Annual Report on Form 10-K for the year ended December 31, 2008;

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Current Report on Form 8-K filed on January 7, 2009, Item 1.01 of the Current Report on Form 8-K filed on April 7, 2009, and the Current Report on Form 8-K filed on April 22, 2009;

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Definitive proxy statement with respect to the 2009 Annual Meeting of Stockholders filed on March 27, 2009;

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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; and

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

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

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

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

DISCLOSURE REGARDING FORWARD-LOOKING STATEMENTS

This prospectus, together with other statements and information we publicly disseminate, contains certain forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended. We intend such forward-looking statements to be covered by the safe harbor provisions for forward-looking statements contained in the Private Securities Litigation Reform Act of 1995 and include this statement for purposes of complying with these safe harbor provisions. Forward-looking statements, which are based on certain assumptions and describe our future plans, strategies and expectations, are generally identifiable by use of the words believe, expect, intend, anticipate, estimate, project or similar expr You should not rely on forward-looking statements since they involve known and unknown risks, uncertainties and other factors which are, in some cases, beyond our control and which could materially affect actual results, performances or achievements. Factors which may cause actual results to differ materially from current expectations include, but are not limited to, (i) general adverse economic and local real estate conditions, including the current economic recession, (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 or refinancing on favorable terms, (iv) the Company s ability to raise capital by selling its assets; (v) changes in governmental laws and regulations, (vi) the level and volatility of interest rates and foreign currency exchange rates, (vii) the availability of suitable acquisition opportunities, (viii) valuation of joint venture investments, (ix) valuation of marketable securities and other investments, (x) increases in operating costs, (xi) changes in the dividend policy for our common stock, (xii) the reduction in our income in the event of multiple lease terminations by tenants or a failure by multiple tenants to occupy their premises in a shopping center, and (xiii) impairment charges. Accordingly, there is no assurance that our expectations will be realized.

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

THE COMPANY

Overview

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 December 31, 2008, we owned interests in 1,950 properties, totaling approximately 182.2 million square feet of GLA located in 45 states, Puerto Rico, Canada, Mexico, Chile, Brazil and Peru.

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 50 years. We have not engaged, nor do we expect to retain, any REIT advisors in connection with the operation of our properties. Our executive officers are engaged in the day-to-day management and operation of our real estate exclusively, and we administer nearly all operating functions for our properties, including leasing, asset management, maintenance, construction, legal, finance and accounting. Our executive offices are located at 3333 New Hyde Park Road, New Hyde Park, New York 11042-0020 and our telephone number is (516) 869-9000.

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

RISK FACTORS

You should carefully consider the risks and uncertainties 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.

We are subject to certain business and legal risks including, but not limited to, the following:

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

We are organized and conduct our operations in a manner which we believe allows us to qualify as a real estate investment trust for federal income tax purposes.

Qualification as a REIT involves the application of highly technical and complex provisions of the Code 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. 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. There can be 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 pay dividends to stockholders. If we fail to qualify as a REIT:

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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;

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

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unless we were 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; and

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we would not be required to make distributions to stockholders.

As a result, our failure to qualify as a REIT could impair our ability to expand our business and raise capital and could adversely affect the value of our securities.

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

Recent market and economic conditions have been unprecedented and challenging with slower growth and tighter credit conditions. Continued concerns about the systemic impact of the availability and cost of credit, the U.S. mortgage market, inflation, energy costs, geopolitical issues and declining equity and real estate markets have contributed to increased market volatility and diminished expectations for the U.S. economy. These adverse market conditions and competition may impede our ability to generate sufficient income to pay expenses, maintain properties, pay dividends and refinance debt.

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

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changes in the national, regional and local economic climate;

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

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the attractiveness of our properties to tenants;

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the ability of tenants to pay rent;

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competition from other available properties;

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changes in market rental rates;

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

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

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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

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

The retail shopping sector has been negatively affected by recent economic conditions. These conditions may result in our tenants delaying lease commencements, declining to extend or renew leases upon expiration and/or renewing at lower rates. Adverse economic conditions have forced some weaker retailers, in some cases, to declare bankruptcy and close stores. Certain retailers have announced store closings even though they have not filed for bankruptcy protection. These downturns in the retailing industry likely will have a direct impact on our performance. Continued store closings or declarations of bankruptcy by our tenants may have a material adverse effect on the Company s overall performance. Adverse general or local economic conditions could result in the inability of some tenants of the Company to meet their lease obligations and could otherwise adversely affect the Company s ability to attract or retain tenants. Lease terminations by certain tenants or a failure by certain tenants to occupy their premises in a shopping center could result in lease terminations or significant reductions in rent by other tenants in the same shopping centers under the terms of some leases, in which case we may be unable to re-lease the vacated space at attractive rents or at all, and our rental payments from our continuing tenants could significantly decrease.

We are unable to predict whether, or to what extent or for how long, these adverse market and economic conditions will persist. The continuation and/or intensification of these conditions may impede our ability to generate sufficient operating cash flow to pay expenses, maintain properties, pay dividends and refinance debt.

As a result of the ongoing market volatility and declining market conditions, for the year ended December 31, 2008 we recognized non-cash impairment charges of approximately $114.8 million, net of income tax benefit of approximately $31.1 million, of which approximately $105.1 million of these charges where taken in the fourth quarter of 2008.

Ongoing adverse market and economic conditions and market volatility will likely continue to make it difficult to value the properties and investments owned by us and our unconsolidated joint ventures. There may be significant uncertainty in the valuation, or in the stability of the value, of such properties and investments that could result in a substantial decrease in the value thereof. In addition, we intend to sell many of our non-core assets over the next several years. No assurance can be given that we will be able to recover the current carrying amount of all of our properties and investments and those of our unconsolidated joint ventures and/or our goodwill in the future. Our failure to do so would require us to recognize additional impairment charges for the period in which we reached that conclusion, which could materially and adversely affect us.

We may change the dividend policy for our common stock in the future.

On February 4, 2009, we declared a dividend of $0.44 per share that is payable on April 15, 2009 to common shareholders of record on April 6, 2009. We have paid a dividend of $0.44 per common share in the first quarter of 2009. Recognizing the need to maintain maximum financial flexibility in light of the current state of the capital markets, and considering the dividend requirements for the increased number of shares outstanding upon completion of our April 1, 2009 offering, we expect to reduce dividend payments on our common stock for the balance of 2009. We expect to pay $0.06 per common share in each of the third and fourth quarters of 2009. We currently expect to pay the final two 2009 dividend payments fully in cash.

In addition, a recent Internal Revenue Service (IRS) revenue procedure allows us to satisfy the REIT income distribution requirement by distributing up to 90% of our dividends on our common stock in shares of our common stock in lieu of paying dividends entirely in cash. Although we reserve the right to utilize this procedure in the future, we currently have no intent to do so. In the event that we pay a portion of a dividend in shares of our common stock, taxable U.S. stockholders would be required to pay tax on the entire amount of the dividend, including the portion paid in shares of common stock, in which case such stockholders might have to pay the tax using cash from other sources. If a U.S. stockholder sells the stock it receives as a dividend in order to pay this tax, the sales proceeds may be less than the amount included in income with respect to the dividend, depending on the market price of our stock at the time of the sale. Furthermore, with respect to non-U.S. stockholders, we may be required to withhold U.S. tax with respect to such dividend, including in respect of all or a portion of such dividend that is payable in stock. In addition, if a significant number of our stockholders sell shares of our common stock in order to pay taxes owed on dividends, such sales would put downward pressure on the market price of our common stock.

The decision to declare and pay dividends on our common stock in the future, as well as the timing, amount and composition of any such future dividends, will be at the sole discretion of our Board of Directors and will depend on our earnings, funds from operations, liquidity, financial condition, 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. While the statements above concerning the remaining dividends for 2009 are the Company s current expectation, the actual dividend payable will be determined by our Board of Directors based upon the circumstances at the time of declaration and the actual dividend payable may vary from such expected amounts. Any change in our dividend policy could have a material adverse effect on the market price of our common stock.

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 generally linked to economic conditions in the market for retail space. In the future, the market for retail space could be adversely affected by:

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weakness in the national, regional and local economies;

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the adverse financial condition of some large retailing companies;

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ongoing consolidation in the retail sector;

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the excess amount of retail space in a number of markets; and

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increasing consumer purchases through catalogues and the Internet.

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 tenants leases and the loss of rental income attributable to these tenants leases. In the event of a default by a tenant, we may experience delays and costs in enforcing our rights as landlord under the terms of our leases.

In addition, multiple lease terminations by tenants or a failure by multiple tenants to occupy their premises in a shopping center could result in lease terminations or significant 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, and our rental payments from our continuing tenants could significantly decrease. The occurrence of any of the situations described above, particularly if it involves a substantial tenant with leases in multiple locations, could have a material adverse effect on our performance.

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

A tenant that files for bankruptcy protection may not 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 the bankruptcy court permits us to do so. 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 rejected by a tenant in bankruptcy, we would have only a general unsecured claim for damages. As a result, it is likely that we would recover substantially less than the full value of any unsecured claims it holds, if at all.

We may be unable to sell our real estate property investments when appropriate or on favorable terms.

Real estate property investments are illiquid and generally cannot be disposed of quickly. In addition, the federal tax code imposes restrictions on a REIT s ability to dispose of 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 may acquire or develop properties or acquire other real estate related companies and this may create risks.

We may acquire or develop properties or acquire other real estate related companies when we believe that an acquisition or development is consistent with our business strategies. We may not succeed in consummating desired acquisitions or in completing developments on time or within budget. We face competition in pursuing these acquisition or development opportunities that could increase our costs. When we do pursue a project or acquisition, we may not succeed in leasing newly developed or acquired properties at rents sufficient to cover the costs of acquisition or development and operations. Difficulties in integrating acquisitions may prove costly or time-consuming and could divert management s attention. Acquisitions or developments in new markets or industries where we do not have the same level of market knowledge may result in poorer than anticipated performance. We may also abandon acquisition or development opportunities that management has begun pursuing and consequently fail to recover expenses already incurred and have devoted management time to a matter not consummated. Furthermore, our acquisitions of new properties or companies will expose us to the liabilities of those properties or companies, some of which we may not be aware of at the time of acquisition. In addition, development of our existing properties presents similar risks.

There may be a lack of operating history with respect to our recent acquisitions and development of properties and we may not succeed in the integration or management of additional properties.

These properties may have characteristics or deficiencies currently unknown to us that affect their value or revenue potential. It is also possible that the operating performance of these properties may decline under our management. As we acquire additional properties, we will be subject to risks associated with managing new properties, including lease-up and tenant retention. In addition, our ability to manage our growth effectively will require us to successfully integrate our new acquisitions into our existing management structure. We may not succeed with this integration or effectively manage additional properties. Also, newly acquired properties may not perform as expected.

We do not have exclusive control over our joint venture and preferred equity investments, so that 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. 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 us, take action contrary to our interests or otherwise impede our objectives. If the co-venturer or partner defaults on their obligations, we may be required to fulfill their obligation ourselves. The co-venturer or partner also might become insolvent or bankrupt, which may result in significant losses to us.

We may not be able to recover our investments in our joint venture or preferred equity investments, which may result in significant losses to us.

Our joint venture and preferred equity investments generally own real estate properties for which the economic performance and value is subject to all the risks associated with owning and operating real estate as described above.

We have significant international operations that carry additional risks.

We invest in and conduct operations outside the United States. The risks we face in international business operations include, but are not limited to:

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currency risks, including currency fluctuations;

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unexpected changes in legislative and regulatory requirements;

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potential adverse tax burdens;

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burdens of complying with different permitting standards, labor laws and a wide variety of foreign laws;

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obstacles to the repatriation of earnings and cash;

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regional, national and local political uncertainty;

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economic slowdown and/or downturn in foreign markets;

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difficulties in staffing and managing international operations; and

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reduced protection for intellectual property in some countries.

Each of these risks might impact our cash flow or impair our ability to borrow funds, which ultimately could adversely affect our business, financial condition, operating results and cash flows.

We may be unable to obtain financing through the debt and equities markets, which would have a material adverse effect on our growth strategy, our results of operations and our financial condition.

The capital and credit markets have become increasingly volatile and constrained as a result of adverse conditions that have caused the failure and near failure of a number of large financial services companies. We cannot assure you that we will be able to access the capital and credit markets to obtain additional debt or equity financing or that we will be able to obtain financing on favorable terms. The inability to obtain financing could have negative effects on our business, such as:

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we could have great difficulty acquiring or developing properties, which would materially adversely affect our business strategy;

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our liquidity could be adversely affected;

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we may be unable to repay or refinance our indebtedness;

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we may need to make higher interest and principal payments or sell some of our assets on unfavorable terms to fund our indebtedness; and

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we may need to issue additional capital stock, which could further dilute the ownership of our existing shareholders.

Financial covenants to which we are subject may restrict our operating and acquisition activities.

Our revolving credit facilities and the indentures 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 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 that might otherwise be advantageous. 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. Adverse changes in our credit ratings could impair our ability to obtain additional debt and equity financing on favorable terms, if at all, and could significantly reduce the market price of our publicly traded securities.

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, 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.

We face competition in leasing or developing properties.

We face competition in the acquisition, development, operation and sale of real property from others engaged in real estate investment. Some of these competitors may have greater financial resources than we do. This could result 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:

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the extent of institutional investor interest in us;

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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);

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our financial condition and performance;

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

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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

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general economic and financial market conditions.

We may not be able to recover our investments in marketable securities or mortgage receivables, which may result in significant losses to us.

Our investments in marketable securities are subject to specific risks relating to the particular issuer of the securities, including the financial condition and business outlook of the issuer, which may result in significant losses to us. Marketable securities are generally unsecured and may also be subordinated to other obligations of the issuer. As a result, investments in marketable securities are subject to risks of:

- limited liquidity in the secondary trading market;
- substantial market price volatility resulting from changes in prevailing interest rates;
- subordination to the prior claims of banks and other senior lenders to the issuer;
- the possibility that earnings of the issuer may be insufficient to meet its debt service and distribution obligations; and
- the declining creditworthiness and potential for insolvency of the issuer during periods of rising interest rates and economic downturn.

These risks may adversely affect the value of outstanding marketable securities and the ability of the issuers to make distribution payments.

The issuers of our marketable securities also might become insolvent or bankrupt, which may result in significant losses to us.

We invest in mortgage receivables. Our investments in mortgage receivables normally are not insured or otherwise guaranteed by any institution or agency. In the event of a default by a borrower it may be necessary for us to foreclose our mortgage or engage in costly negotiations. Delays in liquidating defaulted mortgage loans and repossessing and selling the underlying properties could reduce our investment returns. Furthermore, in the event of default, the actual value of the property securing the mortgage may decrease. A decline in real estate values will adversely affect the value of our loans and the value of the mortgages securing our loans.

Our mortgage receivables may be or become subordinated to mechanics' or materialmen's liens or property tax liens. In these instances we may need to protect a particular investment by making payments to maintain the current status of a prior lien or discharge it entirely. In these cases, the total amount we recover may be less than our total investment, resulting in a loss. In the event of a major loan default or several loan defaults resulting in losses, our investments in mortgage receivables would be materially and adversely affected.

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.

USE OF PROCEEDS

Unless otherwise described in the applicable prospectus supplement, we intend to use the net proceeds from the sale of the securities offered by this prospectus for general corporate purposes, which may include the acquisition of neighborhood and community shopping centers as suitable opportunities arise, the expansion and improvement of certain properties in our portfolio, or the repayment or refinancing of indebtedness outstanding at that time including the repayment or reduction of indebtedness on our outstanding lines of credit which may be re-borrowed at a later time. The factors which we will consider in any refinancing will include the amount and characteristics of any debt securities issued and may include, among others, the impact of such refinancing on our interest coverage, debt-to-capital ratio, liquidity and earnings per share. If we identify any specific use for the net proceeds from the sale of securities, we will describe such use in the accompanying prospectus supplement.

RATIOS OF EARNINGS TO FIXED CHARGES

All periods presented below have been adjusted to reflect the impact of operating properties sold and classified as discontinued operations during the year ended December 31, 2008 and for properties classified as held for sale as of December 31, 2008, 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, 2008, 2007, 2006, 2005 and 2004 were 2.1, 3.0, 2.8, 3.2 and 3.4, respectively. Our ratios of earnings to combined fixed charges and preferred stock dividend requirements for the years ended December 31, 2008, 2007, 2006, 2005 and 2004 were 1.8, 2.8, 2.6, 3.0, and 3.1, 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, the third supplemental indenture, dated as of June 2, 2006, the fourth supplemental indenture, dated as of April 26, 2007, 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 more series of debt securities. Any trustee under the indenture may resign or be removed with respect to one or more series of debt securities, and a successor trustee may be appointed to act with respect to that series (Section 608). In the event that two or more persons are acting as trustee with respect to different series of debt securities, each trustee shall be a trustee of a trust under the indenture separate and apart from the trust administered by any other trustee (Section 609), and, except as otherwise indicated herein, any action described herein to be taken by the trustee may be taken by each trustee with respect to, and only with respect to, the one or more series of debt securities for which it is trustee under the indenture.

