

KIMCO REALTY CORP  
Form 424B5  
December 12, 2017

**Filed Pursuant to Rule 424(b)(5)**  
**Registration Statement No. 333-202389**

**CALCULATION OF REGISTRATION FEE**

<b>Title of Each Class of Securities to be Registered</b>	<b>Amount to be Registered</b>	<b>Proposed Maximum Offering Price Per Security</b>	<b>Proposed Maximum Aggregate Offering Price</b>	<b>Amount of Registration Fee</b>
Depository Shares, each representing 1/1000 of a Share of 5.25% Class M Cumulative Redeemable Preferred Stock, \$1.00 par value per share	10,580,000	\$25.00	\$264,500,000	\$32,930.25 (1)

(1) Calculated in accordance with Rule 457(r) under the Securities Act of 1933, as amended (the Securities Act). Payment of the registration fee at the time of filing of the registrant's registration statement on Form S-3, filed with the Securities and Exchange Commission on February 27, 2015 (File No. 333-202389), was deferred pursuant to Rules 456(b) and 457(r) under the Securities Act, and is paid herewith. This Calculation of Registration Fee table shall be deemed to update the Calculation of Registration Fee table in such registration statement.

**Prospectus Supplement**

**December 11, 2017**

**(To Prospectus dated February 27, 2015)**

**9,200,000 Shares**

**Depositary Shares**

**Each Representing 1/1000 of a Share of 5.25% Class M**

**Cumulative Redeemable Preferred Stock**

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

We are offering and selling 9,200,000 of our depositary shares, each of which represents a 1/1000 interest in a share of our Class M cumulative redeemable preferred stock that we have deposited with Wells Fargo Bank, N.A. as depositary. We will receive the net proceeds from the sale of the depositary shares. As a holder of a depositary share, you will be entitled to proportional rights and preferences as if you held 1/1000 of a share of our Class M preferred stock.

Dividends on the Class M preferred stock represented by the depositary shares will be cumulative from, and including, the date of original issue and will be payable, subject to authorization by our Board of Directors, quarterly in arrears on January 15, April 15, July 15 and October 15 of each year (or, if such date is not a business day, on the next succeeding business day), commencing April 15, 2018, at the rate of 5.25% of the \$25,000.00 liquidation preference per year, or \$1,312.50 per share of our Class M preferred stock (equal to \$1.3125 per year per depositary share).

Except in certain circumstances relating to the preservation of our status as a real estate investment trust ( REIT ), the Class M preferred stock and the depositary shares representing the Class M preferred stock are not redeemable until December 20, 2022. On or after December 20, 2022, we may redeem the Class M preferred stock (and cause the redemption of the depositary shares) for cash at our option, in whole or in part, at a redemption price of \$25,000.00 per share of Class M preferred stock (equal to \$25.00 per depositary share), plus accrued and unpaid dividends, if any, to, but excluding, the date of redemption. The Class M preferred stock and the depositary shares have no maturity date and will remain outstanding indefinitely unless redeemed or otherwise repurchased by us.

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

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

**Investing in our depositary shares involves risks. See the information under the captions Risk Factors beginning on page S-5 of this prospectus supplement and on page 3 of the accompanying prospectus, as well as the information under the caption Risk Factors in our Annual Report on Form 10-K for the year ended December 31, 2016, which is incorporated by reference in this prospectus supplement and the accompanying prospectus.**

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

	<b>Per Depositary Share</b>	<b>Total</b>
Public offering price (1)	\$ 25.00	\$ 230,000,000
Underwriting discount (retail/institutional)	\$ 0.7875 / 0.50(2)	\$ 7,217,687.50(2)
Proceeds to Kimco Realty Corporation, before expenses (retail/institutional) (1)(3)	\$ 24.2125 / 24.50	\$222,782,312.50

- (1) Plus accrued dividends, if any, from December 20, 2017 if settlement occurs after that date.
- (2) The underwriting discount will equal \$0.7875 per depositary share for each depositary share sold to retail accounts and \$0.50 per depositary share for each depositary share sold to institutional accounts. See Underwriting.
- (3) Assumes no exercise of the underwriters option to purchase additional depositary shares described below.

We have granted the underwriters the right to purchase up to an additional 1,380,000 depositary shares from us at the public offering price, less the applicable underwriting discount, within 30 days of the date of this prospectus supplement solely to cover over-allotments, if any.

