

GRAN TIERRA ENERGY INC.
Form 8-K
June 30, 2015

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 8-K

CURRENT REPORT

Pursuant to Section 13 or 15(d) of the

Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): June 24, 2015

GRAN TIERRA ENERGY INC.

(Exact name of Registrant as specified in its charter)

Nevada 98-0479924
(State or other jurisdiction of incorporation) (I.R.S. Employer Identification No.)

Commission file number: 001-34018

200, 150 13 Avenue SW

Calgary, Alberta Canada T2R, 0V2

(Address of principal executive offices and zip code)

Registrant's telephone number, including area code: (403) 265-3221

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Item 5.02. Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers

As reported in its Current Report on Form 8-K filed by Gran Tierra Energy Inc. on May 13, 2015, Ryan Ellson was appointed as Chief Financial Officer of Gran Tierra, replacing James Rozon in that position. Gran Tierra further reported that Mr. Rozon would remain as an employee of Gran Tierra to assist in the transition of his role for an indeterminate period of time. Effective June 30, 2015, Mr. Rozon's employment will be terminated.

SIGNATURE

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 hereunto duly authorized.

Date: June 29, 2015 GRAN TIERRA ENERGY INC.

By: /s/ David Hardy
Name: David Hardy
Title: V.P. Legal and General Counsel

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NRT Lease, which information is correct and complete in all respects as of the date hereof (except for discrepancies that would not have a Material Adverse Effect). Except as set forth in Section 5.12(f) of the NRT Disclosure Schedule, neither NRT nor any NRT Subsidiary has received written notice that it is in default under any NRT Lease, except for violations or defaults that have been cured or are disclosed in the rent rolls or that would not have a Material Adverse Effect.

(g) Section 5.12(g) of the NRT Disclosure Schedule sets forth a correct and complete list as of the date of this Agreement of each ground lease pursuant to which NRT or any NRT Subsidiary is a lessee (individually, a NRT Ground Lease and collectively, NRT Ground Leases). Except as listed in Section 5.12(g) of the NRT Disclosure Schedule or that would not have a Material Adverse Effect, each NRT Ground Lease is in full force and effect and neither NRT nor any NRT Subsidiary has received a written notice that it is in default under any NRT Ground Lease which remains uncured. NRT has made available to the Company a correct and complete copy of each NRT Ground Lease and all amendments thereto.

(h) Except as set forth in Section 5.12(h) of the NRT Disclosure Schedule, as of the date hereof, neither NRT nor any NRT Subsidiary has granted any unexpired option agreements (excluding any rights of first refusal or rights of first offer) with respect to the purchase of a NRT Property or any portion thereof or any other unexpired rights in favor of any party other than NRT, any NRT Subsidiary, or any of their respective Affiliates (an NRT Third Party) to purchase or otherwise acquire a NRT Property or any portion thereof or entered into any contract for sale, ground lease or letter of intent to sell or ground lease any NRT Property or any portion thereof or provided an NRT Third Party with any right to terminate an NRT Lease prior to the expiration of its scheduled lease term.

(i) Except as set forth in Section 5.12(i) of the NRT Disclosure Schedule, neither NRT nor any of its Subsidiaries is a party to any agreement pursuant to which NRT or any NRT Subsidiary manages any real property for any NRT Third Party.

(j) Except for those contracts or agreements set forth in Section 5.12(j) of the NRT Disclosure Schedule, neither NRT nor any of the NRT Subsidiaries has entered into any contract or agreement (collectively, the NRT Participation Agreements) with any NRT Third Party or any employee, consultant, Affiliate or other Person (the NRT Participation Party) that provides for a right of such NRT Participation Party to participate, invest, join, partner, have any interest in whatsoever (whether characterized as a contingent fee, profits interest, equity interest or otherwise) or have the right to any of the foregoing in any proposed or anticipated investment opportunity, joint venture, partnership or any other current or future transaction or property in which NRT or any NRT Subsidiary has or will have an interest, including but not limited to those transactions or properties identified, sourced, produced or developed by such NRT Participation Party (a NRT Participation Interest).

(k) Except as set forth in Section 5.12(k) of the NRT Disclosure Schedule, NRT is not responsible for the payment of any operating expenses under the NRT Leases.

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(l) As of the date listed therein, each of the master lessees set forth in Section 5.12(l) of the NRT Disclosure Schedule has been duly dissolved and liquidated under the laws of the states of its respective incorporation.

SECTION 5.13. Intellectual Property.

Except as would not have a Material Adverse Effect, (a) the conduct of the business of NRT and its Subsidiaries as currently conducted does not infringe the Intellectual Property rights of any NRT Third Party and (b) with respect to Intellectual Property owned by or licensed to NRT or any NRT Subsidiary and material to the business of NRT and its Subsidiaries, taken as a whole (NRT Intellectual Property), NRT or such NRT Subsidiary has the right to use such NRT Intellectual Property in the continued operation of its business as currently conducted.

SECTION 5.14. Taxes.

(a) NRT and its Subsidiaries (1) have filed all federal, state, local and foreign Tax Returns required to be filed by them (after giving effect to any filing extensions properly obtained) and all such Tax Returns are correct and complete in all material respects, (2) have paid and discharged all Taxes shown as due on such Tax Returns or otherwise required to be paid, and (3) have complied in all material respects with all applicable Tax laws requiring the withholding or collection of Taxes, other than in each case, (i) such payments as are being contested in good faith by appropriate proceedings and (ii) such filings, payments or other occurrences that would not have a Material Adverse Effect. There are no currently effective or otherwise outstanding waivers or extensions of any applicable statute of limitations to assess any Taxes.

(b) Commencing with its initial taxable year ended December 31, 2005, NRT has been organized and has operated in conformity with the requirements for qualification and taxation as a REIT under the Code, and its proposed method of operation will enable NRT to continue to meet the requirements for qualification and taxation as a REIT under the Code. To NRT's Knowledge, no challenge to NRT's status as a REIT is pending, or is or has been threatened.

(c) NRT has incurred no liability for any material Taxes under Sections 857(b), 860(c), or 4981 of the Code, Treasury Regulation Section 1.337(d)-7 (or any applicable predecessor guidance or regulation), including any material Tax arising from a prohibited transaction described in Section 857(b)(6) of the Code, and neither NRT nor its Subsidiaries has incurred any material liability for Taxes outside of the ordinary course of business other than transfer or similar Taxes arising in connection with the sales of property. Neither NRT nor its Subsidiaries (other than a TRS within the meaning of Section 856(l) of the Code) has engaged at any time in any prohibited transaction within the meaning of Section 857(b)(6) of the Code. Neither NRT nor its Subsidiaries has engaged in any transaction that would give rise to redetermined rents, redetermined deductions and excess interest described in Section 857(b)(7) of the Code. No asset or portion thereof held directly or indirectly by NRT is subject to the rules of Section 1374 pursuant to Treasury Regulation Section 1.337(d)-7 (or any applicable predecessor guidance or regulation). No event has

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occurred, and no condition or circumstance exists, which presents a risk that any material Tax described in the preceding sentences will be imposed on NRT or its Subsidiaries.

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(d) There is no pending or ongoing federal audit, examination, investigation or proceeding of NRT or its Subsidiaries and there is no pending or ongoing material state, local or foreign audit, examination, investigation or proceeding of NRT or its Subsidiaries. There are no material claims or assessments pending against NRT or its Subsidiaries for any alleged deficiency in any Tax, and, to NRT's Knowledge, there are no written or oral threatened Tax claims or assessments against NRT or its Subsidiaries which if upheld would reasonably be expected to result, individually or in the aggregate, in a material cost or liability for NRT or its Subsidiaries. There are no pledges, claims, liens, charges, encumbrances or security interests of any kind or nature whatsoever for any Taxes upon the assets of NRT or its Subsidiaries except for liens for current Taxes not yet due.

(e) Neither NRT nor its Subsidiaries has received or is subject to any written ruling of a taxing authority related to Taxes or has entered into any written and legally binding agreement with a taxing authority relating to any material Taxes. No issues have been raised in any examination by any taxing authority with respect to NRT or its Subsidiaries which, by application of similar principles, reasonably could be expected to result in a material proposed deficiency or material increase in Tax for any other period not so examined.

(f) NRT does not have any earnings and profits attributable to any other corporation in any non-REIT year within the meaning of Section 857 of the Code. For all taxable years for which the Internal Revenue Service either could assert a Tax liability in respect of NRT's status as a REIT or could assert that NRT failed to qualify as a REIT, NRT has not held, directly or indirectly, any asset (including any security) that has violated or does violate Section 856(c)(4)(B)(iii) of the Code, other than a violation which has been cured pursuant to any applicable provisions of Section 856 of the Code so as not to cause NRT to fail to qualify as a REIT for any such year and which has not and reasonably could not be expected to result in any material Tax liability. NRT has, together with only those entities set forth in Section 5.14(f) of the NRT Disclosure Schedule, made a proper election to treat each such entity as a TRS within the meaning of Section 856(l) of the Code.

(g) Except as set forth on Section 5.14(g) of the NRT Disclosure Schedule, neither NRT nor its Subsidiaries (a) is a party to or is otherwise subject to any Tax allocation or sharing agreement, or (b) has any liability for Taxes of another person under law, by contract or otherwise except for withholding Taxes incurred in the ordinary course of business that have been properly withheld but are not yet required to be deposited with a Tax authority.

(h) To the Knowledge of NRT, neither NRT nor its Subsidiaries is or has been a party to any reportable transaction within the meaning of Treasury Regulations Section 1.6011-4(b).

(i) To the Knowledge of NRT, NRT is a domestically controlled REIT within the meaning of Section 897(h) of the Code and NRT is not a pension held REIT within the meaning of Section 856(h) of the Code.

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(j) Each mezzanine loan, participation or other similar debt instrument that NRT treats as a qualifying real estate asset for purposes of Section 856(c)(4)(A) of the Code satisfies the requirements of the safe harbor set forth in Revenue Procedure 2003-65.

(k) Each hedging transaction, the income from which NRT excludes in determining its gross income for purposes of Section 856(c)(2) of the Code, is clearly identified pursuant to Section 1221(a)(7) and is treated as a hedging transaction (1) as defined in Section 1221(b)(2)(A)(ii) or (iii) and (2) within the meaning of Section 856(c)(5)(G) only to the extent the hedging transaction hedges any debt incurred or to be incurred by NRT to acquire or carry real estate assets.

SECTION 5.15. Environmental Matters.

Except as set forth in the SEC Reports or as would not have a Material Adverse Effect:

(a) There has been no material storage, generation, transportation, handling, treatment, disposal, discharge, emission or other release of any kind of Hazardous Materials by, due to, or caused by NRT or any NRT Subsidiary or, to NRT's Knowledge, by any other entity for whose acts or omissions NRT or any NRT Subsidiary is or may be liable, upon any property now or previously owned or leased by NRT or any NRT Subsidiary, or upon any other property, which would be a violation of and give rise to liability against NRT or any NRT Subsidiary under any

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Environmental Law.

- (b) To NRT's Knowledge, there has been no disposal, discharge, emission or other release of any kind onto the properties referred in paragraph (a) or into the environment surrounding such properties of any Hazardous Materials.
- (c) Neither NRT nor any NRT Subsidiary has agreed to assume, undertake or provide indemnification for any liability of any other persons under any Environmental Law, except for customary environmental indemnity agreements in connection with mortgage loans on the NRT Properties.
- (d) There is no pending or, to NRT's Knowledge, any threatened administrative, regulatory or judicial action, claim or notice of noncompliance or violation, investigation or proceedings relating to any Environmental Law against NRT or any NRT Subsidiary.

NRT has previously delivered or made available to the Company complete copies of all material information, documents and reports, including, without limitation, environmental investigations and testing or analysis that are in the possession or control of any of NRT or the NRT Subsidiaries and which relate to compliance with Environmental Laws by any of them or to the past or current environmental condition of the NRT Properties.

SECTION 5.16. Material Contracts.

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(a) Except as filed as exhibits to the SEC Reports filed prior to the date of this Agreement, or as disclosed in Section 5.16(a) of the NRT Disclosure Schedule, none of NRT or any NRT Subsidiary is a party to or bound by any contract that, as of the date hereof:

- (i) is a material contract (as such term is defined in Item 601(b)(10) of Regulation S-K of the SEC);
- (ii) involves aggregate expenditures in excess of \$2,500,000;
- (iii) involves annual expenditures in excess of \$500,000 and is not cancelable within one year;
- (iv) contains any non-compete or material exclusivity provisions with respect to any line of business or geographic area with respect to NRT or any NRT Subsidiary, or that restricts the conduct of any line of business by NRT or any NRT Subsidiary or any geographic area in which NRT or any NRT Subsidiary may conduct business, in each case in any material respect;
- (v) would prohibit or materially delay the consummation of the REIT Merger or any of the transactions contemplated by this Agreement or any Ancillary Agreement;
- (vi) is a contract or agreement pursuant to which NRT or any of the NRT Subsidiaries agrees to indemnify or hold harmless any director, trustee or executive officer of NRT or any of the NRT Subsidiaries (other than the organizational documents for NRT or the NRT Subsidiaries); or
- (vii) is a loan agreement, letter of credit, indenture, note, bond, debenture, mortgage or any other document, agreement or instrument evidencing a capitalized leased obligation or other indebtedness of, for the benefit of, or payable to NRT or any NRT Subsidiaries or any guaranty thereof, in each case, having a value in excess of \$5,000,000 individually.

Each contract of the type described in this Section 5.16, whether or not set forth in Section 5.16(a) of the NRT Disclosure Schedule, is referred to herein as a NRT Material Contract.

(b) Except as set forth in Section 5.16(b) of the NRT Disclosure Schedule, each NRT Material Contract is valid and binding on NRT, each NRT Subsidiary party thereto, and, to the Knowledge of NRT, each NRT Third Party thereto, and neither NRT nor any NRT Subsidiary has

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received a written notice that it is in violation of or in default under (nor to the Knowledge of NRT does there exist any condition which upon the passage of time or the giving of notice or both would cause such a violation of or default under) any NRT Material Contract, except as would not (i) prevent or materially delay consummation of the REIT Merger, or (ii) result in a Material Adverse Effect.

(c) To the extent not set forth in response to the requirements of Section 5.16(a), Section 5.16(c) of the NRT Disclosure Schedule sets forth each interest rate cap,

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interest rate collar, interest rate swap, currency hedging transaction, and any other agreement relating to a similar transaction to which NRT or any NRT Subsidiary is a party or an obligor with respect thereto.

(d) Except as set forth in Section 5.16(d) of the NRT Disclosure Schedule, none of NRT or any NRT Subsidiary is a party to any agreement which would restrict any of them from prepaying any of their Indebtedness without penalty or premium at any time or which requires any of them to maintain any amount of Indebtedness with respect to any of the NRT Properties.

(e) Except as set forth in Section 5.16(e) of the NRT Disclosure Schedule, none of NRT or any NRT Subsidiary is a party to any agreement relating to the management of any NRT Property by any Person other than NRT or any NRT Subsidiary.

(f) None of NRT or any NRT Subsidiary is a party to any agreement pursuant to which NRT or any NRT Subsidiary manages or provides services with respect to any real properties other than NRT Properties, except for the agreements listed in Section 5.16(f) of the NRT Disclosure Schedule.

(g) Section 5.16(g) of the NRT Disclosure Schedule lists all material agreements entered into by NRT or any NRT Subsidiary relating to the development or construction of, or additions or expansions to, any NRT real properties (or any properties with respect to which NRT has executed as of the date of this Agreement a purchase agreement or other similar agreement) which are currently in effect and under which NRT or any NRT Subsidiary currently has, or expects to incur, an obligation in excess of \$250,000 in the aggregate in the future. True, correct and complete copies of such agreements have previously been delivered or made available to the Company.

(h) Section 5.16(h) of the NRT Disclosure Schedule lists all agreements entered into by NRT or any NRT Subsidiary providing for the sale of, or option to sell, any NRT Properties or the purchase of, or option to purchase, by NRT or any NRT Subsidiary, on the one hand, or the other party thereto, on the other hand, any real estate not yet consummated as of the date hereof.

(i) Except as set forth in Section 5.16(i) of the NRT Disclosure Schedule, none of NRT or any NRT Subsidiary has any continuing obligation that could reasonably be expected to have a Material Adverse Effect (A) for indemnification or otherwise under any agreement relating to the sale of real estate previously owned, whether directly or indirectly, by NRT or any NRT Subsidiary or (B) to pay any additional purchase price for any of the NRT Properties.

(j) Except as set forth in Section 5.16(j) of the NRT Disclosure Schedule, none of NRT or any NRT Subsidiary has entered into or is subject, directly or indirectly, to any Tax Protection Agreements. None of NRT or any NRT Subsidiary is in violation of or in default under any Tax Protection Agreement.

SECTION 5.17. No Payments to Employees, Officers or Directors.

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Section 5.17 of the NRT Disclosure Schedule contains a true and complete list of all arrangements, agreements or plans pursuant to which cash and non-cash payments which will become payable to each employee, officer or director of NRT or any NRT Subsidiary as a result of the REIT Merger or a termination of service subsequent to the consummation of the REIT Merger. Except as described in Section 5.17 of the NRT Disclosure Schedule, or as otherwise provided for in this Agreement, there is no employment or severance contract, or other agreement requiring payments, cancellation of indebtedness or other obligation to be made on a change of control or otherwise as a result of the consummation of any of the transactions contemplated by this Agreement or as a result of a termination of service subsequent to the consummation of any of the transactions contemplated by this Agreement, with respect to any employee, officer or director of NRT or any of the NRT Subsidiaries. Except as described in Section 5.17 of the NRT Disclosure Schedule, there is no agreement or arrangement with any employee, officer or other service provider under which NRT or any NRT Subsidiary has agreed to pay any tax that might be owed under Section 4999 of the Code with respect to payments to such individuals.

SECTION 5.18. Brokers.

No broker, finder or investment banker or other Person, other than Bear Stearns & Co., Inc. as set forth in its engagement letter with NRT, a true and complete copy of which NRT previously supplied to the Company, is entitled to any brokerage, finder's or other fee or commission in connection with the transactions contemplated hereby based upon arrangements made by or on behalf of NRT or any NRT subsidiary.

SECTION 5.19. Opinion of Financial Advisor.

NRT has received an opinion of Bear Stearns & Co., Inc. to the effect that the REIT Merger Consideration is fair to the holders of NRT Common Stock from a financial point of view. A copy of such opinion shall be delivered to the Company promptly after the date hereof.

SECTION 5.20. Insurance.

Section 5.20 of the NRT Disclosure Schedule sets forth a correct and complete list of the insurance policies held by, or for the benefit of, NRT or any of the NRT Subsidiaries, including the underwriter of such policies and the amount of coverage thereunder. NRT and each of the NRT Subsidiaries have paid, or caused to be paid, all premiums due under such policies and have not received written notice that they are in default with respect to any obligations under such policies other than as would not have a Material Adverse Effect. Neither NRT nor any NRT Subsidiary has received any written notice of cancellation or termination with respect to any existing insurance policy set forth in Section 5.20 of the NRT Disclosure Schedule that is held by, or for the benefit of, any of NRT or any of the NRT Subsidiaries, other than as would not have a Material Adverse Effect.

SECTION 5.21. Related Party Transactions.

Except as set forth in Section 5.16(a) of the NRT Disclosure Schedule or as disclosed in the SEC Reports and except for ordinary course advances to employees, set forth in

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Section 5.21 of the NRT Disclosure Schedule is a list of all material agreements, agreements and contracts entered into by NRT or any of the NRT Subsidiaries under which continuing obligations exist with any Person who is an officer, director, trustee or Affiliate of NRT or any of its Subsidiaries, any member of the immediate family (as such term is defined in Item 404 of Regulation S-K promulgated under the Securities Act)

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of any of the foregoing or any entity of which any of the foregoing is an Affiliate.

SECTION 5.22. Takeover Statutes.

NRT has taken all action required to be taken by it in order to exempt this Agreement and the REIT Merger from, and this Agreement and the REIT Merger are exempt from, the requirements of any moratorium, control share, fair price, affiliate transaction, business combination or other applicable state and federal takeover Laws and regulations and any takeover provision in NRT's Articles, NRT's By-laws or other organizational documents to which NRT is a party. Except as set forth in Section 5.22 of the NRT Disclosure Schedule, the execution, delivery and performance of this Agreement do not, and will not violate the restrictions on transfer and ownership of shares of capital stock set forth in NRT's Articles, NRT's By-laws, or other organizational document to which NRT is a party. As of the date of this Agreement, neither NRT nor any Affiliate or Subsidiary of NRT has ever been deemed to be an interested stockholder or an affiliate of an interested stockholder of the Company for purposes of the Maryland Business Combination Act.

SECTION 5.23. Investment Company Act.

Neither NRT nor any NRT Subsidiary is, nor immediately after consummation of the transactions contemplated hereby will be, required to be registered under the Investment Company Act of 1940, as amended, and the rules and regulations of the SEC thereunder.

SECTION 5.24. Patriot Act.

NRT and its Subsidiaries have complied in all material respects with the International Money Laundering Abatement and Anti-Terrorist Financing Act of 2001 (as in effect on the date hereof), which comprises Title III of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 and the regulations promulgated to date thereunder, and the rules and regulations administered to date by the U.S. Treasury Department's Office of Foreign Assets Control, to the extent such Laws are applicable to them.

SECTION 5.25. Compliance with Laws.

None of NRT or any of the NRT Subsidiaries has violated or failed to comply with any statute, law, ordinance, regulation, rule, judgment, decree or order of any Governmental Entity applicable to its business, properties or operations, except in each case to the extent that such violation or failure would not reasonably be expected to have a Material Adverse Effect.

SECTION 5.26. Tender Offers.

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All tender offers of NRT or any of the NRT Subsidiaries are in compliance with all applicable statutes, laws, ordinances, regulations, rule, judgments, decrees and orders of any Governmental Entity in all material respects.

SECTION 5.27. No Other Representations or Warranties.

(a) Except for the representations and warranties contained in this Article V of this Agreement, the Company acknowledges that neither NRT nor any other Person on behalf of NRT has made, and the Company has not relied upon any representation or warranty, whether express or implied, with respect to NRT or any of the NRT Subsidiaries or their respective businesses, affairs, assets, liabilities, financial condition, results of operations or prospects or with respect to the accuracy or completeness of any other information provided or made available to the Company by or on behalf of NRT. Neither NRT nor any other Person will have or be subject to any liability or indemnification obligation to the Company or any other Person resulting from the distribution in written or verbal communications to the Company, or use by the Company of any such information, including any information, documents, projections, forecasts or other material made available to the Company in online data rooms,

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confidential information memoranda or management interviews and presentations in expectation of the transactions contemplated by this Agreement.

(b) In connection with any investigation by the Company of NRT and the NRT Subsidiaries, the Company has received or may receive from NRT and its respective Subsidiaries and/or other Persons or entities on behalf of NRT certain projections, forward-looking statements and other forecasts and certain business plan information in written or verbal communications. The Company acknowledges that there are uncertainties inherent in attempting to make such estimates, projections and other forecasts and plans, that the Company is familiar with such uncertainties, that the Company is taking full responsibility for making its own evaluation of the adequacy and accuracy of all estimates, projections and other forecasts and plans so furnished to the Company (including the reasonableness of the assumptions underlying such estimates, projections, forecasts or plans), and that the Company shall have no claim against any Person with respect thereto. Accordingly, the Company acknowledges that neither NRT nor any other Person on behalf of either of them makes any representation or warranty with respect to such estimates, projections, forecasts or plans (including the reasonableness of the assumptions underlying such estimates, projections, forecasts or plans).

ARTICLE VI

CONDUCT OF BUSINESS PENDING THE CLOSING

SECTION 6.01. Conduct of Business by the Company.

(a) Unless NRT shall otherwise consent in writing (which consent shall not be unreasonably withheld or delayed), and except as otherwise contemplated by this Agreement, during the period commencing on the date hereof and terminating on the earlier to occur of the Effective Time and the termination of this Agreement pursuant to and in accordance with Article

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IX (the Interim Period), the Company shall, and shall cause each Company Subsidiary to, (i) conduct the Company's business in the ordinary course, (ii) use commercially reasonable efforts, subject to the limitations set forth in this Agreement, to keep available the services of the officers and key employees of the Company and its Subsidiaries, and (iii) use commercially reasonable efforts to maintain the assets and properties of the Company and its Subsidiaries in their current condition, normal wear and tear and damage caused by casualty or by any reason outside of the Company's control excepted.

(b) Except as otherwise contemplated by this Agreement or set forth in Section 6.01(b) of the Company Disclosure Schedule, during the Interim Period, the Company shall not, and shall cause its Subsidiaries not to, do or cause to be done any of the following without the prior written consent of NRT (which consent shall not be unreasonably withheld or delayed):

(i) amend the Company Declaration of Trust or Company By-laws, certificates of limited partnership of the Company Partnerships, Partnership Agreements, or similar organizational or governance documents;

(ii) (A) authorize for issuance, issue or sell or agree or commit to issue or sell (whether through the issuance or granting of options, warrants, commitments, subscriptions, rights to purchase or otherwise) any common shares of beneficial interest (or similar interest) of any class or any other securities or equity equivalents (including, without limitation, share appreciation rights, phantom stock plans or stock equivalents), other than the (1) issuance of Company Common Shares under the Company Share Rights outstanding on the date of this Agreement, (2) issuance of Company Common Shares in exchange for Existing Units pursuant to the Partnership Agreements, (3) issuance of Company Common Shares in connection with the Company's dividend reinvestment plan, including an increase in the size of such plan, (4) issuance of Company Common Shares in connection with the Company's 1994 Employee Stock Purchase Plan, (5) issuance of Company Common Shares in

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connection with the Company's 1994 Director Stock Purchase Plan, (6) issuance of Company Common Shares upon the conversion of any Series C Preferred Shares under Section 6 of the Amended and Restated Declaration classifying the Series C Preferred Shares, (7) issuance of shares by LSAC in connection with its initial public offering, (8) issuance of equity interests by any of the Company Partnerships in consideration of property acquired by any such Company Partnership pursuant to the terms hereof, (9) issuance of equity interests by LSAC in consideration of property acquired by any LSAC pursuant to the terms hereof, or (7) issuance of partnership units of the Company Partnerships in connection with acquisitions permitted hereunder or (B) repurchase, redeem or otherwise acquire any securities or equity equivalents (including, without limitation, Company Share Rights of the Company or its Subsidiaries) except in connection with the exercise of Company Share Options, the lapse of restrictions on the Company Restricted Shares or the redemption of Existing Units under Section 8.4 of the Partnership Agreements;

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(iii) (A) split, combine or reclassify any common shares of beneficial interest or partnership interests, as the case may be, of the Company, any Joint Venture or the Company Partnerships or (B) declare, set aside or pay any dividend or other distribution (whether in cash, equity securities, shares, or property or any combination thereof and whether or not out of earnings and profits of the Company, any Joint Venture or the Company Partnerships) in respect of any equity securities, common shares of beneficial interest or partnership interests, as the case may be, of the Company, any Joint Venture or the Company Partnerships, except for (1) such distributions as are required pursuant to the Joint Venture Agreements, (2) a one-time distribution of \$0.17 per Company Common Share, and (3) the payment with respect to quarterly periods ending prior to the Closing Date, of (I) regular cash dividends at a rate not in excess of \$0.365 per Company Common Share, declared and paid quarterly, in each case with a record date for each quarterly payment on the last business day of the applicable calendar quarter, and a payment date on the fifteenth day of the next succeeding month (or, in the event such date is not a business day, the next business day occurring thereafter); (II) regular cash dividends at a rate of 8.05% per annum of the \$25 liquidation preference per Series B Preferred Share, payable quarterly in arrears on each February 15, May 15, August 15 and November 15 in respect of the quarterly distribution periods ending on December 31, March 31, June 30 and September 30, respectively, (III) regular cash dividends at a rate of 6.50% per annum of the \$50 liquidation preference per Series C Preferred Share, payable quarterly in arrears on each February 15, May 15, August 15 and November 15 in respect of the quarterly distribution periods ending on December 31, March 31, June 30 and September 30, respectively, (IV) corresponding regular quarterly distributions payable to holders of Company OP Units and to the Company or its Subsidiaries as holder of partnership units of the Company Partnerships, (V) dividends or distributions, declared, set aside or paid by any Company Subsidiary to the Company, and (VI) quarterly distributions in cash or Company Common Shares pursuant to dividend equivalent rights associated with outstanding Company Restricted Shares, in accordance with past practices, it being understood that, in the case of dividends and distributions referenced in (I), (II) and (III), the Company and the Company Partnerships intend to pay quarterly dividends and make distributions for each full fiscal quarter ending prior to the Effective Time and if a dividend or distribution is declared for the partial fiscal quarter, if any, ending on the Effective Time, shall set a record date for such dividends or distribution that is one day prior to the Effective Time payable on a pro rata basis with respect to the portion of such fiscal quarter that has elapsed as of the record date, based on a quarterly dividend of \$.365. Notwithstanding the foregoing, the Company and the Company Partnerships (proportionately to all holders of Company OP Units) shall also be permitted to make distributions reasonably necessary for the Company to maintain its status as a REIT under the Code and avoid the imposition of corporate level Tax or excise Tax; provided that in the event NRT or NRT OP makes a distribution pursuant to the last sentence of Section 6.02(b)(iii) in an amount in excess of \$0.40 per share of NRT Common Stock, prorated as set forth in the immediately preceding sentence, the Company

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shall be entitled to make a proportionately equal additional distribution per share on the Company Common Shares and the Company OP Units equal to 125% of such excess amount;

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- (iv) except as otherwise contemplated by this Agreement, (A) acquire (including, without limitation, by merger, consolidation, or acquisition of stock or assets) any interest in any entity, or any division thereof or any assets not listed in Section 6.01(b)(iv) of the Company Disclosure Schedule, other than (1) acquisitions of assets in the ordinary course of business consistent with past practice which do not provide for an equity investment of greater than \$30,000,000 in any individual transaction, or \$150,000,000 in the aggregate, for the Company and its Subsidiaries taken as a whole; (2) acquisitions of publicly traded securities in the ordinary course of business consistent with past practice provided such acquisitions do not represent more than a 2.45% beneficial ownership interest in any such entity and the aggregate purchase price does not exceed \$20 million; (3) the purchase of mortgages set forth in Section 6.01(b)(iv) of the Company Disclosure Schedule and the purchase of additional mortgages in the ordinary course of business consistent with past practice in an amount not to exceed \$50,000,000 of equity invested by the Company, (B) incur any indebtedness for borrowed money or issue any debt securities or assume, guarantee or endorse, or otherwise as an accommodation become responsible for, the obligations of any Person (other than a wholly owned Company Subsidiary) for borrowed money, except for (1) indebtedness for borrowed money incurred in the ordinary course of business, (2) indebtedness for borrowed money with a maturity of not more than one year in a principal amount not in excess of \$25,000,000 in the aggregate for the Company and any of the Company Subsidiaries taken as a whole, (3) indebtedness for borrowed money incurred in order for the Company to pay regular cash dividends at a rate not in excess of \$0.365 per Company Common Share, declared and paid quarterly, in accordance with past practice, and for the Company Partnerships to make corresponding regular quarterly distributions payable to holders of Company OP Units and to the Company or its Subsidiaries as holder of partnership units of the Company Partnerships in the ordinary course and in accordance with past practice, (4) mortgages, in each case, up to a maximum of 85% of loan-to-value, related to acquisitions permitted pursuant to this Section 6.01(b) or with respect to any Company Property, and (5) indebtedness for borrowed money incurred in order for the Company to pay the dividend of \$0.17 per Company Common Share set forth in Section 6.01(b)(iii)(B)(2) or (C) enter into or amend any contract, agreement, commitment or arrangement that, if fully performed, would not be permitted under this Section 6.01(b);
- (v) except as may be required by contractual commitments or Company policies with respect to severance or termination pay in existence on the date of this Agreement: (A) increase the compensation or benefits payable or to become payable to its directors, trustees, officers or employees (except for increases in accordance with past practices in salaries or wages of employees of the Company or any Company Subsidiary and for the payment of annual bonus

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payments in accordance with past practices or as otherwise approved by the Compensation Committee of the Company Board); (B) other than in the ordinary course of business, grant any rights to severance or termination pay to, or enter into any employment or severance agreement with, any director, trustee or officer of the Company or any Company Subsidiary, or establish, adopt, enter into or amend any collective bargaining, bonus, profit sharing, thrift, compensation, stock option, restricted stock, pension, retirement, deferred compensation, employment, termination, severance or other plan, agreement, trust, fund, policy or arrangement for the benefit of any director, trustee or officer, except to the extent required by applicable Law or the terms of a collective bargaining agreement in existence on the date of this Agreement; or (C) except as contemplated by this Agreement, take any affirmative action to amend or waive any performance or vesting criteria or accelerate vesting, exercisability or funding under any Company Plan, establish any new Company Plan, or otherwise modify (except to the extent required by applicable Law) any Company Plan;

(vi) except in connection with dispositions permitted hereunder or in connection with the prepayments set forth in Section 6.01(b)(vi) of the Company Disclosure Schedule, pre-pay any long-term debt, except in the ordinary course of business (including, without limitation, pre-payments or repayments of revolving credit facilities or other similar lines of credit and/or payments made in respect of any termination or settlement of any interest rate swap or other similar hedging instrument relating thereto) in an amount not to exceed \$25,000,000 in the aggregate for the Company and its Subsidiaries taken as a whole, or pay, discharge or satisfy any claims, liabilities or obligations (absolute, accrued, contingent or otherwise), except in the ordinary course of business consistent with past practice and in accordance with their terms;

(vii) change in any material respect any of the accounting principles or practices used by it (except as required by GAAP or change in Law, or as recommended by the Company's independent auditors, or pursuant to written instructions, comments or orders from the SEC, in which case written notice shall be provided to NRT prior to any such change);

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(viii) (A) except as set forth in Section 6.01(b)(viii) of the Company Disclosure Schedule or in connection with a right being exercised by a tenant under its lease with any of the Company Partnerships or any other Company Subsidiary, enter into any new lease (or renew or extend any existing lease) for vacant space at a Company Property, other than for any leases of not more than \$4,000,000 of annualized rent; or (B) other than in the ordinary course of business, and except in connection with a right being exercised by a tenant under its lease with any of the Company Partnerships or any other Company Subsidiary, terminate or materially modify or amend any Company Lease or Company Ground Lease;

(ix) except as set forth in Section 6.01(b)(ix) of the Company Disclosure Schedule or as otherwise permitted by this Section 6.01(b), (A)

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authorize, or enter into any commitment for, any new material expenditure relating to the Company Properties, except (1) expenditures in the ordinary course of business in order to own, operate and maintain the Company Properties in working order, (2) individual expenditures not exceeding \$5,000,000, and (3) expenditures required by Law; or (B) authorize, or enter into, any new Company Material Contract that has a duration of greater than one year and that may not be terminated by the Company or its Subsidiaries, as the case may be, by notice of ninety days or less, including with respect to the disposition of any interest in any entity not listed in Section 6.01(b)(ix) of the Company Disclosure Schedule, or any division thereof or any assets, other than (1) dispositions of the Company Properties listed in Section 6.01(b)(ix) of the Company Disclosure Schedule, (2) any disposition of assets set forth in Section 4.12(h) of the Company Disclosure Schedule and (3) any other dispositions with net proceeds to the Company and its Subsidiaries taken as a whole that are individually not in excess of \$15,000,000, or in the aggregate not in excess of \$50,000,000 for the Company and its Subsidiaries taken as a whole,

(x) waive, release, assign, settle or compromise any material litigation or arbitration set forth on Section 4.08 of the Company Disclosure Schedule;

(xi) make or rescind any material election relating to Taxes or settle or compromise any material liability for Taxes;

(xii) enter into any Tax Protection Agreement;

(xiii) enter into contracts or other agreements with Affiliates (other than the Joint Ventures or Company Subsidiaries); or

(xiv) authorize or enter into any agreement or otherwise make any commitment to do any of the foregoing.