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

(1) the title and series designation of those debt securities;

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

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

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

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

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

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

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

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

(10) our obligation, if any, to redeem, repay or purchase those debt securities pursuant to any sinking fund or analogous provision or at the option of a holder of those debt securities and the period or

periods within which, the price or prices at which and the terms and conditions upon which those debt securities will be redeemed, repaid or purchased, as a whole or in part, pursuant to that obligation;

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

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

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

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

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

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

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

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

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

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

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

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

(1)

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

(2)

a change of control, or

(3)

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

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

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

Denominations, Interest, Registration and Transfer

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

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

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

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

Neither we nor any trustee shall be required to:

(1)

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

(2)

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

(3)

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

Merger, Consolidation or Sale

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

(1)

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

(2)

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

(3)

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

Certain Covenants

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

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

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

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

(1)

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

(2)

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

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

(1)

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

(a)

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

(b)

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

(2)

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

Events of Default, Notice and Waiver

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

(1)

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

(2)

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

(3)

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

(4)

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

(5)

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

(6)

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

(7)

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

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

(1)

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

(2)

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

(a)

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

(b)

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

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

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

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

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

Modification

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

(1)

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

(2)

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

(3)

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

(4)

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

(5)

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

(6)

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

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

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

(1)

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

(2)

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

(3)

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

(4)

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

(5)

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

(6)

to secure the debt securities;

(7)

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

(8)

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

(9)

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

(10)

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

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

(1)

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

(2)

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

(3)

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

(4)

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

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

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

(1)

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

(2)

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

Discharge, Defeasance and Covenant Defeasance

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

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

(1)

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

(2)

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

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

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

Government Obligations means securities which are:

(1)

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

(2)

obligations of a person controlled or supervised by and acting as an agency or instrumentality of the United States of America or that government which issued the foreign currency in which the debt securities of that series are payable, the payment of which is unconditionally guaranteed as a full faith and credit obligation by the United States of America or that other government, which, in either case, are not callable or redeemable at the option of the issuer thereof, and shall also include a depository receipt issued by a bank or trust company as custodian with respect to that Government Obligation or a specific payment of interest on or principal of that Government Obligation held by the custodian for the account of the holder of a depository receipt, provided that (except as required by law) the custodian is not authorized to make any deduction from the amount payable to the holder of the depository receipt from any amount received by the custodian in respect of the Government Obligation or the specific payment of interest on or principal of the Government Obligation evidenced by the depository receipt (Section 101).

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

(1)

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

(2)

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

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

(1)

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

(2)

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

(3)

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

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

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

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

Conversion Rights

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

Global Securities

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

DESCRIPTION OF COMMON STOCK

We have the authority to issue 750,000,000 shares of common stock, par value $.01 per share, and 382,500,000 shares of excess stock, par value $.01 per share. At April 22, 2009, we had outstanding 376,352,395 shares of common stock and no shares of excess stock. Prior to August 4, 1994, we were incorporated as a Delaware corporation. On August 4, 1994, we reincorporated as a Maryland corporation pursuant to an Agreement and Plan of Merger approved by our stockholders.

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

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

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

Restrictions on Ownership

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

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

In addition, because rent from related party tenants is not qualifying rent for purposes of the gross income tests under the Code, our charter provides that no individual or entity may own, or be deemed to own by virtue of the attribution provisions of the Code (which differ from the attribution provisions applied to the ownership limit), in excess of 9.8% in value of our outstanding common stock. We refer to this ownership limitation as the related party limit. Our board of directors may waive the ownership limit and the related party limit with respect to a particular stockholder if evidence satisfactory to our board of directors and our tax counsel is presented that such ownership will not then or in the future jeopardize our status as a REIT. As a condition of that waiver, our board of directors may require opinions of counsel satisfactory to it or an undertaking or both from the applicant with respect to preserving our REIT status. The foregoing restrictions on transferability and ownership will not apply if our board of directors determines that it is no longer in our best interests to attempt to qualify, or to continue to qualify, as a REIT. If shares of common stock in excess of the ownership limit or the related party limit, or shares which would otherwise cause the REIT to be beneficially owned by less than 100 persons or which would otherwise cause us to be closely held within the meaning of the Code or would otherwise result in our failure to qualify as a REIT, are issued or transferred to any person, that issuance or transfer shall be null and void to the intended transferee, and the intended transferee would acquire no rights to the stock. Shares transferred in excess of the ownership limit or the related party limit, or shares which would otherwise cause us to be closely held within the meaning of the Code or would otherwise result in our failure to qualify as a REIT, will automatically be exchanged for shares of a separate class of stock, which we refer to as excess stock, that will be transferred by operation of law to us as trustee for the exclusive benefit of the person or persons to whom the shares are ultimately transferred, until that time as the intended transferee retransfers the shares. While these shares are held in trust, they will not be entitled to vote or to share in any dividends or other distributions (except upon liquidation). The shares may be retransferred by the intended transferee to any person who may hold those shares at a price not to exceed either:

(1)

the price paid by the intended transferee, or

(2)

if the intended transferee did not give value for such shares, a price per share equal to the market value of the shares on the date of the purported transfer to the intended transferee,

at which point the shares will automatically be exchanged for ordinary common stock. In addition, such shares of excess stock held in trust are purchasable by us for a 90-day period at a price equal to the lesser of the price paid for the stock by the intended transferee and the market price for the stock on the date we determine to purchase the stock. This period commences on the date of the violative transfer if the intended transferee gives us notice of the transfer, or the date our board of directors determines that a violative transfer has occurred if no notice is provided.

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

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

The registrar and transfer agent for our common stock is The Bank of New York.

DESCRIPTION OF COMMON STOCK WARRANTS

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

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

(1)

the title of those common stock warrants;

(2)

the aggregate number of those common stock warrants;

(3)

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

(4)

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

(5)

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

(6)

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

(7)

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

(8)

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

(9)

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

(10)

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

(11)

a discussion of federal income tax considerations; and

(12)

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

DESCRIPTION OF PREFERRED STOCK

We are authorized to issue 3,232,000 shares of preferred stock, $1.00 par value per share, 345,000 shares of 7 3/4% Class A Cumulative Redeemable Preferred Stock, $1.00 par value per share, 230,000 shares of 8 1/2% Class B Cumulative Redeemable Preferred Stock, $1.00 par value per share, 460,000 shares of 8 3/8% Class C Cumulative

Redeemable Preferred Stock, $1.00 par value per share, 700,000 shares of 7 1/2% Class D Cumulative Convertible Preferred Stock, $1.00 par value per share, 65,000 shares of Class E Floating Rate Cumulative Redeemable Preferred Stock, $1.00 par value per share, 700,000 shares of 6.65% Class F Cumulative Redeemable Preferred Stock, $1.00 par value per share, and 184,000 shares of 7.75% Class G Cumulative Redeemable Preferred Stock, $1.00 par value per share. We are also authorized to issue 345,000 shares of Class A Excess Preferred Stock, $1.00 par value per share, 230,000 shares of Class B Excess Preferred Stock, $1.00 par value per share, 460,000 shares of Class C Excess Preferred Stock, $1.00 par value per share, 700,000 shares of Class D Excess Preferred Stock, $1.00 par value per share, 65,000 shares of Class E Excess Preferred Stock, $1.00 par value per share, 700,000 shares of Class F Excess Preferred Stock, $1.00 par value per share, and 184,000 shares of Class G Excess Preferred Stock, $1.00 par value per share, which are reserved for issuance upon conversion of certain outstanding Class A preferred stock, Class B preferred stock, Class C preferred stock, Class D preferred stock, Class E preferred stock, Class F preferred stock or Class G preferred stock, as the case may be, as necessary to preserve our status as a REIT. At April 1, 2009, 700,000 shares of Class F preferred stock, represented by 7,000,000 depositary shares, and 184,000 shares of Class G preferred stock, represented by 18,400,000 depositary shares, were outstanding.

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

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

General

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

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

(1)

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

(2)

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

(3)

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

(4)

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

(5)

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

(6)

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

(7)

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

(8)

Any listing of that preferred stock on any securities exchange;

(9)

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

(10)

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

(11)

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

(12)

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

(13)

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

(14)

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

(15)

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

Rank

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

(1)

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

(2)

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

(3)

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

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

Dividends

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

Dividends on any class or series of our preferred stock may be cumulative or non-cumulative, as provided in the applicable prospectus supplement and the articles supplementary setting forth the terms of any class or series of preferred stock. Dividends, if cumulative, will accumulate from and after the date set forth in the applicable prospectus supplement and the articles supplementary setting forth the terms of any class or series of preferred stock. If our board of directors fails to authorize a dividend payable on a dividend payment date on any class or series of our preferred stock for which dividends are noncumulative, then the holders of that class or series of our preferred stock will have no right to receive a dividend in respect of the dividend period ending on that dividend payment date, and we will have no obligation to pay the dividend accrued for that period, whether or not dividends on that class or series are declared payable on any future dividend payment date.

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

(1)

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

(2)

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

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

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

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

Redemption

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

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

(1)

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

(2)

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

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

In addition, unless:

(1)

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

(2)

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

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

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

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

(1)

the redemption date;

(2)

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

(3)

the redemption price;

(4)

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

(5)

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

(6)

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

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

Liquidation Preference

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

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

Voting Rights

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

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

(1)

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

(2)

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

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

(1)

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

(2)

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

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

Conversion Rights

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

Restrictions on Ownership

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

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

DESCRIPTION OF DEPOSITARY SHARES

General

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

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

Dividends and Other Distributions

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

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

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

Withdrawal of Preferred Stock

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

Redemption

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

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

Voting

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

Liquidation Preference

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

Conversion

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

Amendment and Termination of the Deposit Agreement

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

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

(1)

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

(2)

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

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

(1)

all outstanding depositary shares issued thereunder shall have been redeemed,

(2)

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

(3)

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

Charges of Preferred Stock Depositary

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

Resignation and Removal of Preferred Stock Depositary

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

Miscellaneous

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

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

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

PROVISIONS OF MARYLAND LAW AND OUR CHARTER AND BYLAWS

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

Election of Directors

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

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

Removal of Directors

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

Business Combinations

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

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

.

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

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

.

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

.

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

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

Control Share Acquisitions

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

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

.

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

.

a majority or more of all voting power.

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

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

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

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

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

Duties of Directors with Respect to Unsolicited Takeovers

Maryland law provides protection for Maryland corporations against unsolicited takeovers by limiting, among other things, the duties of the directors in unsolicited takeover situations. The duties of directors of Maryland corporations do not require them to (a) accept, recommend or respond to any proposal by a person seeking to acquire control of the corporation, (b) make a determination under the Maryland business combination or control share acquisition statutes described above or (c) act or fail to act solely because of the effect the act or failure to act may have on an acquisition or potential acquisition of control of the corporation or the amount or type of consideration that may be offered or paid to the stockholders in an acquisition. Moreover, under Maryland law the act of a director of a Maryland corporation relating to or affecting an acquisition or potential acquisition of control is not subject to any higher duty or greater scrutiny than is applied to any other act of a director. Maryland law also contains a statutory presumption that an act of a director of a Maryland corporation satisfies the applicable standards of conduct for directors under Maryland law.

Subtitle 8

Subtitle 8 of Title 3 of the Maryland General Corporation Law permits a Maryland corporation with a class of equity securities registered under the Securities Exchange Act of 1934 and at least three independent directors to elect to be subject, by provision in its charter or bylaws or a resolution of its board of directors and notwithstanding any contrary provision in the charter or bylaws, to any or all of five provisions:

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a classified board,

·

a two-thirds vote requirement for removing a director,

·

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

·

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

·

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

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

Amendments to the Charter

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

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

Amendment to the Bylaws

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

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

Dissolution of Kimco Realty Corporation

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

Advance Notice of Director Nominations and New Business

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

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

Limitation of Liability and Indemnification

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

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

Our charter authorizes us, to the maximum extent permitted by Maryland law, to obligate Kimco to indemnify any present or former director or officer or any individual who, while a director of Kimco and at the request of Kimco, serves or has served another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise as a director, officer, partner or trustee, from and against any claim or liability to which that individual may become subject or which that individual may incur by reason of his or her status as a present or former director or officer of Kimco and to pay or reimburse his or her reasonable expenses in advance of final disposition of a proceeding. Our bylaws obligate us, to the maximum extent permitted by Maryland law, to indemnify any present or former director or officer or any individual who, while a director or officer of the Kimco and at our request, serves or has served another corporation, real estate investment trust, partnership, joint venture, trust, employee benefit plan or other enterprise as a director, officer, partner or trustee and who is made or threatened to be made a party to the proceeding by reason of his or her service in that capacity from and against any claim or liability to which that individual may become subject or which that individual may incur by reason of his or her status as a present or former director or officer of Kimco and to pay or reimburse his or her reasonable expenses in advance of final disposition of a proceeding.

On February 25, 2009, our Board of Directors approved a form of Indemnification Agreement to be entered into between the Company and each of its executive officers, members of the Board of Directors and such other employees or consultants of the Company or any subsidiary as may be determined from time to time by the Company's Chief Executive Officer in his discretion. A brief description of the terms and conditions of the Indemnification Agreement that are material to the Company is included in the Company's Annual Report on Form 10-K for the year ended December 31, 2008 and the Indemnification Agreement is filed as an exhibit thereto.

It is the position of the Commission that indemnification of directors and officers for liabilities arising under the Securities Act is against public policy and is unenforceable pursuant to Section 14 of the Securities Act.

UNITED STATES FEDERAL INCOME TAX CONSIDERATIONS

The following is a general summary of certain material United States federal income tax considerations relating to our election to be taxed as a REIT and the ownership and disposition of the securities offered by this prospectus. This summary is for general information only and is not tax advice.

The information in this summary is based on:

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the Internal Revenue Code of 1986, as amended, or the Code;

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current, temporary and proposed Treasury Regulations promulgated under the Code;

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the legislative history of the Code;

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current administrative interpretations and practices of the Internal Revenue Service, or the IRS; and

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court decisions;

in each case, as of the date of this prospectus. 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. Except as discussed in this summary, we have not requested, and do not plan to request, any rulings from the IRS concerning our tax treatment with respect to matters contained in this summary, and the statements in this prospectus 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 considerations, or tax considerations arising from any United States federal tax other than income tax.

This summary assumes that the securities offered by this prospectus are held as a capital asset (generally, property held for investment within the meaning of Section 1221 of the Code). Your tax treatment will vary depending upon 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. You should consult your tax advisor concerning the application of United States federal income tax laws to your particular situation as well as any consequences of the acquisition, ownership and disposition of our securities arising under the laws of any state, local or foreign taxing jurisdiction.

This summary does not consider all of the rules which may affect the United States tax treatment of the securities offered by this prospectus in light of your particular circumstances. For example, except to the extent specifically discussed herein, special rules not discussed here may apply to you if you are:

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a broker-dealer or a dealer in securities or currencies;

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an S corporation;

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a bank, thrift or other financial institution;

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a regulated investment company or a REIT;

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an insurance company;

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a tax-exempt organization;

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subject to the alternative minimum tax provisions of the Code;

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holding securities offered by this prospectus as part of a hedge, straddle, conversion, integrated or other risk reduction or constructive sale transaction;

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holding securities offered by this prospectus through a partnership or other pass-through entity;

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a non-United States corporation or partnership, or a person who is not a resident or citizen of the United States;

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a partnership or a limited liability company or other entity taxable as a partnership for United States federal income tax purposes;

- a United States person whose functional currency is not the United States dollar; or
- a United States expatriate.

For purposes of this section under the heading United States Federal Income Tax Considerations, references to we, our, and us mean only Kimco Realty Corporation, and not its subsidiaries, except as otherwise indicated.

You are urged to consult your tax advisors regarding the tax consequences to you of:

- **the acquisition, ownership and sale or other disposition of the securities offered by this prospectus, 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 applicable tax laws.**

Taxation of Our Company

General. We elected to be taxed as a REIT under Sections 856 through 860 of the Code, commencing with our taxable year ended December 31, 1992. We believe that we have been organized and have operated in a manner which has allowed us to qualify for taxation as a REIT under the Code commencing with our taxable year ended December 31, 1992, and we intend to continue to be organized and operate in this manner. However, qualification and taxation as a REIT depend upon our ability to meet the various qualification tests imposed under the Code, including through actual annual operating results, asset composition, distribution levels and diversity of stock ownership. Accordingly, no assurance can be given that we have been organized and have operated, or will continue to be organized and operate, in a manner so as to qualify or remain qualified as a REIT. See Failure to Qualify.

The sections of the Code and the corresponding Treasury Regulations that relate to qualification and taxation as a REIT are highly technical and complex. The following sets forth certain material aspects of the sections of the Code that govern the federal income tax treatment of a REIT and its stockholders. This summary is qualified in its entirety by the applicable Code provisions, relevant rules and regulations promulgated under the Code, and administrative and judicial interpretations of the Code and these rules and regulations.