The depositary shares will be ready for delivery in book-entry only form through the facilities of The Depository Trust Company on or about December 20, 2017.

*Joint Book-Running Managers*

<b>BofA Merrill Lynch</b>	<b>Morgan Stanley</b>	<b>UBS Investment Bank</b>	<b>Wells Fargo Securities</b>
<b>J.P. Morgan</b>		<b>RBC Capital Markets</b>	

*Co-Managers*

<b>Barclays</b>	<b>BNY Mellon Capital Markets, LLC</b>	<b>Citigroup</b>	<b>Mizuho Securities</b>
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**TABLE OF CONTENTS**

	<b>Page</b>
<b>Prospectus Supplement</b>	
About This Prospectus Supplement	S-i
Where You Can Find More Information	S-ii
Forward-Looking Statements	S-iii
Summary	S-1
Risk Factors	S-5
Use of Proceeds	S-7
Ratios of Earnings to Total Fixed Charges and Earnings to Combined Fixed Charges and Preferred Stock Dividends	S-8
Description of Class M Preferred Stock and Depositary Shares	S-9
Supplemental United States Federal Income Tax Considerations	S-16
Underwriting	S-17
Legal Matters	S-21
Experts	S-21
<b>Prospectus</b>	
About This Prospectus	1
Where You Can Find More Information	1
Incorporation of Certain Documents by Reference	1
Disclosure Regarding Forward-Looking Statements	2
The Company	3
Risk Factors	3
Use of Proceeds	3
Ratios of Earnings to Fixed Charges and Preferred Stock Dividends	3
Description of Debt Securities	3
Description of Common Stock	11
Description of Common Stock Warrants	13
Description of Preferred Stock	14
Description of Depositary Shares	16
Provisions of Maryland Law and Our Charter and Bylaws	18
United States Federal Income Tax Considerations	22
Plan of Distribution	40
Experts	41
Legal Matters	41

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## ABOUT THIS PROSPECTUS SUPPLEMENT

You should read this prospectus supplement along with the accompanying prospectus, as well as the information incorporated by reference herein and therein, carefully before you invest. These documents contain important information you should consider before making your investment decision. This prospectus supplement and the accompanying prospectus contain the terms of this offering of depositary shares. The accompanying prospectus contains information about our securities generally, some of which does not apply to the depositary shares offered by this prospectus supplement. This prospectus supplement may add, update or change information contained in or incorporated by reference in the accompanying prospectus. If the information in this prospectus supplement is inconsistent with any information contained in or incorporated by reference in the accompanying prospectus, the information in this prospectus supplement will apply and will supersede the inconsistent information contained in or incorporated by reference in the accompanying prospectus. Any statement contained in this prospectus supplement, the accompanying prospectus or in a document incorporated or deemed to be incorporated by reference herein and therein shall be deemed to be modified or superseded to the extent that a statement contained in any subsequently filed document which also is incorporated or deemed to be incorporated by reference modifies or replaces such statement.

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

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

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

## WHERE YOU CAN FIND MORE INFORMATION

We file annual, quarterly and current reports, proxy statements and other information with the SEC. You may read and copy any materials we file with the SEC at its public reference room at 100 F Street, N.E., Washington, D.C. 20549. You may also obtain copies of this information by mail from the public reference room of the SEC, 100 F Street, N.E., Washington, D.C. 20549, at prescribed rates. Please call the SEC at 1-800-SEC-0330 for further information on the operation of the 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 (the "NYSE"), as well as our SEC filings, at the offices of the NYSE at 20 Broad Street, New York, New York 10005.

The SEC allows us to incorporate by reference certain information we file with the SEC, which means that we can disclose important information to you by referring to the other information we have filed with the SEC. The information that we incorporate by reference is considered a part of this prospectus supplement and the accompanying prospectus and information that we file later with the SEC prior to the termination of this offering of the depositary shares 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 (the "Exchange Act"):

•  
our Annual Report on Form 10-K for the fiscal year ended December 31, 2016 (filed with the SEC on February 27, 2017);

•  
our Quarterly Reports on Form 10-Q for the quarterly periods ended March 31, 2017 (filed with the SEC on April 28, 2017), June 30, 2017 (filed with the SEC on July 28, 2017) and September 30, 2017 (filed with the SEC on October 27, 2017);