Notwithstanding anything to the contrary set forth in this Agreement, nothing in this Agreement shall prohibit the Company from taking, and the Company hereby agrees to take, any action that the Company Board determines, upon advice of counsel, and in consultation with NRT, is reasonably necessary for the Company to (i) maintain its qualification as a REIT under the Code for any period or portion thereof ending on or prior to the Effective Time, including without limitation, making dividend or distribution payments to shareholders of the Company in accordance with Section 6.01(b)(iii) of this Agreement or otherwise or (ii) discharge the duties (fiduciary or otherwise) which the Company may owe in connection with the Joint Ventures, the Company Partnerships or the Company OP Units.

SECTION 6.02. Conduct of Business by NRT.

(a) Unless the Company shall otherwise consent in writing (which consent shall not be unreasonably withheld or delayed), and except as otherwise contemplated by this Agreement, during the Interim Period, NRT shall, and shall cause each NRT Subsidiary to, (i) conduct NRT's business in the ordinary course, (ii) use commercially reasonable efforts, subject to the limitations set forth in this Agreement, to keep available the services of the

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Advisor and the officers and key employees of NRT and its Subsidiaries, and (iii) use commercially reasonable efforts to maintain the assets and properties of NRT and its Subsidiaries in their current condition, normal wear and tear and damage caused by casualty or by any reason outside of NRT's control excepted.

- (b) Except as otherwise contemplated by this Agreement or set forth in Section 6.02(b) of the NRT Disclosure Schedule, during the Interim Period, NRT shall not, and shall cause its Subsidiaries not to, do or cause to be done any of the following without the prior written consent of the Company (which consent shall not be unreasonably withheld or delayed):
- (i) amend NRT's Articles or NRT By-laws, certificates of limited partnership of NRT OP, the NRT OP Limited Partnership Agreement, or similar organizational or governance documents;
- (ii) (A) authorize for issuance, issue or sell or agree or commit to issue or sell (whether through the issuance or granting of options, warrants, commitments, subscriptions, rights to purchase or otherwise) any common stock (or similar interest) of any class or any other securities or equity equivalents (including, without limitation, share appreciation rights, phantom stock plans or stock equivalents) other than (1) the issuance of NRT Common Stock upon the redemption of NRT OP Units under the NRT OP Limited Partnership Agreement or (2) the issuance of partnership interests of NRT OP in connection with acquisitions permitted hereunder; or (B) repurchase, redeem or otherwise acquire any securities or equity equivalents other than in connection with the redemption of NRT OP Units pursuant to the NRT OP Limited Partnership Agreement.
- (iii) (A) split, combine or reclassify any equity securities, common stock or partnership interests, as the case may be, of NRT or NRT OP; or (B) declare, set aside or pay any dividend or other distribution (whether in cash, equity securities, shares, or property or any combination thereof and whether or not out of earnings and profits of NRT or NRT OP) in respect of any equity securities, common stock or partnership interests, as the case may be, of NRT or NRT OP, except for (1) distributions by 111 Debt Acquisition LLC to its members in accordance with their ownership interests, (2) the payment with respect to quarterly periods or portions of quarterly periods ending prior to the Closing Date of (I) regular cash dividends at a rate not in excess of \$.40 per share of NRT Common Stock, declared and paid quarterly, in each case with a record date for each quarterly payment on the last business day of the applicable calendar quarter, and a payment date on the fifteenth day of the next succeeding month (or, in the event such date is not a business day, the next business day occurring thereafter); (II) corresponding distributions payable to holders of NRT OP Units and to NRT as holder of partnership units of NRT OP, and (III) dividends or distributions, declared, set aside or paid by any NRT Subsidiary to NRT. Notwithstanding the foregoing, in no event shall the holders of NRT Common Stock be paid dividends as holders of NRT Common Stock and as holders of Company Common Shares for the same quarterly period. It is understood that in the case of dividends and distributions referenced in (1) and (2) above, that NRT

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and NRT OP intend to pay quarterly dividends and make distributions for each full fiscal quarter ending prior to the Effective Time and if a dividend or distribution is declared for the partial fiscal quarter, if any, ending on the Effective Time, shall set a record date for such dividends or distribution that is one day prior to the Effective Time payable on a pro rata basis with respect to the portion of such fiscal quarter that has elapsed as of the record date based on a quarterly dividend of \$.40. Notwithstanding the foregoing, NRT and NRT OP (proportionately to all holders of NRT OP Units) shall also be permitted to make distributions reasonably necessary for NRT to maintain its status as a REIT under the Code and avoid the imposition of corporate level Tax or excise Tax; provided that in the event the Company makes a distribution pursuant to the last sentence of Section 6.01(b)(iii) in an amount in excess of \$0.365 per Company Common Share, prorated as set forth in the immediately preceding sentence, NRT shall be entitled to make a proportionately equal additional distribution per share on the NRT Common Stock and NRT OP Units equal to 80% of such excess amount;

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(iv) except as otherwise contemplated by this agreement, (A) acquire (including, without limitation, by merger, consolidation, or acquisition of stock or assets) any interest in any entity, or any division thereof or any assets not listed in Section 6.02(b)(iv) of the NRT Disclosure Schedule, other than (1) acquisitions of assets in the ordinary course of business consistent with past practice which do not provide for an equity investment of greater than \$30,000,000 in any individual transaction, or \$150,000,000 in the aggregate including without limitation properties offered to NRT or any of its Subsidiaries pursuant to the terms of the Exclusivity Agreement, for NRT and its Subsidiaries taken as a whole, (2) acquisitions of publicly traded securities in the ordinary course of business consistent with past practice provided such acquisitions do not represent more than a 2.45% beneficial ownership interest in any such entity and the aggregate purchase price does not exceed \$20 million, (3) the purchase of debt securities in the ordinary course of business consistent with past practice in an amount not to exceed \$50,000,000 of equity invested by NRT, or (4) the acquisition of fee simple or leasehold interests in the land underlying NRT Properties, (B) incur any indebtedness for borrowed money or issue any debt securities or assume, guarantee or endorse, or otherwise as an accommodation become responsible for, the obligations of any Person (other than a wholly owned NRT Subsidiary) for borrowed money, except for (1) indebtedness for borrowed money incurred in the ordinary course of business, (2) indebtedness for borrowed money with a maturity of not more than one year in a principal amount not in excess of \$25,000,000 in the aggregate for NRT and any of the NRT Subsidiaries taken as a whole, (3) indebtedness for borrowed money incurred in order for NRT to pay regular cash dividends at a rate not in excess of \$.40 per share of NRT Common Stock, declared and paid quarterly, in accordance with past practice, and for NRT OP to make corresponding regular quarterly distributions payable to holders of NRT OP Units and to NRT as holder of partnership units of NRT OP in the ordinary course and in accordance with past practice, and (4) mortgages, in each case, up to a maximum of 85% of loan-to-value, related to acquisitions permitted pursuant to this Section 6.02(b) or with respect to any NRT Property, or (C) enter into or

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amend any contract, agreement, commitment or arrangement that, if fully performed, would not be permitted under this Section 6.02(b);

(v) except as may be required by contractual commitments or corporate policies with respect to severance or termination pay in existence on the date of this Agreement or in connection with the termination of the Advisory Agreement in accordance with the terms of this Agreement: (A) increase the compensation or benefits payable or to become payable to its directors, trustees, officers or employees (except for increases in accordance with past practices in salaries or wages of employees of NRT or any NRT Subsidiary and for the payment of annual bonus payments in accordance with past practices or as otherwise approved by the Compensation Committee of the NRT Board); (B) other than in the ordinary course of business, grant any rights to severance or termination pay to, or enter into any employment or severance agreement with, any director, trustee or officer of NRT or any NRT Subsidiary, or establish, adopt, enter into or amend any collective bargaining, bonus, profit sharing, thrift, compensation, stock option, restricted stock, pension, retirement, deferred compensation, employment, termination, severance or other plan, agreement, trust, fund, policy or arrangement for the benefit of any director, trustee or officer, except to the extent required by applicable Law or the terms of a collective bargaining agreement in existence on the date of this Agreement; or (C) except as contemplated by this Agreement, take any affirmative action to amend or waive any performance or vesting criteria or accelerate vesting, exercisability or funding under any NRT Plan, establish any new NRT Plan, or otherwise modify (except to the extent required by applicable Law) any NRT Plan;

(vi) except in connection with dispositions permitted hereunder, pre-pay any long-term debt except in the ordinary course of business (including, without limitation, pre-payments or repayments of revolving credit facilities or other similar lines of credit and/or payments made in respect of any termination or settlement of any interest rate swap or other similar hedging instrument relating thereto) in an amount not to exceed \$25,000,000 in the aggregate for NRT and its Subsidiaries taken as a whole, or pay, discharge or satisfy any claims, liabilities or obligations (absolute, accrued, contingent or otherwise), except in the ordinary course of business consistent with past practice and in accordance with their terms;

(vii) change in any material respect any of the accounting principles or practices used by it (except as required by GAAP or change in Law, or as recommended by NRT's independent auditors, or pursuant to written instructions, comments or orders from the SEC, in which case written notice shall be provided to the Company prior to any such change);

(viii) (A) except as provided in Section 6.02(b)(viii) of the NRT Disclosure Schedule or in connection with a right being exercised by a tenant under its lease with NRT OP or any other NRT Subsidiary, enter into any new lease (or renew or extend any existing lease) for vacant space at a NRT Property,

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other than for any leases of not more than \$4,000,000 of annualized rent; or (B) other than in the ordinary course of business, and except in connection with a right being exercised by a tenant under its lease with NRT OP or any other NRT Subsidiary, terminate or materially modify or amend any NRT Lease or NRT Ground Lease;

(ix) except as provided in Section 6.02(b)(ix) of the NRT Disclosure Schedule or except as otherwise permitted by this Section 6.02(b), (A) authorize, or enter into any commitment for, any new material expenditure relating to the NRT Properties, except (i) expenditures in the ordinary course of business in order to own, operate and maintain the NRT Properties in working order, (ii) individual expenditures not exceeding \$5,000,000, and (iii) expenditures required by Law; or (B) authorize, or enter into, any new NRT Material Contract that has a duration of greater than one year and that may not be terminated by NRT or its Subsidiaries, as the case may be, by notice of ninety days or less, including the disposition of any interest in any entity not listed on Section 6.02(b)(ix) of the NRT Disclosure Schedule, or any division thereof or any assets, other than (i) dispositions of the NRT Properties listed on Section 6.02(b)(ix) of the NRT Disclosure Schedule; (ii) any disposition of assets set forth in Section 5.12(h) of the NRT Disclosure Schedule and (iii) any other dispositions for net proceeds to NRT and its Subsidiaries, taken as a whole, that is individually not in excess of \$15,000,000, or in the aggregate, not in excess of \$50,000,000 for the NRT and its Subsidiaries taken as a whole,

(x) waive, release, assign, settle or compromise any material litigation or arbitration set forth on Section 5.08 of the NRT Disclosure Schedule;

(xi) make or rescind any material election relating to Taxes or settle or compromise any material liability for Taxes;

(xii) enter into any Tax Protection Agreement;

(xiii) amend the Advisory Agreement;

(xiv) enter into contracts or other agreements with Affiliates (other than (1) NRT Subsidiaries or (2) in order to permit compliance with the terms of the Exclusivity Services Agreement, dated December 31, 2003, as amended as of October 27, 2005, between Winthrop Realty Trust ("Winthrop") and Michael L. Ashner and the Exclusivity Assignment (as defined in the Acquisition Agreement), for the conveyance of assets other than Net Lease Assets (as defined in the Acquisition Agreement) to Winthrop or to acquire, subject to the limitations of Section 6.02(iv), Net Lease Assets from Winthrop), or

(xv) authorize or enter into any agreement or otherwise make any commitment to do any of the foregoing.

Notwithstanding anything to the contrary set forth in this Agreement, nothing in this Agreement shall prohibit NRT from taking, and NRT hereby agrees to take, any action that

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the NRT Board determines, upon advice of counsel, and in consultation with the Company, is reasonably necessary for NRT to (i) maintain its qualification as a REIT under the Code for any period or portion thereof ending on or prior to the Effective Time, including without limitation, making dividend or distribution payments to capital stockholders of NRT in accordance with Section 6.02(b)(iii) of this Agreement or otherwise

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or (ii) discharge the duties (fiduciary or otherwise) which NRT may owe in connection with NRT OP or the NRT OP Units.

SECTION 6.03. Like-kind Exchanges.

LXP and NRT shall consult and cooperate with each other during the Interim Period regarding any proposed exchanges intended to qualify as like-kind exchanges under Section 1031 of the Code and the Treasury Regulations thereunder. LXP and NRT covenant and agree that any exchange consummated by either of them during the Interim Period that the applicable party has elected to treat as a like-kind exchange under Section 1031 of the Code and the Treasury Regulations thereunder shall satisfy the requirements of Section 1031 of the Code and the Treasury Regulations thereunder.

ARTICLE VII

ADDITIONAL AGREEMENTS

SECTION 7.01. Shareholders Meetings; NRT OP Unitholder s Meeting.

(a) The Company, acting through the Company Board, shall, in accordance with applicable Law and the Company Declaration of Trust and Company By-laws, (a) duly call, give notice of, convene and hold the Company Shareholder Meeting as promptly as reasonably practicable after the date that the REIT Merger Proxy Statement is cleared by the SEC and (b) except as is reasonably likely to be required by the Company Board s duties under applicable Law, (i) include in the REIT Merger Proxy Statement the recommendation of the Company Board that the Company s shareholders approve the REIT Merger and (ii) use its reasonable efforts to obtain the Company Shareholder Approval. Unless this Agreement shall have been validly terminated in accordance with Section 9.01, the Company shall hold the Company Shareholder Meeting regardless of whether the Company Board has withdrawn, qualified or modified its approval or recommendation of this Agreement or the REIT Merger. Notwithstanding the foregoing, (x) nothing contained in this Agreement shall prevent the Company or the Company Board from taking and disclosing to its shareholders a position contemplated by Rule 14d-9 and Rule 14e-2(a) promulgated under the Exchange Act (or any similar communication to shareholders) or from making any legally required disclosure to shareholders with regard to a Company Acquisition Proposal and (y) any stop-look-and-listen communication by the Company or the Company Board to the shareholders of the Company pursuant to Rule 14d-9(f) promulgated under the Exchange Act (or any similar communication to the shareholders of the Company) shall not be considered a failure to make, or a withdrawal, modification or change in any manner adverse to NRT of, all or a portion of the Company Board s recommendation that the Company s shareholders approve the REIT Merger.

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(b) NRT, acting through the NRT Board, shall, in accordance with applicable Law, the NRT Articles and the NRT By-laws, (a) duly call, give notice of, convene and hold the NRT Stockholder Meeting as promptly as reasonably practicable after the date that the REIT Merger Proxy Statement is cleared by the SEC and (b) except as is reasonably likely to be required by the NRT Board s duties under applicable Law, (i) include in the REIT Merger Proxy Statement the recommendation of the NRT Board that the holders of the NRT Common Stock and the NRT Preferred Stock approve the REIT Merger and (ii) use its reasonable efforts to obtain the NRT Stockholder Approval. Unless this Agreement shall have been validly terminated in accordance with Section 9.01, NRT shall hold the NRT Stockholder Meeting regardless of whether the NRT Board has withdrawn, qualified or modified its approval or recommendation of this Agreement or the REIT Merger. Notwithstanding the foregoing, (x) nothing contained in this Agreement shall prevent NRT or the NRT Board from taking and disclosing to the holders of the NRT Common Stock and the NRT Preferred Stock a position contemplated by Rule 14d-9 and Rule 14e-2(a) promulgated under the Exchange Act (or any similar communication to shareholders) or from making any legally required disclosure to stockholders with regard to an NRT Acquisition Proposal and (y) any stop-look-and-listen communication by NRT or the NRT Board to the holders of the NRT Common Stock and the NRT Preferred Stock pursuant to Rule 14d-9(f) promulgated under the Exchange Act (or any similar communication to the stockholders of NRT) shall not be considered a failure to make, or a withdrawal, modification or change in any manner adverse to the Company of, all or a portion of the

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NRT Board's recommendation that the holders of the NRT Common Stock and the NRT Preferred Stock approve the REIT Merger.

(c) NRT, as sole general partner of NRT OP, acting through the NRT Board, shall, in accordance with applicable Law and Article 14 of the NRT OP Limited Partnership Agreement, propose to adopt the Amended NRT OP Limited Partnership Agreement, and shall call a meeting of the holders of the NRT OP Units (the NRT OP Unitholder's Meeting) to vote thereon. NRT shall (a) duly call, give notice of, convene and hold the NRT OP Unitholder's Meeting, as promptly as reasonably practicable after the date that the NRT OP Proxy Statement is cleared by the SEC and (b) except as is reasonably likely to be required by the NRT Board's duties under applicable Law, (i) include in the NRT OP Proxy Statement the recommendation of the NRT Board that the holders of the NRT OP Units approve the Amended NRT OP Limited Partnership Agreement and (ii) use its reasonable efforts to obtain the approval of the holders of the NRT OP Units. Unless this Agreement shall have been validly terminated in accordance with Section 9.01, NRT shall hold the NRT OP Unitholder's Meeting regardless of whether the NRT Board has withdrawn, qualified or modified its approval or recommendation of this Agreement or the REIT Merger.

SECTION 7.02. Registration Statement: REIT Merger Proxy Statement.

(a) As promptly as practicable following the date hereof, the Company and NRT shall cooperate in preparing and shall cause to be filed with the SEC mutually acceptable proxy materials that shall constitute the proxy statement/prospectus relating to the matters to be submitted to holders of Company Common Shares at the Company Shareholder Meeting and to holders of NRT Common Stock at the NRT Stockholder Meeting (such joint proxy statement/prospectus, and any amendments or supplements thereto, the REIT Merger Proxy Statement), and the Company shall prepare and file with the SEC the Registration Statement (of

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which the REIT Merger Proxy Statement will be a part). NRT and the Company shall use their reasonable best efforts to cause the Registration Statement to become effective under the Securities Act as soon after such filing as practicable and to keep the Registration Statement effective as long as is necessary to consummate the REIT Merger. All correspondence and communications to the SEC made by the Company or NRT with respect to the transactions contemplated by this Agreement, will be provided to the other party with an opportunity to review and comment thereon, prior to such communication or correspondence being made to the SEC, and all other correspondence or communication made to the SEC by the Company shall be provided to NRT at the time of submission to the SEC. The Company and NRT shall use their reasonable best efforts to cause the REIT Merger Proxy Statement to be mailed to the holders of the Company Common Shares, and NRT Common Stock and NRT Preferred Stock, as applicable, as promptly as practicable after filing the REIT Merger Proxy Statement with the SEC and receiving clearance from the SEC with respect to such REIT Merger Proxy Statement.

(b) NRT and the Company shall make all necessary filings with respect to the REIT Merger and the transactions contemplated thereby under the Securities Act and the Exchange Act and applicable blue sky laws and the rules and regulations thereunder. Each party will advise the other, promptly after it receives notice thereof, of the time when the Registration Statement has become effective or any supplement or amendment has been filed, the issuance of any stop order, the suspension of the qualification of the Company Common Shares issuable in connection with the REIT Merger for offering or sale in any jurisdiction, or any request by the SEC for amendment of the REIT Merger Proxy Statement or the Registration Statement or comments thereon and responses thereto or requests by the SEC for additional information. No amendment or supplement to the REIT Merger Proxy Statement or the Registration Statement shall be filed without the approval of both parties hereto, which approval shall not be unreasonably withheld or delayed; provided that, with respect to documents filed by a party which are incorporated by reference in the REIT Merger Proxy Statement or the Registration Statement, this right of approval shall apply only with respect to information relating to the other party and its Affiliates, their business, financial condition or results of operations or the transactions contemplated hereby.

(c) If at any time prior to the Effective Time, any information relating to NRT or the Company, or any of their respective Affiliates, officers or directors, should be discovered by NRT or the Company that should be set forth in an amendment or supplement to the Registration Statement or the REIT Merger Proxy Statement, so that such documents would not include any misstatement of a material fact or omit to state any material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading, the party which discovers such information shall promptly notify the other parties hereto and an appropriate amendment or supplement describing such information shall be promptly filed with the SEC and, to the extent required by law, disseminated to the holders of Company Common Shares and NRT Common Stock.

SECTION 7.03. NRT OP Proxy Statement.

(a) As promptly as reasonably practicable after the date of this Agreement, NRT shall prepare, with the cooperation of the Company, in accordance with the rules and regulations of the SEC and file with the SEC the NRT OP Proxy Statement in preliminary form,

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and NRT, after consultation with the Company, shall use its reasonable best efforts to respond as promptly as practicable to any comments of the SEC with respect thereto. NRT shall notify the Company promptly of the receipt of any comments from the SEC or its staff and of any request by the SEC or its staff for amendments or supplements to the NRT OP Proxy Statement or for additional information and shall supply the Company with copies of all correspondence between NRT or any of its representatives, on the one hand, and the SEC or its staff, on the other hand, with respect to the NRT OP Proxy Statement. NRT shall give the Company and its counsel the opportunity to review the NRT OP Proxy Statement prior to its being filed with the SEC and shall give the Company and its counsel the opportunity to review all amendments and supplements to the NRT OP Proxy Statement and all responses to requests for additional information and replies to comments prior to their being filed with, or sent to, the SEC. NRT shall not mail the NRT OP Proxy Statement, or any amendment or supplement thereto, to which the Company reasonably objects. NRT shall use its reasonable best efforts to cause the NRT OP Proxy Statement to be mailed to the holders of the NRT OP Units, as applicable, as promptly as practicable after filing the NRT OP Proxy Statement with the SEC and receiving clearance from the SEC with respect to such NRT OP Proxy Statement.

(b) The Company shall furnish all pertinent information about itself, its business and operations, and its owners pursuant to this Agreement as is necessary in connection with the preparation of the NRT OP Proxy Statement. The Company agrees to correct promptly any information provided by it for use in the NRT OP Proxy Statement if and to the extent that such information shall have become false or misleading in any material respect. The Company represents and warrants that none of the information supplied by it or its Affiliates specifically for inclusion or incorporation by reference in the NRT OP Proxy Statement will, at the respective times filed with the SEC or as of the date it or any amendment or supplement thereto is mailed to the holders of the NRT OP Units and at the time of the NRT OP Unitholder s Meeting, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they are made, not misleading.

SECTION 7.04. NRT Advisor Voting.

At the NRT Stockholder Meeting, NKT Advisors LLC (NRT Advisor) shall cast all votes with respect to shares of NRT Preferred Stock in proportion to the directives (the NRT OP Direction Votes) that NRT Advisor receives from the holders of the NRT OP Units (other than NRT) in accordance with the terms of the Advisory Agreement.

SECTION 7.05. Access to Information; Confidentiality.

(a) From the date hereof to the Closing and in compliance with applicable Laws, NRT shall, and shall cause the NRT Advisor and each of their respective Subsidiaries to, afford representatives of the Company, following notice from the Company to NRT in accordance with this Section 7.05(a), reasonable access during normal business hours to all the properties, offices and other facilities, books and records of NRT and each NRT Subsidiary, and all other financial, operating and other data and information as the Company may reasonably request. Notwithstanding the foregoing, neither the Company nor any of its representatives shall (i) contact or have any discussions with any of NRT s employees, agents, or representatives,

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unless in each case the Company obtains the prior written consent of NRT, which shall not be unreasonably withheld, (ii) contact or have any discussions with any of the landlords/sublandlords, tenants/subtenants, or licensees or franchisees of NRT or its Subsidiaries, unless in each case the Company obtains the prior written consent of NRT, which shall not be unreasonably withheld or delayed (but may be subject to NRT having one of its representatives present at any interview of, or participating on any call with, any such landlords/sublandlords, tenants/subtenants, or licensees or franchisees, (iii) damage any property or any portion thereof, or (iv) perform any onsite procedure or investigation (including any onsite environmental investigation or study) without NRT's prior written consent. The Company shall schedule and coordinate all inspections with NRT and shall give NRT at least three Business Days prior written notice thereof, setting forth the inspection or materials that the Company or its representatives intend to conduct. NRT shall be entitled to have representatives present at all times during any such inspection. Notwithstanding the foregoing, neither NRT nor any of its Subsidiaries shall be required to provide access to or to disclose information where such access or disclosure would jeopardize the attorney-client privilege of NRT or its Subsidiaries or contravene any Law or binding agreement entered into prior to the date of this Agreement.

(b) From the date hereof to the Closing and in compliance with applicable Laws, the Company shall, and shall cause each of its Subsidiaries to, afford representatives of NRT, following notice from NRT to the Company in accordance with this Section 7.05(b), reasonable access during normal business hours to all the properties, offices and other facilities, books and records of the Company and each Company Subsidiary, and all other financial, operating and other data and information as NRT may reasonably request. Notwithstanding the foregoing, neither NRT nor any of its representatives shall (i) contact or have any discussions with any of the Company's employees, agents, or representatives, unless in each case NRT obtains the prior written consent of the Company, which shall not be unreasonably withheld, (ii) contact or have any discussions with any of the landlords/sublandlords, tenants/subtenants, or licensees or franchisees of the Company or its Subsidiaries, unless in each case NRT obtains the prior written consent of the Company, which shall not be unreasonably withheld or delayed (but may be subject to the Company having one of its representatives present at any interview of, or participating on any call with, any such landlords/sublandlords, tenants/subtenants, or licensees or franchisees, (iii) damage any property or any portion thereof, or (iv) perform any onsite procedure or investigation (including any onsite environmental investigation or study) without the Company's prior written consent. NRT shall schedule and coordinate all inspections with the Company and shall give the Company at least three (3) Business Days prior written notice thereof, setting forth the inspection or materials that NRT or its representatives intend to conduct. The Company shall be entitled to have representatives present at all times during any such inspection. Notwithstanding the foregoing, neither the Company nor any of its Subsidiaries shall be required to provide access to or to disclose information where such access or disclosure would jeopardize the attorney-client privilege of the Company or its Subsidiaries or contravene any Law or binding agreement entered into prior to the date of this Agreement.

(c) All information obtained by the Company or NRT pursuant to this Section 7.05 shall be kept confidential in accordance with the confidentiality agreement, dated April 12, 2006 (the Confidentiality Agreement), between NRT and the Company.

SECTION 7.06. No Solicitation of Transactions.

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(a) Neither the Company nor any Company Subsidiary shall, directly or indirectly, through any officer, director, trustee, agent or otherwise, (i) solicit, or initiate the submission of, any Company Acquisition Proposal; or (ii) participate in any negotiations regarding, or furnish to any Person any information with respect to, or otherwise cooperate with respect to any Company Acquisition Proposal, except to the extent that (A) such Company Acquisition Proposal was unsolicited and the Company Board shall have determined in good faith that such Company Acquisition Proposal constitutes or is reasonably likely to result in a Company Superior Proposal and (B) the Company Board determines in good faith that failure to participate in such negotiations, furnish information or otherwise cooperate would be reasonably likely to be inconsistent with the Company Board's duties under applicable Law.

(b) The Company shall, and shall direct or cause its directors, trustees, officers, employees, representatives and agents to, immediately cease and cause to be terminated any discussions or negotiations with any parties that may be currently ongoing with respect to any Company

Acquisition Proposal.

(c) Neither NRT nor any NRT Subsidiary shall, directly or indirectly, through any officer, director, trustee, agent or otherwise, (i) solicit, or initiate the submission of, any NRT Acquisition Proposal or (ii) participate in any negotiations regarding, or furnish to any Person any information with respect to, or otherwise cooperate with respect to any NRT Acquisition Proposal, except to the extent that (A) such NRT Acquisition Proposal was unsolicited and the NRT Board shall have determined in good faith that such NRT Acquisition Proposal constitutes or is reasonably likely to result in a NRT Superior Proposal and (B) the NRT Board determines in good faith that failure to participate in such negotiations, furnish information or otherwise cooperate would be reasonably likely to be inconsistent with the NRT Board's duties under applicable Law.

(d) NRT shall, and shall direct or cause its directors, trustees, officers, employees, representatives and agents to, immediately cease and cause to be terminated any discussions or negotiations with any parties that may be currently ongoing with respect to any NRT Acquisition Proposal.