Latham & Watkins LLP has acted as our tax counsel in connection with this prospectus and has rendered an opinion to us to the effect that, commencing with our taxable year ending December 31, 1992, we have been organized and have operated in conformity with the requirements for qualification and taxation as a REIT under the Code, and our proposed method of operation will enable us to continue to meet the requirements for qualification and taxation as a REIT under the Code. It must be emphasized that this opinion was based on various assumptions and representations as to factual matters, including representations made by us in a factual certificate provided by one of our officers. In addition, this opinion was based on our factual representations set forth in this prospectus. Our qualification and taxation as a REIT depend upon our ability to meet the various qualification tests imposed under the Code, which are discussed below, including through actual annual operating results, asset composition, distribution levels and diversity of stock ownership, the results of which have not been and will not be reviewed by Latham & Watkins LLP. No assurance can be given that our actual results of operation for any particular taxable year will satisfy those requirements. Further, the anticipated income tax treatment described in this prospectus may be changed, perhaps retroactively, by legislative, administrative or judicial action at any time. Latham & Watkins LLP has no obligation to update its opinion subsequent to its date.

Provided we qualify for taxation as a REIT, we generally will not be required to pay federal corporate income taxes on our net income that is currently distributed to our stockholders. This treatment substantially eliminates the double taxation that ordinarily results from investment in a C corporation. A C corporation is a corporation that generally is required to pay tax at the corporate level. Double taxation means taxation once at the corporate-level when income is earned and once again at the stockholder level when the income is distributed. We will, however, be required to pay federal income tax as follows:

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first, we will be required to pay tax at regular corporate rates on any undistributed REIT taxable income, including undistributed net capital gains;

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second, we may be required to pay the alternative minimum tax on our items of tax preference under some circumstances;

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third, if we have (1) net income from the sale or other disposition of foreclosure property which is held primarily for sale to customers in the ordinary course of business or (2) other nonqualifying income from foreclosure property, we will be required to pay tax at the highest corporate rate on this income. Foreclosure property generally is defined as property we acquired through foreclosure or after a default on a loan secured by the property or a lease of the property;

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fourth, we will be required to pay a 100% tax on any net income from prohibited transactions. Prohibited transactions are, in general, sales or other taxable dispositions of property, other than foreclosure property, held primarily for sale to customers in the ordinary course of business;

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fifth, if we fail to satisfy the 75% gross income test or the 95% gross income test, as discussed below, but have otherwise maintained our qualification as a REIT because certain other requirements are met, we will be required to pay a tax equal to (1) the greater of (a) the amount by which 75% of our gross income exceeds the amount qualifying under the 75% gross income test and (b) the amount by which 95% of our gross income (90% for the taxable years ending on or before December 31, 2004) exceeds the amount qualifying under the 95% gross income test, multiplied by (2) a fraction intended to reflect our profitability;

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sixth, if we fail to satisfy any of the REIT asset tests (other than a *de minimis* failure of the 5% or 10% asset test), as described below, due to reasonable cause and not due to willful neglect, and we nonetheless maintain our REIT qualification because of specified cure provisions, we will be required to pay a tax equal to the greater of $50,000 or the highest corporate tax rate multiplied by the net income generated by the nonqualifying assets that caused us to fail such test;

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seventh, if we fail to satisfy any provision of the Code that would result in our failure to qualify as a REIT (other than a violation of the REIT gross income tests or certain violations of the asset tests described below) and the violation is due to reasonable cause, and not due to willful neglect, we may retain our REIT qualification but we will be required to pay a penalty of $50,000 for each such failure;

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eighth, we will be required to pay a 4% excise tax to the extent we fail to distribute during each calendar year at least the sum of (1) 85% of our REIT ordinary income for the year, (2) 95% of our REIT capital gain net income for the year, and (3) any undistributed taxable income from prior periods;

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ninth, if we acquire any asset from a corporation which is or has been a C corporation in a transaction in which the basis of the asset in our hands is determined by reference to the basis of the asset in the hands of the C corporation, and we subsequently recognize gain on the disposition of the asset during the ten-year period beginning on the date on which we acquired the asset, then we will be required to pay tax at the highest regular corporate tax rate on this gain to the extent of the excess of (1) the fair market value of the asset over (2) our adjusted basis in the asset, in each case determined as of the date on which we acquired the asset. The results described in this paragraph with respect to the recognition of gain assume that the C corporation will refrain from making an election to receive different treatment under existing Treasury Regulations on its tax return for the year in which we acquire the asset from the C corporation;

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tenth, we will be required to pay a 100% tax on any redetermined rents, redetermined deductions or excess interest. See Penalty Tax. In general, redetermined rents are rents from real property that are overstated as a result of services furnished to any of our tenants by a taxable REIT subsidiary of ours. Redetermined deductions and excess interest generally represent amounts that are deducted by a taxable REIT subsidiary of ours for amounts paid to us that are in excess of the amounts that would have been deducted based on arm s length negotiations; and

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eleventh, certain of our subsidiaries are C corporations, the earnings of which will be subject to United States federal income tax.

We and our subsidiaries may be subject to a variety of taxes other than U.S. federal income tax, including payroll taxes and state and local income, property and other taxes on our assets and operations. In addition, other countries may impose taxes on our property, income, or operations within their jurisdictions. To the extent possible, we will structure our activities to minimize our foreign tax liability. However, there can be no assurance that we will be able to eliminate our foreign tax liability or reduce it to a specified level. Because we are a REIT, we and our stockholders will derive little or no benefit from any foreign tax credits arising from the payment of those taxes.

Requirements for Qualification as a REIT. The Code defines a REIT as a corporation, trust or association:

(1)

that is managed by one or more trustees or directors;

(2)

that issues transferable shares or transferable certificates to evidence its beneficial ownership;

(3)

that would be taxable as a domestic corporation, but for Sections 856 through 860 of the Code;

(4)

that is not a financial institution or an insurance company within the meaning of certain provisions of the Code;

(5)

that is beneficially owned by 100 or more persons;

(6. See Note 6 for additional information.

In June 2018, the company's $500 million 364-day revolving credit facility with a syndicate of banks expired and was not renewed.

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6. Financial Instruments

In its normal operations, Praxair is exposed to market risks relating to fluctuations in interest rates, foreign currency exchange rates, energy costs and to a lesser extent precious metal prices. The objective of financial risk management at Praxair is to minimize the negative impact of such fluctuations on the company's earnings and cash flows. To manage these risks, among other strategies, Praxair routinely enters into various derivative financial instruments ("derivatives") including interest-rate swap and treasury rate lock agreements, currency-swap agreements, forward contracts, currency options, and commodity-swap agreements. These instruments are not entered into for trading purposes and Praxair only uses commonly traded and non-leveraged instruments.

There are three types of derivatives that the company enters into: (i) those relating to fair-value exposures, (ii) those relating to cash-flow exposures, and (iii) those relating to foreign currency net investment exposures. Fair-value exposures relate to recognized assets or liabilities, and firm commitments; cash-flow exposures relate to the variability of future cash flows associated with recognized assets or liabilities, or forecasted transactions; and net investment exposures relate to the impact of foreign currency exchange rate changes on the carrying value of net assets denominated in foreign currencies.

When a derivative is executed and hedge accounting is appropriate, it is designated as either a fair-value hedge, cash-flow hedge, or a net investment hedge. Currently, Praxair designates all interest-rate and treasury-rate locks as hedges for accounting purposes; however, currency contracts are generally not designated as hedges for accounting purposes unless they are related to forecasted transactions. Whether designated as hedges for accounting purposes or not, all derivatives are linked to an appropriate underlying exposure. On an ongoing basis, the company assesses the hedge effectiveness of all derivatives designated as hedges for accounting purposes to determine if they continue to be highly effective in offsetting changes in fair values or cash flows of the underlying hedged items. If it is determined that the hedge is not highly effective, then hedge accounting will be discontinued prospectively.

Counterparties to Praxair's derivatives are major banking institutions with credit ratings of investment grade or better and no collateral is required, and there are no significant risk concentrations. Management believes the risk of incurring losses on derivative contracts related to credit risk is remote and any losses would be immaterial.

The following table is a summary of the notional amount and fair value of derivatives outstanding at June 30, 2018 and December 31, 2017 for consolidated subsidiaries:

(Millions of dollars)	Notional Amounts		Fair Value Assets		Liabilities	
	June 30, 2018	December 31, 2017	June 30, 2018	December 31, 2017	June 30, 2018	December 31, 2017
Derivatives Not Designated as Hedging Instruments:						
Currency contracts:						
Balance sheet items (a)	$2,266	$ 2,693	$6	$ 16	$25	$ 16
Derivatives Designated as Hedging Instruments:						
Currency contracts:						
Balance sheet items (a)	$—	$ 38	$—	$ —	$—	$ 2
Forecasted purchases (a)	2	4	—	1	—	—
Interest rate contracts:						
Interest rate swaps (a)	475	475	—	—	1	—
Total Hedges	$477	$ 517	$—	$ 1	$1	$ 2
Total Derivatives	$2,743	$ 3,210	$6	$ 17	$26	$ 18

(a) Assets are recorded in prepaid and other current assets, and liabilities are recorded in other current liabilities.

Currency Contracts

Balance Sheet Items

Foreign currency contracts related to balance sheet items consist of forward contracts entered into to manage the exposure to fluctuations in foreign-currency exchange rates on recorded balance sheet assets and liabilities denominated in currencies other than the functional currency of the related operating unit. Certain forward currency contracts are entered into to protect underlying monetary assets and liabilities denominated in foreign currencies from foreign exchange risk and are not designated

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as hedging instruments. The fair value adjustments on these contracts are offset by the fair value adjustments recorded on the underlying monetary assets and liabilities. Praxair also enters into forward currency contracts, which are designated as hedging instruments, to limit the cash flow exposure on certain foreign-currency denominated intercompany loans. The fair value adjustments on these contracts are recorded to AOCI, with the effective portion immediately reclassified to earnings to offset the fair value adjustments on the underlying debt instrument.

Forecasted Purchases

Foreign currency contracts related to forecasted purchases consist of forward contracts entered into to manage the exposure to fluctuations in foreign-currency exchange rates on forecasted purchases of capital-related equipment and services denominated in currencies other than the functional currency of the related operating units. These forward contracts were designated and accounted for as cash flow hedges.

Net Investment Hedge

As of June 30, 2018, the Company has €1.65 billion ($1.92 billion) of Euro-denominated notes, of which €1.57 billion ($1.83 billion) is designated as a hedge of the net investment position in its European operations. These Euro-denominated debt instruments reduce the company's exposure to changes in the currency exchange rate on investments in foreign subsidiaries with Euro functional currencies. Since hedge inception, exchange rate movements have reduced long-term debt by $148 million (long-term debt decreased by $51 million during the first six months of 2018), with the offsetting gain shown within the cumulative translation component of AOCI in the condensed consolidated balance sheets and the consolidated statements of comprehensive income.

Interest Rate Contracts

Outstanding Interest Rate Swaps

At June 30, 2018, Praxair had one outstanding interest rate swap agreement with a $475 million notional amount related to the $475 million 1.25% notes that mature in 2018. The interest rate swap effectively converts fixed-rate interest to variable-rate interest and is designated as a fair value hedge. Fair value adjustments are recognized in earnings along with an equally offsetting charge / benefit to earnings for the changes in the fair value of the underlying debt instrument. At June 30, 2018, $1 million was recognized as a decrease in the fair value of these notes (increase in the fair value of less than $1 million at December 31, 2017).

Terminated Treasury Rate Locks

The following table summarizes the unrecognized gains (losses) related to terminated treasury rate lock contracts:

(Millions of dollars)	Year Terminated	Original Gain / (Loss)	Unrecognized Gain / (Loss) (a) June 30, 2018	December 31, 2017
Treasury Rate Locks				
Underlying debt instrument:				
$500 million 2.20% fixed-rate notes that mature in 2022 (b)	2012	$ (2)	$ (1)	$ (1)
$500 million 3.00% fixed-rate notes that mature in 2021 (b)	2011	(11)	(3)	(4)
$600 million 4.50% fixed-rate notes that mature in 2019 (b)	2009	16	2	3
Total - pre-tax			$ (2)	$ (2)
Less: income taxes			1	1
After- tax amounts			$ (1)	$ (1)

(a) The unrecognized gains / (losses) for the treasury rate locks are shown in accumulated other comprehensive income ("AOCI") and are being recognized on a straight line basis to interest expense – net over the term of the underlying debt agreements. Refer to the table below summarizing the impact on the company's consolidated statements of income and AOCI for current period gain (loss) recognition.

(b) The notional amount of the treasury rate lock contracts are equal to the underlying debt instrument with the exception of the treasury rate lock contract entered into to hedge the $600 million 4.50% fixed-rate notes that mature in 2019. The notional amount of this contract was $500 million.

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The following table summarizes the impact of the company’s derivatives on the consolidated statements of income:

	Amount of Pre-Tax Gain (Loss) Recognized in Earnings *			
	Quarter Ended June 30,		Six Months Ended June 30,	
(Millions of dollars)	2018	2017	2018	2017
Derivatives Not Designated as Hedging Instruments				
Currency contracts:				
Balance sheet items				
Debt-related	$ (68)	$ 30	$ (32)	$ 109
Other balance sheet items	(1)	1	1	2
Total	$ (69)	$ 31	$ (31)	$ 111

* The gains (losses) on balance sheet items are offset by gains (losses) recorded on the underlying hedged assets and liabilities. Accordingly, the gains (losses) for the derivatives and the underlying hedged assets and liabilities related to debt items are recorded in the consolidated statements of income as interest expense-net. Other balance sheet items and anticipated net income gains (losses) are recorded in the consolidated statements of income as other income (expenses)-net.

The following table summarizes the impacts of the company's derivatives designated as hedging instruments that impact AOCI:

Derivatives Designated as Hedging Instruments **

	Quarter Ended			
	Amount of Gain (Loss) Recognized in AOCI		Amount of Gain (Loss) Reclassified from AOCI to the Consolidated Statement of Income	
(Millions of dollars)	June 30, 2018	June 30, 2017	June 30, 2018	June 30, 2017
Currency contracts:				
Balance sheet items	$ —	$ —	$ —	$ —
Forecasted purchases	—	1	—	—
Interest rate contracts:				
Treasury rate lock contracts	—	—	—	—
Total - pre tax	$ —	$ 1	$ —	$ —
Less: income taxes	—	(1)	—	—
Total - Net of Taxes	$ —	$ —	$ —	$ —

	Six Months Ended			
	Amount of Gain (Loss) Recognized in AOCI		Amount of Gain (Loss) Reclassified from AOCI to the Consolidated Statement of Income	
(Millions of dollars)	June 30, 2018	June 30, 2017	June 30, 2018	June 30, 2017
Currency contracts:				

Balance sheet items	$ —	$ (1)	$ —	$ —
Forecasted purchases	—	1	—	—
Interest rate contracts:				
Treasury rate lock contracts	—	—	—	—
Total - pre tax	$ —	$ —	$ —	$ —
Less: income taxes	—	—	—	—
Total - Net of Taxes	$ —	$ —	$ —	$ —

**The gains (losses) on net investment hedges are recorded as a component of AOCI within foreign currency translation adjustments in the condensed consolidated balance sheets and the condensed consolidated statements of comprehensive income. The gains (losses) on treasury rate locks are recorded as a component of AOCI within derivative instruments in the condensed consolidated balance sheets and the condensed consolidated statements of comprehensive income. There was no ineffectiveness for these instruments during 2018 or 2017. The gains (losses) on net investment hedges are reclassified to earnings only when the related currency translation adjustments are required to be reclassified, usually upon sale or liquidation of the investment. The gains (losses) for interest rate contracts are reclassified to earnings as interest expense –net on a straight-line basis over the remaining maturity of the underlying debt. Net losses of less than $1 million are expected to be reclassified to earnings during the next twelve months.

7. Fair Value Disclosures

The fair value hierarchy prioritizes the input to valuation techniques used to measure fair value into three broad levels as follows:

Level 1 – quoted prices in active markets for identical assets or liabilities

Level 2 – quoted prices for similar assets and liabilities in active markets or inputs that are observable

Level 3 – inputs that are unobservable (for example cash flow modeling inputs based on assumptions)

Assets and Liabilities Measured at Fair Value on a Recurring Basis

The following table summarizes assets and liabilities measured at fair value on a recurring basis:

	Fair Value Measurements Using					
	Level 1		Level 2		Level 3	
(Millions of dollars)	June 30, 2018	December 31, 2017	June 30, 2018	December 31, 2017	June 30, 2018	December 31, 2017
Assets						
Derivatives	—	—	$ 6	$ 17	—	—
Liabilities						
Derivatives	—	—	$ 26	$ 18	—	—

The fair values of the derivative assets and liabilities are based on market prices obtained from independent brokers or determined using quantitative models that use as their basis readily observable market parameters that are actively quoted and can be validated through external sources, including third-party pricing services, brokers and market transactions. Investments are marketable securities traded on an exchange.

The fair values of cash and cash equivalents, short-term debt, accounts receivable-net, and accounts payable approximate carrying amounts because of the short maturities of these instruments. The fair value of long-term debt is estimated based on the quoted market prices for similar issues, which is deemed a level 2 measurement. At June 30, 2018, the estimated fair value of Praxair's long-term debt portfolio was $8,216 million versus a carrying value of $8,208 million. At December 31, 2017, the estimated fair value of Praxair's long-term debt portfolio was $8,969 million versus a carrying value of $8,762 million. Differences from carrying amounts are attributable to interest-rate changes subsequent to when the debt was issued.