•  
our Definitive Proxy Statement on Schedule 14A dated March 15, 2017 (filed with the SEC on March 15, 2017); and

•  
our Current Reports on Form 8-K dated January 30, 2017 (filed with the SEC on February 2, 2017), February 1, 2017 (excluding the information furnished pursuant to Item 7.01 and the related exhibit) (filed with the SEC on February 3, 2017), February 27, 2017 (filed with the SEC on February 27, 2017), March 1, 2017 (filed with the SEC on March 1, 2017), March 22, 2017 (filed with the SEC on March 23, 2017), March 30, 2017 (filed with the SEC on March 30, 2017), April 25, 2017 (filed with the SEC on April 27, 2017), August 1, 2017 (filed with the SEC on August 2, 2017), August 7, 2017 (excluding the information furnished pursuant to Item 7.01 and the related exhibits) (filed with the SEC on August 8, 2017), August 10, 2017 (filed with the SEC on August 10, 2017) and October 2, 2017 (excluding the information furnished pursuant to Item 7.01 and the related exhibit) (filed with the SEC on October 2, 2017).

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 this offering of the depositary shares, but excluding any information furnished to, rather than filed with, the SEC. These documents include periodic reports, such as Annual Reports on Form 10-K and Quarterly Reports on Form 10-Q, 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 any other subsequently filed document which also is or is deemed to be incorporated by reference in this prospectus supplement and the accompanying prospectus modifies or supersedes such statement. Any such statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this prospectus supplement or the accompanying prospectus.

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

Kimco Realty Corporation

3333 New Hyde Park Road

New Hyde Park, New York 11042-0020

Attn: Bruce Rubenstein, Corporate Secretary

(516) 869-9000

## FORWARD-LOOKING STATEMENTS

This prospectus supplement, the accompanying prospectus and the documents incorporated and deemed to be incorporated by reference in this prospectus supplement and the accompanying prospectus contain certain forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended (the Securities Act), and Section 21E of the Exchange Act. The Company intends such forward-looking statements to be covered by the safe harbor provisions for forward-looking statements contained in the Private Securities Litigation Reform Act of 1995 and includes this statement for purposes of complying with the 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, will, target, forecast or similar expressions. You should not rely on forward-looking statements since they involve known and unknown risks, uncertainties and other factors which are, in some cases, beyond the Company's control and could materially affect actual results, performances or achievements. Factors which may cause actual results to differ materially from our current expectations include, but are not limited to, those discussed under the caption Risk Factors beginning on page S-5 of this prospectus supplement, page 3 of the accompanying prospectus and beginning on page 6 of our Annual Report on Form 10-K for the year ended December 31, 2016, which is incorporated by reference in this prospectus supplement and the accompanying prospectus, as well as the following additional factors: (i) general adverse economic and local real estate conditions, (ii) the inability of major tenants to continue paying their rent obligations due to bankruptcy, insolvency or a general downturn in their business, (iii) financing risks, such as the inability to obtain equity, debt or other sources of financing or refinancing on favorable terms to the Company, (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 and management's ability to estimate the impact thereof, (vii) risks related to the Company's international operations, (viii) the availability of suitable acquisition, disposition, development and redevelopment opportunities, and risks related to acquisitions not performing in accordance with the Company's expectations, (ix) valuation and risks related to the Company's joint venture and preferred equity investments, (x) valuation of marketable securities and other investments, (xi) increases in operating costs, (xii) changes in the dividend policy for the Company's common stock, (xiii) the reduction in the Company's income in the event of multiple lease terminations by tenants or a failure by multiple tenants to occupy their premises in a shopping center, (xiv) impairment charges and (xv) unanticipated changes in the Company's intention or ability to prepay certain debt prior to maturity and/or hold certain securities until maturity. Accordingly, there is no assurance that the Company's expectations will be realized. Additional risk factors that we may disclose in documents that we file with the SEC that are deemed to be incorporated by reference in this prospectus supplement and the accompanying prospectus prior to completion of this offering could also cause actual results to differ materially from our expectations.