SECTION 7.07. Further Action; Reasonable Best Efforts.

(a) Upon the terms and subject to the conditions hereof, each of the parties hereto shall (i) if at any time required between the date hereof and the Effective Time, promptly make its respective filings, and thereafter make any other required submissions, under the Hart Scott Rodino Antitrust Improvements Act of 1976, as amended, with respect to the REIT Merger and (ii) use its reasonable best efforts to take, or cause to be taken, all appropriate action, and to do, or cause to be done, all things necessary, proper or advisable under applicable Laws to consummate and make effective the REIT Merger, including, without limitation, using its reasonable best efforts to obtain all Permits, consents, approvals, authorizations, qualifications and orders of Governmental Authorities and parties to contracts with the Company and its Subsidiaries as are necessary for the consummation of the REIT Merger and to fulfill the conditions to the Closing. In case, at any time after the Closing, any further action is necessary or desirable to carry out the purposes of this Agreement and the Ancillary Agreements, each of

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the parties hereto shall use all reasonable efforts to cause its respective officers, employees and agents to take all such action.

(b) The parties hereto shall cooperate and assist one another in connection with all actions to be taken pursuant to Section 7.07(a), including the preparation and making of the filings referred to therein and, if requested, amending or furnishing additional information thereunder, including, subject to applicable Law and the Confidentiality Agreement, providing copies of all related documents to the non-filing party and their advisors prior to filing, and to the extent practicable none of the parties will file any such document or have any communication with any Governmental Authority without prior consultation with the other parties. Each party shall keep the others apprised of the content and status of any communications with, and communications from, any Governmental Authority with respect to the REIT Merger. To the extent practicable, and permitted by a Governmental Authority, each party hereto shall permit representatives of the other party to participate in meetings (whether by telephone or in person) with such Governmental Authority.

(c) Each of the parties hereto agrees to cooperate and use its reasonable best efforts to defend through litigation on the merits any Action, including administrative or judicial Action, asserted by any party in order to avoid the entry of, or to have vacated, lifted, reversed, terminated or overturned any decree, judgment, injunction or other order (whether temporary, preliminary or permanent) that in whole or in part restricts, delays, prevents or prohibits consummation of the REIT Merger, including, without limitation, by vigorously pursuing all available avenues of administrative and judicial appeal.

SECTION 7.08. Public Announcements.

NRT and the Company agree that no public release or announcement concerning the REIT Merger shall be issued by either party without the prior consent of the other party (which consent shall not be unreasonably withheld), except as such release or announcement may be required by Law or the rules or regulations of any securities exchange, in which case the party required to make the release or announcement shall use its best efforts to allow the other party reasonable time to comment on such release or announcement in advance of such issuance.

SECTION 7.09. Indemnification.

(a) Without limiting any additional rights that any employee, officer, director, trustee or other fiduciary may have under any employment or indemnification agreement in effect on the date hereof or under the NRT OP Limited Partnership Agreement, the NRT Articles, the NRT By-laws, the Advisory Agreement, or this Agreement or, if applicable, similar organizational documents or agreements of any NRT Subsidiary, from and after the Effective Time, the Surviving Entity shall (i) indemnify and hold harmless each Person who is at the date hereof or during the period from the date hereof through the Effective Time will be serving as a trustee, director or executive officer of NRT, NRT OP, the NRT Advisor or their respective Subsidiaries or as a fiduciary under or with respect to any employee benefit plan (within the meaning of Section 3(3) of ERISA) sponsored by NRT or any of its Subsidiaries (collectively, the NRT Indemnified Parties) to the fullest extent authorized or permitted by applicable law, in connection with any Claim and any judgments, fines, penalties and amounts paid in settlement

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(including all interest, assessments and other charges paid or payable in connection with or in respect of such judgments, fines, penalties or amounts paid in settlement) resulting therefrom; and (ii) promptly pay on behalf of or, within 30 days after any request for advancement, advance to each of the NRT Indemnified Parties, to the fullest extent authorized or permitted by applicable law, as now or hereafter in effect, any properly documented Expenses incurred in defending, serving as a witness with respect to any Claim in advance of the final disposition of such Claim, including payment on behalf of or advancement to the NRT Indemnified Party of any Expenses incurred by such NRT Indemnified Party in connection with enforcing any rights with respect to such indemnification and/or advancement; provided that such NRT Indemnified Party provides an undertaking to the Company to repay such advances if it is ultimately determined by a court of competent jurisdiction (which determination shall have become final and not appealable) that such NRT Indemnified Party is not entitled to indemnification. The indemnification and advancement obligations of the Surviving Entity pursuant to this Section 7.09(a) shall extend to acts or omissions occurring at or before the Effective Time and any Claim relating thereto (including with respect to any acts or omissions occurring in connection with the approval of this Agreement and the consummation of the transactions contemplated hereby, including the consideration and approval thereof and the process undertaken in connection therewith and any Claim relating thereto), and all rights to indemnification and advancement conferred hereunder shall continue as to a Person who has ceased to be a trustee, director, executive officer or other fiduciary of the Company, NRT OP or their respective Subsidiaries after the date hereof and shall inure to the benefit of such Person's heirs, executors and personal and legal representatives. As used in this Section 7.09(a), the term Claim means any threatened, asserted, pending or completed action, suit or proceeding, or any inquiry or investigation, whether instituted by any party hereto, any Governmental Authority or any other party, that any NRT Indemnified Party in good faith believes might lead to the institution of any such Action, suit or proceeding, whether civil, criminal, administrative, investigative or other, including any arbitration or other alternative dispute resolution mechanism, arising out of or pertaining to matters that relate to such NRT Indemnified Party's duties or service as a director, officer, trustee or fiduciary of NRT, NRT OP, the NRT Advisor, any of their respective Subsidiaries, or any employee benefit plan (within the meaning of Section 3(3) of ERISA) sponsored by NRT or any of its Subsidiaries; and (ii) the term Expenses means reasonable attorneys' fees and all other reasonable costs, expenses and obligations (including, without limitation, experts' fees, travel expenses, court costs, retainers, transcript fees, duplicating, printing and binding costs, as well as telecommunications, postage and courier charges) paid or incurred in connection with investigating, defending, being a witness in (including on appeal), or preparing to investigate, defend, be a witness in any Claim for which indemnification is authorized pursuant to this Section 7.09(a), including any Action relating to a claim for indemnification or advancement brought by a NRT Indemnified Party. The Surviving Entity shall not settle, compromise or consent to the entry of any judgment in any actual or threatened claim, demand, Action, suit, proceeding, inquiry or investigation in respect of which indemnification has been or could be sought by such NRT Indemnified Party hereunder unless such settlement, compromise or judgment includes an unconditional release of such NRT Indemnified Party from all liability arising out of such claim, demand, Action, suit, proceeding, inquiry or investigation or such NRT Indemnified Party otherwise consents thereto. No NRT Indemnified Party shall settle, compromise or consent to the entry of any judgment in any actual or threatened claim, demand, action, suit, proceeding, inquiry or investigation in respect of which

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indemnification has been or could be sought by such NRT Indemnified Party without the consent of the Company, such consent not to be unreasonably withheld, conditioned or delayed. The Company shall have the right to defend each NRT Indemnified Party in any action which may give rise to the payment of indemnification hereunder; provided, however, that the Company shall notify such NRT Indemnified Party of any such decision to defend within ten (10) calendar days of receipt of notice of any such action. Notwithstanding the immediately preceding sentence, if in an action to which a NRT Indemnified Party is a party and which is indemnifiable hereunder, (I) such NRT Indemnified Party reasonably concludes, upon advice of counsel, that he or she may have separate defenses or counterclaims to assert with respect to any issue which may not be consistent with the position of other defendants defended by the Company in such action, (II) a conflict of interest or potential conflict of interest exists between such NRT Indemnified Party and the Company, or (III) if the Company fails to assume the defense of such action in a timely manner, such NRT Indemnified Party shall be entitled to be represented by separate legal counsel of such NRT Indemnified Party's choice at the expense of the Company.

(b) Without limiting the foregoing, for current or former directors, trustees, officers, employees or other fiduciaries of NRT, NRT OP, the NRT Advisor or any of their respective Subsidiaries the Company agrees that all rights to indemnification and exculpation from liabilities for acts or omissions occurring at or prior to the Effective Time now existing in favor of such directors, trustees, officers, employees or other fiduciaries, as provided in the NRT Articles, NRT By-laws, NRT OP Limited Partnership Agreement and the Advisory Agreement (or, as applicable, the charter, by-laws, partnership agreement or other organizational documents of any of the NRT Subsidiaries) and indemnification agreements of NRT, NRT OP, the NRT Advisor or any of their respective Subsidiaries identified in Section 7.09(b) of the NRT Disclosure Schedule shall be assumed by the Surviving Entity in the REIT Merger, without further action, at the Effective Time and shall survive the REIT Merger and shall continue in full force and effect in accordance with their terms.

(c) The Surviving Entity shall maintain for a period of at least six years the current policies of directors' and officers' liability insurance maintained by NRT and NRT OP with respect to claims arising from facts or events that occurred on or before the Effective Time, including, without limitation, in respect of the transactions contemplated by this Agreement and the Ancillary Agreements; provided that the Surviving Entity may substitute therefor policies of at least the same coverage and amounts containing terms and conditions which are, in the aggregate, no less advantageous to the insured and such substitution shall not result in gaps or lapses of coverage with respect to matters occurring before the Effective Time. The provisions of this subsection (c) shall be deemed to have been satisfied if prepaid policies have been obtained by the Surviving Entity for purposes of this Section 7.09, which policies provide such directors, trustees and officers with the coverage described in this subsection (c) for an aggregate period of not less than six years with respect to claims arising from facts or events that occurred on or before the Effective Time, including, without limitation, in respect of the transactions contemplated by this Agreement and the Ancillary Agreements.

(d) In no event shall any NRT Indemnified party be entitled to indemnification or exculpation hereunder, taking into account any other amounts received by such NRT Indemnified party relating to any other indemnification rights of such NRT Party, in excess of actual costs incurred in connection with any Claim and the Expenses related thereto.

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(e) If the Surviving Entity or any of its successors or assigns (i) consolidates with or merges with or into any other Person and shall not be the continuing or surviving corporation, partnership or other entity of such consolidation or merger or (ii) transfers or conveys all or substantially all of its properties and assets to any Person, then, and in each such case, proper provision shall be made so that the successors and assigns of the Surviving Entity assume the obligations set forth in this Section 7.09.

(f) The provisions of this Section 7.09 shall not be terminated or modified in such a manner as to adversely affect any indemnitee to whom this Section 7.09 applies without the consent of such affected indemnitee and are intended to be for the benefit of, and will be enforceable by, each indemnified party, his or her heirs and his or her legal representatives.

SECTION 7.10. Employee Benefit Matters.

(a) With respect to any employee benefit plan as defined in Section 3(3) of ERISA maintained by Company or any subsidiary of Company (collectively, the Company Benefit Plans) in which any director, trustee, officer, employee or independent contractor of NRT, any NRT Subsidiary or NRT Advisor (the NRT Employees) will participate after the Effective Time, the Company shall, or shall cause the Surviving Entity to, recognize all service of the NRT Employees with NRT, an NRT Subsidiary or NRT Advisor, as the case may be, for purposes of vacation and severance and participation, but not for purposes of benefit accrual, in any such Company Benefit Plan (except to the extent necessary to prevent duplication of benefits). In addition, the Company shall or shall cause the Surviving Entity to (i) waive all limitations as to preexisting conditions exclusions and waiting periods with respect to participation and coverage requirements applicable to the NRT Employees under any welfare benefit plans in which such employees may be eligible to participate after the Effective Time, other than limitations or waiting periods that are already in effect with respect to such employees and that have not been satisfied as of the Effective Time under any welfare benefit plan maintained for the NRT Employees immediately prior to the Effective Time and (ii) subject to the consent of the insurance carriers for the Company Benefit Plans, provide each NRT Employee with credit for any co-payments and deductibles paid prior to the Effective Time in satisfying any applicable deductible or out-of-pocket requirements under any welfare plans in which such employees are eligible to participate after the Effective Time.

(b) Except as otherwise provided in this Agreement, from and after the Effective Time, the Company shall cause the Surviving Entity to assume and honor in accordance with their terms the employment, severance and termination plans and agreements (including change in control provisions) of employees or independent contractors of NRT and its Subsidiaries set forth on Section 7.10(b) of the NRT Disclosure Schedule, and NRT shall deliver to the Company at the Closing an instrument of assignment of such agreements executed by NRT and its Subsidiaries, as applicable.

(c) From and after the Effective Time, for each NRT Employee who remains an employee of the Surviving Entity (each a Transferred NRT Employee), the Company shall, or shall cause the Surviving Entity to, maintain compensation and benefits (including, without limitation, group health, life, disability, bonus, and severance plans) that are comparable in the aggregate to those provided to similarly situated employees of the Company or the Surviving

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Entity; provided that nothing in this Section 7.10 shall limit the right of the Company or the Surviving Entity to amend or terminate any such compensation and benefits at any time.

(d) Assuming that NRT delivers to the Company the NRT Section 16 Information (as hereinafter defined) in a timely fashion prior to the Effective Time, the board of trustees of the Company, or a committee of Non-Employee Directors thereof (as such term is defined for purposes of Rule 16b-3(d) under the Exchange Act), shall reasonably promptly thereafter and in any event prior to the Effective Time adopt a resolution providing in substance that the receipt by the NRT Insiders (as hereinafter defined) of Company Common Shares in exchange for shares of NRT Common Stock pursuant to the transactions contemplated hereby and to the extent such securities are listed in the NRT Section 16 Information, are intended to be exempt from liability pursuant to Section 16(b) under the Exchange Act in accordance with Rule 16b-3 and interpretations of the SEC thereunder. NRT Section 16 Information shall mean information accurate in all material respects regarding NRT Insiders, the number of shares of NRT Common Stock held by each such NRT Insider and expected to be exchanged for Company Common Shares in the REIT Merger and any other information that may be required under applicable interpretations of the SEC under Rule 16b-3. NRT Insiders shall mean those officers and directors of NRT who are subject to the reporting requirements of Section 16(a) of the Exchange Act and who are listed in the NRT Section 16 information.

(e) If requested by the Company at least five days prior to the Effective Time, NRT and the NRT Subsidiaries shall terminate any and all NRT Plans intended to qualify under Section 401(k) of the Code, effective not later than the day immediately preceding the Effective Time. In the event that the Company requests that such 401(k) plan(s) be terminated, NRT shall provide the Company with evidence that such 401(k) plan(s) have been terminated pursuant to resolution of boards of directors of NRT and the NRT Subsidiaries (the form and substance of which shall be subject to review and approval by Parent) not later than the day immediately preceding the Effective Time.

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(f) NRT shall provide the Company or the Surviving Entity with all information relating to each NRT Transferred Employee as the Company or the Surviving Entity may reasonably require in connection with its employment or engagement of such individuals, including initial employment dates, termination dates, reemployment dates, hours of service, compensation and tax withholding history in a form that shall be usable by the Company or the Surviving Entity, and such information shall be true and correct in all respects.

(g) Neither NRT, any NRT Subsidiary, nor any officer, director, employee, agent or representative of the NRT or the NRT Subsidiaries shall make any communication to any employees of NRT or the NRT Subsidiaries regarding any compensation or benefits to be provided after the Closing Date without the advance approval of the Company.

(h) No provision of this Agreement shall create any third-party beneficiary rights in any employee of NRT or the NRT Subsidiaries, any beneficiary or dependent thereof, or any collective bargaining representative thereof, with respect to the compensation, terms and conditions of employment and/or benefits that may be provided to any employee of NRT or an NRT Subsidiary by the Company or the Surviving Entity or under any benefit plan that the Company or the Surviving Entity may maintain.

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SECTION 7.11. Transfer Taxes.

NRT and the Company shall cooperate in the preparation, execution and filing of all returns, questionnaires, applications or other documents regarding any real property transfer or gains, sales, use, transfer, value added, stock transfer or stamp taxes, any transfer, recording, registration and other fees and any similar taxes that become payable in connection with the transactions contemplated by this Agreement (together with any related interests, penalties or additions to Tax, Transfer Taxes), and shall cooperate in attempting to minimize the amount of Transfer Taxes. From and after the Effective Time, the Surviving Entity shall pay or cause to be paid, without deduction or withholding from any consideration or amounts payable to the holders of the NRT Common Stock, all Transfer Taxes.

SECTION 7.12. Compliance with Agreements.

From and after the date hereof, the parties hereto agree to take (and to cooperate with each other in taking) any and all actions necessary to satisfy the comply with the terms, conditions and requirements set forth in each Ancillary Agreement; provided that, prior to the Closing, any such necessary actions shall be taken at such time as the Company, in its discretion, directs.

SECTION 7.13. Advisory Agreement Termination.

Simultaneously with the Closing, NRT shall deliver documentation evidencing that the Advisory Agreement, dated as of November 7, 2005, as amended by Amendment No. 1, dated as of May 17, 2006 between NRT, NRT OP and NRT Advisor (the Advisory Agreement), shall have been terminated by all parties thereto as of the Effective Time and that the payment referred to in the immediately following sentence is the only payment due to NRT Advisor by virtue of such termination (the NRT Advisor Termination). At the Effective Time, NRT OP shall pay a fee of not more than \$12,500,000 in lieu of fees required to be paid to NRT Advisor upon termination of the Advisory Agreement. Up to \$7,000,000 of such amount shall be in respect of the termination of NRT Advisor's right to receive base management fees under the Advisory Agreement and up to \$5,500,000 of such amount shall be in respect of the termination of NRT Advisor's right to receive incentive management fees under the Advisory Agreement.

SECTION 7.14. Voting Trustee Agreement.

At the Closing, the Company and NRT shall, and NRT shall cause NRT OP to, enter into a Voting Trustee Agreement with NRT Advisor (the Voting Trustee Agreement), in substantially the form attached Exhibit D hereto, setting forth the voting obligations of NRT Advisor with respect to the Surviving Special Preferred Stock.

SECTION 7.15. Lock-Up Agreements.

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The parties acknowledge that simultaneously with the Closing, the various lock-up agreements, dated on or about November 1, 2005 between certain holders of NRT OP Units

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and Company Common Shares on the one hand, and certain underwriters on the other hand, shall be terminated unless such agreements have previously been terminated in accordance with their terms.

SECTION 7.16. Amended and Restated Exclusivity Arrangement: Amendment to Acquisition Agreement.

Effective as of the Effective Time, the exclusivity services agreement, dated as of November 7, 2005, between Michael L. Ashner and NRT (the Exclusivity Agreement) shall be amended and restated, as set forth Exhibit E-1 (the Amended and Restated Exclusivity Agreement). At the Closing, the Acquisition Agreement, dated as of November 7, 2005 between NRT and Winthrop Realty Trust (the Acquisition Agreement) shall be amended, and the Company shall become a party thereto, as set forth as Exhibit E-2 (the Acquisition Agreement Amendment, Assignment and Assumption).

SECTION 7.17. Employment Agreement.

Simultaneously with the consummation of the REIT Merger:

- (a) The Company shall, simultaneously with the consummation of the REIT Merger, enter into an employment agreement with Michael Ashner in substantially the form attached as Exhibit F hereto (the NRT Executive Employment Agreement).
- (b) NRT shall deliver to the Company copies of the NRT Executive Employment Agreement duly executed by Michael L. Ashner.

SECTION 7.18. Registration Rights.

Simultaneously with the Closing, (i) the Company shall assume all of NRT's obligations under the Registration Rights Agreements, each dated November 7, 2005, between NRT, on the one hand, and Vornado Realty L.P., Apollo Real Estate Investment Fund III, L.P. and Winthrop Realty Trust, respectively, on the other hand (collectively, the Existing Registration Rights Agreements), provided that each such counterparty affirmatively agrees in writing, on or prior to the Closing, to the assignment of the Existing Registration Rights Agreements to the Company and the Company's assumption thereof, (ii) the Company shall enter into a registration rights agreement with Michael L. Ashner and WEM-Brynmawr LLC (WEM), on substantially the same terms of the Existing Registration Rights Agreements, with respect to shares of the Company issuable to Michael L. Ashner and WEM upon redemption of NRT OP Units (the WEM Registration Rights Agreement).

SECTION 7.19. Contribution, Funding Agreement and MLP Guarantee.

- (a) The Company shall use commercially reasonable efforts to contribute 100% of its economic interests in the Company Partnerships to NRT OP in exchange for, at the

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Company's option, general or limited partnership interests in NRT OP (the Contributions) at the Closing, or as soon thereafter as is practicable.

(b) Effective as of the Effective Time, the Company shall enter into and, as general partner of each of the NRT OP and the Company Partnerships, shall cause NRT OP and the Company Partnerships to enter into a Funding Agreement (the Funding Agreement) in substantially the form attached as Exhibit I hereto.

(c) Effective as of the Effective Time, the Company shall enter into the MLP Guarantee Agreement.

SECTION 7.20. Listing Of Shares.

The Company shall use its reasonable best efforts to cause the Company Common Shares to be issued in the REIT Merger and by the transactions contemplated by this Agreement to be approved for listing, upon official notice of issuance, on the New York Stock Exchange.

SECTION 7.21. Reorganization.

From and after the date hereof and until the Effective Time, the parties shall use their reasonable best efforts to cause the REIT Merger to be treated as a reorganization within the meaning of Section 368(a) of the Code. Following the Effective Time, the Surviving Corporation shall use its reasonable best efforts to conduct its business in a manner that would not jeopardize the characterization of the REIT Merger as a reorganization within the meaning of Section 368(a) of the Code. The parties hereby approve this Agreement as a plan of reorganization.

SECTION 7.22. Amended NRT OP Limited Partnership Agreement.

Simultaneously with the Closing, the Company and NRT shall each execute and deliver the Amended NRT OP LP Agreement.

SECTION 7.23. Tax Returns.

NRT shall timely prepare and file or shall cause to be timely prepared and filed all Tax Returns of NRT and its Subsidiaries for any taxable period that ends on or before the Closing Date; provided however, that NRT, prior to filing such Tax Returns, shall provide the Company with copies of such proposed Tax Returns at least 20 days prior to the due date thereof (other than payroll Tax Returns, which shall be provided as soon as possible after the filing thereof). Such Tax Returns shall be prepared consistently with this Agreement and past practice. NRT shall consult in good faith with the Company regarding any comments the Company may have with respect to such Tax Returns and shall reasonably cooperate with any request made by the Company to make any such changes or revisions to such proposed Tax Returns as are reasonably requested by the Company and after the date hereof to obtain Tax books and records, Tax Returns and other information related to Tax of NRT and its Subsidiaries.

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SECTION 7.24. Transition Services Agreement.

At the Closing, the Surviving Entity and Winthrop Realty Partners, L.P. shall enter into a Transition Services Agreement in substantially the form attached as Exhibit G hereto (the Transition Services Agreement), relating to provision of services following the Effective Time.

SECTION 7.25. Property Management Agreements.

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At or prior to the Effective Time, the Company shall enter into an agreement with Winthrop Management L.P. (the Property Management Agreement) providing that for a period of 12 months from the Effective Time (i) all management agreements set forth on Section 7.25 of the NRT Disclosure Schedule shall not be terminated except in accordance with their terms, and (ii) Winthrop Management L.P. or its Affiliate shall be retained as the property manager for all NRT Properties and all properties acquired from and after the Effective Time by the Surviving Entity or any of its Subsidiaries, in all cases for which a property manager is retained all in accordance with a property management agreement on substantially the same terms as the existing property management agreements between NRT, NRT OP or a Subsidiary thereof and Winthrop Management L.P. or its Affiliates and for property management fees in accordance with the provisions of Section 6.2(a) of the Advisory Agreement. After the first anniversary hereof, the Property Management Agreement shall be terminable by the Company without cause upon thirty days notice to Winthrop Management L.P.

SECTION 7.26. Ownership Waiver.

Simultaneously with the Closing, the Company shall enter into a waiver agreement (each, a Waiver Agreement), in the form attached Exhibit H hereto, with Apollo Real Estate Investment Fund III, L.P. and Vornado Realty Trust (the Waiver Parties).

SECTION 7.27. REIT Merger Voting Agreements.

Simultaneously with the execution and delivery of this Agreement, each of Apollo Real Estate Investment Fund III, L.P., AP-Newkirk Holdings LLC, WEM-Brynmawr Associates LLC, WRT Realty, L.P. and Michael Ashner and his affiliates, shall enter into a voting agreement for the benefit of the Company (each, a REIT Merger Voting Agreement), pursuant to which such holders shall agree, among other things, to vote, or cause their shares of NRT Common Stock and NRT OP Units, as applicable, to be voted, to approve this Agreement, the REIT Merger and any other matter which requires their vote in connection with the transactions contemplated by this Agreement.

ARTICLE VIII

CONDITIONS

SECTION 8.01. Conditions to the Obligations of Each Party.

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The obligations of each of the Company and NRT to effect the REIT Merger shall be subject to the satisfaction, at or prior to the Closing, of the following conditions:

- (a) Company Shareholder Approval. The REIT Merger shall have been approved and adopted by the requisite affirmative vote of the shareholders of the Company in accordance with the Maryland REIT Law and the Company Declaration of Trust;
- (b) NRT Stockholder Approval. This Agreement and the REIT Merger shall have been approved and adopted by the requisite affirmative vote of the holders of the NRT Common Stock and the NRT Preferred Stock, in accordance with MGCL and the NRT Articles;
- (c) No Order. No Governmental Authority in the United States shall have enacted, issued, promulgated, enforced or entered any Law (whether temporary, preliminary or permanent) which is then in effect and has the effect of making the REIT Merger illegal or otherwise restricting, preventing or prohibiting consummation of the REIT Merger;
- (d) Registration Statement. The Registration Statement shall have been declared effective by the SEC, and shall be effective at the Effective Time, and the REIT Merger Proxy Statement shall have been cleared by the SEC and no stop order suspending effectiveness of the

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Registration Statement shall have been issued; no action, suit, proceeding or investigation by the SEC to suspend the effectiveness thereof shall have been initiated and be continuing; and all necessary approvals under state securities Laws or the Securities Act or Exchange Act relating to the issuance or trading of the Company Common Shares shall have been received; and

(e) Funding Agreement. NRT OP and the Company Partnerships shall have entered into the Funding Agreement.

SECTION 8.02. Conditions to the Obligations of NRT.

The obligations of NRT to consummate the REIT Merger are subject to the satisfaction or waiver (where permissible) of the following additional conditions:

(a) Representations and Warranties. The representations and warranties of the Company in this Agreement that (i) are not made as of a specific date shall be true and correct in all material respects (without giving effect to any limitation as to materiality set forth therein) as of the date of this Agreement and as of the Closing, as though made on and as of the Closing, and (ii) are made as of a specific date shall be true and correct (without giving effect to any limitation as to materiality set forth therein) as of such date, in each case except where the failure of such representations or warranties to be true and correct (without giving effect to any limitation as to materiality or Material Adverse Effect set forth therein) would not have a Material Adverse Effect;

(b) Agreements and Covenants. The Company shall have performed, in all material respects, all obligations and complied with, in all material respects, all agreements and covenants to be performed and complied with by it under this Agreement on or prior to the Closing;

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(c) Officer Certificate. The Company shall have delivered to NRT a certificate, dated the date of the Closing, signed by an authorized officer of the Company, certifying as to the satisfaction of the conditions specified in Sections 8.02(a) and 8.02(b);

(d) Ancillary Agreements. Each of the Ancillary Agreements to which the Company is a party shall have been duly executed and delivered by the Company;

(e) [Reserved];

(f) Legal Opinions. NRT shall have received the opinion dated the Closing Date of Katten Muchin Rosenman LLP, based upon customary exceptions, assumptions, qualifications, certificates and letters dated the Closing Date, to the effect that the REIT Merger will qualify as a reorganization under the provisions of Section 368(a) of the Code. The Company shall have received the opinion dated the Closing Date of Paul, Hastings, Janofsky & Walker LLP, to the effect that, commencing with its taxable year ended December 31, 1993, the Company has been organized and operated in conformity with the requirements for qualification and taxation as a REIT under the Code and that, the Company's proposed method of operation will enable it to continue to meet the requirements for qualification and taxation as a REIT under the Code (with customary exceptions, assumptions and qualifications and based upon representations of the Company set forth in an officer's certificate);

(g) Board of Trustees. All necessary corporate action shall have been taken by the Company such that, immediately following the Effective Time, the board of trustees of the Surviving Entity shall be reconstituted as set forth in Section 2.06;

(h) Authorization of Company Common Shares. The Company shall have validly authorized the Company Common Shares to be issued in connection with the REIT Merger and the transactions contemplated by this Agreement and such shares shall have been approved for listing on the New York Stock Exchange, subject to official notice of issuance;

(i) Consents. The Company shall have received all permits, authorizations, consents and approvals set forth on Section 8.02(i) of the Company Disclosure Schedule; and

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(j) No Material Adverse Effect. There shall not have occurred any event, circumstance, change or effect that individually or in the aggregate has had or is reasonably likely to have a Material Adverse Effect with respect to the Company.

SECTION 8.03. Conditions to the Obligations of the Company.

The obligations of the Company to consummate the REIT Merger are subject to the satisfaction or waiver (where permissible) of the following additional conditions:

(a) Representations and Warranties. The representations and warranties of NRT in this Agreement that (i) are not made as of a specific date shall be true and correct in all material respects (without giving effect to any limitation as to materiality set forth therein) as of the date of this Agreement and as of the Closing, as though made on and as of the Closing, and (ii) are made as of a specific date shall be true and correct (without giving effect to any limitation as to materiality set forth therein) as of such date, in each case except where the

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failure of such representations or warranties to be true and correct (without giving effect to any limitation as to materiality or Material Adverse Effect set forth therein) would not have a Material Adverse Effect;

(b) Agreements and Covenants. NRT shall have performed, in all material respects, all obligations and complied with, in all material respects, all agreements and covenants to be performed and complied with by it under this Agreement on or prior to the Closing;

(c) Officer Certificate. NRT shall have delivered to the Company a certificate, dated the date of the Closing, signed by an authorized officer of NRT, certifying as to the satisfaction of the conditions specified in Sections 8.03(a) and 8.03(b);

(d) Ancillary Agreements. Each of the Ancillary Agreements to which NRT or a Subsidiary of NRT is a party shall have been duly executed and delivered by NRT;

(e) NRT OP Approval. The Amended NRT OP Limited Partnership Agreement shall have been approved and adopted by the requisite vote of the holders of the NRT OP Units;

(f) NRT Executive Employment Agreement. The NRT Executive Employment Agreement shall have been duly executed and delivered by Michael L. Ashner;

(g) Legal Opinions. The Company shall have received the opinion dated the Closing Date of Paul, Hastings, Janofsky & Walker LLP, based upon customary exceptions, assumptions, qualifications, certificates and letters and dated the Closing Date, to the effect that the REIT Merger will qualify as a reorganization under the provisions of Section 368(a) of the Code. NRT shall have received the opinion dated the Closing Date of Katten Muchin Rosenman LLP, to the effect that, commencing with its taxable year ended December 31, 2005, NRT has been organized and operated in conformity with the requirements for qualification and taxation as a REIT under the Code and NRT's proposed method of operation will enable NRT to continue to meet the requirements for qualification and taxation as a REIT under the Code (with customary exceptions, assumptions and qualifications and based upon representations of NRT set forth in an officer's certificate);

(h) Consents. NRT shall have received all permits, authorizations, consents and approvals set forth on Section 8.03(h) of the NRT Disclosure Schedule; and

(i) No Material Adverse Effect. There shall not have occurred any event, circumstance, change or effect that individually or in the aggregate has had or is reasonably likely to have a Material Adverse Effect with respect to NRT.

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ARTICLE IX

TERMINATION, AMENDMENT AND WAIVER

SECTION 9.01. Termination.