8. Earnings Per Share – Praxair, Inc. Shareholders

Basic earnings per share is computed by dividing Net income – Praxair, Inc. for the period by the weighted average number of Praxair common shares outstanding. Diluted earnings per share is computed by dividing Net income – Praxair, Inc. for the period by the weighted average number of Praxair common shares outstanding and dilutive common stock equivalents, as follows:

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	Quarter Ended June 30,		Six Months Ended June 30,	
	2018	2017	2018	2017
Numerator (Millions of dollars)				
Net income - Praxair, Inc.	$ 480	$ 406	$942	$ 795
Denominator (Thousands of shares)				
Weighted average shares outstanding	287,467	285,719	287,321	285,429
Shares earned and issuable under compensation plans	336	371	333	370
Weighted average shares used in basic earnings per share	287,803	286,090	287,654	285,799
Effect of dilutive securities				
Stock options and awards	3,105	2,445	3,272	2,268
Weighted average shares used in diluted earnings per share	290,908	288,535	290,926	288,067
Basic Earnings Per Share	$ 1.67	$ 1.42	$3.27	$ 2.78
Diluted Earnings Per Share	$ 1.65	$ 1.41	$3.24	$ 2.76

There were no antidilutive shares for the quarter and six months ended June 30, 2018. Stock options of 2,508,472 and 2,509,162 for the quarter and six months ended June 30, 2017 were antidilutive and therefore excluded in the computation of diluted earnings per share.

9. Goodwill and Other Intangible Assets

Changes in the carrying amount of goodwill for the six months ended June 30, 2018 were as follows:

(Millions of dollars)	North America	South America	Europe	Asia	Surface Technologies	Total
Balance, December 31, 2017	$2,202	$ 129	$698	$61	$ 143	$3,233
Acquisitions	—	—	—	—	—	—
Purchase adjustments & other	12	—	—	—	—	12
Foreign currency translation	(7)	(22)	(12)	(1)	(3)	(45)
Balance, June 30, 2018	$2,207	$ 107	$686	$60	$ 140	$3,200

Praxair has performed its goodwill impairment tests annually during the second quarter of each year, and historically has determined that the fair value of each of its reporting units was substantially in excess of its carrying value. For the 2018 test completed this quarter, Praxair applied the FASB's accounting guidance which allows the Company to first assess qualitative factors to determine the extent of additional quantitative analysis, if any, that may be required to test goodwill for impairment (refer to Note 1 to the consolidated financial statements of Praxair's 2017 Annual Report on Form 10-K). Based on the qualitative assessments performed in the second quarter of 2018, Praxair concluded that it was more likely than not that the fair value of each reporting unit substantially exceeded its carrying value and therefore, further quantitative analysis was not required. As a result, no impairment was recorded. There were no indicators of impairment through June 30, 2018.

Changes in the carrying amounts of other intangibles for the six months ended June 30, 2018 were as follows:

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(Millions of dollars)	Customer & License/Use Agreements	Non-compete Agreements	Patents & Other	Total
Cost:				
Balance, December 31, 2017	$ 772	$ 28	$ 52	$852
Additions	—	—	—	—
Foreign currency translation	(6)	—	—	(6)
Other*	(20)	(5)	—	(25)
Balance, June 30, 2018	$ 746	$ 23	$ 52	$821
Less: Accumulated amortization				
Balance, December 31, 2017	$ (260)	$ (18)	$ (21)	$(299)
Amortization expense	(19)	(2)	(2)	(23)
Foreign currency translation	2	—	—	2
Other*	19	5	—	24
Balance, June 30, 2018	$ (258)	$ (15)	$ (23)	$(296)
Net balance at June 30, 2018	$ 488	$ 8	$ 29	$525

* Other primarily relates to the write-off of fully amortized assets.

There are no expected residual values related to these intangible assets. The remaining weighted-average amortization period for intangible assets is approximately 16 years.

Total estimated annual amortization expense is as follows:

(Millions of dollars)	
Remaining 2018	$22
2019	43
2020	41
2021	39
2022	38
Thereafter	342
	$525

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10. Share-Based Compensation
Share-based compensation expense of $17 million ($12 million after-tax) and $16 million ($1 million after-tax) was recognized during the quarters ended June 30, 2018 and 2017, respectively. The 2018 and 2017 quarters include $2 million and $10 million of excess tax benefits, respectively. Share-based compensation of $21 million ($2 million after-tax) and $28 million ($5 million after-tax) was recognized during the six months ended June 30, 2018 and 2017, respectively. The 2018 and 2017 six-month periods include $15 million and $14 million, respectively, of excess tax benefits. The expense was recorded primarily in selling, general and administrative expenses. There was no share-based compensation cost that was capitalized. For further details regarding Praxair's share-based compensation arrangements and prior-year grants, refer to Note 15 to the consolidated financial statements of Praxair's 2017 Annual Report on Form 10-K.
Stock Options
The weighted-average fair value of options granted during the six months ended June 30, 2018 was $19.29 ($12.40 in 2017) based on the Black-Scholes Options-Pricing model. The increase in grant date fair value year-over-year was primarily attributable to an increase in the company's stock price.

The following weighted-average assumptions were used to value the grants in 2018 and 2017:

	Six months ended June 30, 2018	2017
Dividend yield	2.1 %	2.7 %
Volatility	14.4%	14.0%
Risk-free interest rate	2.67%	2.13%
Expected term years	5	6

The following table summarizes option activity under the plans as of June 30, 2018 and changes during the six-month period then ended (averages are calculated on a weighted basis; life in years; intrinsic value expressed in millions):

	Number of Options (000's)	Average Exercise Price	Average Remaining Life	Aggregate Intrinsic Value
Outstanding at January 1, 2018	10,787	$ 108.70		
Granted	1,625	154.00		
Exercised	(1,136)	92.29		
Cancelled or Expired	(35)	126.27		
Outstanding at June 30, 2018	11,241	116.86	6.3	$ 464
Exercisable at June 30, 2018	7,521	$ 110.02	5.2	$ 362

The aggregate intrinsic value represents the difference between the company's closing stock price of $158.15 as of June 30, 2018 and the exercise price multiplied by the number of in the money options outstanding as of that date. The total intrinsic value of stock options exercised during the quarter and six months ended June 30, 2018 was $14 million and $77 million, respectively ($45 million and $63 million during the same periods in 2017, respectively).
Cash received from option exercises under all share-based payment arrangements for the quarter and six months ended June 30, 2018 was $12 million and $38 million, respectively ($44 million and $63 million for the same periods in 2017). The cash tax benefit realized from share-based compensation totaled $5 million and $19 million for the quarter and six months ended June 30, 2018, respectively ($18 million and $26 million for the same periods in 2017, respectively).
As of June 30, 2018, $33 million of unrecognized compensation cost related to non-vested stock options is expected to be recognized over a weighted-average period of approximately 1 year.
Performance-Based and Restricted Stock Awards
During the six months ended June 30, 2018, the company granted restricted stock units to employees of 269,433 shares. There were no performance-based stock awards granted to employees during the six months ended June 30,

2018 as restricted stock units were granted in place of performance-based stock awards. Compensation expense related to the restricted stock units is recognized over the vesting period, which is up to three years, based on the grant date fair value.

As of June 30, 2018 the company had performance-based stock awards outstanding, tied to either return on capital ("ROC") performance or relative total shareholder return ("TSR") performance versus that of the S&P 500. The actual number of shares

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issued in settlement of a vested award can range from zero to 200 percent of the target number of shares granted based upon the company's attainment of specified performance targets at the end of a three-year period. Compensation expense related to these awards is recognized over the three-year performance period based on the fair value of the closing market price of the company's common stock on the date of the grant and the estimated performance that will be achieved. Compensation expense for ROC awards will be adjusted during the three-year performance period based upon the estimated performance levels that will be achieved. TSR awards are measured at their grant date fair value and not subsequently re-measured.

The weighted-average fair value of restricted stock units granted during the six months ended June 30, 2018 was $144.79 ($111.69 for the same period in 2017). These fair values are based on the closing market price of Praxair's common stock on the grant date adjusted for dividends that will not be paid during the vesting period. The weighted-average fair value of ROC performance-based stock awards granted during the six months ended June 30, 2017 was $109.68.

The weighted-average fair value of performance-based stock tied to relative TSR performance granted during six months ended June 30, 2017 was $124.12 and was estimated using a Monte Carlo simulation performed as of the grant date.

The following table summarizes non-vested performance-based and restricted stock award activity as of June 30, 2018 and changes during the six months then ended (shares based on target amounts, averages are calculated on a weighted basis):

	Performance-Based		Restricted Stock	
	Number of Shares (000's)	Average Grant Date Fair Value	Number of Shares (000's)	Average Grant Date Fair Value
Non-vested at January 1, 2018	665	$ 113.40	264	$ 107.56
Granted	—	—	269	144.79
Vested	(78)	119.98	(89)	116.29
Cancelled and Forfeited	(150)	110.12	(14)	92.93
Non-vested at June 30, 2018	437	$ 110.02	430	$ 129.49

There are approximately 6 thousand performance-based shares and 3 thousand restricted stock shares that are non-vested at June 30, 2018 which will be settled in cash due to foreign regulatory limitations. The liability related to these grants reflects the current estimate of performance that will be achieved and the current common stock price.

As of June 30, 2018, based on current estimates of future performance, $11 million of unrecognized compensation cost related to performance-based awards is expected to be recognized through the first quarter of 2020 and $36 million of unrecognized compensation cost related to the restricted stock awards is expected to be recognized primarily through the first quarter of 2021.

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11. Retirement Programs

The components of net pension and postretirement benefits other than pensions (“OPEB”) costs for the quarter and six months ended June 30, 2018 and 2017 are shown below:

	Quarter Ended June 30,				Six Months Ended June 30,			
	Pensions		OPEB		Pensions		OPEB	
(Millions of dollars)	2018	2017	2018	2017	2018	2017	2018	2017
Amount recognized in Operating Profit								
Service cost	$12	$12	$1	$ 1	$24	$23	$1	$2
Amount recognized in Net pension and OPEB cost (benefit), excluding service cost								
Interest cost	25	25	1	1	51	51	2	2
Expected return on plan assets	(41)	(40)	—	—	(83)	(80)	—	—
Net amortization and deferral	18	17	(1)	(1)	36	34	(2)	(2)
Curtailment gain (a)	—	—	—	—	—	—	—	(18)
	$2	$2	$—	$ —	$4	$5	$—	$(18)
Net periodic benefit cost (benefit)	$14	$14	$1	$ 1	$28	$28	$1	$(16)

(a) The curtailment gain recorded in the first quarter of 2017 resulted from the termination of an OPEB plan in South America.

Praxair estimates that 2018 required contributions to its pension plans will be in the range of $15 million to $20 million, of which $10 million have been made through June 30, 2018.

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12. Commitments and Contingencies

Contingent Liabilities

Praxair is subject to various lawsuits and government investigations that arise from time to time in the ordinary course of business. These actions are based upon alleged environmental, tax, antitrust and personal injury claims, among others. Praxair has strong defenses in these cases and intends to defend itself vigorously. It is possible that the company may incur losses in connection with some of these actions in excess of accrued liabilities. Management does not anticipate that in the aggregate such losses would have a material adverse effect on the company's consolidated financial position or liquidity; however, it is possible that the final outcomes could have a significant impact on the company's reported results of operations in any given period (see Note 17 to the consolidated financial statements of Praxair's 2017 Annual Report on Form 10-K).

Significant matters are:

- During May 2009, the Brazilian government published Law 11941/2009 instituting a new voluntary amnesty program ("Refis Program") which allowed Brazilian companies to settle certain federal tax disputes at reduced amounts. During the 2009 third quarter, Praxair decided that it was economically beneficial to settle many of its outstanding federal tax disputes and such disputes were enrolled in the Refis Program, subject to final calculation and review by the Brazilian federal government. The Company recorded estimated liabilities based on the terms of the Refis Program. Since 2009, Praxair has been unable to reach final agreement on the calculations and initiated litigation against the government in an attempt to resolve certain items. Open issues relate to the following matters: (i) application of cash deposits and net operating loss carryforwards to satisfy obligations, and (ii) the amount of tax reductions available under the Refis Program. It is difficult to estimate the timing of resolution of legal matters in Brazil.
- At June 30, 2018 the most significant non-income and income tax claims in Brazil, after enrollment in the Refis Program, relate to state VAT tax matters and a federal income tax matter where the taxing authorities are challenging the tax rate that should be applied to income generated by a subsidiary company. The total estimated exposure relating to such claims, including interest and penalties, as appropriate, is approximately $210 million. Praxair has not recorded any liabilities related to such claims based on management judgments, after considering judgments and opinions of outside counsel. Because litigation in Brazil historically takes many years to resolve, it is very difficult to estimate the timing of resolution of these matters; however, it is possible that certain of these matters may be resolved within the near term. The company is vigorously defending against the proceedings.
- On September 1, 2010, CADE (Brazilian Administrative Council for Economic Defense) announced alleged anticompetitive activity on the part of five industrial gas companies in Brazil and imposed fines on all five companies. Originally, CADE imposed a civil fine of R$2.2 billion Brazilian reais (US$570 million) against White Martins, the Brazil-based subsidiary of Praxair, Inc. In response to a motion for clarification, the fine was reduced to R$1.7 billion Brazilian reais (US$440 million) due to a calculation error made by CADE. The amount of the fine is subject to indexation using SELIC. On September 2, 2010, Praxair issued a press release and filed a report on Form 8-K rejecting all claims and stating that the fine represents a gross and arbitrary disregard of Brazilian law.

On October 19, 2010, White Martins filed an annulment petition ("appeal") with the Federal Court in Brasilia seeking to have the fine against White Martins entirely overturned. In order to suspend payment of the fine pending the completion of the appeal process, Brazilian law required that the company tender a form of guarantee in the amount of the fine as security. Initially, 50% of the guarantee was satisfied by letters of credit with a financial institution and 50% by equity of a Brazilian subsidiary. On April 15, 2016, the Ninth Federal Court in Brasilia allowed White Martins to withdraw and cancel the letters of credit. Accordingly, the guarantee is currently satisfied solely by equity of a Brazilian subsidiary.

On September 14, 2015, the Ninth Federal Court of Brasilia overturned the fine against White Martins and declared the original CADE administrative proceeding to be null and void. On June 30, 2016, CADE filed an appeal against this decision with the Federal Circuit Court in Brasilia.

Praxair strongly believes that the allegations are without merit and that the fine will be entirely overturned during the appeal process. The company further believes that it has strong defenses and will vigorously defend against the allegations and related fine up to such levels of the Federal Courts in Brazil as may be necessary. Because appeals in Brazil historically take many years to resolve, it is very difficult to estimate when the appeal will be finally decided.

Based on management judgments, after considering judgments and opinions of outside counsel, no reserve has been recorded for this proceeding as management does not believe that a loss is probable.

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13. Segments
For a description of Praxair's operating segments, refer to Note 18 to the consolidated financial statements of Praxair's 2017 Annual Report on Form 10-K.
Sales and operating profit by segment for the quarters and six months ended June 30, 2018 and 2017 are shown below. 2017 segment operating profit has been reclassified to conform with current year presentation as a result of the adoption of new accounting guidance on the presentation of net periodic pension and postretirement benefit costs (see Note 1).

	Quarter Ended June 30,		Six Months Ended June 30,	
(Millions of dollars)	2018	2017	2018	2017
SALES[a]				
North America	$ 1,594	$ 1,505	$3,157	$2,963
Europe	444	383	872	739
South America	349	373	714	742
Asia	502	422	978	817
Surface Technologies	172	151	339	301
Total sales	$ 3,061	$ 2,834	$6,060	$5,562

	Quarter Ended June 30,		Six Months Ended June 30,	
(Millions of dollars)	2018	2017	2018	2017
OPERATING PROFIT				
North America	$ 432	$ 378	$838	$735
Europe	87	74	167	141
South America	56	64	110	112
Asia	107	80	211	155
Surface Technologies	31	25	59	51
Segment operating profit	713	621	1,385	1,194
Transaction costs and other charges (Note 2)	(24)	(15)	(43)	(21)
Total operating profit	$ 689	$ 606	$1,342	$1,173

(a) Sales reflect external sales only. Intersegment sales, primarily from North America to other segments, were not material.