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



## SUMMARY

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

### **Kimco Realty Corporation**

Kimco Realty Corporation, a Maryland corporation, is one of the nation's largest publicly-traded owners and operators of open-air shopping centers. We are a self-administered real estate investment trust ( REIT ) and have owned and operated open-air shopping centers for more than 50 years. We have not engaged, nor do we expect to retain, any REIT advisors in connection with the operation of our properties. As of September 30, 2017, we had interests in 508 shopping centers comprising 84.2 million square feet of gross leasable area ( GLA ) primarily concentrated in the top major metropolitan markets. In addition, we had 374 other property interests, primarily through our preferred equity investments and other real estate investments, totaling 5.9 million square feet of GLA. Our ownership interests in real estate consist of our consolidated portfolio and portfolios where we own an economic interest, such as properties in our investment real estate management programs, where we partner with institutional investors and also retain management.

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

In order to maintain our qualification as a REIT for federal income tax purposes, we are required to distribute to our stockholders at least 90% of our REIT taxable income, determined without regard to the deduction for dividends paid and excluding capital gains, each year. To the extent that we do not distribute all of our net capital gain, or distribute at least 90%, but less than 100%, of our REIT taxable income, as adjusted, we will be required to pay tax on the undistributed amount at regular corporate tax rates. Dividends on any preferred stock issued by us are included as distributions for this purpose. Historically, our distributions have exceeded, and we expect that our distributions will continue to exceed, our REIT taxable income (as so determined) each year. A portion of such distributions may constitute a return of capital. As a result of the foregoing, our consolidated net worth may decline. We, however, do not believe that consolidated stockholders' equity is a meaningful reflection of net real estate values.

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

## The Offering

*The offering terms are summarized below solely for your convenience. This summary is not a complete description of our Class M preferred stock or the depositary shares representing our Class M preferred stock. You should read the full text and more specific details contained elsewhere in this prospectus supplement and the accompanying prospectus. For a more detailed description of our Class M preferred stock and the depositary shares representing our Class M preferred stock, see the discussion under the caption "Description of Class M Preferred Stock and Depositary Shares" beginning on page S-9 of this prospectus supplement.*

Issuer	Kimco Realty Corporation, a Maryland corporation.
Securities Offered	9,200,000 depositary shares (or 10,580,000 depositary shares if the underwriters' over-allotment option is exercised in full), each representing 1/1000 of a share of 5.25% Class M cumulative redeemable preferred stock.
Price per Depositary Share	\$25.00
Ranking	With respect to the payment of dividends and amounts upon liquidation, the Class M preferred stock represented by the depositary shares will rank senior to our common stock and to all other equity securities that, by their terms, rank junior to the Class M preferred stock, and on a parity with respect to our Class I, Class J, Class K and Class L preferred stock. Shares of our Class I, Class J, Class K and Class L preferred stock are our only outstanding shares of preferred stock. The Class M preferred stock represented by the depositary shares will rank junior to our currently outstanding indebtedness and any future indebtedness and junior to all equity securities issued by us whose senior ranking is consented to by holders of at least two-thirds of the shares of the Class M preferred stock outstanding at the time. Additionally, our ability to make payments of dividends and other amounts due on the Class M preferred stock represented by the depositary shares will be structurally subordinated to the debt and other liabilities and any preferred equity of our subsidiaries and joint ventures (including trade payables). This means that creditors and preferred equity holders of our subsidiaries and joint ventures will be paid from the assets of these entities before we receive any cash flow from these entities for use in making payments to holders of depositary shares.
Dividend Rate and Payment Dates	Investors will be entitled to receive cumulative cash dividends on the Class M preferred stock represented by the depositary shares at the rate of 5.25% of the \$25,000.00 per share liquidation preference per year, or \$1,312.50 per share of the Class M preferred stock (equal to \$1.3125 per depositary share). Dividends on the Class M preferred

stock will be payable, subject to authorization by our Board of Directors and declaration by us, quarterly in arrears on January 15, April 15, July 15 and October 15 of each year (or, if any such date is not a business day, on the next succeeding business day), commencing on April 15, 2018. Any dividend payable on our Class M preferred stock represented by the depositary shares shall be computed on the basis of a 360-day year consisting of twelve 30-day months.

Dividends on the Class M preferred stock represented by the depositary shares will be cumulative from, and including, the date of original issue of the depositary shares, which is expected to be December 20, 2017.

Dividends on our Class M preferred stock represented by the depositary shares will accrue even if:

.

any of our agreements prohibit the current payment of dividends;

.