This Agreement may be terminated at any time prior to the Effective Time in writing (the date of any such termination, the Termination Date):

- (a) by the mutual written consent of NRT and the Company;
- (b) by either the Company or NRT by written notice to the other party if any Governmental Authority with jurisdiction over such matters shall have issued a governmental order permanently restraining, enjoining or otherwise prohibiting the REIT Merger, and such governmental order shall have become final and unappealable; provided, however, that the terms of this Section 9.01(b) shall not be available to any party unless such party shall have used its reasonable best efforts to oppose any such governmental order or to have such governmental order vacated or made inapplicable to the REIT Merger;
- (c) prior to the Closing, by written notice to the Company from NRT, if the conditions specified in Sections 8.02(a) or (b) would not be satisfied at the Closing (a Terminating Company Breach), except that, if such Terminating Company Breach is curable by the Company through the exercise of its commercially reasonable efforts, then, for a period of up to the earlier of (x) the Drop Dead Date and (y) sixty days, but only as long as the Company continues to use its commercially reasonable efforts to cure such Terminating Company Breach (the Company Cure Period), such termination shall not be effective, and such termination shall become effective only if the Terminating Company Breach is not cured within the Company Cure Period; provided, however, that the right to terminate this Agreement pursuant to this Section 9.01(c) shall not be available to NRT if NRT's action or failure to act has been a principal cause of or resulted in the failure of the REIT Merger to be consummated on or prior to such date.
- (d) prior to the Closing, by written notice to NRT from the Company, if the conditions specified in Sections 8.03(a) or (b) would not be satisfied at the Closing (a Terminating NRT Breach), except that, if such Terminating NRT Breach is curable by NRT through the exercise of its commercially reasonable efforts, then, for a period of up to the earlier of (x) the Drop Dead Date and (y) sixty days, but only as long as NRT continues to exercise such commercially reasonable efforts to cure such Terminating NRT Breach (the NRT Cure Period), such termination shall not be effective, and such termination shall become effective only if the Terminating NRT Breach is not cured within the NRT Cure Period; provided, however, that the right to terminate this Agreement pursuant to this Section 9.01(d) shall not be available to the Company if the Company's action or failure to act has been a principal cause of or resulted in the failure of the REIT Merger to be consummated on or prior to such date.
- (e) by either the Company or NRT, if either the Company Shareholder Approval or the NRT Stockholder Approval is not obtained at the Company Shareholder Meeting or the NRT Stockholder Meeting;

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- (f) by NRT if the Company Board shall have (i) publicly withdrawn or modified in a manner materially adverse to NRT its recommendation of the REIT Merger, or (ii) publicly recommended or approved any Company Acquisition Proposal other than that contemplated by this Agreement;
- (g) by the Company if the NRT Board shall have (i) publicly withdrawn or modified in a manner materially adverse to the Company its recommendation of the REIT Merger, or (ii) publicly recommended or approved any NRT Acquisition Proposal other than that contemplated by this Agreement;
- (h) by the Company if, prior to obtaining the Company Shareholder Approval at the Company Shareholder Meeting, the Company Board determines in good faith (i) to accept a Company Superior Proposal and (ii) that failure to terminate this Agreement would reasonably be likely to be inconsistent with its duties under applicable Law;
- (i) by NRT if, prior to obtaining the NRT Stockholder Approval at the NRT Stockholder Meeting, the NRT Board determines in good faith (i) to accept a NRT Superior Proposal and (ii) that failure to terminate this Agreement would reasonably be likely to be inconsistent with its duties under applicable Law; or
- (j) by the Company or NRT, if the REIT Merger shall not have been consummated on or prior to January 31, 2007 (the Drop Dead Date).

SECTION 9.02. Effect of Termination.

In the event of termination of this Agreement and abandonment of the REIT Merger and the other transactions contemplated by this Agreement pursuant to and in accordance with Section 9.01, this Agreement shall forthwith become void and of no further force or effect whatsoever and there shall be no liability on the part of any party, or their respective officers, directors, trustees, subsidiaries or partners, as applicable, to this Agreement; provided, however, that nothing contained in this Agreement shall relieve any party to this Agreement from any liability resulting from or arising out of any material breach of any agreement or covenant hereunder; provided, further, that notwithstanding the foregoing, the covenants and other obligations under this Agreement shall terminate upon the termination of this Agreement, except that the agreements set forth in Section 7.05(c), Section 7.08, Section 9.03, Section 10.07, Section 10.08 and Section 10.09 shall survive termination indefinitely. If this Agreement is terminated as provided herein, all filings, applications and other submissions made pursuant to this Agreement, to the extent practicable, shall be withdrawn from the agency or other person to which they were made.

SECTION 9.03. Fees and Expenses.

- (a) Except as otherwise explicitly set forth in this Section 9.03 or elsewhere in this Agreement, all costs and expenses incurred in connection with this Agreement, the Ancillary Agreements or the transactions contemplated hereby and thereby shall be paid by the party incurring such expenses, whether or not the transactions contemplated by this Agreement and the Ancillary Agreements are consummated; provided, however, that each of NRT and the Company shall pay one-half of the expenses related to printing, filing and mailing the REIT Merger Proxy

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Statement (and any amendments or supplements thereto), the NRT OP Proxy Statement and all SEC and other regulatory filing fees (if any) incurred in connection with the REIT Merger Proxy Statement.

- (b) If this Agreement is terminated pursuant to Section 9.01(e) because one of the parties failed to obtain approval of their shareholders, then the party that failed to get shareholder approval shall promptly pay to the other party the lesser of (i) such party's actual transaction expenses of such party and (ii) \$5,000,000 (such lesser amount the Non-Approval Expense Fee). If the party that failed to obtain shareholder approval

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enters into a definitive agreement with respect to a Company Acquisition Proposal or NRT Acquisition Proposal, as applicable, within six months following the termination of this Agreement pursuant to Section 9.01(e), then upon signing of such definitive agreement such party shall pay the other party an amount equal to the difference between \$25,000,000 (the Break-up Fee) and the amount of the Non-Approval Expense Fee previously paid. If this Agreement is terminated by NRT pursuant to Section 9.01(c) or Section 9.01(f), then the Company shall promptly pay to NRT the lesser of (i) NRT's actual transaction expenses and (ii) \$5,000,000 (such lesser amount the NRT Expense Fee), and if within six months following such termination, the Company enters into a definitive agreement with respect to a Company Acquisition Proposal, then, upon the signing of such definitive agreement, the Company shall pay to NRT an amount equal to the difference between the Break-Up Fee and the amount of the NRT Expense Fee previously paid. If this Agreement is terminated by the Company pursuant to Section 9.01(d) or Section 9.01(g), then NRT shall promptly pay to the Company the lesser of (i) the Company's actual transaction expenses and (ii) \$5,000,000 (such lesser amount the Company Expense Fee), and if within six months following such termination, NRT enters into a definitive agreement with respect to an NRT Acquisition Proposal, then upon the signing of such definitive agreement, NRT shall pay to the Company an amount equal to the difference between the Break-Up Fee and the amount of the Company Expense Fee previously paid. If this Agreement is terminated by the Company pursuant to Section 9.01(h), then, upon termination of this Agreement, the Company shall pay to NRT an amount equal to the Break-Up Fee. If this Agreement is terminated by NRT pursuant to Section 9.01(i), then, upon termination of this Agreement, NRT shall pay to the Company an amount equal to the Break-Up Fee. For purposes of this Section 9.03(b), if a Company Acquisition Proposal or NRT Acquisition Proposal is consummated without a definitive agreement having been executed, the definitive agreement shall be deemed to have been entered into upon consummation of the transaction resulting from such Company Acquisition Proposal or NRT Acquisition Proposal.

(c) Notwithstanding anything to the contrary in this Agreement, NRT and the Company expressly acknowledge and agree that, with respect to any termination that triggers the payment of the Non-Approval Expense Fee (together with any subsequent Break-Up Fee required to be paid, if any) or the Break-up Fee, such payments shall constitute liquidated damages with respect to any claim for damages or any other claim which NRT or Company, as applicable, would otherwise be entitled to assert against the party making such payment or any of its Subsidiaries or any of their respective assets, or against any of their respective directors, officers, employees, partners, managers, members or shareholders, with respect to this Agreement and the transactions contemplated hereby and shall constitute the sole and exclusive remedy available to NRT and the Company and the Subsidiaries of each. The parties hereto expressly acknowledge and agree that, with respect to any termination that triggers solely the

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payment of the NRT Expense Fee or the Company Expense Fee, the NRT Expense Fee or the Company Expense Fee alone shall not constitute liquidated damages with respect to any claim for damages or any other claim which NRT or the Company, as applicable, would be entitled to assert against the party paying such NRT Expense Fee or Company Expense Fee or any of its Subsidiaries or any of their respective assets, or against any of their respective directors, officers, employees, partners, managers, members or shareholders, with respect to this Agreement and the transactions contemplated hereby and shall not constitute the sole and exclusive remedy available to NRT and the Company.

ARTICLE X

GENERAL PROVISIONS

SECTION 10.01. Non-Survival of Representations and Warranties.

The representations and warranties in this Agreement shall terminate at the Closing or upon the termination of this Agreement pursuant to Section 9.01.

SECTION 10.02. Notices. All notices, requests, claims, demands and other communications hereunder shall be in writing and shall be given (and shall be deemed to have been duly given upon receipt) by delivery in person or by a recognized overnight courier service to the respective parties at the following addresses (or at such other address for a party as shall be specified in a notice given in accordance with this

Section 10.02):

if to NRT:

Newkirk Realty Trust

7 Bulfinch Place

Suite 500

P.O. Box 9507

Boston, MA 02114

Fax No: (617) 742-4643

Attn: Carolyn Tiffany

with a copy to:

Katten Muchin Rosenman LLP

575 Madison Avenue

New York, NY 10022

Fax No: (212) 940-8776

Attention: Mark I. Fisher, Esq.

Elliot Press, Esq.

if to the Company:

Lexington Realty Trust

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One Penn Plaza, Suite 4015

New York, New York 10119-4015

Fax: (212) 594-6600

Attention: T. Wilson Eglin

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Joseph S. Bonventre

with a copy to:

Paul, Hastings, Janofsky & Walker LLP

75 East 55th Street

New York, New York 10022

Fax No.: (212) 319-4090

Attention: Mark Schonberger, Esq.
William F. Schwitter, Esq.

SECTION 10.03. Severability.

If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any rule of law, or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the fullest extent possible.

SECTION 10.04. Amendment.

This Agreement may be amended by the parties hereto by action taken by their respective boards of directors or trustees (or similar governing body or entity) at any time prior to the Effective Time; provided, however, that, after approval of the REIT Merger by the shareholders of the Company, no amendment may be made without further shareholder approval which, by Law or in accordance with the rules of the NYSE, requires further approval by such shareholders. This Agreement may not be amended except by an instrument in writing signed by the parties hereto.

SECTION 10.05. Entire Agreement; Assignment.

This Agreement and the Ancillary Agreements constitute the entire agreement between the parties with respect to the subject matter hereof and thereof and supersede, except as set forth in Section 7.05(c), all prior agreements and undertakings, both written and oral, among the parties, or any of them, with respect to the subject matter hereof and thereof. This Agreement shall not be assigned by operation of law or otherwise (except to the Surviving Entity).

SECTION 10.06. Parties in Interest.

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This Agreement shall be binding upon and inure solely to the benefit of each party hereto, and nothing in this Agreement, express or implied, other than Sections 3.01 and 9.03(b) (subject to the limitations set forth in Section 9.03(c)) with respect to the holders of the NRT Common Stock, Section 9.03(b) with respect to the holders of Company Common Shares and Section 7.09 with respect to the NRT Indemnified Parties, is

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intended to or shall confer upon any other Person any right, benefit or remedy of any nature whatsoever under or by reason of this Agreement. For the avoidance of doubt, the third-party beneficiary rights of the holders of the NRT Common Stock under Sections 3.01 and 9.03(b) and the holders of Company Common Shares with respect to Section 9.03(b), shall be conferred upon the execution and delivery of this Agreement.

SECTION 10.07. Specific Performance.

The parties hereto agree that irreparable damage would occur in the event any provision of this Agreement were not performed in accordance with the terms hereof and that the parties shall be entitled to specific performance of the terms hereof, in addition to any other remedy at law or equity.

SECTION 10.08. Governing Law.

This Agreement shall be governed by, and construed in accordance with, the Laws of the State of New York; provided, however, that to the extent required by the Laws of the State of Maryland, the REIT Merger shall be governed by, and construed in accordance with, the Laws of the State of Maryland regardless of the Laws that might otherwise govern under applicable principles of conflict of Laws thereof. All Actions and proceedings arising out of or relating to this Agreement shall be heard and determined exclusively in any New York or Maryland (as applicable) state or federal court. The parties hereto hereby (a) submit to the exclusive jurisdiction of any New York or Maryland (as applicable) state or federal court, for the purpose of any Action arising out of or relating to this Agreement brought by any party hereto, and (b) irrevocably waive, and agree not to assert by way of motion, defense, or otherwise, in any such Action, any claim that it is not subject personally to the jurisdiction of the above-named courts, that its property is exempt or immune from attachment or execution, that the Action is brought in an inconvenient forum, that the venue of the Action is improper, or that this Agreement or the transactions contemplated hereby may not be enforced in or by any of the above-named courts.

SECTION 10.09. Waiver of Jury Trial.

Each of the parties hereto hereby waives to the fullest extent permitted by applicable Law any right it may have to a trial by jury with respect to any litigation directly or indirectly arising out of, under or in connection with this Agreement or the transactions contemplated hereby. Each of the parties hereto (a) certifies that no representative, agent or attorney of any other party has represented, expressly or otherwise, that such other party would not, in the event of litigation, seek to enforce that foregoing waiver and (b) acknowledges that it and the other parties hereto have been induced to enter into this Agreement and the transactions contemplated hereby, as applicable, by, among other things, the mutual waivers and certifications in this Section 10.09.

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SECTION 10.10. Headings.

The descriptive headings contained in this Agreement are included for convenience of reference only and shall not affect in any way the meaning or interpretation of this Agreement.

SECTION 10.11. Counterparts.

This Agreement may be executed and delivered (including by facsimile transmission) in one or more counterparts, and by the different parties hereto in separate counterparts, each of which when executed shall be deemed to be an original but all of which taken together shall constitute one and the same agreement.

SECTION 10.12. Mutual Drafting.

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Each party hereto has participated in the drafting of this Agreement, which each party acknowledges is the result of extensive negotiations between the parties.

[SIGNATURE PAGE FOLLOWS]

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized.

NEWKIRK REALTY TRUST, INC.

By /s/ Michael Ashner

Name: Michael Ashner

Title: Chief Executive Officer

LEXINGTON CORPORATE PROPERTIES TRUST

By /s/ T. Wilson Eglin

Name: T. Wilson Eglin

Title: Chief Executive Officer

Exhibit 2.2

EXECUTION COPY

AMENDMENT NO. 1 TO AGREEMENT AND PLAN OF MERGER

AMENDMENT NO. 1, dated as of September 11, 2006 (Amendment No. 1), to the AGREEMENT AND PLAN OF MERGER, dated as of July 23, 2006 (the Merger Agreement), by and among Lexington Corporate Properties Trust (the Company) and Newkirk Realty Trust, Inc. (NRT). Capitalized terms used and not otherwise defined herein shall have the meanings set forth in the Merger Agreement.

RECITALS

The Company and NRT wish to amend the Merger Agreement pursuant to the terms hereof.

AGREEMENT

In consideration of the foregoing and the mutual covenants and agreements herein contained, and intending to be legally bound hereby, the parties agree as follows:

ARTICLE 1

AMENDMENTS

1.1 Section 9.01. Section 9.01(j) of the Merger Agreement is hereby amended by replacing the date January 31, 2007 with the date March 31, 2007.

1.2 Section 7.22. Section 7.22 of the Merger Agreement is hereby amended and restated in its entirety as follows:

SECTION 7.22 Amended NRT OP Limited Partnership Agreement.

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(a) Simultaneously with the Closing, the Company and NRT shall each execute and deliver the Amended NRT OP LP Agreement.

(b) The parties acknowledge that NRT has an obligation to file the registration statement referenced in Section 8.5.B. of the Amended NRT OP LP Agreement (the NRT OP Registration Statement). In order for the NRT OP Registration Statement to be timely filed (i.e. no later than November 21, 2006), the parties acknowledge that its preparation may need to commence prior to the Effective Time.

If the Effective Time of the Merger occurs on or before November 7, 2006, the Company shall prepare and file the NRT OP Registration Statement on or prior to November 21, 2006. If the Effective Time of the Merger has not occurred by October 25, 2006, NRT shall prepare and deliver to the Company on or before November 1, 2006 a draft of the NRT OP Registration Statement (together with all required exhibits) in form substantially ready to be filed with the SEC. If the

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Effective Time of the Merger occurs on or after November 7, 2006 but before November 21, 2006, the Company shall finalize the draft NRT OP Registration Statement and file same on or prior to November 21, 2006, unless previously filed by NRT, which NRT may do in its sole and absolute discretion. If the Effective Time occurs after November 21, 2006, the Company shall have no obligation to file the NRT OP Registration Statement. The parties agree to cooperate and use their reasonable judgment in determining which party shall be responsible for the filing of the NRT OP Registration Statement during the period between November 7 and November 21, 2006, if the Effective Time has not occurred by November 7, 2006.

1.3 Exhibit C. Exhibit C to the Merger Agreement is hereby amended as follows:

(a) Section 8.5.A. of the Amended NRT OP LP Agreement is hereby amended by adding a new sentence at the end thereof as follows:

For purpose of this Section 8.5.A. only, the term Majority-in-Interest of the Limited Partners shall not include any Partnership Units held by LXP or LXP LP.

(b) Section 8.5.B. of the Amended NRT OP LP Agreement is hereby amended and restated in its entirety as follows:

B. In order to facilitate the sale of REIT Shares issued in exchange for Special Voting Partnership Units pursuant to the terms of Section 8.4 hereof, if not already filed prior to the date hereof, LXP agrees to cause a Registration Statement on Form S-3 to be filed with the SEC on or before November 21, 2006 registering for sale up to the number of REIT Shares issuable upon exchange of the Special Voting Partnership Units.

(c) Section 13.1.A. of the Amended NRT OP LP Agreement is hereby amended and restated in its entirety as follows:

A. an event of withdrawal of the General Partner, as defined in the Act, unless (i) at the time of such event there is at least one remaining general partner of the Partnership who carries on the business of the Partnership (and each remaining general partner of the Partnership is hereby authorized to carry on the business of the Partnership in such an event) or (ii) within ninety (90) days after such event, a Majority-in-Interest of the Limited Partners agree in writing to continue the business of the Partnership and to the appointment, effective as of the date of such event, of LXP as the General Partner of the Partnership (and LXP agrees to become a general partner of the Partnership);

ARTICLE 2

MISCELLANEOUS PROVISIONS

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2.1 Authorization. Each of the Company and NRT is duly authorized to execute and deliver this Amendment and is and will continue to be duly authorized to perform its obligations under the Merger Agreement, as amended hereby.

2.2 Ratification and Confirmation of the Merger Agreement; No Other Changes. Except as modified by this Amendment, the Merger Agreement is hereby ratified and confirmed in all respects. Nothing herein shall be held to alter, vary or otherwise affect the terms, conditions and provision of the Merger Agreement, other than as contemplated herein.

2.3 Effectiveness. This Amendment shall be effective as of the date hereof.

2.4 Amendment and Modification. This Amendment No. 1 may not be amended, modified or supplemented in any manner, whether by course of conduct or otherwise, except by an instrument in writing signed on behalf of each party and otherwise as expressly set forth herein.

2.5 Counterparts. This Amendment No. 1 may be executed in two or more counterparts, all of which shall be considered one and the same instrument and shall become effective when one or more counterparts have been signed by each of the parties and delivered to the other party.

2.6 Facsimile Signature. This Amendment No. 1 may be executed by facsimile signature and a facsimile signature shall constitute an original for all purposes.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the Company and NRT have caused this Amendment No. 1 to be executed as of the date first written above by their respective officers thereunto duly authorized.

LEXINGTON CORPORATE PROPERTIES TRUST

Name: T. Wilson Eglin
By: /s/ T. Wilson Eglin
Title: Chief Executive Officer

NEWKIRK REALTY TRUST, INC.

Name: Michael L. Ashner
By: /s/ Michael L. Ashner

Title: Chief Executive Officer

ANNEX B

AMENDED AND RESTATED DECLARATION OF TRUST

~~LEXINGTON CORPORATE PROPERTIES TRUST~~ **AMENDED AND RESTATED
DECLARATION OF TRUST**

~~LEXINGTON CORPORATE PROPERTIES TRUST, a Maryland statutory real estate investment trust, having its principal office in Baltimore City, Maryland (which is hereinafter called the Trust), hereby certifies to the State Department of Assessments and Taxation of Maryland that:~~

FIRST: The Trust shall be a real estate investment trust within the meaning of Title 8 of the Corporations and Associations Article of the Annotated Code of Maryland (the Maryland REIT Law). The Trust is not intended to be, shall not be deemed to be, and shall not be treated as a general partnership, limited partnership, joint venture, corporation or joint stock company (but nothing herein shall preclude the Trust from being treated for tax purposes as an association under the Internal Revenue Code); nor shall the Trustees or shareholders or any of them for any purpose be, nor be deemed to be, nor be treated in any way whatsoever as, liable or responsible hereunder as partners or joint venturers. The relationship of the shareholders to the Trustees shall be solely that of beneficiaries of the Trust in accordance with the rights conferred upon them by this Declaration.

SECOND: The name of the trust is ~~Lexington Corporate Properties~~ Realty Trust and, so far as may be practicable, the Trustees shall conduct the Trust's activities, execute all documents and sue or be sued under that name, which name (and the word "Trust" where used in this Declaration of Trust), except where the context otherwise requires, shall refer to the Trustees collectively but not individually or personally nor to the officers, agents, employees or shareholders of the Trust or of such Trustees. Under circumstances in which the Trustees determine the use of such name is not practicable or under circumstances in which the Trustees are contractually bound to change that name, they may use such other designation or they may adopt another name under which the Trust may hold property or conduct its activities.

THIRD: (a) The purposes for which the Trust is formed and the business and objects of the Trust are:

To engage in the real estate business (including, without limitation, the ownership, operation and management of properties), and any lawful activities incidental thereto. To engage in any lawful act or activity for which real estate investment trusts may be organized under the applicable laws of the State of Maryland.

(b) The foregoing purposes and objects shall be in no way limited or restricted by reference to, or inference from, the terms of any other clause of this or any other Article of this Declaration, and each shall be regarded as independent; and they are intended to be and shall be construed as powers as well as purposes and objects of the Trust and shall be in addition to and not in limitation of the general powers of real estate investment trusts under the laws of the State of Maryland.

FOURTH: The ~~present address of the principal office of the Trust in the State of Maryland is 300 Lombard Street, Baltimore, Maryland 21202.~~ Trust may have offices, including a

[principal executive office, at such places as the Board of Trustees may from time to time determine or the business of the Trust may require.](#)

FIFTH: The name and address of the resident agent of the Trust in this State is ~~The Corporation Trust Incorporated, 300 Lombard~~[National Registered Agents, Inc. of MD, 11 East Chase](#) Street, Baltimore, Maryland 21202. Said resident agent is a Maryland corporation.

SIXTH: (a) The total number of shares of beneficial interest of all classes which the Trust has [the](#) authority to issue is ~~340,000,000~~ [1,000,000,000](#) shares of beneficial interest (par value \$.0001 per share), of which ~~160,000,000~~ [400,000,000](#) shares are classified as Common Stock ~~170,000,000~~ [500,000,000](#) shares are classified as Excess Stock and ~~10,000,000~~ [100,000,000](#) shares are classified as Preferred Stock (of which 3,160,000 shares are classified as 8.05% Series B Cumulative Redeemable Preferred Stock (Series B Preferred Stock) 3,100,000 shares are classified as 6.50% Series C Cumulative Convertible Preferred Stock (Series C Preferred Shares) and 1 share is classified as Special Voting Preferred Stock (the Special Voting Preferred Stock)). The Board of Trustees may classify and reclassify any unissued shares of beneficial interest by setting or changing, in any one or more respects, the preferences, conversion or other rights, voting powers, restrictions, limitations as to dividends, qualifications or terms or conditions of redemption of such shares of beneficial interest.

(b) The following is a description of the preferences, conversion and other rights, voting powers, restrictions, limitations as to dividends, qualifications and terms and conditions of redemption of the Common Stock of the Trust:

(1) Each share of Common Stock shall have one vote; and, except as otherwise provided in respect of any other class of shares hereunder classified or reclassified, the exclusive voting power for all purposes shall be vested in the holders of the Common Stock. Shares of Common Stock shall not have cumulative voting rights.

(2) Subject to the provisions of law and any preferences of any class of shares hereafter classified or reclassified, dividends or other distributions, including dividends or other distributions payable in shares of another class of the Trust's shares, may be paid on the Common Stock of the Trust at such time and in such amounts as the Board of Trustees may deem advisable.

(3) In the event of any liquidation, dissolution or winding up of the Trust, whether voluntary or involuntary, the holders of the Common Stock shall be entitled, after payment or provision for payment of the debts and other liabilities of the Trust and the amount to which the holders of any class of shares hereafter classified or reclassified having a preference on distributions in the liquidation, dissolution or winding up of the Trust shall be entitled, together with the holders of Excess Stock and any other class of shares hereafter classified or reclassified not having a preference on distributions in the liquidation, dissolution or winding up of the Trust, to share ratably in the remaining net assets of the Trust.

(4) Each share of Common Stock is convertible into Excess Stock as provided in Article NINTH hereof.

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(c) [The following is a description of the preferences, conversion and other rights, voting powers, restrictions, limitations as to dividends, qualifications and terms and conditions of redemption of the Series B Preferred Stock of the Trust:](#)

(1) [Number of Shares and Designation.](#) The Series B Preferred Stock shall be a series of ~~preferred shares of beneficial interest~~ [Preferred Stock](#) designated as 8.05% Series 13 Cumulative Redeemable Preferred Stock, par value \$.0001 per share, and the number of shares constituting such series shall be 3,160,000.

(2) [Definitions.](#) [For the purposes of this Section \(c\), the following terms shall have the following meanings:](#)

Board of Trustees shall mean the Board of Trustees of the Trust or any committee authorized by such Board of Trustees to perform any of its responsibilities with respect to the Series B Preferred Stock.

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Business Day shall mean any day other than a Saturday, Sunday or a day on which state or federally chartered banking institutions in New York, New York are not required to be open.

Capital Gains Amount shall have the meaning set forth in Section (c)(3) of this Article SIXTH.

Capital Stock shall have the meaning set forth in Article NINTH hereof.

Code shall mean the Internal Revenue Code of 1986, as amended.

~~Common Stock shall mean the Common Stock, par value \$.0001 per share, of the Trust.~~

~~Declaration shall have the meaning set forth in Article FIRST hereof.~~

Dividend Payment Date shall mean, with respect to each Dividend Period, the fifteenth day of February, May, August and November of each year, commencing on August 15, 2003.

Dividend Period shall mean the respective periods commencing on and including January 1, April 1, July 1 and October 1 of each year and ending on and including the day preceding the first day of the next succeeding Dividend Period (other than the initial Dividend Period, which shall commence on the Original Issue Date and end on and include June 30, 2003).

Dividend Record Date shall mean the date designated by the Board of Trustees for the payment of dividends that is not more than 30 nor less than 10 days prior to the applicable Dividend Payment Date.

Equity Stock shall have the meaning set forth in Article NINTH hereof.

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Event shall have the meaning set forth in Section (c)(6) of this Article SIXTH.

Market Price on any date shall mean, with respect to the Series B Preferred Stock, the average of the daily market price for ten consecutive trading days immediately preceding the date. The market price for each such trading day shall be determined as follows: (A) if the Series B Preferred Stock is listed or admitted to trading on any securities exchange or included for quotation on the NASDAQ-National Market System, the closing price, regular way, on such day, or if no such sale takes place on such day, the average of the closing bid and asked prices on such day, as reported by a reliable quotation source designated by the Trust; (B) if the Series B Preferred Stock is not listed or admitted to trading on any securities exchange or included for quotation on the NASDAQ-National Market System, the last reported sale price on such day or, if no sale takes place on such day, the average of the closing bid and asked prices on such day, as reported by a reliable quotation source designated by the Trust; or (C) if the Series B Preferred Stock is not listed or admitted to trading on any securities exchange or included for quotation on the NASDAQ-National Market System and no such last reported sale price or closing bid and asked prices are available, the average of the reported high bid and low asked prices on such day, as responded by a reliable quotation source designated by the Trust, or if there shall be no bid and asked prices on such day, the average of the high bid and low asked prices, as so reported, on the most recent day (not more than ten days prior to the date in question) for which prices have been so reported; provided that if there are no bids and asked prices reported during the ten days prior to the date in question, the market price of the Series B Preferred Stock shall be determined by the Trust acting in good faith on the basis of such quotations and other information as it considers, in its reasonable judgment, appropriate.

Original Issue Date shall mean June 19, 2003.

Ownership Limit shall have the meaning set forth in Article NINTH hereof.

Parity Preferred shall have the meaning set forth in Section (c)(6) of this Article SIXTH.

Preferred Dividend Default shall have the meaning set forth in Section (c)(6) of this Article SIXTH.

Preferred Trustees shall have the meaning set forth in Section (c)(6) of this Article SIXTH.

~~Series B Preferred Stock shall have the meaning set forth in Article FIRST hereof.~~

Total Dividends shall have the meaning set forth in Section (c)(3) of this Article SIXTH.

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~~Trust shall have the meaning set forth in the preamble to these Articles Supplementary.~~

(3) Dividends and Distributions.

(a) Subject to the preferential rights of the holders of any class or series of Capital Stock of the Trust ranking senior to the Series B Preferred Stock as to dividends, the holders of the Series B Preferred Stock shall be entitled to receive, when, as and if declared by the Board of Trustees, out of funds legally available for the payment of dividends, cumulative cash dividends at the rate of 8.05% per annum of the \$25.00 liquidation preference per share of the Series B Preferred Stock (equivalent to the annual rate of \$2.0125 per share of the Series B Preferred Stock). Such dividends shall accrue and be cumulative from and including the Original Issue Date and shall be payable quarterly in arrears on each Dividend Payment Date, commencing August 15, 2003; provided, however, that if any Dividend Payment Date is not a Business Day, then the dividend which would otherwise have been payable on such Dividend Payment Date may be paid on the next succeeding Business Day with the same force and effect as if paid on such Dividend Payment Date, and no interest or additional dividends or other sums shall accrue on the amount so payable from such Dividend Payment Date to such next succeeding Business Day. The initial partial dividend payable on the Series B Preferred Stock will be \$0.0671 per share. The amount of any dividend payable on the Series B Preferred Stock for each full Dividend Period shall be computed by dividing the annual dividend by four (4). The amount of any dividend payable on the Series B Preferred Stock for any partial Dividend Period other than the initial Dividend Period shall be prorated and computed on the basis of a 360-day year consisting of twelve 30-day months. Dividends will be payable to holders of record as they appear in the stockholder records of the Trust at the close of business on the applicable Dividend Record Date.

(b) No dividends on the Series B Preferred Stock shall be declared by the Board of Trustees or paid or set apart for payment by the Trust at such time as the terms and provisions of any agreement of the Trust, including any agreement relating to its indebtedness, prohibits such declaration, payment or setting apart for payment or provides that such declaration, payment or setting apart for payment would constitute a breach thereof or a default thereunder, or if such declaration, or payment or setting apart for payment shall be restricted or prohibited by law.

(c) Notwithstanding anything contained herein to the contrary, dividends on the Series B Preferred Stock shall accrue whether or not the Trust has earnings, whether or not there are funds legally available for the payment of such dividends, and whether or not such dividends are declared.