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14. Equity and Redeemable Noncontrolling Interests

Equity

A summary of the changes in total equity for the quarters and six months ended June 30, 2018 and 2017 is provided below:

(Millions of dollars)	Quarter Ended June 30, 2018			2017		
Activity	Praxair, Inc. Shareholders' Equity	Noncontrolling Interests	Total Equity	Praxair, Inc. Shareholders' Equity	Noncontrolling Interests	Total Equity
Balance, beginning of period	$6,368	$ 516	$6,884	$5,529	$ 436	$5,965
Net income (a)	480	18	498	406	13	419
Other comprehensive income (loss)	(616)	(21)	(637)	41	13	54
Noncontrolling interests:						
Additions (reductions)	—	1	1	—	7	7
Dividends and other capital changes	—	(13)	(13)	—	(16)	(16)
Redemption value adjustments	—	—	—	—	—	—
Dividends to Praxair, Inc. common stock holders ($0.825 per share in 2018 and $0.7875 per share in 2017)	(237)	—	(237)	(225)	—	(225)
Issuances of common stock:						
For the dividend reinvestment and stock purchase plan	1	—	1	1	—	1
For employee savings and incentive plans	15	—	15	39	—	39
Purchases of common stock	(1)	—	(1)	—	—	—
Share-based compensation	17	—	17	16	—	16
Balance, end of period	$6,027	$ 501	$6,528	$5,807	$ 453	$6,260

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(Millions of dollars)	Six Months Ended June 30, 2018			2017		
Activity	Praxair, Inc. Shareholders' Equity	Noncontrolling Interests	Total Equity	Praxair, Inc. Shareholders' Equity	Noncontrolling Interests	Total Equity
Balance, beginning of period	$6,018	$ 493	$6,511	$5,021	$ 420	$5,441
Net income (a)	942	27	969	795	28	823
Other comprehensive income (loss)	(498)	(10)	(508)	356	18	374
Noncontrolling interests:						
Additions (reductions)	—	7	7	—	7	7
Dividends and other capital changes	—	(16)	(16)	—	(20)	(20)
Redemption value adjustments	(2)	—	(2)	—	—	—
Dividends to Praxair, Inc. common stock holders ($1.65 per share in 2018 and $1.575 per share in 2017)	(474)	—	(474)	(450)	—	(450)
Issuances of common stock:						
For the dividend reinvestment and stock purchase plan	3	—	3	3	—	3
For employee savings and incentive plans	18	—	18	54	—	54
Other	—	—	—	—	—	—
Purchases of common stock	(1)	—	(1)	—	—	—
Share-based compensation	21	—	21	28	—	28
Balance, end of period	$6,027	$ 501	$6,528	$5,807	$ 453	$6,260

(a) Net income for noncontrolling interests excludes Net income related to redeemable noncontrolling interests of $2 million for the six months ended June 30, 2018 ($1 million for the same time period in 2017) which is not part of total equity (see redeemable noncontrolling interests section below).

The components of AOCI are as follows:

(Millions of dollars)	June 30, 2018	December 31, 2017
Cumulative translation adjustment - net of taxes:		
North America	$(940)	$(885)
South America	(2,319)	(2,004)
Europe	(433)	(398)
Asia	(254)	(151)
Surface Technologies	(27)	(17)
	(3,973)	(3,455)
Derivatives - net of taxes	(1)	(1)
Pension / OPEB funded status obligation (net of $341 million and $347 million tax benefit in June 30, 2018 and December 31, 2017, respectively)	(622)	(642)
	$(4,596)	$(4,098)

Redeemable Noncontrolling Interests

Noncontrolling interests with redemption features, such as put/sell options, that are not solely within the Company's control ("redeemable noncontrolling interests") are reported separately in the consolidated balance sheets at the greater of carrying value or redemption value. For redeemable noncontrolling interests that are not yet exercisable, Praxair calculates the redemption value by accreting the carrying value to the redemption value over the period until exercisable. If the redemption value is greater than the carrying value, any increase is adjusted directly to equity and

does not impact net income.
At June 30, 2018 and 2017, redeemable noncontrolling interests includes one packaged gas distributor in the United States where the noncontrolling shareholder has a put option.

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Following is a summary of the changes in redeemable noncontrolling interests for the six months ended June 30, 2018 and 2017:

(Millions of dollars)	2018	2017
Balance, January 1	$11	$11
Net income	2	1
Distributions to noncontrolling interest and other	(1)	(2)
Redemption value adjustments/accretion	2	—
Balance, June 30	$14	$10

15. Revenue Recognition

Effective January 1, 2018, Praxair adopted the FASB's Accounting Standards Update No. 2014-09 ("ASC 606") relating to Revenue Recognition using the modified retrospective transition method. The new accounting standard requires revenue to be recognized as control of goods or services are transferred to customers in an amount that reflects the consideration to which an entity expects to be entitled to receive in exchange for the goods or services. No material differences in revenue recognition were identified as compared to the Company's historical revenue recognition accounting; accordingly, there is no adjustment to opening retained earnings at January 1, 2018 and therefore no need to present comparable revenue in accordance with the prior accounting policy. The following sections include updated accounting policies and disclosures required by ASC 606. Praxair's significant accounting policies for periods through December 31, 2017 are summarized in Note 1 to its 2017 Annual Report on Form 10-K.

Contracts with Customers

Approximately 94% of Praxair’s consolidated sales are generated from industrial gases and related products in four geographic segments (North America, Europe, South America and Asia) and the remaining 6% is related to the global surface technologies segment. Praxair serves a diverse group of industries including healthcare, petroleum refining, manufacturing, food, beverage carbonation, fiber-optics, steel making, aerospace, chemicals and water treatment.

Industrial Gases

Within each of the Company’s geographic segments for industrial gases, there are three basic distribution methods: (i) on-site or tonnage; (ii) merchant or bulk liquid; and (iii) packaged or cylinder gases. The distribution method used by Praxair to supply a customer is determined by many factors, including the customer’s volume requirements and location. The distribution method generally determines the contract terms with the customer and, accordingly, the revenue recognition accounting practices. Praxair’s primary products in its industrial gases business are atmospheric gases (oxygen, nitrogen, argon, rare gases) and process gases (carbon dioxide, helium, hydrogen, electronic gases, specialty gases, acetylene). These products are generally sold through one of the three distribution methods.

Following is a description of each of the three industrial gases distribution methods and the respective revenue recognition policies:

On-site. Customers that require the largest volumes of product and that have a relatively constant demand pattern are supplied by cryogenic and process gas on-site plants. Praxair constructs plants on or adjacent to these customers’ sites and supplies the product directly to customers by pipeline. Where there are large concentrations of customers, a single pipeline may be connected to several plants and customers. On-site product supply contracts generally are total requirement contracts with terms typically ranging from 10-20 years and contain minimum purchase requirements and price escalation provisions. Many of the cryogenic on-site plants also produce liquid products for the merchant market. Therefore, plants are typically not dedicated to a single customer. Additionally, Praxair is responsible for the design, construction, operations and maintenance of the plants and our customers typically have no involvement in these activities. Advanced air separation processes also allow on-site delivery to customers with smaller volume requirements.

The Company’s performance obligations related to on-site customers are satisfied over time as customers receive and obtain control of the product. Praxair has elected to apply the practical expedient for measuring progress towards the completion of a performance obligation and recognizes revenue as the company has the right to invoice each customer, which generally corresponds with product delivery. Accordingly, revenue is recognized when product is delivered to the customer and the Company has the right to invoice the customer in accordance with the contract terms. Consideration in these contracts is generally based on pricing which fluctuates with various price indices. Variable components of consideration exist within on-site contracts but are considered constrained.

Merchant. Merchant deliveries generally are made from Praxair's plants by tanker trucks to storage containers at the customer's site. Due to the relatively high distribution cost, merchant oxygen and nitrogen generally have a relatively small distribution

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radius from the plants at which they are produced. Merchant argon, hydrogen and helium can be shipped much longer distances. The customer agreements used in the merchant business are usually three-to seven-year supply agreements based on the requirements of the customer. These contracts generally do not contain minimum purchase requirements or volume commitments.

The Company’s performance obligations related to merchant customers are generally satisfied at a point in time as the customers receive and obtain control of the product. Revenue is recognized when product is delivered to the customer and the Company has the right to invoice the customer in accordance with the contract terms. Any variable components of consideration within merchant contracts are constrained however this consideration is not significant.

Packaged Gases. Customers requiring small volumes are supplied products in containers called cylinders, under medium to high pressure. Praxair distributes merchant gases from its production plants to Company-owned cylinder filling plants where cylinders are then filled for distribution to customers. Cylinders may be delivered to the customer’s site or picked up by the customer at a packaging facility or retail store. Praxair invoices the customer for the industrial gases and the use of the cylinder container(s). The Company also sells hardgoods and welding equipment purchased from independent manufacturers. Packaged gases are generally sold under one to three-year supply contracts and purchase orders and do not contain minimum purchase requirements or volume commitments.

The Company’s performance obligations related to packaged gases are satisfied at a point in time. Accordingly, revenue is recognized when product is delivered to the customer or when the customer picks up product from a packaged gas facility or retail store, and the Company has the right to payment from the customer in accordance with the contract terms. Any variable consideration is constrained and will be recognized when the uncertainty related to the consideration is resolved.

Surface Technologies

The company’s surface technologies segment, operated through Praxair Surface Technologies, Inc., supplies wear-resistant and high-temperature corrosion-resistant metallic and ceramic coatings and powders. Praxair Surface Technologies is a leading global supplier of coatings services and thermal spray consumables to customers in the aircraft, energy, printing, primary metals, petrochemical, textile, and other industries. Its coatings are used to provide wear resistance, corrosion protection, thermal insulation, and many other surface-enhancing functions which serve to extend component life, enable optimal performance, and reduce operating costs. It also manufactures a complete line of electric arc, plasma and wire spray, and high-velocity oxy-fuel ("HVOF") equipment.

The Company’s performance obligation related to surface technologies customers are generally satisfied at a point in time when the customer receives and takes control of product. Accordingly, revenue is recognized when product is delivered to the customer or when the customer picks up the product from the Company’s facility, and the Company has the right to invoice the customer in accordance with the contract terms.

Payment Terms and Other

Praxair generally receives payment after performance obligations are satisfied, and customer prepayments are not typical. Payment terms vary based on the country where sales originate and local customary payment practices. Praxair does not offer extended financing outside of customary payment terms. Contract asset and liability balances and the changes in these balances are not material. Amounts billed for sales and use taxes, value-added taxes, and certain excise and other specific transactional taxes imposed on revenue producing transactions are presented on a net basis and are not included in sales within the consolidated statement of income. Additionally, sales returns and allowances are not a normal practice in the industry and are not significant.

Disaggregated Revenues Information

As described above and in Note 18 of the 2017 10-K, the Company manages its industrial gases business on a geographic basis, while the surface technologies business is managed on a global basis. Further, the Company believes that reporting sales by distribution method by reportable geographic segment best illustrates the nature, timing, type of customer, and contract terms for its revenues, including terms and pricing.

The following table shows sales by distribution method for each reportable segment and at the consolidated level for the quarter and six months ended June 30, 2018.

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Quarter Ended June 30,

(Dollars in Millions)	Industrial Gases						
Sales	North America	Europe	South America	Asia	Surface Technologies	Total	%
Merchant	$ 591	$ 152	$ 131	$ 164	$ —	$ 1,038	34 %
On-Site	458	77	117	250	—	902	29 %
Packaged Gas	508	199	93	57	—	857	28 %
Other	37	16	8	31	172	264	9 %
	$ 1,594	$ 444	$ 349	$ 502	$ 172	$ 3,061	100 %

Six Months Ended June 30,

(Dollars in Millions)	Industrial Gases						
Sales	North America	Europe	South America	Asia	Surface Technologies	Total	%
Merchant	$ 1,164	$ 300	$ 274	$ 311	$ —	$ 2,049	34 %
On-Site	918	157	231	496	—	1,802	30 %
Packaged Gas	1,001	380	191	111	—	1,683	28 %
Other	74	35	18	60	339	526	8 %
	$ 3,157	$ 872	$ 714	$ 978	$ 339	$ 6,060	100 %

Remaining Performance Obligations

As described above, Praxair’s contracts with on-site customers are under long-term supply arrangements which generally require the customer to purchase their requirements from Praxair and also have minimum purchase requirements. The Company estimates the consideration related to minimum purchase requirements is approximately $17 billion. This amount excludes all sales above minimum purchase requirements, which can be significant depending on customer needs. In the future, actual amounts will be different due to impacts from several factors, many of which are beyond the Company’s control including, but not limited to, timing of newly signed, terminated and renewed contracts, inflationary price escalations, currency exchange rates, and pass-through costs related to natural gas and electricity. The actual duration of long-term supply contracts ranges up to twenty years. The Company estimates that approximately half of the revenue related to minimum purchase requirements are estimated to be earned in the next five years and the remaining thereafter.

Note 16. Income Taxes

U.S. Tax Cuts and Jobs Act (Tax Act)

On December 22, 2017 the U.S. government enacted the Tax Cuts and Jobs Act (Tax Act). This comprehensive tax legislation significantly revises the U.S. corporate income tax rules by, among other things, lowering the corporate income tax rate from 35% to 21%, implementing a territorial tax system and imposing a one-time tax on accumulated earnings of foreign subsidiaries. Given the substantial uncertainties surrounding the Tax Act and the short period of time between December 22, 2017 and December 31, 2017 to calculate the U.S. Federal, U.S. state, and non-U.S. tax impacts of the Tax Act, the Company is accounting for its income tax charge on a provisional (estimated) basis as allowed by SEC Staff Accounting Bulletin No. 118. In 2017, the Company recorded a net provisional income tax charge of $394 million with three main components: (i) an estimated $467 million U.S. federal and state tax charge for deemed repatriation of accumulated foreign earnings; (ii) an estimated $260 million charge for foreign withholding taxes related to anticipated future repatriation of foreign earnings; and (iii) an estimated $333 million deferred tax benefit for the revaluation of net deferred tax liabilities from 35% to the new 21% tax rate. Refer to Note 5 to the consolidated financial statements of Praxair's 2017 Annual Report on Form 10-K.

During 2018, the Company will continue to evaluate the Tax Act, additional guidance from the Internal Revenue Service, its historical foreign earnings and taxes and other items that could impact its net provisional tax charge. Additionally, the Company will continue to review its foreign capital structures, organizational cash needs and the foreign withholding tax cost of planned repatriation. As new information becomes available, the Company will update its provisional estimate and record

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any changes to its income tax expense at that time. As of June 30, 2018, there have been no adjustments to the net provisional income tax charge recognized in 2017.

17. Proposed Business Combination with Linde AG

On June 1, 2017, Praxair, Inc. and Linde AG entered into a definitive Business Combination Agreement, as amended (the "Business Combination Agreement"), pursuant to which, among other things, Praxair, Inc. and Linde AG agreed to combine their respective businesses through an all-stock transaction, and become subsidiaries of a new holding company incorporated in Ireland, Linde plc. In connection with the proposed business combination, Linde plc filed a Registration Statement on Form S-4 which was declared effective by the U. S. Securities and Exchange Commission ("SEC") on August 14, 2017.

Linde plc has also filed an offer document with the German Federal Financial Supervisory Authority (Bundesanstalt fuer Finanzdienstleistungsaufsicht) (“BaFin”) which was approved for publication by BaFin on August 14, 2017 and published by Linde plc on August 15, 2017. Pursuant to the offer document, Linde plc made an offer to exchange each issued and outstanding no-par value bearer share of Linde AG for 1.540 ordinary shares of Linde plc (the “Exchange Offer”). In addition, Zamalight Subco, Inc., an indirect wholly-owned Delaware subsidiary of Linde plc, will merge with and into Praxair, Inc., with Praxair, Inc. surviving the merger (the “Merger”, and together with the Exchange Offer, the “Business Combination”). In the Merger, each share of Praxair, Inc. common stock will be converted into the right to receive one Linde plc ordinary share. Praxair Inc.’s stockholders approved the Merger at Praxair Inc.’s special meeting held on September 27, 2017, and on November 24, 2017, the tender period for the Exchange Offer expired with approximately 92% of all Linde AG shares entitled to voting rights being tendered. The parties currently expect the Business Combination to be completed in the second half of 2018. In connection with the completion of the Business Combination, Linde plc will apply to list its ordinary shares on the New York Stock Exchange and the Frankfurt Stock Exchange, and will seek inclusion in the S&P 500 and DAX 30 indices.

Completion of the Business Combination remains subject to approval by requisite governmental regulators and authorities under applicable competition laws.

The Business Combination Agreement, or certain covenants contained therein, may be terminated for, or may terminate as a result of, certain reasons, including, among others, (a) the mutual consent of Praxair, Inc. and Linde AG to termination, (b) a permanent injunction or order by any governmental entity in Ireland, the United Kingdom, Germany or the United States that prohibits or makes illegal the completion of the Business Combination, (c) the occurrence of a change, event, occurrence or effect that has had or is reasonably expected to have a “material adverse change” (as defined in the Business Combination Agreement) on Linde AG or Praxair, Inc. or (d) the failure to obtain approval by requisite governmental regulators and authorities described in the preceding paragraph.

For additional information related to the Business Combination Agreement, please refer to the proxy statement/prospectus filed by Praxair, Inc. on Schedule 14A with the SEC on August 16, 2017.

Subsequent Event

On July 5, 2018, Praxair, Inc. agreed to sell the majority of its businesses in Europe to Taiyo Nippon Sanso Corporation (“Taiyo”) pursuant to a Sale and Purchase Agreement, dated July 5, 2018, by and among Praxair Inc., Taiyo and Linde plc (the “SPA”).