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

.

our Board of Directors does not authorize or we do not declare such dividends.

Liquidation Preference	If we liquidate, dissolve or wind up, holders of depositary shares will have a right to receive \$25.00 per depositary share, plus any accrued and unpaid dividends (whether or not declared) to, but excluding, the date of payment, before any payments are made to the holders of our common stock or other securities that, by their terms, rank junior to the depositary shares representing our Class M preferred stock.
Optional Redemption / No Maturity	Except in certain circumstances relating to the preservation of our status as a REIT, we may not redeem the Class M preferred stock or the depositary shares representing the Class M preferred stock prior to December 20, 2022. On or after December 20, 2022, we may, at our option, redeem the Class M preferred stock (and the preferred stock depositary will redeem the number of depositary shares representing the Class M preferred stock redeemed) for cash, in whole or in part, at a redemption price of \$25,000.00 per share of the Class M preferred stock (equal to \$25.00 per depositary share), plus accrued and unpaid dividends, if any, to, but excluding, the redemption date. The Class M preferred stock and the depositary shares have no stated maturity date and will not be subject to any sinking fund or mandatory redemption (except in certain circumstances relating to the preservation of our status as a REIT).
Voting Rights	Holders of the depositary shares representing the Class M preferred stock generally have no voting rights. However, if and whenever dividends payable on the Class M preferred stock are in arrears for six or more dividend periods, whether or not consecutive, holders of the depositary shares representing Class M preferred stock (voting together as a class with holders of the depositary shares representing the Class I, Class J, Class K and Class L preferred stock and all other classes or series of preferred stock upon which like voting rights have been conferred and are exercisable) will be entitled to elect two additional directors to serve on our Board of Directors until we pay all accrued and unpaid dividends on the Class M preferred stock to which the holders of such Class M preferred stock are entitled.
Conversion	The Class M preferred stock and the depositary shares representing Class M preferred stock are not convertible into or exchangeable for any other property or securities, except that, in limited circumstances, the Class M preferred stock and the depositary shares representing Class M preferred stock may be automatically converted into Class M excess preferred stock or depositary shares representing Class M excess preferred stock. See Description of Class M Preferred Stock and Depositary Shares Restrictions on Ownership.
Restrictions on Ownership and Transfer	Beneficial or constructive ownership of more than 9.8% of our outstanding Class M preferred stock or the outstanding depositary shares representing our Class M preferred stock is, subject to certain

exceptions, restricted in our Charter in order to preserve our status as a REIT for federal income tax purposes. See Description of Class M Preferred Stock and Depositary Shares Restrictions on Ownership in this prospectus supplement as well as Description of Preferred Stock Restrictions on Ownership in the accompanying prospectus.

Trading

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

Use of Proceeds	<p>We estimate that the net proceeds from this offering, after deducting the underwriting discount and other estimated offering expenses payable by us, will be approximately \$222.3 million, or approximately \$255.7 million if the underwriters' over-allotment option is exercised in full, assuming all such over-allotment shares are sold to retail accounts. We intend to use the net proceeds of this offering for general corporate purposes, including, without limitation, any one or more of the following: (i) the funding of development and redevelopment costs; (ii) the potential redemption of other classes of our preferred stock with an aggregate liquidation preference of \$575 million which are currently callable at our option; and (iii) the reduction, from time to time, of our outstanding indebtedness, including borrowings under our revolving credit facility maturing in March 2021 (subject to two six-month extension options), which borrowings bear interest at a rate of one-month LIBOR plus 0.875% (2.10% as of September 30, 2017). For more information, see "Use of Proceeds" on page S-7 of this prospectus supplement.</p>
Other Relationships	<p>Certain of the underwriters or their affiliates are holders of our outstanding depositary shares representing our preferred stock, may have provided mortgage financing to us that is still outstanding and are lenders under our revolving credit facility. Accordingly, those affiliates may receive a portion of the net proceeds from this offering. Additionally, Wells Fargo Bank, N.A., an affiliate of Wells Fargo Securities, LLC, one of the underwriters of this offering, will act as registrar, transfer agent and dividends disbursing agent for the Class M preferred stock and as preferred stock depositary. See "Underwriting" and "Other Relationships" for additional information.</p>
Form	<p>The depositary shares will be issued and maintained in book-entry only form registered in the name of the nominee of The Depository Trust Company ( "DTC" ), except under limited circumstances.</p>
Settlement Date	<p>Delivery of the depositary shares will be made against payment therefor on or about December 20, 2017.</p>
Risk Factors	<p>Investing in the depositary shares involves risks. Please read the sections entitled "Risk Factors" on page S-5 of this prospectus supplement, "Risk Factors" on page 3 of the accompanying prospectus and "Risk Factors" on page 6 of our Annual Report on Form 10-K for the year ended December 31, 2016, which are incorporated by reference in this prospectus supplement and the accompanying prospectus.</p>