(d) Except as provided in Section (c)(3)(e) below, no dividends shall be declared or paid or set apart for payment and no other distribution of cash or other property may be declared or made, directly or indirectly, on or with respect to any shares of Common Stock or shares of any other class or series of Capital Stock of the Trust ranking, as to dividends, on a parity with or junior to the Series B Preferred Stock (other than pro rata dividends paid in shares of Common Stock or in shares of any other class or

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series of Capital Stock ranking on parity with the Series B Preferred Stock as to dividends and upon liquidation) for any period, nor shall any shares of Common Stock or any other shares of any other class or series of Capital Stock of the Trust ranking, as to dividends or upon liquidation, on a parity with or junior to the Series B Preferred Stock 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 shares) by the Trust (except by conversion into or exchange for other shares of any class or series of Capital Stock of the Trust ranking junior to the Series B Preferred Stock as to dividends and upon liquidation and except for the acquisition of shares made pursuant to the provisions of Article NINTH hereof), unless full cumulative dividends on the Series B Preferred Stock for all past dividend periods and the then current dividend period shall have been or contemporaneously are (i) declared and paid in cash or (ii) declared and a sum sufficient for the payment thereof in cash is set apart for such payment.

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(e) When dividends are not paid in full (or a sum sufficient for such full payment is not so set apart) upon the Series B Preferred Stock and the shares of any other class or series of Capital Stock ranking, as to dividends, on a parity with the Series B Preferred Stock, all dividends declared upon the Series B Preferred Stock and each such other class or series of Capital Stock ranking, as to dividends, on a parity with the Series B Preferred Stock shall be declared pro rata so that the amount of dividends declared per share of Series B Preferred Stock and such other class or series of Capital Stock shall in all cases bear to each other the same ratio that accrued dividends per share on the Series B Preferred Stock and such other class or series of Capital Stock (which shall not include any accrual in respect of unpaid dividends on such other class or series of Capital Stock for prior dividend periods if such other class or series of Capital Stock does not have a cumulative dividend) 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 the Series B Preferred Stock which may be in arrears.

(f) Holders of shares of Series B Preferred Stock shall not be entitled to any dividend, whether payable in cash, property or shares of Capital Stock, in excess of full cumulative dividends on the Series B Preferred Stock as provided herein. Any dividend payment made on the Series B Preferred Stock shall first be credited against the earliest accrued but unpaid dividends due with respect to such shares which remains payable. Accrued but unpaid distributions on the Series B Preferred Stock will accumulate as of the Dividend Payment Date on which they first become payable.

(g) If, for any taxable year, the Trust elects to designate as capital gain dividends (as defined in Section 857 of the Code or any successor revenue code or section) any portion (the *Capital Gains Amount*) of the total dividends (as determined for United States federal income tax purposes) paid or made available for such taxable year to holders of all classes and series of Capital Stock (the *Total Dividends*), then the portion of the Capital Gains Amount that shall be allocable to holders of Series B Preferred Stock shall be in the same proportion that the Total Dividends paid or made available to the holders of Series B Preferred Stock for such taxable year bears to the Total Dividends for such taxable year made with respect to all classes or series of Capital Stock outstanding.

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(4) Liquidation Preference. Upon any voluntary or involuntary liquidation, dissolution or winding-up of the affairs of the Trust, before any distribution or payment shall be made to holders of shares of Common Stock or any other class or series of Capital Stock of the Trust ranking, as to liquidation rights, junior to the Series B Preferred Stock, the holders of shares of Series B Preferred Stock (and of the Excess Stock converted from Series B Preferred Stock, if any) shall be entitled to be paid out of the assets of the Trust legally available for distribution to its stockholders a liquidation preference of \$25.00 per share, plus an amount equal to any accrued and unpaid dividends to the date of payment (whether or not declared). In the event that, upon such voluntary or involuntary liquidation, dissolution or winding-up, the available assets of the Trust are insufficient to pay the amount of the liquidating distributions on all outstanding shares of Series B Preferred Stock (and the Excess Stock converted from Series B Preferred Stock, if any) and the corresponding amounts payable on all shares of other classes or series of Capital Stock of the Trust ranking, as to liquidation rights, on a parity with the Series B Preferred Stock in the distribution of assets, then the holders of the Series B Preferred Stock (and the Excess Stock converted from Series B Preferred Stock, if any) and each such other class or series of shares of Capital Stock ranking, as to liquidation rights, on a parity with the Series B Preferred Stock shall share ratably in any such distribution of assets in proportion to the full liquidating distributions to which they would otherwise be respectively entitled. Written notice of any such liquidation, dissolution or winding up of the Trust, stating the payment date or dates when, and the place or places where, the amounts distributable in such circumstances shall be payable, shall be given by first class mail, postage pre-paid, not less than 30 nor more than 60 days prior to the payment date stated therein, to each record holder of shares of Series B Preferred Stock (and the Excess Stock converted from Series B Preferred Stock, if any) at the respective addresses of such holders as the same shall appear on the stock transfer records of the Trust. After payment of the full amount of the liquidating distributions to which they are entitled, the holders of Series B Preferred Stock (and the Excess Stock converted from Series B Preferred Stock, if any) will have no right or claim to any of the remaining assets of the Trust. The consolidation or merger of the Trust with or into any other trust, corporation or entity, or the sale, lease, transfer or conveyance of all or substantially all of the property or business of the Trust, shall not be deemed to constitute a liquidation, dissolution or winding-up of the affairs of the Trust.

(5) Redemption.

(a) Subject to Section (c)(9), shares of Series B Preferred Stock shall not be redeemable prior to June 19, 2008.

(b) Subject to Section (c)(9), on or after June 19, 2008, the Trust, at its option upon not less than 30 nor more than 60 days written notice, may redeem the Series B Preferred Stock, in whole or in part, at any time or from time to time, for cash at a redemption price of \$25.00 per share, plus all accrued and unpaid dividends (whether or not declared) thereon to and including the date fixed for redemption, without interest. If fewer than all of the outstanding shares of Series B Preferred Stock are to be redeemed, the shares of Series B Preferred Stock to be redeemed shall be redeemed pro rata (as nearly as may be practicable without creating fractional shares) or by any other equitable

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method determined by the Trust that will not result in a violation of the Ownership Limit. Holders of Series B Preferred Stock to be redeemed shall surrender such Series B Preferred Stock at the place designated in such notice and shall be entitled to the redemption price of \$25.00 per share and any accrued and unpaid dividends payable upon such redemption following such surrender. If (i) notice of redemption of any shares of Series B Preferred Stock has been given, (ii) the funds necessary for such redemption have been irrevocably set aside by the Trust in trust for the benefit of the holders of any shares of Series B Preferred Stock so called for redemption and (iii) irrevocable instructions have been given to pay the redemption price and all accrued and unpaid dividends, then from and after the redemption date dividends shall cease to accrue on such shares of Series B Preferred Stock, such shares of Series B Preferred Stock shall no longer be deemed outstanding and all rights of the holders of such shares will terminate, except the right to receive the redemption price plus any accrued and unpaid dividends payable upon such redemption, without interest. Nothing herein shall prevent or restrict the Trust's right or ability to purchase, from time to time either at a public or a private sale, all or any part of the Series B Preferred Stock at such price or prices as the Trust may determine, subject to the provisions of applicable law.

(c) Unless full cumulative dividends on all Series B Preferred Stock shall have been or contemporaneously are declared and paid in cash or declared and a sum sufficient for the payment thereof in cash set apart for payment for all past dividend periods and the then current dividend period, no Series B Preferred Stock shall be redeemed unless all outstanding shares of Series B Preferred Stock are simultaneously redeemed and the Trust shall not purchase or otherwise acquire directly or indirectly any shares of Series B Preferred Stock or any class or series of Capital Stock of the Trust ranking, as to dividends or upon liquidation, on a parity with or junior to the Series B Preferred Stock (except by exchange for shares of Capital Stock of the Trust ranking, as to dividends and upon liquidation, junior to the Series B Preferred Stock); except that the Trust may purchase shares of Series B Preferred Stock pursuant to a purchase or exchange offer made on the same terms to holders of all outstanding shares of Series B Preferred Stock or, subject to certain provisions of ~~the~~[this](#) Declaration, the Trust may, under certain circumstances, purchase shares of Series B Preferred Stock owned by a shareholder in excess of the Ownership Limit.

(d) Notice of redemption shall be mailed by the Trust, postage prepaid, as of a date set by the Trust not less than 30 nor more than 60 days prior to the redemption date, addressed to the respective holders of record of the shares of Series B Preferred Stock to be redeemed at their respective addresses as they appear on the share transfer records of the Trust. No failure to give such notice or any defect thereto or in the mailing thereof shall affect the sufficiency of notice or validity of the proceedings for the redemption of any Series B Preferred Stock except as to a holder to whom notice was defective or not given. A redemption notice which has been mailed in the manner provided herein shall be conclusively presumed to have been duly given on the date mailed whether or not the holder received the redemption notice. Each notice shall state (i) the redemption date; (ii) the redemption price and accrued and unpaid dividends payable on the redemption date; (iii) the number of shares of Series B Preferred Stock to be redeemed; (iv) the place or places where the certificates for shares of Series B

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Preferred Stock are to be surrendered for payment of the redemption price and accrued and unpaid dividends payable on the redemption date; and (v) that dividends on the Series B Preferred Stock to be redeemed shall cease to accrue on such redemption date. If fewer than all of the shares of Series B Preferred Stock held by any holder are to be redeemed, the notice mailed to such holder shall also specify the number of shares of Series B Preferred Stock held by such holder to be redeemed.

(e) Immediately prior to any redemption of the Series B Preferred Stock, the Trust shall pay, in cash, any accumulated and unpaid dividends through the redemption date, whether or not declared, unless a redemption date falls after a Dividend Record Date and on or prior to the corresponding Dividend Payment Date, in which event, notwithstanding the redemption of the Series B Preferred Stock prior to such Dividend Payment date, (i) each holder of Series B Preferred Stock at the close of business on such Dividend Record Date shall be entitled to the dividend payable on such shares on the corresponding Dividend Payment Date; and (ii) each holder of Series B Preferred Stock at the close of business on such redemption date shall be entitled to the dividend payable on such shares after the end of the Dividend Period to which such Dividend Record Date relates through and including the Redemption Date on the corresponding Dividend Payment Date.

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(f) The Series B Preferred Stock shall have no stated maturity and shall not be subject to any sinking fund or mandatory redemption.

(g) All shares of the Series B Preferred Stock redeemed or repurchased pursuant to this Section (c)(5) or otherwise shall be authorized but unissued shares of Series B Preferred Stock until reclassified into another class or series of Capital Stock.

(6) Voting Rights.

(a) Holders of the Series B Preferred Stock shall not have any voting rights, except as provided by applicable law and as set forth in this Section (c)(6).

(b) Whenever dividends on any shares of Series B Preferred Stock shall be in arrears for six or more consecutive or non-consecutive quarterly periods (a *Preferred Dividend Default*), the holders of such Series B Preferred Stock (voting as a single class with all other classes or series of parity preferred stock of the Trust upon which like voting rights have been conferred and are exercisable (*Parity Preferred*)) shall be entitled to vote for the election of a total of two additional trustees of the Trust (the *Preferred Trustees*) at the next annual meeting of stockholders and at each subsequent meeting until all dividends accumulated on such Series B Preferred Stock and Parity Preferred 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 aside for payment. In such case, the entire Board of Trustees will be increased by two trustees. If and when all accumulated dividends shall have been paid on such Series B Preferred Stock and all classes or series of Parity Preferred, the right of the holders of Series B Preferred Stock and the Parity Preferred to elect the Preferred Trustees shall immediately cease (subject to revesting in the event of each and every Preferred Dividend Default),

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and the term of office of each Preferred Trustee so elected shall terminate and the entire Board of Trustees shall be reduced accordingly. So long as a Preferred Dividend Default shall continue, any vacancy in the office of a Preferred Trustee may be filled by written consent of the Preferred Trustee remaining in office, or if none remains in office, by a vote of the holders of record of a majority of the outstanding Series B Preferred Stock when they have the voting rights described above (voting as a single class with all other classes or series of Parity Preferred). Each of the Preferred Trustees shall be entitled to one vote on any matter.

(c) So long as any shares of Series B Preferred Stock remain outstanding, the affirmative vote or consent of the holders of two-thirds of the shares of Series B Preferred Stock and each other class or series of Parity Preferred, outstanding at the time, given in person or by proxy, either in writing or at a meeting (voting as a single class) will be required to: (i) authorize or create, or increase the authorized or issued amount of, any class or series of Capital Stock ranking senior to the Series B Preferred Stock with respect to payment of dividends or the distribution of assets upon liquidation, dissolution or winding-up of the affairs of the Trust or reclassify any authorized shares of Capital Stock of the Trust into such Capital Stock, or create, authorize or issue any obligation or security convertible into or evidencing the right to purchase any such Capital Stock; or (ii) amend, alter or repeal the provisions of ~~the this Declaration or these Articles Supplementary~~, whether by merger, consolidation, transfer or conveyance of all or substantially all of its assets or otherwise (an *Event*), so as to materially and adversely affect any right, preference, privilege or voting power of the Series B Preferred Stock or the holders thereof; provided however, with respect to the occurrence of any of the Events set forth in (ii) above, so long as the Series B Preferred Stock remains outstanding with the terms thereof materially unchanged, taking into account that, upon the occurrence of an Event, the Trust may not be the surviving entity, the occurrence of such Event shall not be deemed to materially and adversely affect such rights, preferences, privileges or voting power of holders of Series B Preferred Stock, and in such case such holders shall not have any voting rights with respect to the occurrence of any of the Events set forth in (ii) above. Holders of shares of Series B Preferred Stock shall not be entitled to vote with respect to (A) any increase, decrease or issuance from time to time of any class or series of Capital Stock of the Trust (including the Series B Preferred Stock), or (B) the creation or issuance from time to time of any additional classes or series of Capital Stock, in each case referred to in clause (A) or (B) above ranking on a parity with or junior to the Series B Preferred Stock with respect to the payment of dividends and the distribution of assets upon liquidation, dissolution or winding up.

(d) The foregoing voting provisions of this Section (c)(6) shall not apply if, at or prior to the time when the act with respect to which such vote would otherwise be required shall be effected, all outstanding shares of Series B Preferred Stock shall have been redeemed or called for redemption upon proper notice and sufficient funds, in cash, shall have been deposited in trust to effect such redemption.

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(e) In any matter in which the Series B Preferred Stock may vote (as expressly provided herein or as may be required by law), each share of Series B Preferred Stock shall be entitled to one vote per \$25.00 of liquidation preference.

(7) Conversion. The shares of Series B Preferred Stock shall not be convertible into or exchangeable for any other property or securities of the Trust or any other entity except as provided in Article NINTH hereof.

(8) Ranking. In respect of rights to the payment of dividends and the distribution of assets in the event of any liquidation, dissolution or winding up of the affairs of the Trust, the Series B Preferred Stock shall rank (i) senior to the Common Stock and to any other class or series of Capital Stock of the Trust other than any class or series referred to in clauses (ii) and (iii) of this sentence, (ii) on a parity with any class or series of Capital Stock of the Trust the terms of which specifically provide that such class or series of Capital Stock ranks on a parity with the Series B Preferred Stock as to the payment of dividends and the distribution of assets in the event of any liquidation, dissolution or winding up of the Trust, and (iii) junior to any class or series of Capital Stock of the Trust ranking senior to the Series B Preferred Stock as to the payment of dividends and the distribution of assets in the event of any liquidation, dissolution or winding up of the Trust. For avoidance of doubt, debt securities of the Trust which are convertible into or exchangeable for shares of Capital Stock of the Trust shall not constitute a class or series of Capital Stock of the Trust.

(9) Restrictions on Transfer, Acquisition and Redemption of Shares. The Series B Preferred Stock, being Equity Stock, is governed by and issued subject to all of the limitations, terms and conditions of ~~the~~this Declaration applicable to Equity Stock generally, including, but not limited to, the terms and conditions (including exceptions and exemptions) of Article NINTH hereof applicable to Equity Stock; provided, however, that (i) the terms and conditions (including exceptions and exemptions) of Article NINTH hereof applicable to Equity Stock shall also be applied to the Series B Preferred Stock separately and without regard to any other series or class, (ii) the reference to the General Corporation Law of the State of Maryland under subparagraph (b)(4) of Article NINTH hereof shall be to the Maryland REIT Law, (iii) the Equity Stock into which the Excess Stock is converted in subparagraph (b)(5)(A) of Article NINTH hereof shall be shares of Series B Preferred Stock, and (iv) the Market Price of the Series B Preferred Stock for purposes of subparagraphs (b)(5) and (b)(6) of Article NINTH hereof shall be determined by the definition under Section (c)(1) of this Article SIXTH. The foregoing sentence shall not be construed to limit to the Series B Preferred Stock the applicability of any other term or provision of ~~the~~this Declaration. In addition to the legend contemplated by subparagraph (a)(10) of Article NINTH hereof, each certificate for Series B Preferred Stock shall bear substantially the following legend:

THE TRUST WILL FURNISH TO ANY SHAREHOLDER ON REQUEST AND WITHOUT CHARGE A FULL STATEMENT OF THE DESIGNATIONS AND ANY PREFERENCES, CONVERSION AND OTHER RIGHTS, VOTING POWERS, RESTRICTIONS, LIMITATIONS AS TO DIVIDENDS OR DISTRIBUTIONS,

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QUALIFICATIONS, AND TERMS AND CONDITIONS OF REDEMPTION OF THE SHARES OF EACH CLASS WHICH THE TRUST IS AUTHORIZED TO ISSUE, OF THE DIFFERENCES IN THE RELATIVE RIGHTS AND PREFERENCES BETWEEN THE SHARES OF EACH SERIES OF A PREFERRED OR SPECIAL CLASS IN SERIES WHICH THE TRUST IS AUTHORIZED TO ISSUE, TO THE EXTENT THEY HAVE BEEN SET, AND OF THE AUTHORITY OF THE BOARD OF TRUSTEES TO SET THE RELATIVE RIGHTS AND PREFERENCES OF SUBSEQUENT SERIES OF A PREFERRED OR SPECIAL CLASS OF SHARES. SUCH REQUEST MAY BE MADE TO THE SECRETARY OF THE TRUST OR TO ITS TRANSFER AGENT.

(10) Exclusion of Other Rights. The Series B Preferred Stock shall not have any preferences, conversion or other rights, voting powers, restrictions, limitations as to dividends, qualifications, or terms or conditions of redemption other than expressly set forth in ~~the~~this Declaration ~~or these Articles Supplementary~~.

(11) Headings of Subdivisions. The headings of the various subdivisions hereof are for convenience of reference only and shall not affect the interpretation of any of the provisions hereof.

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(12) Severability of Provisions. If any preferences, conversion or other rights, voting powers, restrictions, limitations as to dividends, qualifications, or terms or conditions of redemption of the Series B Preferred Stock set forth in ~~the Declaration and these Articles Supplementary~~ this Section (c) are invalid, unlawful or incapable of being enforced by reason of any rule of law or public policy, all other preferences or other rights, voting powers, restrictions, limitations as to distributions, qualifications or terms or conditions of redemption of Series B Preferred Stock set forth ~~in the Declaration~~ herein which can be given effect without the invalid, unlawful or unenforceable provision thereof shall, nevertheless, remain in full force and effect and no preferences or other rights, voting powers, restrictions, limitations as to dividends or other distributions, qualifications or terms or conditions of redemption of the Series B Preferred Stock herein set forth shall be deemed dependent upon any other provision thereof unless so expressed therein.

(13) No Preemptive Rights. No holder of Series B Preferred Stock shall be entitled to any preemptive rights to subscribe for or acquire any unissued shares of Capital Stock of the Trust (whether now or hereafter authorized) or securities of the Trust convertible into or carrying a right to subscribe to or acquire shares of Capital Stock of the Trust.

(d) The following is a description of the preferences, conversion and other rights, voting powers, restrictions, limitations as to dividends, qualifications and terms and conditions of redemption of the Series C Preferred Shares of the Trust:

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(1) Number of Shares and Designation. The Series C Preferred Shares shall be a series of ~~preferred shares of beneficial interest~~ Preferred Stock designated as 6.50% Series C Cumulative Convertible Preferred Stock, par value \$.0001 per share, and the number of shares constituting such series shall be 3,100,000.

(2) Definitions. For the purposes of this Section (d), the following terms shall have the following meanings:

105% Trading Price Exception shall have the meaning set forth in Section (d)(12)(k) of this Article SIXTH.

Board of Trustees shall mean the Board of Trustees of the Trust or any committee authorized by such Board of Trustees to perform any of its responsibilities with respect to the Series C Preferred Shares.

Business Day shall mean any day other than a Saturday, Sunday or a day on which state or federally chartered banking institutions in New York, New York are not required to be open.

Capital Gains Amount shall have the meaning set forth in Section (d)(3)(g) of this Article SIXTH.

Capital Stock shall have the meaning set forth in Article NINTH hereof.

Cash Amount shall have the meaning set forth in Section (d)(6)(d)(5) of this Article SIXTH.

Cash Settlement Average Period shall have the meaning set forth in Section (6)(d) of this Article SIXTH.

Closing Sale Price shall mean with regard to shares of the Common Stock, on any date, the closing sale price per share (or if no closing sale price is reported, the average of the closing bid and ask prices or, if more than one in either case, the average of the average closing bid and the average closing ask prices) on such date as reported on the principal United States national or regional securities exchange on which shares of the Common Stock are traded or, if shares of the Common Stock are not listed on a United States national or regional securities exchange, as reported by Nasdaq or by the National Quotation Bureau Incorporated, or in the absence of such a quotation, the Trust shall determine the closing sale price, in good faith, on the basis of such quotations and other information as it considers, in its reasonable judgment, appropriate.

Code shall mean the Internal Revenue Code of 1986, as amended.

~~Common Stock shall mean the common stock, par value \$.0001 per share, of the Trust.~~

Conversion Date shall have the meaning set forth in Section (d)(6)(c) of this Article SIXTH.

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Conversion Notice shall have the meaning set forth in Section (d)(6)(c) of this Article SIXTH.

Conversion Price shall mean, as of any day, a per share amount equal to the quotient of the liquidation preference amount of a share of Series C Preferred Shares on that day divided by the Conversion Rate on such day.

Conversion Rate shall have the meaning set forth in Section (d)(6)(a) of this Article SIXTH.

Conversion Retraction Period shall have the meaning set forth in Section (d)(6)(d) of this Article SIXTH.

Conversion Right shall have the meaning set forth in Section (d)(6)(a) of this Article SIXTH.

Conversion Value shall mean an amount equal to the product of the applicable Conversion Rate (as adjusted) multiplied by the arithmetic average of the Closing Sale Prices of the Common Stock during the Cash Settlement Averaging Period.

Current Market Price shall have the meaning set forth in Section (d)(7)(g) of this Article SIXTH.

~~Declaration shall have the meaning set forth in Article FIRST hereof.~~

Distributed Assets shall have the meaning set forth in Section (d)(7)(d) of this Article SIXTH.

Dividend Payment Date shall mean, with respect to each Dividend Period, the fifteenth day of February, May, August and November of each year, commencing on February 15, 2005.

Dividend Period shall mean the respective periods commencing on and including January 1, April 1, July 1 and October 1 of each year and ending on and including the day preceding the first day of the next succeeding Dividend Period (other than the initial Dividend Period, which shall commence on the Original Issue Date and end on and include December 31, 2004).

Dividend Record Date shall mean the date designated by the Board of Trustees for the payment of dividends that is not more than 30 nor less than 10 days prior to the applicable Dividend Payment Date.

Dividend Threshold Amounts shall mean the amounts set forth in the table below; provided, however that the Dividend Threshold Amounts are subject to adjustment under the same circumstances and by the same mechanisms under which the Conversion Rate is subject to adjustment pursuant to Sections (d)(7)(a), (d)(7)(b), (d)(7)(c) and (d)(7)(d) of this Article SIXTH.

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\$0.36 per common share through and including November 15, 2005

\$0.37 per common share from November 16, 2005 thru and including November 15, 2006

\$0.38 per common share thereafter

DTC shall have the meaning set forth in Section (d)(6)(c) of this Article SIXTH.

Equity Stock shall have the meaning set forth in Article ~~EIGHTH~~NINTH hereof.

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Event shall have the meaning set forth in Section (d)(5) of this Article SIXTH.

~~Excess Stock shall have the meaning set forth in Article NINTH hereof.~~

Expiration Time shall have the meaning set forth in Section (d)(7)(f) of this Article SIXTH.

Fair Market Value shall have the meaning set forth in Section (d)(7)(g) of this Article SIXTH.

Fundamental Change shall have the meaning set forth in Section (d)(12)(j) of this Article SIXTH.

Fundamental Change Repurchase Date shall have the meaning set forth in Section (d)(12)(a) of this Article SIXTH.

Fundamental Change Repurchase Price shall have the meaning set forth in Section (d)(12)(a) of this Article SIXTH.

Liquidation Preference Conversion Settlement Election shall have the meaning set forth in Section (d)(6)(d) of this Article SIXTH.

Nasdaq shall mean National Association of Securities Dealers Automated Quotation System.

Non-electing Share shall have the meaning set forth in Section (d)(8)(c) of this Article SIXTH.

Notice shall have the meaning set forth in Section (d)(6)(b) of this Article SIXTH.

OP Units shall mean operating partnership units of Lepercq Corporate Income Fund L.P., Lepercq Corporate Income Fund II L.P. and Net 3 Acquisition L.P. not owned by the Trust or any of its consolidated subsidiaries and which by their terms of issuance are exchangeable for shares of Common Stock on a one-to-one basis.

Original Issue Date shall mean December 8, 2004.

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Ownership Limit shall have the meaning set forth in Article NINTH hereof.

Parity Preferred shall have the meaning set forth in Section (d)(5) of this Article SIXTH.

Preferred Dividend Default shall have the meaning set forth in Section (d)(5) of this Article SIXTH.

Preferred Trustees shall have the meaning set forth in Section (d)(5) of this Article SIXTH.

Public Acquirer Change of Control shall have the meaning set forth in Section (d)(11)(f) of this Article SIXTH.

Public Acquirer Common Stock shall have the meaning set forth in Section (d)(12)(g) of this Article SIXTH.

Record Date shall have the meaning set forth in Section (d)(7)(g) of this Article SIXTH.

Reference Period shall have the meaning set forth in Section (d)(7)(d) of this Article SIXTH.

Repurchase Right shall have the meaning set forth in Section (d)(12)(a) of this Article SIXTH.

Series B Preferred Shares shall mean ~~the 0.5% Series B Cumulative Redeemable Preferred Shares, par value \$0.0001 per share, of the Trust Stock.~~

Settlement Notice Period shall have the meaning set forth in Section (d)(6)(d) of this Article SIXTH.

~~Series C Preferred Shares shall have the meaning set forth in Article FIRST hereof.~~

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Spin-Off shall have the meaning set forth in Section (d)(7)(d) of this Article SIXTH.

Total Dividends shall have the meaning set forth in Section (d)(3) of this Article SIXTH.

Trading Day shall mean a day during which trading in securities generally occurs on the New York Stock Exchange or, if the Common Stock is not listed on the New York Stock Exchange, on the principal other United States national or regional securities exchange on which the Common Stock is then listed or, if the Common Stock is not listed on a United States national or regional securities exchange, on Nasdaq or, if the Common Stock is not quoted on Nasdaq, on the principal other market on which the Common Stock is then traded.

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~~Trust shall have the meaning set forth in the preamble to these Articles Supplementary.~~

Trust Conversion Option shall have the meaning set forth in Section (d)(6)(b) of this Article SIXTH.

Trust Conversion Option Date shall have the meaning set forth in Section (d)(6)(b) of this Article SIXTH.

Undisrupted Trading Day shall mean a Trading Day on which trading of shares of Common Stock does not experience any of the following during the one hour period ending at the conclusion of the regular Trading Day:

(a) ~~(+)~~ any suspension of or limitation imposed on the trading of shares of Common Stock on any United States national or regional securities exchange or association or over-the-counter market;

(b) ~~(+)~~ any event (other than an event listed in clause (3) below) that disrupts or impairs the ability of market participants in general to (i) effect transactions in or obtain market values for shares of Common Stock on any relevant United States national or regional securities exchange or association or over-the-counter market or (ii) effect transactions in or obtain market values for futures or options contracts relating to shares of Common Stock on any relevant United States national or regional securities exchange or association or over-the-counter market; or

(c) ~~(+)~~ any relevant United States national or regional securities exchange or association or over-the-counter market on which shares of Common Stock trade closes on any Trading Day prior to its scheduled closing time unless such earlier closing time is announced by the exchange at least one hour prior to the earlier of (i) the actual closing time for the regular trading session on such exchange or (ii) the submission deadline for orders to be entered into the exchange for execution on such Trading Day.

(3) Dividends and Distributions.

(a) Subject to the preferential rights of the holders of any class or series of Capital Stock of the Trust ranking senior to the Series C Preferred Shares as to dividends, the holders of the Series C Preferred Shares shall be entitled to receive, when, as and if declared by the Board of Trustees, out of funds legally available for the payment of dividends, cumulative cash dividends at the rate of 6.50% per annum of the \$50.00 liquidation preference per share of the Series C Preferred Shares (equivalent to the annual rate of \$3.25 per share of the Series C Preferred Shares). Such dividends shall accrue and be cumulative from and including the Original Issue Date and shall be payable quarterly in arrears on each Dividend Payment Date, commencing February 15, 2004 in respect of the quarterly distribution periods ending on December 31, March 31, June 30, and September 30, respectively; provided, however, that if any Dividend Payment Date is not a Business Day, then the dividend which would otherwise have been payable on such Dividend Payment Date may be paid on the next succeeding Business Day with the same force and effect as if paid on such Dividend Payment Date, and no interest or additional

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dividends or other sums shall accrue on the amount so payable from such Dividend Payment Date to such next succeeding Business Day. The dividend payable on the Series C Preferred Shares on February 15, 2005 shall be a pro rata dividend from the Original Issue Date to December 31, 2004 in the amount of \$0.2167 per share. The amount of any dividend payable on the Series C Preferred Shares for each full Dividend Period shall be computed by dividing the annual dividend by four (4). The amount of any dividend payable on the Series C Preferred Shares for any partial Dividend Period other than the initial Dividend Period shall be prorated and computed on the basis of a 360-day year consisting of twelve 30-day months. Dividends will be payable to holders of record as they appear in the stockholder records of the Trust at the close of business on the applicable Dividend Record Date, which shall be a date determined by the Board of Trustees that is not more than thirty (30) days nor less than ten (10) days before the Dividend Payment Date.

(b) No dividends on the Series C Preferred Shares shall be declared by the Board of Trustees or paid or set apart for payment by the Trust at such time as the terms and provisions of any agreement of the Trust, including any agreement relating to its indebtedness, prohibits such declaration, payment or setting apart for payment or provides that such declaration, payment or setting apart for payment would constitute a breach thereof or a default thereunder, or if such declaration, or payment or setting apart for payment shall be restricted or prohibited by law.

(c) Notwithstanding anything contained herein to the contrary, dividends on the Series C Preferred Shares shall accrue whether or not the Trust has earnings, whether or not there are funds legally available for the payment of such dividends, and whether or not such dividends are declared.

(d) Except as provided in Section (d)(3)(e) below, unless full cumulative dividends on the Series C Preferred Shares for all past dividend periods and the then current dividend period shall have been or contemporaneously are declared and paid in cash or declared and a sum sufficient for the payment thereof in cash is set apart for such payment, (i) no dividends, other than distributions in kind on the Common Stock or other capital shares ranking junior to the Series C Preferred Shares as to distributions and upon liquidation, shall be declared or paid or set apart for payment and no other dividend or distribution of cash or other property may be declared or made, directly or indirectly, on or with respect to any shares of Common Stock, Series B Preferred Shares or shares of any other class or series of Capital Stock of the Trust ranking, as to dividends, on a parity with or junior to the Series C Preferred Shares (other than pro rata dividends on Series B Preferred Shares or other preferred shares ranking on parity as to distributions with the Series C Preferred Shares) for any period, nor (ii) shall any shares of Common Stock or any other shares of any other class or series of Capital Stock of the Trust ranking, as to dividends or upon liquidation, on a parity with or junior to the Series C Preferred Shares, including without limitation the Series B Preferred Shares, 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 shares) by the Trust (except by conversion into or exchange for other shares of any class or series of Capital Stock of the Trust ranking junior to the Series C Preferred Shares as to dividends

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and upon liquidation and except for the acquisition of shares made pursuant to the provisions of Article NINTH hereof).