The SPA was entered into in connection with the antitrust regulatory review by the European Commission of the transactions contemplated by the Business Combination Agreement. The purchase price for the European businesses pursuant to the SPA is 5.0 billion euros in cash consideration and is subject to customary adjustments at closing. The completion of the transactions contemplated by the SPA is conditioned upon, and subject to, (i) the successful completion of the Business Combination, (ii) Praxair, Inc. having received confirmation from the European Commission in writing that the European Commission (x) approves Taiyo as a suitable purchaser of the European businesses or does not object to the identity of Taiyo and (y) approves the sale of the European businesses pursuant to the SPA as an adequate remedy to concerns that the Business Combination could impede competition in the European Economic Area, and (iii) the transactions contemplated by the SPA having received competition approvals or expiry of the statutory waiting periods in the European Union and Brazil.

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Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations

The following table provides summary data for the quarter and six months ended June 30, 2018 and 2017:

	Quarter Ended June 30,				Six Months Ended June 30,			
(Dollar amounts in millions, except per share data)	2018	2017 (c)	Variance		2018	2017 (c)	Variance	
Reported Amounts								
Sales	$3,061	$2,834	8	%	$6,060	$5,562	9	%
Cost of sales, exclusive of depreciation and amortization	$1,723	$1,599	8	%	$3,400	$3,148	8	%
Gross margin (a)	$1,338	$1,235	8	%	$2,660	$2,414	10	%
As a percent of sales	43.7 %	43.6 %			43.9 %	43.4 %		
Selling, general and administrative	$307	$305	1	%	$617	$595	4	%
As a percent of sales	10.0 %	10.8 %			10.2 %	10.7 %		
Depreciation and amortization	$311	$292	7	%	$622	$579	7	%
Transaction costs and other charges (b)	$24	$15			$43	$21		
Other income (expense) - net	$17	$6			$12	$—		
Operating profit	$689	$606	14	%	$1,342	$1,173	14	%
Operating margin	22.5 %	21.4 %			22.1 %	21.1 %		
Interest expense - net	$44	$38	16	%	$90	$79	14	%
Net pension and OPEB cost (benefit), excluding service cost	$2	$2			$4	$(13)		
Effective tax rate	24.6 %	27.7 %			24.5 %	27.6 %		
Income from equity investments	$14	$11	27	%	$29	$23	26	%
Noncontrolling interests	$(19)	$(14)	36	%	$(29)	$(29)	—	%
Net income - Praxair, Inc.	$480	$406	18	%	$942	$795	18	%
Diluted earnings per share	$1.65	$1.41	17	%	$3.24	$2.76	17	%
Diluted shares outstanding	290,908	288,535	1	%	290,926	288,067	1	%
Number of employees	26,658	26,487			26,658	26,487		
Adjusted Amounts (b)								
Operating profit	$713	$621	15	%	$1,385	$1,194	16	%
Operating margin	23.3 %	21.9 %			22.9 %	21.5 %		
Effective tax rate	24.1 %	27.0 %			24.1 %	27.1 %		
Noncontrolling interests	$(19)	$(14)	36	%	$(28)	$(29)	(3)	%
Net income - Praxair, Inc.	$501	$421	19	%	$981	$816	20	%
Diluted earnings per share	$1.72	$1.46	18	%	$3.37	$2.83	19	%
Other Financial Data (b)								
EBITDA	$1,014	$909			$1,993	$1,775		
EBITDA Margin	33.1 %	32.1 %			32.9 %	31.9 %		
Adjusted EBITDA	$1,038	$924			$2,036	$1,796		
Adjusted EBITDA Margin	33.9 %	32.6 %			33.6 %	32.3 %		

(a) Gross margin excludes depreciation and amortization expense.

(b) Adjusted amounts and other financial data are non-GAAP performance measures. A reconciliation of reported amounts to adjusted amounts and other financial data can be found in the "Non-GAAP Financial Measures" section of this MD&A. See Note 2 to the condensed consolidated financial statements.

(c) Prior period information has been reclassified to conform with current year presentation as a result of the adoption of new accounting guidance on the presentation of net periodic pension and postretirement benefit costs. See Note 1 to the condensed consolidation financial statements.

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Consolidated Results

In the second quarter of 2018, Praxair’s sales were $3,061 million, 8% above the prior–year quarter. Excluding higher cost pass-through which increased sales by 1% with minimal impact on operating profit, sales growth of 7% was driven by higher volumes across all segments, including new project start-ups, and price attainment. Reported operating profit for the second quarter of 2018 of $689 million, 22.5% of sales, was 14% above the prior-year quarter. Operating profit included transaction costs and other charges of $24 million primarily related to the potential Linde merger. Excluding these costs, adjusted operating profit was $713 million, 23.3% of sales and 15% above the 2017 adjusted second quarter driven by higher volumes and price. The company's EBITDA margin was 33.1% and adjusted EBITDA margin was 33.9%. The reported effective tax rate ("ETR") was 24.6% versus 27.7% in the second quarter of 2017. The adjusted ETR was 24.1% versus 27.0% in the second quarter of 2017, reflecting the impact of U.S. tax reform. Diluted earnings per share ("EPS") was $1.65, 17% above reported EPS of $1.41 in the second quarter of 2017. On an adjusted basis, EPS was $1.72, 18% above the 2017 EPS of $1.46, driven by higher adjusted net income and a lower adjusted ETR.

Outlook

The company’s core business is to build, own, and operate industrial gas plants in order to supply atmospheric and process gases to customers. As such, Praxair believes that its backlog is one indicator of future sales growth. At June 30, 2018, Praxair’s backlog of 19 large projects under construction was $1.7 billion. This represents the total estimated capital cost of large plants under construction. These plants will supply customers in the energy, chemical, manufacturing, and electronics end-markets.

Praxair provides quarterly updates on operating results, material trends that may affect financial performance, and financial earnings guidance via quarterly earnings releases and investor teleconferences. These updates are available on the company’s website, www.praxair.com, but are not incorporated herein.

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Results of Operations

The changes in consolidated sales and operating profit compared to the prior year are attributable to the following:

	Quarter Ended June 30, 2018 vs. 2017		Six Months Ended June 30, 2018 vs. 2017	
	% Change		% Change	
	Sales	Operating Profit	Sales	Operating Profit
Factors Contributing to Changes				
Volume	5 %	9 %	5%	9 %
Price/Mix	2 %	8 %	2%	8 %
Cost pass-through	1 %	— %	—%	— %
Currency	—%	— %	2%	2 %
Acquisitions/divestitures	—%	— %	—%	— %
Other	—%	(3)%	—%	(5)%
Reported	8 %	14 %	9%	14 %
Add: Transaction costs and other charges	—%	1 %	—%	2 %
Adjusted	8 %	15 %	9%	16 %

The following tables provide sales by end-market and distribution method:

	Quarter Ended June 30,			Six Months Ended June 30,		
	% of Sales		% Change*	% of Sales		% Change*
	2018	2017		2018	2017	
Sales by End Markets						
Manufacturing	22 %	22 %	7 %	22 %	22 %	7 %
Metals	17 %	17 %	11 %	17 %	17 %	10 %
Energy	11 %	12 %	2 %	11 %	12 %	2 %
Chemicals	11 %	10 %	13 %	11 %	10 %	13 %
Electronics	9 %	9 %	7 %	9 %	9 %	8 %
Healthcare	8 %	8 %	7 %	8 %	8 %	6 %
Food & Beverage	9 %	10 %	4 %	9 %	9 %	5 %
Aerospace	4 %	3 %	16 %	4 %	3 %	12 %
Other	9 %	9 %	5 %	9 %	10 %	2 %
	100%	100%		100%	100%	

* Excludes impact of currency, natural gas/precious metals cost pass-through and acquisitions/divestitures.

	Quarter Ended June 30,		Six Months Ended June 30,	
	% of Sales		% of Sales	
	2018	2017	2018	2017
Sales by Distribution Method				
On-Site	29 %	30 %	30 %	30 %
Merchant	34 %	34 %	34 %	34 %
Packaged Gas	28 %	28 %	28 %	28 %
Other	9 %	8 %	8 %	8 %
	100 %	100 %	100%	100%

Sales increased $227 million, or 8%, for the second quarter and increased $498 million, or 9% for the six months ended June 30, 2018 versus the respective 2017 periods. Volume growth contributed 5% to sales in both the quarter and six-month periods driven by higher volumes in North America and Asia, including new project start-ups. Higher overall pricing across most segments contributed 2% to sales in both the quarter and six-month periods. Currency translation impact was minimal in the quarter and increased sales by 2% for the six-month period. Higher cost pass through increased sales by 1% in the quarter with a minimal impact on the six-month period.

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Gross margin increased $103 million, or 8%, for the second quarter of 2018 and increased $246 million or 10% for the six months ended June 30, 2018 versus the respective 2017 periods, primarily due to higher volumes and price. Gross margin as a percentage of sales increased to 43.7% from 43.6% for the second quarter of 2018 and increased to 43.9% from 43.4% for the six months ended June 30, 2018 versus the respective 2017 periods.

Selling, general and administrative expense ("SG&A") was relatively flat for the second quarter of 2018 and increased $22 million for the six months ended June 30, 2018 versus the respective 2017 periods. Currency impacts were minimal in the quarter and increased SG&A $9 million for the six-month period. Excluding currency effects in the six-month period, SG&A was higher driven by cost inflation partially offset by cost reduction actions.

Depreciation and amortization expense increased $19 million and $43 million, or 7%, for both the quarter and the six months ended June 30, 2018 versus the respective 2017 periods. Currency impacts increased depreciation and amortization by $2 million in the quarter and $12 million for the six-month period. Excluding currency effects, depreciation and amortization expense increased $17 million for the quarter and $31 million for the six-month period primarily driven by large project start-ups.

Praxair recorded transaction costs and other charges of $24 million and $15 million in the second quarters of 2018 and 2017, respectively, primarily related to the potential merger (refer to Note 2 to the condensed consolidated financial statements). Transaction costs and other charges were $43 million and $21 million, respectively, for the six-month periods ended June 30, 2018 and 2017.

Other income (expense) – net was $17 million income for the 2018 second quarter compared to $6 million income for the 2017 second quarter and was $12 million income for the six months ended June 30, 2018 compared to flat for the respective 2017 period. In North America, the second quarter and six-month periods of 2018 included a $30 million asset impairment charge which was more than offset by $43 million of gains on asset disposals. In Asia, the six-month period of 2018 included a first quarter $22 million asset impairment charge, offset by a litigation settlement gain.

Reported operating profit increased $83 million, or 14%, for the second quarter of 2018 and increased $169 million, or 14%, for the six months ended June 30, 2018 versus the respective 2017 periods. The second quarter and six-month period of 2018 included $24 million and $43 million, respectively, of transaction costs and other charges primarily related to the potential merger ($15 million and $21 million for the respective 2017 periods). Excluding these charges, adjusted operating profit increased $92 million, or 15%, for the second quarter of 2018 and increased $191 million, or 16%, for the six months ended June 30, 2018 versus the respective 2017 periods driven by higher volumes and price.

Interest expense-net increased $6 million, or 16%, for the second quarter of 2018 and increased $11 million, or 14%, for the six months ended June 30, 2018 versus the respective 2017 periods. The increase in both periods was primarily attributable to lower capitalized interest.

The reported effective tax rate ("ETR") for the second quarter of 2018 and 2017 was 24.6% and 27.7%, respectively. The reported ETR for the second quarters of 2018 and 2017 include transaction costs and other charges of $24 million ($21 million after-tax), and $15 million ($15 million after-tax), respectively, related to the potential merger. Excluding these impacts, on an adjusted basis the ETR for the second quarters of 2018 and 2017 was 24.1% and 27.0%, respectively. The reported ETR for the six months ended June 30, 2018 and 2017 was 24.5% and 27.6%, respectively. The reported ETR for the six-month periods of 2018 and 2017 include transaction costs and other charges of $43 million ($38 million after-tax) and $21 million ($21 million after-tax), respectively. Excluding these impacts, on an adjusted basis the ETR for the six months ended June 30, 2018 and 2017 was 24.1% and 27.1%, respectively. The decrease in both the quarter and six-month periods was driven primarily by the impact of the U.S. Tax Cuts and Jobs Act enacted in the fourth quarter of 2017 (see Note 16 to the condensed consolidated financial statements).

Income from equity investments for the second quarters of 2018 and 2017 was $14 million and $11 million, respectively, largely in China and Italy. Income from equity investments for the six months ended June 30, 2018 and 2017 was $29 million and $23 million, respectively.

At June 30, 2018, non-controlling interests consisted primarily of non-controlling shareholders' investments in Asia (primarily China), Europe (primarily Italy) and surface technologies. Reported non-controlling interests increased $5 million for the second quarter of 2018 and was flat for the six months ended June 30, 2018 versus the respective 2017 periods. The increase in the second quarter was driven by higher earnings. In the six-month period, higher earnings were more than offset by the impact of an asset impairment charge in the first quarter.

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Reported Net income-Praxair, Inc. increased $74 million, or 18%, for the second quarter of 2018 and increased $147 million, or 18%, for the six months ended June 30, 2018 versus the respective 2017 periods. Included within the second quarter and six-month periods of 2018 were transaction costs and other charges of $21 million and $39 million, respectively, after-tax and noncontrolling interests. Included within the second quarter and six-month periods of 2017 were transaction costs and other charges of $15 million and $21 million, respectively, after-tax (see Note 2 to the condensed consolidated financial statements). Excluding these charges, adjusted Net income-Praxair, Inc increased $80 million, or 19%, for the second quarter of 2018 and increased $165 million, or 20%, for the six months ended June 30, 2018 due to higher adjusted operating profit and a lower effective tax rate.

Reported Earnings per share of $1.65 increased $0.24, or 17%, for the second quarter of 2018 and reported earnings per share of $3.24 increased $0.48, or 17%, for the six months ended June 30, 2018 versus the respective 2017 periods. Included within the 2018 second quarter and six-month period were charges of $0.07 and $0.13, respectively, for transaction costs and other charges related primarily to the potential merger ($0.05 and $0.07 for the respective 2017 periods, see Note 2 to the condensed consolidated financial statements). Excluding these charges, adjusted EPS increased $0.26, or 18% for the second quarter of 2018 and increased $0.54, or 19%, for the six months ended June 30, 2018 versus the respective 2017 periods primarily due to higher adjusted net income.

The number of employees at June 30, 2018 was 26,658, an increase of 171 employees from June 30, 2017.

Other Financial Data

EBITDA increased $105 million to $1,014 million for the second quarter 2018 from $909 million for the second quarter 2017 and increased $218 million to $1,993 million for the six-month period of 2018 from $1,775 million for the six-month period of 2017. Included within the 2018 second quarter and six-month period were charges of $24 million and $43 million, respectively, for transaction costs and other charges related primarily to the potential merger ($15 million and $21 million for the respective 2017 periods, see Note 2 to the condensed consolidated financial statements). Adjusted EBITDA increased $114 million to $1,038 million for the second quarter 2018 from $924 million for the second quarter 2017 and increased $240 million to $2,036 million for the six-month period of 2018 from $1,796 million for the six-month period of 2017. The increase in EBITDA and adjusted EBITDA in the second quarter and six-month periods is primarily due to higher net income plus depreciation and amortization on both a reported and adjusted basis versus the prior year periods.

See the "Non-GAAP Financial Measures" section below for definitions and reconciliations of these non-GAAP measures to reported GAAP amounts.
Other Comprehensive Income (Loss)

Other comprehensive losses for the second quarter and six months ended June 30, 2018 of $(637) million and $(508) million resulted primarily from adverse currency translation adjustments of $(643) million and $(528) million. The adverse translation adjustments reflect the impact of translating local currency foreign subsidiary financial statements to U.S. dollars, and are largely driven by the strengthening of the U.S. dollar against major currencies including the Euro, Brazilian Real, and Canadian dollar. See the "Currency" section of the MD&A for exchange rates used for translation purposes and Note 14 to the condensed consolidated financial statements for a summary of the currency translation adjustment component of accumulated other comprehensive income by segment.

Retirement Benefits

The net periodic benefit cost for pension and OPEB plans was $15 million in the quarters ended June 30, 2018 and June 30, 2017 and $29 million and $12 million for the six months ended June 30, 2018 and June 30, 2017, respectively. The increase in expense versus the prior year for the six months ended June 30, 2018 is related to a curtailment gain recorded in the first quarter of 2017 on a South American OPEB plan for $18 million (see Note 11 to the condensed consolidated financial statements).

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Segment Discussion

The following summary of sales and operating profit by segment provides a basis for the discussion that follows.

	Quarter Ended June 30,			Six Months Ended June 30,		
(Dollar amounts in millions)	2018	2017*	Variance	2018	2017*	Variance
SALES						
North America	$1,594	$1,505	6 %	$3,157	$2,963	7 %
Europe	444	383	16 %	872	739	18 %
South America	349	373	(6)%	714	742	(4)%
Asia	502	422	19 %	978	817	20 %
Surface Technologies	172	151	14 %	339	301	13 %
	$3,061	$2,834	8 %	$6,060	$5,562	9 %
OPERATING PROFIT						
North America	$432	$378	14 %	$838	$735	14 %
Europe	87	74	18 %	167	141	18 %
South America	56	64	(13)%	110	112	(2)%
Asia	107	80	34 %	211	155	36 %
Surface Technologies	31	25	24 %	59	51	16 %
Segment operating profit	713	621	15 %	1,385	1,194	16 %
Transaction costs and other charges	(24)	(15)		(43)	(21)	
Total operating profit	$689	$606	14 %	$1,342	$1,173	14 %

* Prior period segment operating profit has been reclassified to conform with current year presentation as a result of the adoption of new accounting guidance on the presentation of net periodic pension and postretirement benefit costs. See Note 1 to the condensed consolidation financial statements.