## RISK FACTORS

*Investing in our depositary shares involves risks. In consultation with your financial and legal advisers, you should carefully consider, among other matters, the risks set forth below, as well as the information under the captions "Risk Factors" beginning on page 3 of the accompanying prospectus and "Risk Factors" beginning on page 6 of our Annual Report on Form 10-K for the year ended December 31, 2016, which are incorporated by reference in this prospectus supplement and the accompanying prospectus, before deciding whether an investment in our depositary shares is suitable for you.*

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

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

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

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

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

changes in tax laws and regulations.

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

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

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

Payment of dividends and other amounts due on the depositary shares representing our Class M preferred stock will be subordinated to all of our existing and future consolidated indebtedness. As of September 30, 2017, our total consolidated indebtedness was approximately \$5.6 billion. We and our subsidiaries may incur additional indebtedness in the future. The terms of our Class M preferred stock do not limit our ability to incur indebtedness. If we incur significant indebtedness, we may not have sufficient funds to make dividend or liquidation payments on the depositary shares representing our Class M preferred stock. In addition, in connection with our existing and future indebtedness, we may be subject to restrictive covenants or other provisions that may prevent our subsidiaries from distributing to us cash needed for payments on the depositary shares representing our Class M preferred stock or may otherwise limit our ability to make dividend or liquidation payments on the depositary shares representing our Class M preferred stock. Upon liquidation, our obligations to our creditors would rank senior to our obligations to holders of depositary shares representing our Class M preferred stock and would be required to be paid before any payments could be made to holders of the depositary shares representing our Class M preferred stock.



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

We conduct the substantial majority of our operations through subsidiaries and joint ventures that own a significant percentage of our consolidated assets. Consequently, our cash flow and our ability to make payments of dividends and other amounts due on the depositary shares representing our Class M preferred stock will depend in large part upon the cash flow of our subsidiaries and joint ventures and the payment of funds by our subsidiaries and joint ventures to us in the form of loans, dividends or otherwise. Neither our subsidiaries nor our joint ventures are obligated to make funds available to us for payments of amounts due on the depositary shares. In addition, the ability of our subsidiaries and joint ventures to distribute funds to us will depend on their earnings and cash flows, the terms of their financing, business and tax considerations and legal restrictions. As a result, payments of dividends and other amounts due on the depositary shares will be structurally subordinated to the debt and other liabilities and any preferred equity of our subsidiaries and joint ventures (including trade payables). This means that creditors and preferred equity holders of our subsidiaries and joint ventures will be paid from the assets of these entities before we receive any cash flow from these entities for use in making payments to holders of depositary shares. In the event of a bankruptcy, liquidation or dissolution of one of our subsidiaries or joint ventures, that subsidiary or joint venture may not have sufficient assets remaining to make payments to us as a shareholder or otherwise after payment of its liabilities and satisfaction of its obligations relating to any preferred equity. As of September 30, 2017, our consolidated subsidiaries had total indebtedness of approximately \$850.8 million and our unconsolidated joint ventures had total indebtedness of approximately \$1.7 billion; as of such date our subsidiaries and joint ventures had no outstanding preferred equity.

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

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

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

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

**Recently proposed tax legislation may affect your investment in the Class M preferred stock.**

The U.S. House of Representatives and the U.S. Senate have each recently passed legislation that would significantly change the Code. As of the date of this prospectus supplement, it is unclear how and to what extent the proposed tax legislation may be amended and whether Congress will ultimately enact any such legislation. If enacted, the legislation could alter the tax consequences of investing in the depositary shares. This prospectus supplement does not discuss any such proposed tax legislation or the manner in which it might affect purchasers of the depositary shares. Investors are urged to consult with their own legal and tax advisors with respect to any such legislation and the potential tax consequences of investing in the depositary shares.