(e) When dividends are not paid in full (or a sum sufficient for such full payment is not so set apart) upon the Series C Preferred Shares and the shares of any other class or series of Capital Stock ranking, as to dividends, on a parity with the Series C Preferred Shares, including, without limitation the Series B Preferred Shares, all dividends declared upon the Series C Preferred Shares and each such other class or series of Capital Stock ranking, as to dividends, on a parity with the Series C Preferred Shares including, without limitation the Series B Preferred Shares, shall be declared pro rata so that the amount of dividends declared per share of Series C Preferred Shares and such other class or series of Capital Stock shall in all cases bear to each other the same ratio that accrued dividends per share on the Series C Preferred Shares and such other class or series of Capital Stock (which shall not include any accrual in respect of unpaid dividends on such other class or series of Capital Stock for prior dividend periods if such other class or series of Capital Stock does not have a cumulative dividend) 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 the Series C Preferred Shares which may be in arrears.

(f) Holders of shares of Series C Preferred Shares shall not be entitled to any dividend, whether payable in cash, property or shares of Capital Stock, in excess of full cumulative dividends on the Series C Preferred Shares as provided herein. Any dividend payment made on the Series C Preferred Shares shall first be credited against the earliest accrued but unpaid dividends due with respect to such shares which remains payable. Accrued but unpaid distributions on the Series C Preferred Shares will accumulate as of the Dividend Payment Date on which they first become payable.

(g) If, for any taxable year, the Trust elects to designate as capital gain dividends (as defined in Section 857 of the Code or any successor revenue code or section) any portion (the Capital Gains Amount) of the total dividends (as determined for United States federal income tax purposes) paid or made available for such taxable year to holders of all classes and series of Capital Stock (the Total Dividends), then the portion of the Capital Gains Amount that shall be allocable to holders of Series C Preferred Shares shall be in the same proportion that the Total Dividends paid or made available to the holders of Series C Preferred Shares for such taxable year bears to the Total Dividends for such taxable year made with respect to all classes or series of Capital Stock outstanding.

(4) Liquidation Preference. Upon any voluntary or involuntary liquidation, dissolution or winding-up of the affairs of the Trust, before any distribution or payment shall be made to holders of shares of Common Stock or any other class or series of Capital Stock of the Trust ranking, as to liquidation rights, junior to the Series C Preferred Shares, the holders of shares of Series C Preferred Shares (and of the Excess Stock converted from Series C Preferred Shares, if any) shall be entitled to be paid out of the assets of the Trust legally available for distribution to its stockholders a liquidation preference of \$50.00 per share, plus an amount equal to any accrued and unpaid dividends to the date of payment (whether or not declared). In the event that, upon such voluntary

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or involuntary liquidation, dissolution or winding-up, the available assets of the Trust are insufficient to pay the amount of the liquidating distributions on all outstanding shares of Series C Preferred Shares (and the Excess Stock converted from Series C Preferred Shares, if any) and the corresponding amounts payable on all shares of other classes or series of Capital Stock of the Trust ranking, as to liquidation rights, on a parity with the Series C Preferred Shares, including without limitation the Series B Preferred Shares, in the distribution of assets, then the holders of the Series C Preferred Shares (and the Excess Stock converted from Series C Preferred Shares, if any) and each such other class or series of shares of Capital Stock ranking, as to liquidation rights, on a parity with the Series C Preferred Shares, including without limitation the Series B Preferred Shares, shall share ratably in any such distribution of assets in proportion to the full liquidating distributions to which they would otherwise be respectively entitled. Written notice of any such liquidation, dissolution or winding up of the Trust, stating the payment date or dates when, and the place or places where, the amounts distributable in such circumstances shall be payable, shall be given by first class mail, postage pre-paid, not less than 30 nor more than 60 days prior to the payment date stated therein, to each record holder of shares of Series C Preferred Shares (and the Excess Stock converted from Series C Preferred Shares, if any) at the respective addresses of such holders as the same shall appear on the stock transfer records of the Trust. After payment of the full amount of the liquidating distributions to which they are entitled, the holders of Series C Preferred Shares (and the Excess Stock converted from Series C Preferred Shares, if any) will have no right or claim to any of the remaining assets of the Trust. The consolidation or merger of the Trust with or into any other trust, corporation or entity, or the sale, lease, transfer or conveyance of all or substantially all of the property or business of the Trust, shall not be deemed to constitute a liquidation, dissolution or winding-up of the affairs of the Trust.

(5) Voting Rights.

(a) Holders of the Series C Preferred Shares shall not have any voting rights, except as provided by applicable law and as set forth in this Section (d)(5).

(b) Whenever dividends on any shares of Series C Preferred Shares shall be in arrears for six or more consecutive or non-consecutive quarterly periods (a Preferred Dividend Default), the holders of such Series C Preferred Shares (voting as a single class with all other classes or series of parity preferred stock of the Trust upon which like voting rights have been conferred and are exercisable (Parity Preferred)) shall be entitled to vote for the election of a total of two additional trustees of the Trust (the Preferred Trustees) at the next annual meeting of stockholders and at each subsequent meeting until all dividends accumulated on such Series C Preferred Shares and Parity Preferred 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 aside for payment. In such case, the entire Board of Trustees will be increased by two trustees. Notwithstanding the foregoing, if, prior to the election of any additional trustees in the manner set forth herein, all accumulated dividends are paid on the Series C Preferred Shares, the Series B Preferred Shares and all other Parity Preferred, no such additional trustees shall be so elected. If and when all accumulated dividends shall have been paid on such Series C Preferred Shares and all classes or series of Parity Preferred,

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the right of the holders of Series C Preferred Shares and the Parity Preferred to elect the Preferred Trustees shall immediately cease (subject to reverting in the event of each and every Preferred Dividend Default), and the term of office of each Preferred Trustee so elected shall immediately terminate and the entire Board of Trustees shall be reduced accordingly. So long as a Preferred Dividend Default shall continue, any vacancy in the office of a Preferred Trustee may be filled by written consent of the Preferred Trustee remaining in office, or if none remains in office, by a vote of the holders of record of a majority of the outstanding Series C Preferred Shares and Parity Preferred when they have the voting rights described above (voting as a single class with all other classes or series of Parity Preferred). Each of the Preferred Trustees shall be entitled to one vote on any matter.

(c) So long as any shares of Series C Preferred Shares remain outstanding, the affirmative vote or consent of the holders of two-thirds of the shares of Series C Preferred Shares and each other class or series of Parity Preferred, outstanding at the time, given in person or by proxy, either in writing or at a meeting (voting as a single class) will be required to: (i) authorize or create, or increase the authorized or issued amount of, any class or series of Capital Stock ranking senior to the Series C Preferred Shares with respect to payment of dividends or the distribution of assets upon liquidation, dissolution or winding-up of the affairs of the Trust or reclassify any authorized shares of Capital Stock of the Trust into such Capital Stock, or create, authorize or issue any obligation or security convertible into or evidencing the right to purchase any such Capital Stock; or (ii) amend, alter or repeal the provisions of ~~the this Declaration or these Articles Supplementary~~, whether by merger, consolidation, transfer or conveyance of all or substantially all of its assets or otherwise (an Event), so as to materially and adversely affect any right, preference, privilege or voting power of the Series C Preferred Shares or the holders thereof; provided, however, with respect to the occurrence of any of the Events set forth in (ii) above, so long as the Series C Preferred Shares remains outstanding with the terms thereof materially unchanged, taking into account that, upon the occurrence of an Event, the Trust may not be the surviving entity, the occurrence of such Event shall not be deemed to materially and adversely affect such rights, preferences, privileges or voting power of holders of Series C Preferred Shares, and in such case such holders shall not have any voting rights with respect to the occurrence of any of the Events set forth in (ii) above. Holders of shares of Series C Preferred Shares shall not be entitled to vote with respect to (A) any increase, decrease or issuance from time to time of any class or series of Capital Stock of the Trust (including the Series C Preferred Shares), or (B) the creation or issuance from time to time of any additional classes or series of Capital Stock, in each case referred to in clause (A) or (B) above ranking on a parity with or junior to the Series C Preferred Shares with respect to the payment of dividends and the distribution of assets upon liquidation, dissolution or winding up.

(d) The foregoing voting provisions of this Section (d)(5) shall not apply if, at or prior to the time when the act with respect to which such vote would otherwise be required shall be effected, all outstanding shares of Series C Preferred Shares are subject to the Company Conversion Option upon proper notice and sufficient

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Common Stock (or if the Trust has elected to make the settlement in cash, sufficient funds) shall have been deposited in trust to effect such Company Conversion Option.

(e) In any matter in which the Series C Preferred Shares may vote (as expressly provided herein or as may be required by law), each share of Series C Preferred Shares shall be entitled to one vote per \$25.00 of liquidation preference (or two (2) votes per \$50.00 of liquidation preference).

(6) Conversion.

(a) Conversion Rights.

(1) Subject to and upon compliance with the provisions of this Section (d)(6), a holder of any share or shares of Series C Preferred Shares shall have the right, at its option, to convert all or any portion of such holder's outstanding Series C Preferred Shares (the Conversion Right), subject to the conditions described below, into the number of fully paid and non-assessable shares of Common Stock initially at a conversion rate of 1.8643 shares of Common Stock per \$50.00 liquidation preference (the Conversion Rate), which is equivalent to an initial Conversion Price of approximately \$26.82 per common share (subject to adjustment in accordance with the provisions of Section (d)(7) of this Article SIXTH); provided, however, that the Trust shall have the right to elect to deliver cash or a combination of cash and shares of Common Stock in lieu of shares of Common Stock in accordance with the provisions of this Section (d)(6) ~~of this Article SIXTH~~. Such holder shall surrender to the Trust such Series C Preferred Shares to be converted in accordance with the provisions in ~~paragraph~~ subparagraphs (b) and (c) of this Section (d)(6), as applicable.

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- (2) In connection with the conversion of any Series C Preferred Shares, no fractional shares of Common Stock will be issued, but the Trust shall pay a cash adjustment in respect of any fractional interest in an amount equal to the fractional interest multiplied by the Closing Sale Price on the Trading Day immediately prior to the Conversion Date or the Company Conversion Option Date. If more than one Series C Preferred Share will be surrendered for conversion by the same holder at the same time, the number of full shares of Common Stock issuable on conversion of those Series C Preferred Shares will be computed on the basis of the total number of Series C Preferred Shares so surrendered.
- (3) A holder of Series C Preferred Shares is not entitled to any rights of a holder of shares of Common Stock until that holder has converted its Series C Preferred Shares, and only to the extent the Series C Preferred Shares are deemed to have been converted to shares of Common Stock in accordance with the provisions of this Section (d)(6).
- (4) The Trust shall, prior to issuance of any Series C Preferred Shares hereunder, and from time to time as may be necessary, reserve and keep available, free from preemptive rights, out of its authorized but unissued Common Stock, for the purpose of effecting the conversion of the Series C Preferred Shares, such number of its

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duly authorized Common Stock as shall from time to time be sufficient to effect the conversion of all Series C Preferred Shares then outstanding into such Common Stock at any time (assuming that, at the time of the computation of such number of Common Stock, all such Series C Preferred Shares would be held by a single holder). The Trust covenants that all Common Stock which may be issued upon conversion of Series C Preferred Shares shall upon issue be fully paid and nonassessable and free from all liens and charges and, except as provided in Section (d)(6)(c) of this Article SIXTH, taxes with respect to the issue thereof. The Trust further covenants that, if at any time the Common Stock shall be listed on the New York Stock Exchange or any other national securities exchange or quoted on the Nasdaq National Market or Nasdaq SmallCap Market or any other automated quotation system, the Trust will, if permitted by the rules of such exchange or automated quotation system, list and keep listed or quoted, so long as the Common Stock shall be so listed or quoted on such exchange or automated quotation system, all Common Stock issuable upon conversion of the Series C Preferred Shares. Before the delivery of any securities that the Trust shall be obligated to deliver upon conversion of the Series C Preferred Shares, the Trust shall comply with all applicable federal and state laws and regulations that require action to be taken by the Trust.

(b) Company Conversion Option.

- (1) On or after November 16, 2009, the Trust shall have the option to cause all of the outstanding shares of Series C Preferred Shares to be automatically converted into that number of shares of Common Stock that are issuable at the Conversion Rate (as adjusted) (Company Conversion Option). The Trust may exercise the Company Conversion Option only if the Closing Sale Price equals or exceeds 125% of the Conversion Price of the Series C Preferred Shares for at least twenty (20) Trading Days in a period of thirty (30) consecutive Trading Days (including the last Trading Day of such period), ending on the Trading Day prior to the Trust's issuance of a press release announcing the Company Conversion Option in accordance with this Section (d).
- (2) To exercise the Company Conversion Option right set forth in this Section (d)(6)(b), the Trust must issue a press release for publication on the Dow Jones & Company, Inc. Business Wire or Bloomberg Business News (or, if such organizations are not in existence at the time of issuance of such press release, such other news or press organization as is reasonably calculated to broadly disseminate the relevant information to the public) prior to the opening of business on the first Trading Day following any date on which the conditions set forth in Section (d)(6)(b)(1) of this Article SIXTH shall have been satisfied, announcing such a Company Conversion Option. The Trust shall also give notice by mail or by publication (with subsequent prompt notice by mail) to the holders of the Series C Preferred Shares (Notice) (not more than four (4) Trading Days after the date of the press release) of the Company Conversion Option announcing the Trust's intention to exercise the Company Conversion Option. The Trust shall select a conversion date (the Company Conversion Option Date), which date shall be no more than five (5) days after the date on which the Trust issues such press release. In addition to any information required by applicable law or regulation, the press release and Notice of a Company Conversion Option shall state, as appropriate: (i) the Company

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Conversion Option Date; (ii) the number of shares of Common Stock to be issued upon conversion of each Series C Preferred Share; (iii) the number of Series C Preferred Shares to be converted; and (iv) that dividends on the Series C Preferred Shares to be converted will cease to accrue on the Company Conversion Option Date.

(3) In addition to the Company Conversion Option Right set forth in this Section (d)(6)(b), if there are fewer than 25,000 shares of Series C Preferred Shares outstanding, the Trust shall have the option, at any time on or after November 16, 2009, to cause all of the outstanding shares of the Series C Preferred Shares to be automatically converted into that number of shares of Common Stock equal to \$50.00 (the liquidation preference per share of Series C Preferred Shares) divided by the lesser of (i) the then prevailing Conversion Price and (ii) the Current Market Price for the five Trading Day period ending on the second Trading Day immediately prior to the Company Conversion Option Date. The provisions of Section (d)(6)(b) shall apply to the Company Conversion Option Right set forth in this ~~subparagraph~~Section (d)(6)(b)(3), provided, however, that (1) the Company Conversion Option Date shall not be less than 15 days nor more than 30 days after the date on which the Trust issues a press release announcing such Company Conversion Option and (2) the press release and notice of Company Conversion Option shall not state the number of shares of Common Stock to be issued upon conversion of each share of Series C Preferred Shares.

(4) Subject to the terms of Section (d)(6)(b)(8) of this Article SIXTH, upon exercise of the Company Conversion Option and surrender of the Series C Preferred Shares by a holder thereof, the Trust shall issue and shall deliver or cause to be issued and delivered to such holder, or to such other person on such holder's written order (a) certificates representing the number of validly issued, fully paid and non-assessable full shares of Common Stock to which a holder of the Series C Preferred Shares being converted, or a holder's transferee, will be entitled and (b) any fractional interest in respect of a share of Common Stock arising upon such conversion shall be settled as provided in Section (d)(6)(a)(2).

(5) Each conversion shall be deemed to have been made at the close of business on the Company Conversion Option Date so that the rights of the holder thereof as to the Series C Preferred Shares being converted will cease except for the right to receive the Conversion Value, and, if applicable, the person entitled to receive shares of Common Stock will be treated for all purposes as having become the record holder of those shares of Common Stock at that time.

(6) In lieu of the foregoing procedures, if the Series C Preferred Shares are held in global form, each holder of beneficial interest in Series C Preferred Shares must comply with the procedures of The Depository Trust Company (DTC) to convert such holder's beneficial interest in respect of the Series C Preferred Shares evidenced by a global share of the Series C Preferred Shares.

(7) In case any Series C Preferred Shares are to be converted pursuant to this Section (d)(6)(b), such holder's right to voluntarily convert its Series C

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Preferred Shares shall terminate at 5:00 p.m., New York City time, on the Trading Day immediately preceding the Company Conversion Option Date.

(8) Notwithstanding any other provision contained herein, in connection with the Trust's election to exercise the Company Conversion Option under this Section (d)(6)(b), the Trust shall have the right to elect to deliver to holders of shares of Series C Preferred Shares in lieu of shares of Common Stock, an equivalent amount of cash or a combination of cash and shares of Common Stock generally in accordance with Section (d)(6)(d) of this Article SIXTH without reference to those provisions applicable solely to a Conversion Right, including, without limitation, Sections (d)(6)(d)(4)(ii) and (d)(6)(d)(4)(iii), which are only applicable to a Conversion Right.

(c) Conversion Right Procedures.

(1) In order to exercise a Conversion Right, a holder of the Series C Preferred Shares may convert any or all of such shares by surrendering to the Trust at its principal office or at the office of the transfer agent of the Trust, as may be designated by the Board of Trustees, the certificate or certificates for the Series C Preferred Shares to be converted accompanied by a written notice stating that the holder of Series C Preferred Shares elects to convert all or a specified whole number of those shares in accordance with this Section (d)(6)(c) and specifying the name or names in which the holder wishes the certificate or certificates for the shares of Common Stock to be issued (Conversion Notice). In case the notice specifies that the shares of Common Stock are to be issued in a name or names other than that of the holder of Series C Preferred Shares, the notice shall be accompanied by payment of all transfer taxes payable upon the issuance of shares of Common Stock in that name or names. Other than those taxes, the Trust shall pay any documentary, stamp or similar issue or transfer taxes that may be payable in respect of any issuance or delivery of shares of Common Stock upon conversion of the Series C Preferred Shares.

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(2) As promptly as practicable after the surrender of the certificate or certificates for the Series C Preferred Shares as aforesaid, the receipt of the Conversion Notice and payment of all required transfer taxes, if any, or the demonstration to the Trust's satisfaction that those taxes have been paid, subject to the terms of Section (d)(6)(d) of this Article SIXTH, the Trust shall issue and shall deliver or cause to be issued and delivered to such holder, or to such other person on such holder's written order (a) certificates representing the number of validly issued, fully paid and non-assessable full shares of Common Stock to which the holder of the Series C Preferred Shares being converted, or the holder's transferee, will be entitled, (b) if less than the full number of Series C Preferred Shares evidenced by the surrendered certificate or certificates is being converted, a new certificate or certificates, of like tenor, for the number of shares of Series C Preferred Shares evidenced by the surrendered certificate or certificates, less the number of shares being converted and (c) any fractional interest in respect of a share of Common Stock arising upon such conversion shall be settled as provided in Section (d)(6)(a)(2) of this Article SIXTH.

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(3) Each conversion shall be deemed to have been made at the close of business on the date of giving the notice and of surrendering the certificate or certificates representing the shares of the Series C Preferred Shares to be converted (the Conversion Date) so that the rights of the holder thereof as to the Series C Preferred Shares being converted will cease except for the right to receive the Conversion Value, and, if applicable, the person entitled to receive shares of Common Stock will be treated for all purposes as having become the record holder of those shares of Common Stock at that time.

(4) In lieu of the foregoing procedures, if the Series C Preferred Shares are held in global form, each holder of beneficial interest in Series C Preferred Shares must comply with the procedures of The Depository Trust Company (DTC) to convert such holder's beneficial interest in respect of the Series C Preferred Shares evidenced by a global share of the Series C Preferred Shares.

(5) If a holder of Series C Preferred Shares has exercised its right to require the Trust to repurchase shares of Series C Preferred Shares in accordance with Section (d)(12) ~~hereof~~ [of this Article SIXTH](#), such holder's Conversion Rights with respect to the Series C Preferred Shares so subject to repurchase shall expire at 5:00PM, New York City time, on the Trading Day immediately preceding the repurchase date, unless the Trust defaults on the payment of the purchase price. If a holder of Series C Preferred Shares has submitted any such share for repurchase, such share may be converted only if such holder submits a notice of withdrawal or complies with applicable DTC procedures.

(d) Settlement Upon Conversion.

(1) Pursuant to the procedures set forth in this Section (d)(6)(d), upon a conversion, the Trust shall have the right to deliver the Conversion Value, in lieu of shares of Common Stock, in cash or a combination of cash and shares of Common Stock.

(2) The Trust can elect at any time to obligate itself to satisfy solely in cash the portion of the Conversion Value that is equal to 100% of the liquidation preference amount of shares of Series C Preferred Shares, with any remaining amount of the Conversion Value to be satisfied in cash, shares of Common Stock or a combination of cash and shares of Common Stock, at the Trust's election. If the Trust elects to do so, the Trust shall notify holders of the Series C Preferred Shares at any time that the Trust intends to settle in cash the portion of the Conversion Value that is equal to the liquidation preference amount of shares of Series C Preferred Shares (the Liquidation Preference Conversion Settlement Election). This notification, once provided to holders of Series C Preferred Shares, shall be irrevocable and shall apply to future conversions of shares of Series C Preferred Shares even if such shares cease to be convertible but subsequently become convertible again.

(3) Except to the extent the Trust makes a Liquidation Preference Conversion Settlement Election, the Trust shall not be required to notify

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holders of shares of Series C Preferred Shares of the method for settling the Trust's conversion obligation relating to the Conversion Value or, if the Trust shall have made a Liquidation Preference Conversion Settlement Election, the excess of the Trust's conversion obligation relating to the

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portion of the Conversion Value above the liquidation preference amount, if any, until the shares of Series C Preferred Shares are submitted for conversion.

(4) If the Trust receives a Conversion Notice from a holder of Series C Preferred Shares, the following procedures shall apply:

(i) Settlement of the Trust's conversion obligation that is equal to 100% of the liquidation preference amount of Series C Preferred Shares shall be according to the Liquidation Preference Conversion Settlement Election, if any, already made.

(ii) The Trust shall provide Notice to any holders of Series C Preferred Shares exercising a Conversion Right, at any time on the date that is three Trading Days following receipt of such holder's Conversion Notice (the Settlement Notice Period), if the Trust elects to settle its conversion obligation in any method other than the issuance solely of shares of Common Stock, and such notice shall set forth the method the Trust chooses to settle its conversion obligation or, if the Trust has made a Liquidation Preference Conversion Settlement Election, the method the Trust chooses to settle the excess of its conversion obligation. In addition, the Trust shall indicate whether settlement of any excess conversion obligation will be solely in shares of Common Stock, solely in cash or a combination of cash and shares of Common Stock. If the Trust elects to settle the conversion obligation in a combination of cash and shares of Common Stock, the Trust shall specify the percentage of the conversion obligation relating to the shares of Series C Preferred Shares surrendered for conversion that the Trust shall pay in cash. Any portion of the Trust's conversion obligation which the Trust has not decided to settle in cash shall be settled in shares of Common Stock (except that the Trust shall pay cash in lieu of issuing any fractional shares). The Trust shall treat all holders of Series C Preferred Shares converting on the same Trading Day in the same manner. The Trust shall not, however, have any obligation to settle its conversion obligation, except to the extent the Trust has made a Liquidation Preference Conversion Settlement Election, arising on different Trading Days in the same manner.

No Notice shall be required if the Trust is settling its conversion obligation solely in Common Stock (other than cash in lieu of issuing fractional shares).

(iii) If the Trust timely elects to pay cash for any portion of the conversion obligation, the holder of Series C Preferred Shares may retract its Conversion Notice at any time during the two Trading Day period beginning on the Trading Day after the final day of the Settlement Notice Period (the Conversion Retraction Period); no such retraction can be made (and a

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Conversion Notice shall be irrevocable) if the Trust does not elect to deliver cash in lieu of shares of Common Stock (other than cash in lieu of fractional shares) or if the Trust has previously made a Liquidation Preference Conversion Settlement Election.

(iv) Settlement that is solely in shares of Common Stock of the Trust's conversion obligation shall occur as soon as practicable, but in any event not more than three Trading Days after the Conversion Date.

(v) Settlement of any portion of the Trust's conversion obligation, including the portion of the Conversion Value that is equal to 100% of the liquidation preference amount or the excess conversion obligation, in cash or in a combination of cash and shares of Common Stock shall occur on the third Trading Day following the final day of the 20-Trading Day period beginning on the Trading Day following the final Trading Day of the Conversion Retraction Period (the Cash Settlement Averaging Period).

(5) Settlement amounts shall be computed as follows:

(i) If the Trust elects to satisfy the entire conversion obligation, including the Conversion Value that is equal to 100% of the liquidation preference amount and the excess conversion obligation, solely in shares of Common Stock (other than with respect to fractional shares), the Trust shall deliver to the holder of Series C Preferred Shares, for each Series C Preferred Share, a number of shares of Common Stock equal to the applicable Conversion Rate (as adjusted).

(ii) If the Trust elects to satisfy the entire conversion obligation, including the Conversion Value that is equal to 100% of the liquidation preference amount and the excess conversion obligation, solely in cash, the Trust shall deliver to the holder of Series C Preferred Shares, for each Series C Preferred Share, cash in an amount equal to the Conversion Value.

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(iii) If the Trust elects to satisfy the conversion obligation, including the Conversion Value that is equal to 100% of the liquidation preference amount and the excess conversion obligation, in a combination of cash and shares of Common Stock, the Trust shall deliver to the holder of Series C Preferred Shares, for Series C Preferred Share:

(A) a cash amount (the Cash Amount) (excluding any cash paid for fractional shares) equal to the sum of: (I) the product of \$50.00 multiplied by the percentage of the liquidation preference amount to be satisfied in cash, plus (II) if greater than zero, the product of (i) the amount of cash that would be paid pursuant to Section (d)(6)(d)(5)(ii) above minus \$50.00 and (ii) the percentage of the excess conversion obligation above the liquidation preference amount to be satisfied in cash; and

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(B) a number of shares of Common Stock equal to the difference between: (1) the number of shares that would be issued pursuant to Section (d)(6)(d)(5)(i) above, minus (II) the number of shares equal to the quotient of (i) the cash amount pursuant to Section (d)(6)(d)(5)(iii)(A) above divided by (ii) the arithmetic average of the Closing Sale Prices of shares of Common Stock during the Cash Settlement Averaging Period.

(6) If any Trading Day during a Cash Settlement Averaging Period is not an Undisrupted Trading Day, then determination of the Closing Sales Price for that day shall be delayed until the next Undisrupted Trading Day on which a pricing is not otherwise observed (that is, such day shall not count as one of the 20 Trading Days that constitute the Cash Settlement Averaging Period). If this would result in a price being observed later than the eighth Trading Day after the last of the original 20 Trading Days in the Cash Settlement Averaging Period, then the Board of Trustees shall determine all prices for all delayed and undetermined prices on that eighth Trading Day based on its good faith estimate of the Common Stock's value on that date.

(e) Payment of Dividends.

(1) Optional Conversion

(i) If a holder of Series C Preferred Shares exercises a Conversion Right, upon delivery of the Series C Preferred Shares for conversion, those Series C Preferred Shares shall cease to cumulate dividends as of the end of the day immediately preceding the Conversion Date and the holder will not receive any cash payment representing accrued and unpaid dividends of the Series C Preferred Shares, except in those limited circumstances discussed in this Section (d)(6)(e). Except as provided herein, the Trust shall make no payment for accrued and unpaid dividends, whether or not in arrears, on Series C Preferred Shares converted at a holder's election pursuant to a Conversion Right, or for dividends on shares of Common Stock issued upon such conversion.

(ii) If the Trust receives a Conversion Notice before the close of business on a Dividend Record Date, the holder shall not be entitled to receive any portion of the dividend payable on such converted Series C Preferred Shares on the corresponding Dividend Payment Date.

(iii) If the Trust receives a Conversion Notice after the Dividend Record Date but prior to the corresponding Dividend Payment Date, the holder on the Dividend Record Date shall receive on that Dividend Payment Date accrued dividends on those Series C Preferred Shares, notwithstanding the conversion of those Series C Preferred Shares prior to that Dividend Payment Date, because that holder shall have been the holder of record on the corresponding Dividend Record Date. However, at the time that such holder surrenders the Series C Preferred Shares for conversion, the holder shall pay to the

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Trust an amount equal to the dividend that has accrued and that will be paid on the related Dividend Payment Date.

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(iv) A holder of Series C Preferred Shares on a Dividend Record Date who exercises its Conversion Right and converts such Series C Preferred Shares into Common Stock on or after the corresponding Dividend Payment Date shall be entitled to receive the dividend payable on such Series C Preferred Shares on such Dividend Payment Date, and the converting holder need not include payment of the amount of such dividend upon surrender for conversion of Series C Preferred Shares.

(v) If the Trust receives a Conversion Notice on or before the close of business on a Dividend Record Date or follow such Dividend Record Date but before the Dividend Payment Date therefore, and the settlement date for any shares of Common Stock to be issued upon such conversion is after the close of business on the record date for the payment of dividends for the corresponding period on such Common Stock, such holder shall be entitled to receive such Common Stock dividends upon the next payment date of dividends on the Common Stock as if it were the holder of such Common Stock on such record date.

(2) Company Conversion Option

(i) If the Trust exercises the Company Conversion Option, whether the Company Conversion Option Date is prior to, on or after the Dividend Record Date for the current period, all unpaid dividend which are in arrears as of the Company Conversion Option Date shall be payable to the holder of the converted shares.

(ii) If the Trust exercises the Company Conversion Option and the Company Conversion Option Date is a date that is prior to the close of business on any Dividend Record Date, the holder shall not be entitled to receive any portion of the dividend payable for such period on such converted shares on the corresponding Dividend Payment Date.

(iii) If the Trust exercises the Company Conversion Option and the Company Conversion Option Date is a date that is on, or after the close of business on, any Dividend Record Date and prior to the close of business on the corresponding Dividend Payment Date, all dividends, including accrued and unpaid dividends, whether or not in arrears, with respect to the Series C Preferred Shares called for conversion on such date, shall be payable on such Dividend Payment Date to the record holder of such shares on such record date.

(7) Adjustment of Conversion Rate.

(a) In case the Trust shall, at any time or from time to time after the Original Issue Date while any of the Series C Preferred Shares are outstanding, issue Common Stock as a dividend or distributions to all or substantially all holders of

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Common Stock, then the Conversion Rate in effect immediately prior to the close of business on the Record Date fixed for the determination of shareholders entitled to receive such dividend or other distribution shall be increased by multiplying such Conversion Rate by a fraction:

(1) the numerator of which shall be the sum of the total number of shares of Common Stock and OP Units outstanding at the close of business on such Record Date and the total number of shares of Common Stock constituting such dividend or other distribution; and

(2) the denominator of which shall be the number of shares of Common Stock and OP Units outstanding at the close of business on such Record Date.

Such increase shall become effective immediately prior to the opening of business on the day following the Record Date fixed for such determination. If any dividend or distribution of the type described in this Section (d)(7)(a) is declared but not so paid or made, the Conversion Rate shall again be adjusted to the Conversion Rate which would then be in effect if such dividend or distribution had not been declared.

(b) In case the Trust shall, at any time or from time to time after the Original Issue Date while any of the Series C Preferred Shares are outstanding, subdivide, reclassify or split its outstanding shares of Common Stock into a greater number of shares of Common Stock, the Conversion Rate in effect immediately prior to the opening of business on the day following the day upon which such subdivision, reclassification or split becomes effective shall be proportionately increased, and, conversely, in case the Trust shall, at any time or from time to time after the Original Issue Date while any of the Series C Preferred Shares are outstanding, combine or reclassify its outstanding shares of Common Stock into a smaller number of shares of Common Stock, the Conversion Rate in effect immediately prior to the opening of business on the day following the day upon which such combination or reclassification becomes effective shall be proportionately reduced, such increase or reduction, as the case may be, to become effective immediately prior to the opening of business on the day following the day upon which such

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subdivision, reclassification, split or combination becomes effective, so that the holder of any Series C Preferred Share thereafter surrendered for conversion shall be entitled to receive that number of shares of Common Stock which it would have received had such Series C Preferred Share been converted immediately prior to the happening of such event adjusted as a result of such event.