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North America

	Quarter Ended June 30,			Six Months Ended June 30,		
	2018	2017	Variance	2018	2017	Variance
Sales	$1,594	$1,505	6 %	$3,157	$2,963	7 %
Cost of sales, exclusive of depreciation and amortization	830	793		1,636	1,567	
Gross margin	764	712		1,521	1,396	
Operating expenses	165	177		354	350	
Depreciation and amortization	167	157		329	311	
Operating profit	$432	$378	14 %	$838	$735	14 %
Margin %	27.1 %	25.1 %		26.5 %	24.8 %	

	Quarter Ended June 30, 2018 vs. 2017		Six Months Ended June 30, 2018 vs. 2017	
	% Change		% Change	
	Sales	Operating Profit	Sales	Operating Profit
Factors Contributing to Changes				
Volume	4 %	8 %	4 %	9 %
Price/Mix	2 %	7 %	2 %	7 %
Cost pass-through	— %	— %	— %	— %
Currency	— %	— %	1 %	1 %
Acquisitions/divestitures	— %	— %	— %	— %
Other	— %	(1)%	— %	(3)%
	6 %	14 %	7 %	14 %

The following tables provide sales by end-market and distribution method:

	Quarter Ended June 30,			Six Months Ended June 30,		
	% of Sales		% Change*	% of Sales		% Change*
	2018	2017		2018	2017	
Sales by End Markets						
Manufacturing	29 %	28 %	7 %	29 %	29 %	6 %
Metals	11 %	11 %	5 %	12 %	12 %	6 %
Energy	17 %	18 %	(2)%	17 %	18 %	(2)%
Chemicals	10 %	9 %	20 %	10 %	9 %	21 %
Electronics	5 %	5 %	4 %	5 %	5 %	9 %
Healthcare	7 %	7 %	7 %	7 %	7 %	8 %
Food & Beverage	10 %	10 %	8 %	10 %	10 %	8 %
Aerospace	2 %	2 %	31 %	2 %	2 %	20 %
Other	9 %	10 %	— %	8 %	8 %	(2)%
	100 %	100 %		100 %	100 %	

* Excludes impact of currency, natural gas/precious metals cost pass-through and acquisitions/divestitures.

	Quarter Ended June 30,		Six Months Ended June 30,	
	% of Sales		% of Sales	
	2018	2017	2018	2017
Sales by Distribution Method				
On- Site	29 %	30 %	29 %	30 %
Merchant	37 %	37 %	37 %	37 %

Packaged Gas	32 %	31 %	32 %	31 %
Other	2 %	2 %	2 %	2 %
	100 %	100 %	100 %	100 %

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North America segment sales increased $89 million, or 6% in the second quarter of 2018 and increased $194 million, or 7%, for the six months ended June 30, 2018 as compared to prior year. Currency translation impact was minimal in the quarter and increased sales by 1% for the six-month period. Excluding currency, sales were 6% above the prior-year quarter and six-month periods primarily due to higher volumes to most end-markets and higher pricing.

North America segment operating profit increased $54 million, or 14% in the second quarter of 2018 and increased $103 million, or 14% for the six months ended June 30, 2018 as compared to prior year driven by higher volumes and pricing. Operating profit for the second quarter and six-month period included a $30 million asset impairment charge which was more than offset by $43 million of gains on asset disposals.

Europe

	Quarter Ended June 30,			Six Months Ended June 30,		
	2018	2017	Variance %	2018	2017	Variance %
Sales	$444	$383	16 %	$872	$739	18 %
Cost of sales, exclusive of depreciation and amortization	261	219		509	420	
Gross margin	183	164		363	319	
Operating expenses	52	49		106	97	
Depreciation and amortization	44	41		90	81	
Operating profit	$87	$74	18 %	$167	$141	18 %
Margin %	19.6 %	19.3 %		19.2 %	19.1 %	

	Quarter Ended June 30, 2018 vs. 2017		Six Months Ended June 30, 2018 vs. 2017	
	% Change	% Change	% Change	% Change
	Sales	Operating Profit	Sales	Operating Profit
Factors Contributing to Changes				
Volume	2 %	2 %	2 %	3 %
Price/Mix	3 %	13 %	2 %	10 %
Cost pass-through	4 %	— %	3 %	— %
Currency	7 %	8 %	11 %	12 %
Acquisitions/divestitures	— %	— %	— %	— %
Other	— %	(5)%	— %	(7)%
	16 %	18 %	18 %	18 %

The following tables provide sales by end-market and distribution method:

	Quarter Ended June 30,			Six Months Ended June 30,		
	% of Sales		% Change*	% of Sales		% Change*
	2018	2017		2018	2017	
Sales by End Markets						
Manufacturing	21 %	20 %	14 %	21 %	21 %	10 %
Metals	16 %	16 %	14 %	17 %	16 %	12 %
Energy	4 %	5 %	— %	4 %	4 %	(3)%
Chemicals	12 %	12 %	10 %	12 %	12 %	7 %
Electronics	7 %	8 %	(7)%	7 %	8 %	— %
Healthcare	12 %	12 %	12 %	12 %	12 %	10 %

Food & Beverage	14 %	15 %	1 %	14 %	14 %	4 %
Aerospace	1 %	1 %	8 %	1 %	1 %	(8)%
Other	13 %	11 %	7 %	12 %	12 %	3 %
	100%	100%		100%	100%	

* Excludes impact of currency, natural gas/precious metals cost pass-through and acquisitions/divestitures

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	Quarter Ended June 30,		Six Months Ended June 30,	
	% of Sales		% of Sales	
	2018	2017	2018	2017
Sales by Distribution Method				
On- Site	17 %	18 %	18 %	19 %
Merchant	34 %	35 %	34 %	35 %
Packaged Gas	45 %	43 %	44 %	42 %
Other	4 %	4 %	4 %	4 %
	100 %	100 %	100 %	100 %

Europe segment sales increased by $61 million, or 16% in the second quarter of 2018 and increased by $133 million, or 18%, for the six months ended June 30, 2018 as compared to the prior year. Favorable currency translation increased sales by 7% in the quarter and 11% in the six-month period. Cost pass-through increased sales by 4% in the quarter and 3% in the six-month period with minimal impact on operating profit. Excluding currency and cost pass-through, sales increased 5% in the quarter and 4% in the six-month period driven by higher volumes and higher price.

Europe segment operating profit increased by $13 million, or 18% in the second quarter of 2018 and increased by $26 million, or 18%, for the six months ended June 30, 2018 as compared to the prior year. Favorable currency translation increased operating profit by 8% in the quarter and 12% in the six-month period. Excluding currency translation, operating profit increased 10% in the quarter and 6% in the six-month period driven by higher volumes and price partially offset by cost inflation.

South America

	Quarter Ended June 30,			Six Months Ended June 30,		
	2018	2017	Variance	2018	2017	Variance
Sales	$349	$373	(6)%	$714	$742	(4)%
Cost of sales, exclusive of depreciation and amortization	209	221		428	444	
Gross margin	140	152		286	298	
Operating expenses	47	49		98	109	
Depreciation and amortization	37	39		78	77	
Operating profit	$56	$64	(13)%	$110	$112	(2)%
Margin %	16.0 %	17.2 %		15.4 %	15.1 %	

	Quarter Ended June 30, 2018 vs. 2017		Six Months Ended June 30, 2018 vs. 2017	
	% Change Sales	% Change Operating Profit	% Change Sales	% Change Operating Profit
Factors Contributing to Changes				
Volume	4 %	6 %	2 %	3 %
Price/Mix	— %	(1)%	1 %	4 %
Cost pass-through	— %	— %	— %	— %
Currency	(10)%	(14)%	(7)%	(11)%
Acquisitions/divestitures	— %	— %	— %	— %
Other	— %	(4)%	— %	2 %

(6)%	(13)%	(4)%	(2)%

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The following tables provide sales by end-market and distribution method:

	Quarter Ended June 30,			Six Months Ended June 30,		
	% of Sales		%	% of Sales		%
	2018	2017	Change*	2018	2017	Change*
Sales by End Markets						
Manufacturing	16 %	16 %	(8)%	16 %	17 %	(4)%
Metals	32 %	31 %	12 %	31 %	30 %	8 %
Energy	2 %	2 %	3 %	2 %	2 %	(1)%
Chemicals	9 %	10 %	— %	10 %	10 %	— %
Electronics	— %	— %	— %	— %	— %	— %
Healthcare	20 %	20 %	3 %	19 %	20 %	3 %
Food & Beverage	12 %	12 %	(1)%	13 %	13 %	— %
Aerospace	— %	— %	— %	— %	— %	— %
Other	9 %	9 %	12 %	9 %	8 %	12 %
	100%	100%		100%	100%	

* - Excludes impact of currency, natural gas/precious metals cost pass-through and acquisitions/divestitures.

	Quarter Ended June 30,		Six Months Ended June 30,	
	% of Sales		% of Sales	
	2018	2017	2018	2017
Sales by Distribution Method				
On- Site	34 %	33 %	32 %	32 %
Merchant	37 %	38 %	38 %	38 %
Packaged Gas	27 %	27 %	27 %	27 %
Other	2 %	2 %	3 %	3 %
	100 %	100 %	100%	100%

South America segment sales decreased $24 million, or 6% in the second quarter of 2018 and decreased $28 million, or 4%, for the six months ended June 30, 2018 as compared to the prior year. Unfavorable currency impacts decreased sales by 10% in the quarter and 7% in the six-month period driven by the weakening of the Brazilian real and Argentine peso against the U.S. dollar. Excluding currency in the quarter, sales increased 4% driven by higher volumes largely to the metals end-markets. Excluding currency in the six-month period, sales increased 3% driven by higher volumes and higher price.

South America segment operating profit decreased $8 million, or 13% in the second quarter of 2018 and decreased $2 million, or 2%, for the six months ended June 30, 2018 versus the prior year. Excluding unfavorable currency impacts in the quarter, operating profit increased 1% driven by higher volumes partially offset by higher costs. Excluding unfavorable currency impacts in the six-month period, operating profit increased 9% driven by higher volumes, higher price and lower costs.

Asia

	Quarter Ended June 30,			Six Months Ended June 30,		
	2018	2017	Variance	2018	2017	Variance
Sales	$502	$422	19 %	$978	$817	20 %
Cost of sales, exclusive of depreciation and amortization	312	268		606	517	
Gross margin	190	154		372	300	

Operating expenses	31	28		57	55	
Depreciation and amortization	52	46		104	90	
Operating profit	$107	$80	34 %	$211	$155	36 %
Margin %	21.3 %	19.0 %		21.6 %	19.0 %	

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	Quarter Ended June 30, 2018 vs. 2017		Six Months Ended June 30, 2018 vs. 2017	
	% Change Sales	% Change Operating Profit	% Change Sales	% Change Operating Profit
Factors Contributing to Changes				
Volume	11 %	16 %	11 %	16 %
Price/Mix	3 %	17 %	3 %	16 %
Cost pass-through	1 %	— %	1 %	— %
Currency	4 %	5 %	5 %	6 %
Acquisitions/divestitures	— %	— %	— %	— %
Other	— %	(4)%	— %	(2)%
	19 %	34 %	20 %	36 %

The following tables provide sales by end-market and distribution method:

	Quarter Ended June 30,			Six Months Ended June 30,		
	% of Sales		% Change*	% of Sales		% Change*
	2018	2017		2018	2017	
Sales by End Markets						
Manufacturing	9 %	9 %	14 %	9 %	9 %	20 %
Metals	27 %	27 %	20 %	27 %	26 %	19 %
Energy	4 %	3 %	86 %	5 %	3 %	97 %
Chemicals	15 %	15 %	9 %	15 %	15 %	9 %
Electronics	33 %	33 %	12 %	33 %	34 %	9 %
Healthcare	1 %	1 %	8 %	1 %	1 %	2 %
Food & Beverage	2 %	2 %	(8)%	2 %	2 %	(9)%
Aerospace	— %	— %	— %	— %	— %	— %
Other	9 %	10 %	7 %	8 %	10 %	6 %
	100 %	100 %		100 %	100 %	

* Excludes impact of currency, natural gas/precious metals cost pass-through and acquisitions/divestitures

	Quarter Ended June 30,		Six Months Ended June 30,	
	% of Sales		% of Sales	
	2018	2017	2018	2017
Sales by Distribution Method				
On- Site	50 %	50 %	51 %	50 %
Merchant	33 %	30 %	32 %	29 %
Packaged Gas	11 %	14 %	11 %	14 %
Other	6 %	6 %	6 %	7 %
	100 %	100 %	100 %	100 %

Asia segment sales increased $80 million, or 19% in the second quarter of 2018 and increased $161 million, or 20%, for the six months ended June 30, 2018 as compared to the prior year. Cost pass-through, primarily energy, increased sales by 1% in both the quarter and six-month periods with minimal impact on operating profit. Favorable currency translation increased sales by 4% in the quarter and 5% in the six-month period. Volume growth of 11% in the quarter and six-month periods was primarily attributable to base volume growth in China, Korea and India and new project start-ups in China. Higher price increased sales by 3% in both the quarter and six-month periods primarily driven by

China. Sales growth was strongest in the metals, energy and electronics end-markets.

Asia segment operating profit increased $27 million, or 34% in the second quarter of 2018 and increased $56 million, or 36% for the six months ended June 30, 2018 as compared to the prior year driven primarily by higher volumes and price. Favorable currency translation increased operating profit by 5% in the quarter and 6% in the six-month period. Operating profit for the six-month period included a $22 million asset impairment charge, offset by a litigation settlement gain.

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Surface Technologies

	Quarter Ended June 30,				Six Months Ended June 30,			
	2018	2017	Variance		2018	2017	Variance	
Sales	$172	$151	14	%	$339	$301	13	%
Cost of sales, exclusive of depreciation and amortization	111	98			221	195		
Gross margin	61	53			118	106		
Operating expenses	19	18			38	35		
Depreciation and amortization	11	10			21	20		
Operating profit	$31	$25	24	%	$59	$51	16	%
Margin %	18.0 %	16.6 %			17.4 %	16.9 %		

	Quarter Ended June 30, 2018 vs. 2017				Six Months Ended June 30, 2018 vs. 2017			
	% Change		% Change		% Change		% Change	
	Sales		Operating Profit		Sales		Operating Profit	
Factors Contributing to Changes								
Volume/Price	10	%	25	%	8	%	18	%
Cost pass-through	1	%	—	%	1	%	—	%
Currency	3	%	2	%	4	%	3	%
Acquisitions/divestitures	—	%	—	%	—	%	—	%
Other	—	%	(3	)%	—	%	(5	)%
	14	%	24	%	13	%	16	%

The following table provides sales by end-market:

	Quarter Ended June 30,						Six Months Ended June 30,					
	% of Sales				% Change*		% of Sales				% Change*	
	2018		2017				2018		2017			
Sales by End Markets												
Manufacturing	12	%	10	%	30	%	12	%	11	%	20	%
Metals	8	%	9	%	(7	)%	8	%	9	%	(3	)%
Energy	19	%	19	%	7	%	19	%	19	%	6	%
Chemicals	2	%	2	%	3	%	2	%	2	%	8	%
Electronics	1	%	1	%	—	%	1	%	1	%	44	%
Healthcare	—	%	—	%	—	%	—	%	—	%	—	%
Food & Beverage	3	%	3	%	19	%	3	%	3	%	3	%
Aerospace	43	%	44	%	10	%	44	%	44	%	9	%
Other	12	%	12	%	11	%	11	%	11	%	5	%
	100	%	100	%			100	%	100	%		

* Excludes impact of currency, natural gas/precious metals cost pass-through and acquisitions/divestitures

Surface Technologies segment sales increased $21 million, or 14% in the second quarter of 2018 and increased $38 million, or 13%, for the six months ended June 30, 2018 as compared to the prior year. Currency translation increased sales by 3% for the quarter and 4% for the six-month period, primarily driven by the British pound and the Euro. Cost pass-through increased sales by 1% in both the quarter and six-month periods with minimal impact on operating profit. Excluding currency and cost pass-through, sales increased 10% in the quarter and 8% in the six-month period due to higher volumes to the aerospace and industrial end-markets and higher price.

Surface Technologies segment operating profit increased $6 million, or 24% in the second quarter of 2018 and increased $8 million, or 16%, for the six months ended June 30, 2018 as compared to the prior year. Excluding currency, operating profit increased 22% for the quarter and 13% for the six-month period due to increased volumes and price, partially offset by higher costs related to project ramp up costs.

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Currency

The results of Praxair's non-U.S. operations are translated to the company's reporting currency, the U.S. dollar, from the functional currencies. For most foreign operations, Praxair uses the local currency as its functional currency. There is inherent variability and unpredictability in the relationship of these functional currencies to the U.S. dollar and such currency movements may materially impact Praxair's results of operations in any given period.