### **USE OF PROCEEDS**

We estimate that the net proceeds from this offering, after deducting the underwriting discount and other estimated offering expenses payable by us, will be approximately \$222.3 million, or approximately \$255.7 million if the underwriters' over-allotment option is exercised in full, assuming all such over-allotment shares are sold to retail accounts. We intend to use the net proceeds of this offering for general corporate purposes, including, without limitation, any one or more of the following: (i) the funding of development and redevelopment costs; (ii) the potential redemption of other classes of our preferred stock with an aggregate liquidation preference of \$575 million which are currently callable at our option; and (iii) the reduction, from time to time, of our outstanding indebtedness, including borrowings under our revolving credit facility maturing in March 2021 (subject to two six-month extension options), which borrowings bear interest at a rate of one-month LIBOR plus 0.875% (2.10% as of September 30, 2017).

S-7

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

	<b>Nine Months</b>					
	<b>Ended</b>					
	<b>September 30,</b>	<b>Year Ended December 31,</b>				
	<b>2017</b>	<b>2016</b>	<b>2015</b>	<b>2014</b>	<b>2013</b>	<b>2012</b>
Ratio of earnings to total fixed charges	2.3x	2.8x	4.2x	2.6x	2.4x	1.9x
Ratio of earnings to combined fixed charges and preferred stock dividends	1.9x	2.2x	3.4x	2.1x	1.9x	1.4x

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

## DESCRIPTION OF CLASS M PREFERRED STOCK AND DEPOSITARY SHARES

Prior to the date of this prospectus supplement, we authorized the issuance of 9,400 shares of 6.000% Class I Cumulative Redeemable Preferred Stock, \$1.00 par value per share, 9,000 shares of 5.50% Class J Cumulative Redeemable Preferred Stock, \$1.00 par value per share, 8,050 shares of 5.625% Class K Cumulative Redeemable Preferred Stock, \$1.00 par value per share and 10,350 shares of 5.125% Class L Cumulative Redeemable Preferred Stock, \$1.00 par value per share. We also authorized the issuance of 18,400 shares of Class I Excess Preferred Stock, \$1.00 par value per share, 9,000 shares of Class J Excess Preferred Stock, \$1.00 par value per share, 8,050 shares of Class K Excess Preferred Stock, \$1.00 par value per share and 10,350 shares of Class L Excess Preferred Stock, \$1.00 par value per share, which are reserved for issuance upon conversion of certain outstanding shares of Class I preferred stock, Class J preferred stock, Class K preferred stock or Class L preferred stock, as the case may be, as necessary to preserve our status as a REIT. At September 30, 2017, 7,000 shares of Class I preferred stock, represented by 7,000,000 depositary shares, were outstanding, 9,000 shares of Class J preferred stock, represented by 9,000,000 depositary shares, were outstanding, 7,000 shares of Class K preferred stock, represented by 7,000,000 depositary shares, were outstanding and 9,000 shares of Class L preferred stock, represented by 9,000,000 depositary shares, were outstanding. We are authorized to issue up to an additional 6,017,400 shares of Preferred Stock, \$1.00 par value per share, in one or more classes or one or more series, with such preferences and rights as will be stated and expressed in the Articles Supplementary establishing the terms of such shares adopted by our Board of Directors under the Maryland General Corporation Law. Out of the 6,017,400 shares of Preferred Stock that we are authorized to issue, we will reclassify 10,580 shares as Class M Cumulative Redeemable Preferred Stock and 10,580 shares as Class M excess preferred stock.

### General

Our Board of Directors, or a duly authorized committee thereof, will adopt a form of Articles Supplementary to our Charter establishing the terms of the Class M preferred stock consisting of 10,580 shares, designated 5.25% Class M Cumulative Redeemable Preferred Stock, \$1.00 par value per share. When issued, the Class M preferred stock will be validly issued, fully paid and nonassessable. Unless redeemed or otherwise repurchased by us, the Class M preferred stock has a perpetual term with no stated maturity date. The following summary of the terms and provisions of the Class M preferred stock does not purport to be complete and is qualified in its entirety by reference to the pertinent sections of our Charter, which includes the Articles Supplementary establishing the Class M preferred stock, which is available from us upon request.