(c) In case the Trust shall, at any time or from time to time after the Original Issue Date while any of the Series C Preferred Shares are outstanding, issue rights or warrants for a period expiring within 60 days to all or substantially all holders of its outstanding Common Stock entitling them to subscribe for or purchase Common Stock (or securities convertible into or exchangeable or exercisable for Common Stock), at a price per share of Common Stock (or having a conversion, exchange or exercise price per share of Common Stock) less than the Closing Sale Price of the Common Stock on the Trading Day immediately preceding the date of the announcement by public notice of such issuance or distribution (treating the conversion, exchange or exercise price per

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share of Common Stock of the securities convertible, exchangeable or exercisable into Common Stock as equal to (x) the sum of (i) the price for a unit of the security convertible into or exchangeable or exercisable for Common Stock and (ii) any additional consideration initially payable upon the conversion of or exchange or exercise for such security into Common Stock divided by (y) the number of shares of Common Stock initially underlying such convertible, exchangeable or exercisable security), then the Conversion Rate shall be increased by multiplying the Conversion Rate in effect at the opening of business on the date after such date of announcement by a fraction:

(1) the numerator of which shall be the number of shares of Common Stock and OP Units outstanding at the close of business on the date of announcement, plus the total number of additional shares of Common Stock so offered for subscription or purchase (or into which the convertible, exchangeable or exercisable securities so offered are convertible, exchangeable or exercisable); and

(2) the denominator of which shall be the number of shares of Common Stock and OP Units outstanding on the close of business on the date of announcement, plus the number of shares of Common Stock (or convertible, exchangeable or exercisable securities) which the aggregate offering price of the total number of shares of Common Stock (or convertible, exchangeable or exercisable securities) so offered for subscription or purchase (or the aggregate conversion, exchange or exercise price of the convertible, exchangeable or exercisable securities so offered) would purchase at such Closing Sale Price of the Common Stock.

Such increase shall become effective immediately prior to the opening of business on the day following the Record Date for such determination. To the extent that shares of Common Stock (or securities convertible, exchangeable or exercisable into shares of Common Stock) are not delivered pursuant to such rights or warrants, upon the expiration or termination of such rights or warrants, the Conversion Rate shall be readjusted to the Conversion Rate which would then be in effect had the adjustments made upon the issuance of such rights or warrants been made on the basis of the delivery of only the number of shares of Common Stock (or securities convertible, exchangeable or exercisable into shares of Common Stock) actually delivered. In the event that such rights or warrants are not so issued, the Conversion Rate shall again be adjusted to be the Conversion Rate which would then be in effect if the Record Date fixed for the determination of stockholders entitled to receive such rights or warrants had not been fixed. In determining whether any rights or warrants entitle the holders to subscribe for or purchase shares of Common Stock at less than such Closing Sale Price, and in determining the aggregate offering price of such shares of Common Stock, there shall be taken into account any consideration received for such rights or warrants, the value of such consideration if other than cash, to be determined by the Board of Trustees.

(d) (A) In case the Trust shall, at any time or from time to time after the Original Issue Date while any of the Series C Preferred Shares are outstanding, by dividend or otherwise, distribute to all or substantially all holders of its outstanding shares of Common Stock (including any such distribution made in connection with a consolidation or merger in which the Trust is the continuing corporation and the shares of

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Common Stock are not changed or exchanged), shares of its capital stock, evidences of its indebtedness or other assets, including securities, (including capital stock of any subsidiary of the Trust) but excluding (i) dividends or distributions of Common Stock referred to in Section (d)(7)(a) of this Article SIXTH, (ii) any rights or warrants referred to in Section (d)(7)(c), (iii) dividends and distributions paid exclusively in cash referred to in Section (d)(7)(e) and (iv) dividends and distributions of stock, securities or other property or assets (including cash) in connection with the reclassification, change, merger, consolidation, combination, sale or conveyance to which Section (d)(8) applies, (such capital stock, evidence of its indebtedness, other assets or securities being distributed hereinafter in this Section (d)(7)(d) called the Distributed Assets), then, in each such case, subject to ~~paragraphs~~ subparagraphs (D) and (E) of this Section (d)(7)(d), the Conversion Rate shall be increased by multiplying the Conversion Rate in effect immediately prior to the close of business on the Record Date with respect to such distribution by a fraction:

(1) the numerator of which shall be the Current Market Price; and

(2) the denominator of which shall be such Current Market Price, less the Fair Market Value on such date of the portion of the Distributed Assets so distributed applicable to one share of Common Stock (determined on the basis of the number of shares of Common Stock outstanding on such Record Date) on such date.

Such increase shall become effective immediately prior to the opening of business on the day following the Record Date for such distribution. In the event that such dividend or distribution is not so paid or made, the Conversion Rate shall again be adjusted to be the Conversion Rate which would then be in effect if such dividend or distribution had not been declared.

(B) If the Board of Trustees determines the Fair Market Value of any distribution for purposes of this Section (d)(7)(d) by reference to the actual or when issued trading market for any Distributed Assets comprising all or part of such distribution, it must in doing so consider the prices in such market over the same period (the Reference Period) used in computing the Current Market Price pursuant to this Section (d)(7)(d) to the extent possible, unless the Board of Trustees determines in good faith that determining the Fair Market Value during the Reference Period would not be in the best interest of the holders of the Series C Preferred Shares.

(C) In the event any such distribution consists of shares of capital stock of, or similar equity interests in, one or more of the Trust's subsidiaries (a Spin Off), the Fair Market Value of the securities to be distributed shall equal the average of the Closing Sale Prices of such securities for the five consecutive Trading Days commencing on and including the sixth Trading Day of those securities after the effectiveness of the Spin Off, and the Current Market Price shall be measured for the same period. In the event, however, that an underwritten initial public offering of the securities in the Spin Off occurs simultaneously with the Spin Off Fair Market Value of the securities distributed in the Spin Off shall mean the initial public offering price of

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such securities and the Current Market Price shall mean the Closing Sale Price for the Common Stock on the same Trading Day.

(D) Rights or warrants distributed by the Trust to all holders of the outstanding shares of Common Stock entitling them to subscribe for or purchase equity securities of the Trust (either initially or under certain circumstances), which rights or warrants, until the occurrence of a specified event or events (Trigger Event), (x) are deemed to be transferred with such shares of Common Stock, (y) are not exercisable and (z) are also issued in respect of future issuances of shares of Common Stock shall be deemed not to have been distributed for purposes of this Section (d)(7)(d) (and no adjustment to the Conversion Rate under this Section (d)(7)(d) shall be required) until the occurrence of the earliest Trigger Event. If such right or warrant is subject to subsequent events, upon the occurrence of which such right or warrant shall become exercisable to purchase different Distributed Assets, or entitle the holder to purchase a different number or amount of the foregoing Distributed Assets or to purchase any of the foregoing Distributed Assets at a different purchase price, then the occurrence of each such event shall be deemed to be the date of issuance and Record Date with respect to a new right or warrant (and a termination or expiration of the existing right or warrant without exercise by the holder thereof). In addition, in the event of any distribution (or deemed distribution) of rights or warrants, or any Trigger Event or other event (of the type described in the preceding sentence) with respect thereto, that resulted in an adjustment to the Conversion Rate under this Section (d)(7)(d):

(1) in the case of any such rights or warrants which shall all have been repurchased without exercise by any holders thereof, the Conversion Rate shall be readjusted upon such final repurchase to give effect to such distribution or Trigger Event, as the case may be, as though it were a cash distribution, equal to the per share repurchase price received by a holder of shares Common Stock with respect to such rights or

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warrants (assuming such holder had retained such rights or warrants), made to all holders of Common Stock as of the date of such repurchase; and

(2) in the case of such rights or warrants which shall have expired or been terminated without exercise, the Conversion Rate shall be readjusted as if such rights and warrants had never been issued.

(E) For purposes of this Section (d)(7)(d) and Section (d)(7)(a), Section (d)(7)(b) and Section (d)(7)(c), any dividend or distribution to which this Section (d)(7)(d) is applicable that also includes (x) shares of Common Stock, (y) a subdivision, split or combination of shares of Common Stock to which Section (d)(7)(b) applies or (z) rights or warrants to subscribe for or purchase shares of Common Stock to which Section (d)(7)(c) applies (or any combination thereof), shall be deemed instead to be:

(1) a dividend or distribution of the evidences of indebtedness, assets, shares of capital stock, rights or warrants, other than such shares of Common Stock, such subdivision, split or combination or such rights or warrants to which Section (d)(7)(a), Section (d)(7)(b) and Section (d)(7)(c) apply, respectively (and any Conversion

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Rate adjustment required by this Section (d)(7)(d) with respect to such dividend or distribution. shall then be made), immediately followed by

(2) a dividend or distribution of such shares of Common Stock, such subdivision, split or combination or such rights or warrants (and any further Conversion Rate increase required by Section (d)(7)(a), Section (d)(7)(b) and Section (d)(7)(c) with respect to such dividend or distribution shall then be made), except:

(i) the Record Date of such dividend or distribution shall be substituted as (i) the date fixed for the determination of stockholders entitled to receive such dividend or other distribution, Record Date fixed for such determinations and Record Date within the meaning of Section (d)(7)(a), (ii) the day upon which such subdivision or split becomes effective or the day upon which such combination becomes effective (as applicable) within the meaning of Section (d)(7)(b), and (iii) as the Record Date fixed for the determination of the stockholders entitled to receive such rights or warrants and such Record Date within the meaning of Section (d)(7)(c); and

(ii) any reduction or increase in the number of shares of Common Stock resulting from such subdivision, split or combination (as applicable) shall be disregarded in connection with such dividend or distribution.

(e) In case the Trust shall, at any time or from time to time after the Original Issue Date while any of the Series C Preferred Shares are outstanding, by dividend or otherwise, distribute to all or substantially all holders of its outstanding shares of Common Stock during any quarterly fiscal period, cash (including any quarterly cash dividends, but excluding any cash that is distributed upon a reclassification, change, merger, consolidation, statutory share exchange, combination, sale or conveyance to which Section (d)(8) [of this Article SIXTH](#) applies or as part of a distribution referred to in Section (d)(7)(d) in excess of the Dividend Threshold Amounts , then, and in each case, immediately after the close of business on such date, the Conversion Rate shall be adjusted based on the following formula:

$$(1) \quad CR1 = CRo \times (SP / (SP - DI)) \text{ where,}$$

(i) CRo = the Conversion Rate in effect immediately prior to the Record Date for such distribution;

(ii) $CR1$ = the Conversion Rate in effect immediately after the Record Date for such distribution;

(iii) SP = the average of the Closing Sale price per share of Common Stock over the ten (10) consecutive Trading Day period prior to the Trading Day immediately preceding the earlier of the Record Date or the ex-dividend date of such cash excess dividend or cash excess distribution; and

(iv) DI = the amount in cash per share the Trust distributes to holders of shares of Common Stock that exceeds the Dividend

Threshold Amounts (with such Dividend Threshold Amounts appropriately adjusted from time to time as provided in this Section (d)(7)).

Such increase shall become effective immediately prior to the opening of business on the day following the Record Date for such distribution. In the event that such distribution is not so made, the Conversion Rate shall again be adjusted to be the Conversion Rate which would then be in effect if such distribution had not been declared.

(f) In case the Trust or any of its subsidiaries purchase shares of Common Stock pursuant to a tender offer or exchange offer that involves an aggregate consideration that exceeds 10% of the aggregate market value of the Common Stock on the expiration of such tender offer or exchange offer (the Expiration Time), the Conversion Rate shall be increased so that the same shall equal the rate determined by multiplying the Conversion Rate in effect immediately prior to the close of business on the date of the Expiration Time by a fraction:

(1) the numerator of which shall be the sum of (x) the product of (i) the number of shares of Common Stock and OP Units outstanding (excluding any tendered or exchanged shares) at the Expiration Time and (ii) the Current Market Price of the Common Stock at the Expiration Time, and (y) the Fair Market Value of the aggregate consideration payable to stockholders based on acceptance (up to any maximum specified in the terms of the tender offer or exchange offer) of all shares validly tendered and not withdrawn as of the Expiration Time; and

(2) the denominator of which shall be the product of the number of shares of Common Stock and OP Units outstanding (including any tendered or exchanged shares) at the Expiration Time and the Current Market Price of the Common Stock at the Expiration Time.

Such increase (if any) shall become effective immediately prior to the opening of business on the day following the Expiration Time. In the event that the Trust is obligated to purchase shares pursuant to any such tender offer or exchange offer, but the Trust does not effect any such purchases or all or a portion of such purchases are rescinded, the Conversion Rate shall again be adjusted to be the Conversion Rate which would then be in effect if such (or such portion of the) tender offer or exchange offer had not been made. If the application of this Section (d)(7)(f) to any tender offer or exchange offer would result in a decrease in the Conversion Rate, no adjustment shall be made for such tender offer or exchange offer under this Section (d)(7)(f).

(g) For purposes of Section (d)(7) of this Article SIXTH, the following terms shall have the meanings indicated:

Current Market Price on any date means the average of the daily Closing Sale Prices per share of Common Stock for the ten consecutive Trading Days immediately prior to such date; provided, however, that if:

(1) the ex date (as hereinafter defined) for any event (other than the issuance or distribution requiring such computation of Current Market Price) that

requires an adjustment to the Conversion Rate pursuant to Section (d)(7)(a), Section (d)(7)(b), Section (d)(7)(c), Section (d)(7)(d), Section (d)(7)(e) or Section (d)(7)(f) occurs during such ten consecutive Trading Days, the Closing Sale Price for each Trading Day prior to the ex date for such other event shall be adjusted by multiplying such Closing Sale Price by the same fraction by which the Conversion Rate is so required to be adjusted as a result of such other event;

(2) the ex date for any event (other than the issuance or distribution requiring such computation of Current Market Price) that requires an adjustment to the Conversion Rate pursuant to Section (d)(7)(a), Section (d)(7)(b), Section (d)(7)(c), Section (d)(7)(d), Section (d)(7)(e) or Section (d)(7)(f) occurs on or after the ex date for the issuance or distribution requiring such computation and prior to the day in question, the Closing Sale Price for each Trading Day on and after the ex date for such other event shall be adjusted by multiplying such Closing Sale Price by the reciprocal of the fraction by which the Conversion Rate is so required to be adjusted as a result of such other event; and

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(3) the ex date for the issuance or distribution requiring such computation is prior to the day in question, after taking into account any adjustment required pursuant to clause (i) or (ii) of this proviso, the Closing Sale Price for each Trading Day on or after such ex date shall be adjusted by adding thereto the amount of any cash and the Fair Market Value (as determined by the Board of Trustees in a manner consistent with any determination of such value for purposes of Section (d)(7)(d), Section (d)(7)(e) or Section (d)(7)(f) of the evidences of indebtedness, shares of capital stock or assets being distributed applicable to one share of Common Stock as of the close of business on the day before such ex date.

For purposes of any computation under Section (d)(7), if the ex date for any event (other than the tender offer requiring such computation) that requires an adjustment to the Conversion Rate pursuant to Section (d)(7)(a), Section (d)(7)(b), Section (d)(7)(c), Section (d)(7)(d), Section (d)(7)(e) or Section (d)(7)(f) occurs on or after the Expiration Time for the tender or exchange offer requiring such computation and prior to the day in question, the Closing Sale Price for each Trading Day on and after the ex date for such other event shall be adjusted by multiplying such Closing Sale Price by the reciprocal of the fraction by which the Conversion Rate is so required to be adjusted as a result of such other event. For purposes of this paragraph, the term ex date, when used:

(i) with respect to any issuance or distribution, means the first date on which the Common Stock trade regular way on the relevant exchange or in the relevant market from which the Closing Sale Price was obtained without the right to receive such issuance or distribution;

(ii) with respect to any subdivision, split or combination of Common Stock, means the first date on which the Common Stock trade regular way on such exchange or in such market after the time at which such subdivision, split or combination becomes effective; and

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(iii) with respect to any tender offer or exchange offer, means the first date on which the Common Stock trade regular way on such exchange or in such market after the Expiration Time of such offer.

Notwithstanding the foregoing, whenever successive adjustments to the Conversion Rate are called for pursuant to this Section (d)(7), such adjustments shall be made to the Current Market Price as may be necessary or appropriate to effectuate the intent of this Section (d)(7) and to avoid unjust or inequitable results as determined in good faith by the Board of Trustees.

Fair Market Value means the amount which a willing buyer would pay a willing seller in an arm's length transaction (as determined by the Board of Trustees, whose determination shall be made in good faith and, absent manifest error, shall be final and binding on holders of the Series C Preferred Shares).

Record Date means, with respect to any dividend, distribution or other transaction or event in which the holders of Common Stock have the right to receive any cash, securities or other property or in which the Common Stock (or other applicable security) is exchanged for or converted into any combination of cash, securities or other property, the date fixed for determination of stockholders entitled to receive such cash, securities or other property (whether such date is fixed by the Board of Trustees or by statute, contract or otherwise).

(h) The Trust shall be entitled to make such additional increases in the Conversion Rate, in addition to those required by Section (d)(7)(a), Section (d)(7)(b), Section (d)(7)(c), Section (d)(7)(d), Section (d)(7)(e) or Section (d)(7)(f), if the Board of Trustees determines that it is advisable, in order that any dividend or distribution of Common Stock, any subdivision, reclassification or combination of Common Stock or any issuance of rights or warrants referred to above, or any event treated as such for United States federal income tax purposes, shall not be taxable to the holders of Common Stock for United States federal income tax purposes or to diminish any such tax.

(i) To the extent permitted by law, the Trust may, from time to time, increase the Conversion Rate for a period of at least twenty (20) Trading Days if the Board of Trustees determines that such an increase would be in the Trust's best interests. Any such determination by Board of Trustees shall be conclusive. The Trust shall give holders of Series C Preferred Shares at least fifteen (15) Trading Days notice of any increase in the Conversion Rate.

(j) The Trust will not adjust the Conversion Rate pursuant to this Section (d)(7) to the extent that the adjustments would reduce the Conversion Price below \$0.0001. The Trust shall not be required to make an adjustment in the Conversion Rate unless the adjustment would require a change of at least one percent in the Conversion Rate. However, any adjustments that are not required to be made because they would

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have required an increase or decrease of less than one percent shall be carried forward and taken into account in any subsequent adjustment of the Conversion Rate. Except as described in this Section (d)(7), the Trust shall not adjust the Conversion Rate for any

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issuance of our shares of Common Stock or any securities convertible into or exchangeable or exercisable for its shares of Common Stock or rights to purchase its shares of Common Stock or such convertible, exchangeable or exercisable securities.

(k) In the event that at any time, as a result of an adjustment made pursuant to this Section (d)(7), the holder of any Series C Preferred Shares thereafter surrendered for conversion shall become entitled to receive any shares of capital stock of the Trust other than Common Stock into which the Series C Preferred Shares originally were convertible, the Conversion Rate of such other shares so receivable upon conversion of any such Series C Preferred Share shall be subject to adjustment from time to time in a manner and on terms as nearly equivalent as practicable to the provisions with respect to Common Stock contained in subparagraphs (a) through (m) of this Section (d)(7), and any other applicable provisions of Section (d) this Article SIXTH with respect to the Common Stock shall apply on like or similar terms to any such other shares.

(l) To the extent the Trust has a rights plan in effect upon conversion of the Series C Preferred Shares into shares of Common Stock, the holder will receive (except to the extent the Trust settles its conversion obligations in cash), in addition to the shares of Common Stock, the rights under the rights plan unless the rights have separated from the shares of Common Stock prior to the time of conversion, in which case the Conversion Rate will be adjusted at the time of separation as if the Trust made a distribution referred to in Section (d)(7)(d) above (without regard to any of the exceptions there).

(8) Consolidation or Merger of the Trust. If any of the following events occurs, namely:

(a) any reclassification or change of the outstanding shares of Common Stock (other than a change in par value, or from par value to no par value, or from no par value to par value, or as a result of a subdivision or combination);

(b) any merger, consolidation, statutory share exchange or combination of the Trust with another Person as a result of which holders of Common Stock shall be entitled to receive stock, securities or other property or assets (including cash) with respect to or in exchange for such Common Stock; or

(c) any sale or conveyance of all or substantially all of the properties and assets of the Trust to any other person as a result of which holders of Common Stock shall be entitled to receive stock, securities or other property or assets (including cash) with respect to or in exchange for such Common Stock;

the Trust or the successor or purchasing person, as the case may be, shall execute Articles Supplementary, a Certificate of Designation and such other necessary documentation providing that such Series C Preferred Shares shall be convertible into the kind and amount of shares of stock and other securities or property or assets (including cash) which such holder of Series C Preferred Shares would have been entitled to receive upon such reclassification, change, merger, consolidation, statutory share exchange, combination,

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sale or conveyance had such Series C Preferred Shares been converted into Common Stock immediately prior to such reclassification, change, merger, consolidation, statutory share exchange, combination, sale or conveyance assuming such holder of Common Stock did not exercise its rights of election, if any, as to the kind or amount of securities, cash or other property receivable upon such merger, consolidation, statutory share exchange, sale or conveyance (provided, that if the kind or amount of securities, cash or other property receivable upon such merger, consolidation, statutory share exchange, sale or conveyance is not the same for each share of Common Stock in respect of which such rights of election shall not have been exercised (Non Electing Share), then for the purposes of this Section (d)(8), the kind and amount of securities, cash

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or other property receivable upon such merger, consolidation, statutory share exchange, sale or conveyance for each Non Electing Share shall be deemed to be the kind and amount so receivable per share by a plurality of the Non Electing Shares). Such Articles Supplementary, a Certificate of Designation or other necessary documentation shall provide for adjustments which shall be as nearly equivalent as may be practicable to the adjustments provided for in Section (d) of this Article SIXTH and, to the extent applicable, reflect the other types of adjustments provided for in Section (d)(7). If, in the case of any such reclassification, change, merger, consolidation, statutory share exchange, combination, sale or conveyance, the stock or other securities and assets receivable thereupon by a holder of Common Stock includes shares of stock or other securities and assets of a Person other than the successor or purchasing person, as the case may be, in such reclassification, change, merger, consolidation, statutory share exchange, combination, sale or conveyance, then such Articles Supplementary, Certificate of Designation or other necessary documentation shall also be executed by such other person and shall contain such additional provisions to protect the interests of the holders of the Series C Preferred Shares as the Board of Trustees shall reasonably consider necessary by reason of the foregoing. The Trust shall cause Notice of the execution of such Articles Supplementary, Certificate of Designation or other necessary documentation to be mailed to each holder, at the address of such holder as it appears on the register of the Series C Preferred Shares maintained by the transfer agent, within 20 days after execution thereof. Failure to deliver such notice shall not affect the legality or validity of such Articles Supplementary, Certificate of Designation or other necessary documentation. The above provisions of this Section (d)(8) shall similarly apply to successive reclassifications, mergers, consolidations, statutory share exchanges, combinations, sales and conveyances. If this Section (d)(8) applies to any event or occurrence, Section (d)(7) shall not apply.

- (9) Notice of Adjustment. Whenever an adjustment in the Conversion Rate with respect to the Series C Preferred Shares is required:
- (a) the Trust shall forthwith place on file with the transfer agent for the Series C Preferred Shares a certificate of the Chief Financial Officer (or such person having similar responsibilities of the Trust, stating the adjusted Conversion Rate determined as provided herein and setting forth in reasonable detail such facts as shall be necessary to show the reason for and the manner of computing such adjustment; and
- (b) a Notice stating that the Conversion Rate has been adjusted and setting forth the adjusted Conversion Rate shall forthwith be given by the Trust to each

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holder of Series C Preferred Shares. Any Notice so given shall be conclusively presumed to have been duly given, whether or not the holder receives such Notice.

- (10) Notice in Certain Events. In case of:
- (a) a consolidation or merger to which the Trust is a party and for which approval of any holders of Common Stock of the Trust is required, or of the sale or conveyance to another person or entity or group of persons or entities acting in concert as a partnership, limited partnership, syndicate or other group (within the meaning of Rule 13d-3 under the Exchange Act of 1934, as amended) of all or substantially all of the property and assets of the Trust; or
- (b) the voluntary or involuntary dissolution, liquidation or winding up of the Trust; or
- (c) any action triggering an adjustment of the Conversion Rate referred to in clauses (x) or (y) below;

then, in each case, the Trust shall cause to be given, to the holders of the Series C Preferred Shares, at least 15 days prior to the applicable date hereinafter specified, a Notice stating:

- (x) the date on which a record is to be taken for the purpose of any distribution or grant of rights or warrants triggering an adjustment to the Conversion Rate pursuant to Section (d)(7) of this Article SIXTH, or, if a record is not to be taken, the date as of which the holders of record of Common Stock entitled to such distribution, rights or warrants are to be determined; or
- (y) the date on which any reclassification, consolidation, merger, sale, conveyance, dissolution, liquidation or winding up triggering an adjustment to the Conversion Rate pursuant to this Section (d)(7) of this Article SIXTH is expected to become effective, and the date as of which it is expected that holders of Common Stock of record shall be entitled to exchange their shares of Common Stock for securities or other property deliverable upon such reclassification, consolidation, merger, sale, conveyance, dissolution, liquidation or winding up.

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Failure to give such Notice or any defect therein shall not affect the legality or validity of the proceedings described in Section (d)(10)(a), Section (d)(10)(b) or Section (d)(10)(c).

(11) Adjustment to Conversion Rate Upon Certain Fundamental Changes.

(a) If and only to the extent a holder of Series C Preferred Shares elects to convert its Series C Preferred Shares in connection with a transaction described in clause (1) of the definition of Fundamental Change (or in connection with a transaction that would have been a fundamental change under such clause (1) but for the application of the 105% Trading Price Exception) that occurs on or prior to November 15, 2014 pursuant to which 10% or more of the consideration for shares of Common Stock (other

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than cash payments for fractional shares and cash payments made in respect of dissenters' appraisal rights) in such Fundamental Change transaction consists of cash (or other property) or securities that are not traded or scheduled to be traded immediately following such transaction on a United States national or regional securities exchange or the Nasdaq National Market, the Trust shall increase the Conversion Rate for the Series C Preferred Share surrendered for conversion by a number of additional shares (the "Additional Shares") as set forth in this Section (d)(11); provided, however, in lieu of the foregoing, the Trust shall have the option to elect to adjust the Conversion Rate so that the shares of Series C Preferred Shares become convertible into shares of Public Acquirer Common Stock in accordance with the provisions of Section (d)(11)(e).

(b) The number of Additional Shares shall be determined by reference to the table below, based on the date on which such Fundamental Change transaction becomes effective (the "Effective Date") and the price paid per share for shares of Common Stock in such Fundamental Change transaction (the "Share Price"). If holders of shares of Common Stock receive only cash in such Fundamental Change transaction, the Share Price shall be the cash amount paid per share. If holders of shares of Common Stock receive consideration other than only cash in such Fundamental Change transaction, the Share Price shall be the average of the Closing Sale Prices of shares of Common Stock on the five Trading Days prior to but not including the Effective Date of such Fundamental Change transaction.

(c) The Share Prices set forth in the first row of the table below (i.e., the column headers) shall be adjusted as of any date on which the Conversion Rate is adjusted pursuant to Section (d)(7) of this Article SIXTH. The adjusted Share Prices shall equal the product of the Share Prices applicable immediately prior to such adjustment multiplied by a fraction, the numerator of which is the Conversion Rate immediately prior to the adjustment giving rise to the Share Price adjustment and the denominator of which is the Conversion Rate as so adjusted. The number of Additional Shares shall be adjusted in the same manner as the Conversion Rate as set forth under the provisions of Section (d)(7). The following table sets forth the hypothetical Share Price and number of Additional Shares to be issuable per \$50.00 liquidation preference of Series C Preferred Shares:

Shares Price (in dollars)

| Effective Date | 22.35 | 25.00 | 27.50 | 30.00 | 32.50 | 35.00 | 37.50 | 40.00 | 45.00 | 50.00 | 55.00 | 60.00 | 65.00 | 70.00 | 75.00 |
|-----------------------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|
| December 2, 2004 | 0.373 | 0.289 | 0.222 | 0.171 | 0.133 | 0.102 | 0.081 | 0.064 | 0.044 | 0.032 | 0.025 | 0.020 | 0.017 | 0.014 | 0.012 |
| November 15, 2005 | 0.373 | 0.289 | 0.211 | 0.157 | 0.117 | 0.087 | 0.066 | 0.053 | 0.033 | 0.024 | 0.018 | 0.015 | 0.012 | 0.010 | 0.008 |
| November 15, 2006 | 0.342 | 0.258 | 0.191 | 0.143 | 0.107 | 0.081 | 0.063 | 0.050 | 0.035 | 0.027 | 0.022 | 0.019 | 0.017 | 0.015 | 0.013 |
| November 15, 2007 | 0.362 | 0.261 | 0.184 | 0.130 | 0.093 | 0.066 | 0.049 | 0.038 | 0.026 | 0.021 | 0.018 | 0.016 | 0.014 | 0.012 | 0.011 |
| November 15, 2008 | 0.347 | 0.245 | 0.162 | 0.103 | 0.062 | 0.034 | 0.019 | 0.010 | 0.005 | 0.003 | 0.002 | 0.002 | 0.001 | 0.001 | 0.001 |
| November 15, 2009 | 0.340 | 0.237 | 0.153 | 0.085 | 0.030 | 0.000 | 0.000 | 0.000 | 0.000 | 0.000 | 0.000 | 0.000 | 0.000 | 0.000 | 0.000 |
| November 15, 2010 | 0.310 | 0.222 | 0.145 | 0.082 | 0.029 | 0.000 | 0.000 | 0.000 | 0.000 | 0.000 | 0.000 | 0.000 | 0.000 | 0.000 | 0.000 |

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|-------------------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|
| November 15, 2011 | 0.332 | 0.230 | 0.147 | 0.082 | 0.028 | 0.000 | 0.000 | 0.000 | 0.000 | 0.000 | 0.000 | 0.000 | 0.000 | 0.000 | 0.000 |
| November 15, 2012 | 0.326 | 0.225 | 0.143 | 0.079 | 0.027 | 0.000 | 0.000 | 0.000 | 0.000 | 0.000 | 0.000 | 0.000 | 0.000 | 0.000 | 0.000 |
| November 15, 2013 | 0.325 | 0.223 | 0.141 | 0.078 | 0.026 | 0.000 | 0.000 | 0.000 | 0.000 | 0.000 | 0.000 | 0.000 | 0.000 | 0.000 | 0.000 |
| November 15, 2014 | 0.304 | 0.214 | 0.138 | 0.077 | 0.026 | 0.000 | 0.000 | 0.000 | 0.000 | 0.000 | 0.000 | 0.000 | 0.000 | 0.000 | 0.000 |

(d) The Share Prices and Additional Share amounts set forth above are based upon a per share Common Stock price of \$22.35 on December 2, 2004 and an initial Conversion Price of \$26.82. The exact Share Prices and Effective Dates may not be set forth in the table above, in which case:

(1) If the Share Price is between two Share Price amounts in the table or the Effective Date is between two Effective Dates in the table, the number of Additional Shares will be determined by a straight-line interpolation between the number of Additional Shares set forth for the higher and lower Share Price amounts and the two dates, as applicable, based on a 365-day year;

(2) If the Share Price is in excess of \$75.00 per share (subject to adjustment), no Additional Shares will be issuable upon conversion; or

(3) If the Share Price is less than \$22.35 per share (subject to adjustment), no Additional Shares will be issuable upon conversion.