To help understand the reported results, the following is a summary of the significant currencies underlying Praxair's consolidated results and the exchange rates used to translate the financial statements (rates of exchange expressed in units of local currency per U.S. dollar):

Currency	Percentage of YTD 2018 Consolidated Sales		Exchange Rate for Income Statement		Exchange Rate for Balance Sheet	
			Year-To-Date Average		June 30,	December 31,
			2018	2017	2018	2017
Euro	14	%	0.83	0.92	0.86	0.83
Brazilian real	9	%	3.41	3.18	3.86	3.31
Canadian dollar	7	%	1.28	1.33	1.31	1.26
Chinese yuan	7	%	6.37	6.88	6.62	6.51
Mexican peso	5	%	19.03	19.37	19.91	19.66
Korean won	4	%	1,076	1,142	1,115	1,067
India rupee	3	%	65.65	65.70	68.47	63.87
Argentine peso	1	%	21.30	15.69	28.85	18.65
British pound	1	%	0.73	0.79	0.76	0.74
Norwegian krone	1	%	7.93	8.48	8.15	8.20

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Liquidity, Capital Resources and Other Financial Data

The following selected cash flow information provides a basis for the discussion that follows:

(Millions of dollars)	Six months ended June 30, 2018	Six months ended June 30, 2017
NET CASH PROVIDED BY (USED FOR):		
OPERATING ACTIVITIES		
Net income (including noncontrolling interests)	$971	$824
Non-cash charges (credits):		
Add: Depreciation and amortization	622	579
Add: Deferred income taxes	10	48
Add: Share-based compensation	21	28
Add: Transaction costs and other charges, net of payments (a)	15	17
Net income adjusted for non-cash charges	1,639	1,496
Less: Working capital	(138)	(164)
Less: Pension contributions	(10)	(6)
Other	(13)	85
Net cash provided by operating activities	$1,478	$1,411
INVESTING ACTIVITIES		
Capital expenditures	(676)	(652)
Acquisitions, net of cash acquired	—	(2)
Divestitures and asset sales	69	17
Net cash used for investing activities	$(607)	$(637)
FINANCING ACTIVITIES		
Debt increase (decrease) - net	(492)	(305)
Issuances (purchases) of common stock - net	43	59
Cash dividends - Praxair, Inc. shareholders	(474)	(450)
Noncontrolling interest transactions and other	(22)	(84)
Net cash provided by (used for) financing activities	$(945)	$(780)
Effect of exchange rate changes on cash and cash equivalents	$(64)	$17
Cash and cash equivalents, end-of-period	$479	$535

(a) See Note 2 to the consolidated financial statements.

Cash Flow from Operations

Cash provided by operations of $1,478 million for the six months ended June 30, 2018 increased $67 million, or 5%, versus 2017. The increase was driven by higher net income adjusted for non-cash charges and lower working capital requirements, partially offset by timing of dividends from equity investments, primarily in China.

Praxair estimates that total 2018 required contributions to its pension plans will be in the range of $15 million to $20 million, of which $10 million has been made through June 30, 2018. At a minimum, Praxair contributes to its pension plans to comply with local regulatory requirements (e.g., ERISA in the United States). Discretionary contributions in excess of the local minimum requirements are made based on many factors, including long-term projections of the plans' funded status, the economic environment, potential risk of overfunding, pension insurance costs and alternative uses of the cash. Changes to these factors can impact the amount and timing of discretionary contributions from year to year.

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Investing
Net cash used for investing of $607 million for the six months ended June 30, 2018 decreased $30 million versus 2017.

Capital expenditures for the six months ended June 30, 2018 were $676 million, $24 million higher than the prior year. Capital expenditures related primarily to investments in new plant and production equipment for growth and density. Approximately 65% of the capital expenditures were in North America.

Acquisition spend was immaterial for both the six months ended June 30, 2018 and 2017.

Divestitures and asset sales for the six months ended June 30, 2018 and 2017 were $69 million and $17 million, respectively. The 2018 period includes proceeds related to asset disposals primarily in North America.

Financing
Cash used by financing activities was $945 million for the six months ended June 30, 2018. Cash dividends of $474 million were higher than the prior year due to a 5% increase in quarterly dividends per share from 78.75 cents per share to 82.5 cents per share. Net issuances of common stock decreased $16 million. Noncontrolling interest transactions and other for the six months ended June 30, 2018 and 2017 were $22 million and $84 million, respectively. Amounts paid in 2017 include dividends paid to noncontrolling interests and repayment of project advances.

In March 2018, Praxair repaid $500 million of 1.20% rate notes that became due.

In June 2018, the company's $500 million 364-day revolving credit facility with a syndicate of banks expired and was not renewed.

Praxair's debt-to-capital ratio was 54.9% at June 30, 2018 versus 58.5% at June 30, 2017. This decrease was primarily attributable to a reduction in net debt of $853 million and an increase in equity due to earnings net of dividends declared. See the "Non-GAAP Financial Measures" section below for definitions and reconciliations of these non-GAAP measures to reported GAAP amounts.

Debt Covenants
Praxair’s $2.5 billion senior unsecured credit facility and long-term debt agreements contain various covenants (refer to Note 5 to the condensed consolidated financial statements and Note 11 to the consolidated financial statements of Praxair’s 2017 Annual Report on Form 10-K). The only financial covenant requires Praxair not to exceed a maximum 70% leverage ratio, as defined in the agreements. For purposes of the leverage ratio calculation, consolidated shareholders' equity excludes changes in the cumulative foreign currency translation adjustments after June 30, 2011. At June 30, 2018 and December 31, 2017, the actual leverage ratio calculated in accordance with the agreements was 46% and 49%, respectively.

Legal Proceedings
See Note 12 to the condensed consolidated financial statements.

Non-GAAP Financial Measures
The following non-GAAP measures are intended to supplement investors’ understanding of the company’s financial information by providing measures which investors, financial analysts and management use to help evaluate the company’s financial leverage and operating performance. Special items which the company does not believe to be indicative of on-going business performance are excluded from these calculations so that investors can better evaluate and analyze historical and future business trends on a consistent basis. Definitions of these non-GAAP measures may not be comparable to similar definitions used by other companies and are not a substitute for similar GAAP measures. The non-GAAP measures in the following reconciliations are presented in the MD&A.

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Adjusted Amounts

(Dollar amounts in millions, except per share data)	Quarter Ended June 30, 2018	Quarter Ended June 30, 2017	Six Months Ended June 30, 2018	Six Months Ended June 30, 2017
Adjusted Operating Profit				
Reported operating profit	$ 689	$ 606	$1,342	$1,173
Add: Transaction costs and other charges	24	15	43	21
Adjusted operating profit	$ 713	$ 621	$1,385	$1,194
Reported percent change	14 %		14 %	
Adjusted percent change	15 %		16 %	
Adjusted Income Taxes and Effective Tax Rate				
Reported income taxes	$ 158	$ 157	$306	$306
Add: Transaction costs and other charges	3	—	5	—
Adjusted income taxes	$ 161	$ 157	$311	$306
Adjusted Effective Tax Rate				
Reported income before income taxes and equity investments	$643	$566	$1,248	$1,107
Add: Transaction costs and other charges	24	15	43	21
Adjusted income before income taxes and equity investments	$667	$581	$1,291	$1,128
Reported effective tax rate	24.6 %	27.7 %	24.5 %	27.6 %
Adjusted effective tax rate	24.1 %	27.0 %	24.1 %	27.1 %
Adjusted Noncontrolling Interests				
Reported noncontrolling interests	$19	$14	$29	$29
Add: Cost reduction program	—	—	(1)	—
Adjusted Noncontrolling Interests	$19	$14	$28	$29
Adjusted Net Income - Praxair, Inc.				
Reported net income - Praxair, Inc.	$480	$406	$942	$795
Add: Transaction costs and other charges	21	15	38	21
Add: Cost reduction program	—	—	1	—
Total adjustments	21	15	39	21
Adjusted net income - Praxair, Inc.	$501	$421	$981	$816
Reported percent change	18 %		18 %	
Adjusted percent change	19 %		20 %	
Adjusted Diluted Earnings Per Share				
Reported diluted EPS	$1.65	$1.41	$3.24	$2.76
Add: Transaction costs and other charges	0.07	0.05	0.13	0.07
Adjusted diluted EPS	$1.72	$1.46	$3.37	$2.83
Reported percent change	17 %		17 %	
Adjusted percent change	18 %		19 %	

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EBITDA, Adjusted EBITDA, EBITDA Margin and Adjusted EBITDA Margin

These measures are used by investors, financial analysts and management to assess a company's profitability.

	Quarter Ended June 30,		Six Months Ended June 30,	
	2018	2017	2018	2017
(Dollar amounts in millions)				
Reported net income - Praxair, Inc.	$480	$406	$942	$795
Add: noncontrolling interest	19	14	29	29
Add: interest expense - net	44	38	90	79
Add: net pension and OPEB cost (benefit), excluding service cost	2	2	4	(13)
Add: income taxes	158	157	306	306
Add: depreciation and amortization	311	292	622	579
EBITDA	$1,014	$909	$1,993	$1,775
Adjustments:				
Add: Transaction costs	$24	$15	$43	$21
ADJUSTED EBITDA	$1,038	$924	$2,036	$1,796
Reported Sales	$3,061	$2,834	$6,060	$5,562
EBITDA Margin	33.1 %	32.1 %	32.9 %	31.9 %
Adjusted EBITDA Margin	33.9 %	32.6 %	33.6 %	32.3 %

Net Debt, Capital and Debt-to-Capital Ratio

The debt-to-capital ratio is a measure used by investors, financial analysts and management to provide a measure of financial leverage and insights into how the company is financing its operations.

	Six Months Ended June 30,	
	2018	2017
(Dollar amounts in millions)		
Debt	$8,458	$9,367
Less: cash and cash equivalents	(479)	(535)
Net debt	7,979	8,832
Equity and redeemable noncontrolling interests		
Redeemable noncontrolling interests	14	10
Praxair, Inc. shareholders' equity	6,027	5,807
Noncontrolling interests	501	453
Total equity and redeemable noncontrolling interests	6,542	6,270
Capital	$14,521	$15,102
DEBT-TO-CAPITAL RATIO	54.9 %	58.5 %

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Forward-looking Statements

This document contains “forward-looking statements” within the meaning of the Private Securities Litigation Reform Act of 1995. These statements are based on management’s reasonable expectations and assumptions as of the date the statements are made but involve risks and uncertainties. These risks and uncertainties include, without limitation: the expected timing and likelihood of the completion of the contemplated business combination with Linde AG, including the timing, receipt and terms and conditions of any required governmental and regulatory approvals that could reduce anticipated benefits or cause the parties to abandon the transaction; the occurrence of any event, change or other circumstances that could give rise to the termination of the business combination agreement; the ability to successfully complete the proposed business combination, including satisfying closing conditions; the success of the business following the proposed business combination; the ability to successfully integrate the Praxair and Linde businesses; the risk that the combined company may be unable to achieve expected synergies or that it may take longer or be more costly than expected to achieve those synergies; the performance of stock markets generally; developments in worldwide and national economies and other international events and circumstances; changes in foreign currencies and in interest rates; the cost and availability of electric power, natural gas and other raw materials; the ability to achieve price increases to offset cost increases; catastrophic events including natural disasters, epidemics and acts of war and terrorism; the ability to attract, hire, and retain qualified personnel; the impact of changes in financial accounting standards; the impact of changes in pension plan liabilities; the impact of tax, environmental, healthcare and other legislation and government regulation in jurisdictions in which the company operates, including the impact of the U.S. Tax Cuts and Jobs Act of 2017; the cost and outcomes of investigations, litigation and regulatory proceedings; the impact of potential unusual or non-recurring items; continued timely development and market acceptance of new products and applications; the impact of competitive products and pricing; future financial and operating performance of major customers and industries served; the impact of information technology system failures, network disruptions and breaches in data security; and the effectiveness and speed of integrating new acquisitions into the business. These risks and uncertainties may cause actual future results or circumstances to differ materially from the GAAP or adjusted projections or estimates contained in the forward-looking statements. The company assumes no obligation to update or provide revisions to any forward-looking statement in response to changing circumstances. The above listed risks and uncertainties are further described in Item 1A (Risk Factors) in the company's latest Annual Report on Form 10-K filed with the SEC and in the proxy statement/prospectus and the offering prospectus included in the Registration Statement on Form S-4 (which Registration Statement was declared effective on August 14, 2017) filed by Linde plc with the SEC which should be reviewed carefully. Please consider the company’s forward-looking statements in light of those risks.

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Item 3. Quantitative and Qualitative Disclosures About Market Risk

Refer to Item 7A. to Part II of Praxair's 2017 Annual Report on Form 10-K for discussion.

Item 4. Controls and Procedures

(a) Based on an evaluation of the effectiveness of Praxair's disclosure controls and procedures, which was made under the supervision and with the participation of management, including Praxair's principal executive officer and principal financial officer, the principal executive officer and principal financial officer have each concluded that, as of the end of the quarterly period covered by this report, such disclosure controls and procedures are effective in ensuring that information required to be disclosed by Praxair in reports that it files under the Exchange Act of 1934 is recorded, processed, summarized and reported within the time periods specified in the Securities and Exchange Commission's rules and forms, and accumulated and communicated to management including Praxair's principal executive officer and principal financial officer, to allow timely decisions regarding required disclosure.

(b) There were no changes in Praxair's internal control over financial reporting that occurred during the quarterly period covered by this report that have materially affected, or are reasonably likely to materially affect, Praxair's internal control over financial reporting.

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PART II - OTHER INFORMATION
Praxair, Inc. and Subsidiaries

Item 1. Legal Proceedings
See Note 12 to the condensed consolidated financial statements for a description of current legal proceedings.
Item 1A. Risk Factors

There have been no material changes to the risk factors disclosed in Item 1a to Part I of Praxair's 2017 Annual Report on Form 10-K.
Item 2. Unregistered Sales of Equity Securities and Use of Proceeds
Purchases of Equity Securities- Certain information regarding purchases made by or on behalf of the company or any affiliated purchaser (as defined in Rule 10b-18(a)(3) under the Securities Exchange Act of 1934, as amended) of its common stock during the quarter ended June 30, 2018 is provided below:

Period	Total Number of Shares Purchased (Thousands)	Average Price Paid Per Share	Total Numbers of Shares Purchased as Part of Publicly Announced Program (1) (Thousands)	Approximate Dollar Value of Shares that May Yet be Purchased Under the Program (2) (Millions)
April 2018	—	$ —	—	$ 1,579
May 2018	2	$ 151.89	2	$ 1,579
June 2018	—	$ —	—	$ 1,579
Second Quarter 2018	2	$ 151.89	2	$ 1,579

(1) On January 28, 2014, the Company's board of directors approved the repurchase of $1.5 billion of its common stock ("2014 program") which could take place from time to time on the open market (which could include the use of 10b5-1 trading plans) or through negotiated transactions, subject to market and business conditions.

(2) As of June 30, 2018, the Company purchased $1,421 million of its common stock pursuant to the 2014 program, leaving an additional $79 million remaining authorized under the 2014 program. The 2014 program does not have any stated expiration date. In addition, on July 28, 2015, the Company's board of directors approved the repurchase of $1.5 billion of its common stock ("2015 program") which could take place from time to time on the open market (which could include the use of 10b5-1 trade plans) or through negotiated transactions, subject to market and business conditions. The 2015 program does not have any stated expiration date. The 2015 program is in addition to the 2014 program.

Item 3. Defaults Upon Senior Securities
None.
Item 4. Mine Safety Disclosures
Not applicable.
Item 5. Other Information

None.

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Item 6. Exhibits
(a) Exhibits

10.1	Limited waiver, dated as of June 22, 2018, to the Credit Agreement, dated as of December 19, 2014, as amended, among Praxair, Inc., the Eligible Subsidiaries party thereto from time to time, the lenders party thereto from time to time and Bank of America, N.A., as Administrative Agent, is filed herewith
12.01	Computation of Ratio of Earnings to Fixed Charges.
31.01	Rule 13a-14(a) Certification
31.02	Rule 13a-14(a) Certification
32.01	Section 1350 Certification (such certifications are furnished for the information of the Commission and shall not be deemed incorporated by reference into any filing under the Securities Act or the Exchange Act).
32.02	Section 1350 Certification (such certifications are furnished for the information of the Commission and shall not be deemed incorporated by reference into any filing under the Securities Act or the Exchange Act).
101.INS	XBRL Instance Document
101.SCH	XBRL Taxonomy Extension Schema
101.CAL	XBRL Taxonomy Extension Calculation Linkbase
101.LAB	XBRL Taxonomy Extension Label Linkbase
101.PRE	XBRL Taxonomy Extension Presentation Linkbase
101.DEF	XBRL Taxonomy Extension Definition Linkbase

* Indicates a management contract or compensatory plan or arrangement.

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SIGNATURE
Praxair, Inc. and Subsidiaries

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

	PRAXAIR, INC.
	(Registrant)
Date: July 26, 2018	By: /s/ Kelcey E. Hoyt
	Kelcey E. Hoyt Vice President and Controller (On behalf of the Registrant and as Chief Accounting Officer)