The registrar, transfer agent and dividends disbursing agent for the Class M preferred stock will be Wells Fargo Bank, N.A. an affiliate of Wells Fargo Securities, LLC, one of the underwriters of this offering.

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

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

given that a market for the depositary shares will develop prior to commencement of trading or, if developed, will be maintained.

### **Ranking**

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

## Dividends

Holders of the Class M preferred stock shall be entitled to receive, when, as and if authorized by our Board of Directors and declared by us, out of assets legally available for payment, cumulative cash dividends at the rate of 5.25% of the \$25,000.00 liquidation preference per year (equivalent to an annual rate of \$1.3125 per depositary share). Dividends on the Class M preferred stock shall accrue and be cumulative from, and including, the date of original issue and shall be payable, subject to authorization by our Board of Directors and declaration by us, quarterly in arrears on January 15, April 15, July 15 and October 15 of each year, commencing on April 15, 2018, or, if any such date is not a business day, the next succeeding business day. Dividends payable on the Class M preferred stock will be computed on the basis of a 360-day year consisting of twelve 30-day months. The preferred stock depositary will distribute cash dividends received in respect of the Class M preferred stock to the record holders of the depositary receipts as of the close of business on the applicable record date, which shall be the first day of the calendar month in which the applicable dividend payment date falls or such other date designated by our Board of Directors for the payment of dividends that is not more than 30 nor less than 10 days prior to the dividend payment date.

No full dividends shall be declared or paid or set apart for payment on any class or series of equity securities ranking, as to dividends or payment upon liquidation, dissolution or winding up, on a parity with or junior to our Class M preferred stock unless 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 Class M preferred stock for all past dividend periods.

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

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

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

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

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

### **Liquidation Preference**

In the event of any liquidation, dissolution or winding up of our affairs, the holders of the Class M preferred stock are entitled to be paid out of our assets legally available for distribution to our stockholders liquidating distributions in cash or property at its fair market value as determined by our Board of Directors in the amount of a liquidation preference of \$25,000.00 per share (equivalent to \$25.00 per depositary share), plus an amount equal to all accrued and unpaid dividends to, but excluding, the date of the liquidation, dissolution or winding up, before any distribution or payment shall be made to



the holders of any common stock, excess stock or any other class or series of equity securities issued by us ranking junior to our Class M preferred stock as to liquidation rights. After payment of the full amount of the liquidating distributions to which they are entitled, the holders of the Class M preferred stock will have no right or claim to any of our remaining assets. Our consolidation or merger with or into any other entity or the sale, lease, transfer or conveyance of all or substantially all of our property or business, individually or as part of a series of transactions, shall not be deemed to constitute a liquidation, dissolution or winding up of our affairs.

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

### **Optional Redemption**

Except in limited circumstances relating to the preservation of our status as a REIT, shares of Class M preferred stock are not redeemable prior to December 20, 2022. On or after December 20, 2022, we may redeem, at our option upon not less than 30 nor more than 60 days written notice, the Class M preferred stock (and the preferred stock depositary will redeem the number of depositary shares representing the Class M preferred stock so redeemed), in whole or in part, at any time or from time to time, for cash at a redemption price of \$25,000.00 per share (equivalent to \$25.00 per depositary share), plus accrued and unpaid dividends thereon, if any, to, but excluding, the date fixed for redemption, without interest. If fewer than all of the outstanding shares of Class M preferred stock and depositary shares are to be redeemed, the shares of Class M preferred stock and depositary shares to be redeemed will be determined by lot (as nearly as practicable without creating fractional shares) or in such other equitable manner prescribed by our Board of Directors that will not result in a violation of the restrictions specified below under Restrictions on Ownership or by the rules and procedures of DTC. In addition, we may redeem shares of Class M preferred stock at any time in certain circumstances relating to the maintenance of our ability to qualify as a REIT for federal income tax purposes.

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

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

.  
the redemption price;

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

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

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

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

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

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

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

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

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

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

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

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

### **Voting Rights**

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

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

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

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

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

### **Conversion**

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

### **Stockholder Liability**

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

### **Restrictions on Ownership**

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

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

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

S-13

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

### **Book-Entry System**

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

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

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

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

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

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

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

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

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

S-14

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

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

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

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

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

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

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