(e) Notwithstanding anything contained in Section (d)(11)(d) of this Article SIXTH, in the event of a Public Acquirer Change of Control, in lieu of issuing Additional Shares, the Trust may elect to adjust the Conversion Rate such that, from and after the effective time of such Public Acquirer Change of Control, holders of Series C Preferred Shares shall be entitled to convert their Series C Preferred Shares into a number of shares of Public Acquirer Common Stock by multiplying the Conversion Rate in effect immediately before effective time of the Public Acquirer Change of Control by a fraction:

(1) the numerator of which shall be (i) in the case of a consolidation, merger or statutory share exchange, pursuant to which shares of Common Stock are converted into cash, securities or other property, the value of all cash, securities and other property (as determined by the Board of Trustees) paid or payable per share of Common Stock or (ii) in the case of any other Public Acquirer Change of Control, the average of the Closing Sale Prices of shares of Common Stock for the five consecutive Trading Days prior to but excluding the effective date of such Public Acquirer Change of Control; and

(2) the denominator of which shall be the average of the Closing Sale Prices of the Public Acquirer Common Stock for the five consecutive Trading Days commencing on the Trading Day next succeeding the effective date of such Public Acquirer Change of Control.

(f) A Public Acquirer Change of Control means any event constituting a Fundamental Change (or that would otherwise constitute a fundamental

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change but for the application of the 105% Trading Price Exception) that would otherwise obligate the Trust to increase the Conversion Rate and the acquirer (or any entity that is a directly or indirectly wholly-owned subsidiary of the acquirer) has a class of common stock traded on a United States national or regional securities exchange or quoted on the Nasdaq National Market or which will be so traded or quoted when issued or exchanged in connection with such Fundamental Change (the Public Acquirer Common Stock).

(g) Upon a Fundamental Change which is a Public Acquirer Change of Control, if the Trust so elects, holders may convert their Series C Preferred Shares at the adjusted Conversion Rate described in Section (d)(11)(e) of this Article SIXTH but will not be entitled to the increased Conversion Rate described in Sections (d)(11)(a), (d)(11)(b), (d)(11)(c) and (d)(11)(d) of this Article SIXTH. Upon a Fundamental Change

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which is a Public Acquirer Change of Control, if the Trust elects to adjust the Conversion Rate and conversion obligation in accordance with the provisions set forth in Section (d)(11)(e), the Trust shall notify holders of Series C Preferred Shares of the Trust's election in the notice to such holders of such transaction. As set forth in Section (d)(6), and subject to the Trust's election right under the first paragraph of Section (d)(11)(e), holders may convert their Series C Preferred Shares upon a Public Acquirer Change of Control during the period specified therein. In addition, a holder can also, subject to certain conditions, require the Trust to repurchase all or a portion of our Series C Preferred Shares in accordance with the provisions set forth in Section (d)(12) of this Article SIXTH.

(12) Purchase of Series C Preferred Shares Upon a Fundamental Change.

(a) In the event of a Fundamental Change, a holder of Series C Preferred Shares shall have the right to require the Trust to purchase (the Repurchase Right) for cash all or any part of such holder's Series C Preferred Shares at a purchase price equal to 100% of the liquidation preference of the Series C Preferred Shares to be purchased plus accrued and unpaid dividends (including additional dividends, if any) to, but not including, the Fundamental Change Purchase Date (the Fundamental Change Purchase Price). Series C Preferred Shares submitted for purchase must be \$50.00 liquidation preference or an integral multiple thereof.

(b) On or before the tenth Trading Day after the occurrence of a Fundamental Change, the Trust shall provide to all holders of Series C Preferred Shares and the transfer agent a Notice of the occurrence of the Fundamental Change and of the resulting Repurchase Right. Such Notice shall state:

- (i) the events constituting the Fundamental Change;
- (ii) the date of the Fundamental Change;
- (iii) the last date on which a holder may exercise the Repurchase Right;
- (iv) the Fundamental Change Repurchase Price;

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- (v) the Fundamental Change Repurchase Date;
- (vi) the name and address of the transfer agent;

(vii) the Conversion Rate and any adjustment to the Conversion Rate that will result from the Fundamental Change, as applicable, pursuant to either (A) Sections (d)(11)(a), (b), (c) and (c) or (B) Section (d)(11)(e);

(viii) that Series C Preferred Shares with respect to which a repurchase notice is given by the holder may be converted, if otherwise convertible, only if the repurchase notice has been properly withdrawn; and

(ix) the procedures that a holder must follow to exercise the Repurchase Right.

(c) Simultaneously with providing such Notice, the Trust shall publish a notice containing this information in a newspaper of general circulation in the City of New York or through such other public medium as the Trust may use at that time and publish such information on its corporate website.

(d) To exercise the Repurchase Right, subject to Section (d)(12)(e) of this Article SIXTH, a holder of the Series C Preferred Shares must deliver, on or before the twentieth Trading Day after the date of the Trust's delivery of Notice of a Fundamental Change (subject to extension to comply with applicable law), the Series C Preferred Shares to be purchased, duly endorsed for transfer, together with a written repurchase notice and the form entitled "Form of Fundamental Change Repurchase Notice" duly completed to the transfer agent. The repurchase notice must state:

- (i) the applicable Fundamental Change Repurchase Date;
- (ii) the portion of the liquidation preference of Series C Preferred Shares to be purchased, in integral multiples of \$50.00; and
- (iii) that the Series C Preferred Shares are to be purchased by the Trust pursuant to this Section (d)(12).

(e) If the Series C Preferred Shares are not in certificated form, a holder's repurchase notice must comply with applicable Depository Trust Company procedures.

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(f) A holder of Series C Preferred Shares may withdraw any repurchase notice (in whole or in part) by a written notice of withdrawal delivered to the Trust prior to the close of business on the Trading Day prior to the Fundamental Change Repurchase Date. The notice of withdrawal shall state:

(i) the liquidation preference of the withdrawn Series C Preferred Shares, in integral multiples of \$50.00;

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(ii) if certificated Series C Preferred Shares have been issued, the certificate numbers of the withdrawn Series C Preferred Shares; and

(iii) the liquidation preference, if any, which remains subject to the repurchase notice.

(g) If the Series C Preferred Shares are not in certificated form, a holder's notice of withdrawal must comply with applicable Depository Trust Company procedures.

(h) The Trust shall be required to purchase the Series C Preferred Shares no later than 35 Trading Days after the date of the Trust's delivery of Notice of the Fundamental Change, subject to extension to comply with applicable law (as set forth in the Notice of Fundamental Change, the Fundamental Change Repurchase Date). A holder of Series C Preferred Shares shall receive payment of the Fundamental Change Purchase Price promptly following the later of the Fundamental Change Repurchase Date or the time of book-entry transfer or delivery of the Series C Preferred Shares.

(i) If the transfer agent holds cash sufficient to pay the Fundamental Change Repurchase Price of the Series C Preferred Shares on the Trading Day following the Fundamental Change Repurchase Date, then:

(1) the Series C Preferred Shares will cease to be outstanding and dividends (including additional dividends, if any) will cease to accrue (whether or not book-entry transfer of the Series C Preferred Shares is made or whether or not the Series C Preferred Share certificate, if applicable, is delivered to the transfer agent); and

(2) all other rights of the holder will terminate (other than the right to receive the Fundamental Change Repurchase Price upon delivery or transfer of the Series C Preferred Shares).

(j) A Fundamental Change will be deemed to have occurred if any of the following occurs:

(1) The Trust consolidates with or merges with or into any person or convey, transfer, sell or otherwise dispose of or lease all or substantially all of its assets to any person, or any corporation consolidates with or merges into or with the Trust, in any such event pursuant to a transaction in which the Trust's outstanding voting shares are changed into or exchanged for cash, securities or other property, other than (a) any such transaction where the Trust's outstanding voting shares are not changed or exchanged at all (except to the extent necessary to reflect a change in the Trust's jurisdiction of formation), or (b) where (i) the Trust's outstanding voting shares are changed into or exchanged for cash, securities and other property (other than equity interests of the surviving corporation) and (ii) the Trust's shareholders immediately before such transaction own, directly or indirectly, immediately following such transaction, more than 50% of the total outstanding voting stock of the surviving corporation; or

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(2) The Trust is liquidated or dissolved or adopt a plan of liquidation or dissolution.

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- (k) However, notwithstanding the foregoing, a Fundamental Change will not be deemed to have occurred if either:
- (1) the Closing Sale Price of the Common Stock for each of at least five (5) Trading Days within (A) the period of ten (10) consecutive Trading Days immediately after the later of the Fundamental Change or the public announcement of the Fundamental Change, in the case of a Fundamental Change described in 1 above; or (B) the period of ten (10) consecutive Trading Days immediately preceding the Fundamental Change, in the case of a Fundamental Change described in 2 above, in either case, is at least equal to 105% of the quotient of the liquidation preference of the Series C Preferred Shares divided by the Conversion Rate in effect on each of those five (5) Trading Days (the 105% Trading Price Exception); or
- (2) in the case of a merger or consolidation described in 1 above, at least 90% of the consideration, excluding cash payments for fractional shares and cash payments pursuant to dissenters appraisal rights, in the merger or consolidation constituting the Fundamental Change consists of voting shares traded on a U.S. national securities exchange or quoted on the Nasdaq National Market (or which will be so traded or quoted when issued or exchanged in connection with such Fundamental Change) and as a result of such transaction or transactions the Series C Preferred Shares become convertible solely into such shares of common stock, excluding cash payments for fractional shares. For purposes of the foregoing, voting shares means shares of the class or classes pursuant to which the holders thereof have the general voting power under ordinary circumstances to elect at least a majority of the board of trustees of a corporation (irrespective of whether or not at the time shares of any other class or classes shall have or might have voting power by reason of the happening of any contingency).
- (l) In connection with a Fundamental Change repurchase, the Trust shall comply with all U.S. federal and state securities laws in connection with any offer by the Trust to purchase the Series C Preferred Shares upon a Fundamental Change.
- (m) The Trust shall not be required to repurchase the Series C Preferred Shares upon a Fundamental Change if a third party (1) makes an offer to purchase the Series C Preferred Shares in the manner, at the times and otherwise in compliance with the requirements applicable to the Trust to repurchase Series C Preferred Shares upon a Fundamental Change and (2) purchases all of the Series C Preferred Shares validly delivered and not withdrawn under such offer to purchase Series C Preferred Shares.
- (13) **Ranking.** In respect of rights to the payment of dividends and the distribution of assets in the event of any liquidation, dissolution or winding up of the affairs of the Trust, the Series C Preferred Shares shall rank (i) senior to the Common Stock and to any other class or series of Capital Stock of the Trust other than any class or series referred to in clauses (ii) and (iii) of this sentence, (ii) on a parity with any class or series of Capital Stock of the Trust the terms of which specifically provide that such class

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or series of Capital Stock ranks on a parity with the Series C Preferred Shares as to the payment of dividends and the distribution of assets in the event of any liquidation, dissolution or winding up of the Trust, including without limitation the Series B Preferred Shares, and (iii) junior to any class or series of Capital Stock of the Trust ranking senior to the Series C Preferred Shares as to the payment of dividends and the distribution of assets in the event of any liquidation, dissolution or winding up of the Trust. For avoidance of doubt, debt securities of the Trust which are convertible into or exchangeable for shares of Capital Stock of the Trust shall not constitute a class or series of Capital Stock of the Trust.

- (14) **Restrictions on Transfer, Acquisition and Redemption of Shares.** The Series C Preferred Shares, being Equity Stock, ~~is~~ are governed by and issued subject to all of the limitations, terms and conditions of ~~the~~ this Declaration applicable to Equity Stock generally, including, but not limited to, the terms and conditions (including exceptions and exemptions) of Article NINTH ~~of the Declaration~~ hereof applicable to Equity Stock; provided, however, that (i) the terms and conditions (including exceptions and exemptions) of Article NINTH ~~of the Declaration~~ hereof applicable to Equity Stock shall also be applied to the Series C Preferred Shares separately and without regard to any other series or class, (ii) the reference to the General Corporation Law of the State of Maryland under subparagraph (b)(4) of Article NINTH ~~of the Declaration~~ hereof shall be to the Maryland REIT Law, (iii) the Equity Stock into which the Excess Stock is converted in subparagraph (b)(5)(A) of Article NINTH hereof shall be shares of Series C Preferred Shares, and (iv) the Current Market Price of the Series C Preferred Shares for purposes of subparagraphs (b)(5) and (b)(6) of Article NINTH hereof shall be determined by the definition under Section (d)(1) of this Article SIXTH. The foregoing sentence shall not be construed to limit to the Series C Preferred Shares the applicability of any other term or provision of this Declaration. In addition to the legend contemplated by subparagraph (a)(10) of Article NINTH hereof, each certificate for Series C Preferred Shares shall bear substantially the following legend:

THE TRUST WILL FURNISH TO ANY SHAREHOLDER ON REQUEST AND WITHOUT CHARGE A FULL STATEMENT OF THE DESIGNATIONS AND ANY PREFERENCES, CONVERSION AND OTHER RIGHTS, VOTING POWERS, RESTRICTIONS, LIMITATIONS AS TO DIVIDENDS OR DISTRIBUTIONS, QUALIFICATIONS, AND TERMS AND CONDITIONS OF REDEMPTION OF THE SHARES OF EACH CLASS WHICH THE TRUST IS AUTHORIZED TO ISSUE, OF THE DIFFERENCES IN THE RELATIVE RIGHTS AND PREFERENCES BETWEEN THE SHARES OF EACH SERIES OF A PREFERRED OR SPECIAL CLASS IN SERIES WHICH THE TRUST IS AUTHORIZED TO ISSUE, TO THE EXTENT THEY HAVE BEEN SET, AND OF THE AUTHORITY OF THE BOARD OF TRUSTEES TO SET THE RELATIVE RIGHTS AND PREFERENCES OF SUBSEQUENT SERIES OF A PREFERRED OR SPECIAL CLASS OF SHARES. SUCH REQUEST MAY BE MADE TO

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THE SECRETARY OF THE TRUST OR TO ITS TRANSFER AGENT.

(15) Exclusion of Other Rights. The Series C Preferred Shares shall not have any preferences, conversion or other rights, voting powers, restrictions, limitations as to dividends, qualifications, or terms or conditions of redemption other than expressly set forth in ~~the~~[this](#) Declaration ~~and these Articles Supplementary~~.

(16) Headings of Subdivisions. The headings of the various subdivisions hereof are for convenience of reference only and shall not affect the interpretation of any of the provisions hereof.

(17) Severability of Provisions. If any preferences, conversion or other rights, voting powers, restrictions, limitations as to dividends, qualifications, or terms or conditions of redemption of the Series C Preferred Shares set forth in ~~the~~[this](#) Declaration ~~and these Articles Supplementary are~~[are](#) invalid, unlawful or incapable of being enforced by reason of any rule of law or public policy, all other preferences or other rights, voting powers, restrictions, limitations as to distributions, qualifications or terms or conditions of redemption of Series C Preferred Shares set forth in ~~the~~[this](#) Declaration which can be given effect without the invalid, unlawful or unenforceable provision thereof shall, nevertheless, remain in full force and effect and no preferences or other rights, voting powers, restrictions, limitations as to dividends or other distributions, qualifications or terms or conditions of redemption of the Series C Preferred Shares herein set forth shall be deemed dependent upon any other provision thereof unless so expressed therein.

(18) No Preemptive Rights. No holder of Series C Preferred Shares shall be entitled to any preemptive rights to subscribe for or acquire any unissued shares of Capital Stock of the Trust (whether now or hereafter authorized) or securities of the Trust convertible into or carrying a right to subscribe to or acquire shares of Capital Stock of the Trust.

(e) [The following is a description of the preferences, conversion and other rights, voting powers, restrictions, limitations as to dividends, qualifications and terms and conditions of redemption of the Special Voting Preferred Stock of the Trust:](#)

(1) Designation and Number. A class of Preferred Stock designated as - "Special Voting Preferred Stock " is hereby established. The number of shares constituting such class shall be one (1). Such number of shares may be increased only by resolution of the Board of Trustees which is approved by the affirmative vote of all of the Independent Trustees.

(2) Definitions: For purposes of ~~the Special Voting Preferred Stock~~[this Section \(e\)](#), the following terms shall have the following meanings:

Board of Trustees shall mean the Board of Trustees of the Trust or any committee authorized by such Board of Trustees, subject to applicable law, to perform any of its responsibilities with respect to the Special Voting Preferred Stock.

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Capital Stock shall have the meaning set forth in Article ~~Ninth of the Declaration~~ NINTH hereof.

~~"Common Stock" shall mean the Common Stock, \$.0001 par value per share, of the Trust as defined in Article SIXTH of the Declaration.~~

Effective Date shall mean the date the merger between Newkirk Realty Trust, Inc., a Maryland corporation, and the Trust becomes effective.

Independent Trustees shall mean those trustees of the Trust who meet the requirement of independent under the rules of the New York Stock Exchange, NASDAQ or other exchange on which the shares of Common Stock (as defined herein) are then listed.

Operating Partnership shall mean the Lexington Master Limited Partnership, a Delaware limited partnership of which a subsidiary of the Trust is the sole general partner, and any successor thereof.

Partnership Agreement shall mean the Second Amended and Restated Agreement of Limited Partnership of the Operating Partnership, dated the Effective Date as the same may be amended from time to time.

~~"Preferred Stock" shall mean the Preferred Stock, \$.0001 par value per share, of the Trust as defined in Article SIXTH of the Declaration.~~

Redemption Date shall mean the date upon which a Redemption Event occurs.

Redemption Event shall mean either of the following: (i) the consummation of a consolidation, merger, combination or other transaction involving the Operating Partnership pursuant to which the outstanding Special Voting Partnership Units are converted or changed into or exchanged for stock and/or other securities of any other entity and/or cash or any other property; or (ii) the Voting Amount is reduced to zero.

Special Voting Partnership Units shall have the meaning set forth in the Partnership Agreement.

Voting Amount shall mean 36,000,000, subject to automatic reduction (but not increase) from time to time to the extent Special Voting Partnership Units are redeemed by the Operating Partnership pursuant to Section 8.4A or 8.4B of the Partnership Agreement or are acquired by the Trust pursuant to Section 8.4 B C of the Partnership Agreement, and subject to further appropriate adjustment as set forth in Section (e)(4)(ii) of this Article SIXTH. As permitted by Article FOURTH hereof and the Maryland REIT Law, the Voting Amount, and therefore the voting power of the Special Voting Preferred Stock, as described in Section (e)(4), are dependent upon the number of outstanding Special Voting Partnership Units from time to time which constitute facts ascertainable outside of the declaration of trust of the Trust.

Voting Amount shall mean 36,000,000, subject to automatic reduction (but not increase) from time to time to the extent Special Voting Partnership Units are redeemed by the Operating Partnership pursuant to [Section 8.4A or 8.4B of the Partnership Agreement or are acquired by the Trust pursuant to Section 8.4C] of the Partnership Agreement, and subject to further appropriate adjustment as set forth in Section (e)(4)(ii) of this Article SIXTH. As permitted by Article FOURTH hereof and the Maryland REIT Law, the Voting Amount, and therefore the voting power of the Special Voting Preferred Stock, as described in Section (e)(4), are dependent upon the number of outstanding Special Voting Partnership Units from time to time which constitute facts ascertainable outside of the declaration of trust of the Trust.

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(3) Dividends and Distributions. Except as set forth in Section ~~7 hereof~~ (e)(7) of this Article SIXTH, the holders of shares of Special Voting Preferred Stock shall not be entitled to any regular or special dividend payments. Without limiting the foregoing, the holders of shares of Special Voting Preferred Stock shall not be entitled to any dividends or other distributions declared or paid with respect to the shares of Common Stock or any other class or series of stock of the Corporation.

(4) Voting Rights.

(i) With respect to all matters submitted to a vote of the holders of Common Stock, each share of Special Voting Preferred Stock shall entitle the holder thereof to an aggregate number of votes equal to the Voting Amount in effect on the record date for determining the holders of shares of beneficial interest of the Trust entitled to vote on such matter. The holders of shares of Special Voting Preferred Stock shall vote together with

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the holders of shares of Common Stock as one class on all matters submitted to a vote of shareholders of the Trust, and, except as expressly set forth in this Section ~~4 hereof(e)(4)~~, the holders of shares of Special Voting Preferred Stock shall have no other voting rights, as a separate class or other otherwise, including any rights to vote as a class with respect to any extraordinary trust action such as a merger, consolidation, dissolution, liquidation or the like.

(ii) If the Trust or the Operating Partnership shall at any time after the Effective Date subdivide or combine its outstanding shares of Common Stock or Special Voting Partnership Units, as the case may be, declare a dividend payable in Common Stock or Special Voting Partnership Units, as the case may be, or effect any similar change in its capitalization structure, the Voting Amount shall be adjusted appropriately to allow the holders of the Special Voting Preferred Stock, as nearly as reasonably possible, to maintain the pro rata voting rights in the Trust that such holders possessed immediately prior to any such subdivision, combination, stock dividend, reorganization, reclassification or similar event.

(iii) Anything herein to the contrary notwithstanding, if the number of shares of Special Voting Preferred Stock is increased and additional shares of

Special Voting Preferred Stock are issued, then at any time during which more than one share of Special Voting Preferred Stock is issued and outstanding, each share of Special Voting Preferred Stock shall entitle the holder thereof to a number of votes equal to the Voting Amount in effect on the record date for determining the holders of shares of Common Stock entitled to vote on any matter, divided by the number of shares of Special Voting Preferred Stock which are issued and outstanding on such date.

(5) Restrictions on Transfer.

(i) No share of Special Voting Preferred Stock shall be transferable, and no such share shall be transferred on the share transfer books of the Trust, without the prior approval of the Trust. A legend shall be placed on the face of each certificate

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representing ownership of shares of Special Voting Preferred Stock referring to the restriction on transfer set forth herein.

(ii) Notwithstanding any terms or provisions to the contrary contained herein, the Special Voting Preferred Stock shall constitute Capital Stock and shall be subject to the provisions of Article NINTH ~~of the Declaration~~ [hereof](#).

(6) Reacquired Shares. Any shares of Special Voting Preferred Stock redeemed, purchased or otherwise acquired by the Trust in any manner whatsoever shall cease to be outstanding and shall become authorized but unissued shares of Preferred Stock, without designation as to class or series until such shares are once more classified and designated as part of a particular class or series by action of the Board of Trustees, and the former holder or holders thereof shall have no further rights (hereunder or otherwise) with respect to such shares.

(7) Liquidation, Dissolution or Winding Up. In the event of any liquidation, dissolution or winding up of the affairs of the Trust, whether voluntary or involuntary, before any assets of the Trust shall be distributed, paid or set aside for the holders of any equity securities ranking junior to the Special Voting Preferred Stock as to the distribution of assets upon liquidation, dissolution or winding up of the Trust, the Trust shall pay to the holders of shares of Special Voting Preferred Stock, out of assets of the Trust legally available for distribution to its shareholders, the sum of \$25.00 per share for each share of Special Voting Preferred Stock held by each such holder. After payment in full to the holders of the Special Voting Preferred Stock of the above-described \$25.00 per share liquidation amount, the holders of the Special Voting Preferred Stock will have no right or claim to any of the remaining assets of the Trust.

If, upon any liquidation, dissolution or winding up of the Trust, the assets of the Trust, or the proceeds thereof, distributable among the holders of Special Voting Preferred Stock and the holders of Common Stock shall be insufficient to pay in full the above-described liquidation amount per share to the holders of the Special Voting Preferred Stock and a like amount per share to the holders of the Common Stock, then such assets, or the proceeds therefrom, shall be distributed among the holders of the Special Voting Preferred Stock and the Common Stock in equal amounts per share.

For the purposes of this Section ~~7(e)(7)~~, (i) a consolidation or merger of the Trust with one or more entities, (ii) a sale or transfer of all or substantially all of the Trust's assets, or (iii) a statutory share exchange shall not be deemed to be a liquidation, dissolution or winding up,

voluntary or involuntary, of the Trust.

(8) Redemption. Upon the occurrence of a Redemption Event, then, concurrent with the Redemption Event, the outstanding shares of Special Voting Preferred Stock shall be redeemed by the Trust out of assets legally available therefor, at a redemption price, payable in cash, equal to \$25.00 per share of Special Voting Preferred Stock. From and after the Redemption Date, the outstanding shares of Special Voting Preferred Stock shall no longer be deemed outstanding and all rights of holders of such shares will terminate, except the rights to receive the cash payable upon such

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redemption, without interest thereon, upon surrender and endorsement of the certificates evidencing the shares of Special Voting Preferred Stock, if so required).

(9) Rank.

(i) The Special Voting Preferred Stock will, with respect to rights upon liquidation, dissolution or winding up of the Trust, rank (a) senior to all equity securities issued by the Trust, the terms of which provide that such equity securities rank junior to the Special Voting Preferred Stock with respect to rights upon liquidation, dissolution or winding up of the Trust; (b) junior to all equity securities issued by the Trust, the terms of which provide that such equity securities rank senior to the Special Voting Preferred Stock with respect to rights upon liquidation, dissolution or winding up of the Trust, including but not limited to the 8.05% Series B Cumulative Redeemable Preferred Stock, par value \$0.0001 per share, of the Trust and the 6.50% Series C Cumulative Convertible Preferred Stock, par value \$0.0001 per share of the Trust; and (c) on a parity with the Common Stock of the Trust and with all other equity securities issued by the Trust, other than those equity securities referred to in clauses (a) and (b) hereof; provided, however, that after payment in full to the holders of the Special Voting Preferred Stock of the \$25.00 per share liquidation amount described in Section ~~7 above~~(e)(7) of this Article SIXTH, the holders of the Special Voting Preferred Stock will have no right or claim to any of the remaining assets of the Trust, and such remaining assets of the Trust shall be distributed among the holders of Common Stock and any other classes or series of shares of beneficial interest ranking on a parity with or junior to the Special Voting Preferred Stock as to rights upon liquidation, dissolution or winding up of the Trust, according to their respective rights and preferences and in each case according to their respective number of shares, and the holders of the Special Voting Preferred Stock shall not be entitled to share therein.

(ii) The Special Voting Preferred Stock will, with respect to dividend rights, rank junior to the Common Stock and to all other equity securities issued by the Trust.

(iii) The term - "equity securities " does not include convertible debt securities or other debt securities of the Trust which will rank senior to the Special Voting Preferred Stock prior to conversion.

(10) Maturity. The Special Voting Preferred Stock has no stated maturity and will not be subject to any sinking fund or mandatory redemption, except as provided in Section ~~8 above~~(e)(8) of this Article SIXTH.

(11) Conversion. The Special Voting Preferred Stock is not convertible into or exchangeable for any other property or securities of the Trust.

(12) No Preemptive Rights. No holder of shares of Special Voting Preferred Stock shall have any pre-emptive or preferential right to subscribe for, or to purchase, any additional shares of Capital Stock of the Trust of any class or series, or any other security of the Corporation which the Corporation may issue or sell.

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- (f) A description of the preferences, conversion and other rights, voting powers, restrictions, limitations as to dividends, qualifications and terms and conditions of redemption of the Excess Stock of the Trust is set forth in Article NINTH hereof.
- (g) Subject to the foregoing, the power of the Board of Trustees to classify and reclassify any of the shares of beneficial interest shall include, without limitation, subject to the provisions of this Declaration, [the](#) authority to classify or reclassify any unissued shares of such shares of beneficial interest into a class or classes of preferred shares, preference shares, special shares or other shares, and to divide and classify shares of any class into one or more series of such class, by determining, fixing, or altering one of more of the following:
- (1) The distinctive designation of such class or series and the number of shares to constitute such class or series; provided that, unless otherwise prohibited by the terms of such or any other class or series, the number of shares of any class or series may be decreased by the Board of Trustees in connection with any classification or reclassification of unissued shares and the number of shares of such class or series may be increased by the Board of Trustees in connection with any such classification or reclassification, and any shares of any class or series which have been redeemed, purchased, otherwise acquired or converted into shares of Common Stock or any other class or series shall become part of the authorized beneficial interest and be subject to classification and reclassification as provided in this subparagraph.
 - (2) Whether or not shares of such class or series shall have dividend rights and, if so, the rates, amounts and times at which, and the conditions under which, dividends shall be payable on shares of such class or series, whether any such dividends shall rank senior or junior to or on a parity with the dividends payable on any other class or series of shares, and the status of any such dividends as cumulative, cumulative to a limited extent or non-cumulative and as participating or non-participating.
 - (3) Whether or not shares of such class or series shall have voting rights, in addition to any voting rights provided by law and, if so, the terms of such voting rights.
 - (4) Whether or not shares of such class or series shall have conversion or exchange privileges and, if so, the terms and conditions thereof, including provision for adjustment of the conversion or exchange rate in such events or at such times as the Board of Trustees shall determine.
 - (5) Whether or not shares of such class or series shall be subject to redemption and, if so, the terms and conditions of such redemption, including the date or dates upon or after which they shall be redeemable and the amount per share payable in case of redemption, which amount may vary under different conditions and at different redemption dates; and whether or not there shall be any sinking fund or purchase account in respect thereof, and if so, the terms thereof.
 - (6) The rights of the holders of shares of such class or series upon the liquidation, dissolution or winding up of the affairs of, or upon any distribution of the assets of, the Trust, which rights may vary depending upon whether such liquidation,

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dissolution or winding up is voluntary or involuntary and, if voluntary, may vary at different dates, and whether such rights shall rank senior or junior to or on a parity with such rights of any other class or series of shares.

- (7) Whether or not there shall be any limitations applicable, while shares ~~or~~of such class or series are outstanding, upon payment of dividends or making of distributions on, or the acquisition of, or the use of moneys for purchase or redemption of, any shares of the Trust, or upon any other action of the Trust, including action under this subparagraph, and, if so, the terms and conditions thereof.
- (8) Any other preferences, rights, restrictions, including restrictions on transferability, and qualifications of shares of such class or series, not inconsistent with law and this Declaration.

[\(e h\) For the purposes hereof and of any amendment hereto providing for the classification or reclassification of any shares of beneficial interest or of any other charter document of the Trust \(unless otherwise provided in any such articles or document\), any class or series of shares of the Trust shall be deemed to rank:](#)

(1) prior to another class or series either as to dividends or upon liquidation, if the holders of such class or series shall be entitled to the receipt of dividends or of amounts distributable on liquidation, dissolution or winding up, as the case may be, in preference or priority to holders of such other class or series;

(2) on a parity with another class or series either as to dividends or upon liquidation, whether or not the dividend rates, dividend payment dates or redemption or liquidation price per share thereof be different from those of such others, if the holders of such class or series of shares shall be entitled to receipt of dividends or amounts distributable upon liquidation, dissolution or winding up, as the case may be, in proportion to their respective dividend rates or redemption or liquidation prices, without preference or priority over the holders of such other class or series; and

(3) junior to another class or series either as to dividends or upon liquidation, if the rights of the holders of such class or series shall be subject or subordinate to the rights of the holders of such other class or series in respect of the receipt of dividends or the amounts distributable upon liquidation, dissolution or winding up, as the case may be.

(+) (i) The legal ownership of the Trust estate and the right to conduct the business of the Trust are vested exclusively in the Trustees and the shareholders shall have no interest therein (other than beneficial interests in the Trust conferred by their shares issued hereunder) and they shall have no right to compel any partition, division, dividend or distribution of the Trust or any of the Trust estate.

(+) (j) The shares shall be personal property and shall confer upon the holders thereof only the interest and rights specifically set forth or provided for in this Declaration. The death, insolvency or incapacity of a shareholder shall not dissolve or terminate the Trust or affect its continuity nor give such shareholder s legal representative any rights whatsoever, whether against or in respect of other shareholders, the Trustees or the trust estate or otherwise, except the

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SEVENTH: (a) The business and affairs of the Trust shall be managed under the direction of the Board of Trustees. The number of trustees of the Trust shall be ~~seven~~eleven, which number may be increased or decreased by vote of at least a majority of the entire Board of Trustees pursuant to the By-Laws of the Trust, but shall never be fewer than the minimum number permitted by the ~~General Corporation Laws of the State of~~ Maryland REIT Law now or hereafter in force.

(b) Subject to the rights of the holders of any class of Preferred Stock, if any, then outstanding, vacancies on the Board of Trustees resulting from any increase in the authorized number of trustees, or death, resignation, retirement or other cause shall be filled by a vote of the shareholders or a majority of the trustees then in office. A vacancy on the Board of Trustees resulting from removal of a trustee by the shareholders in accordance with subparagraph (d) of Article SEVENTH shall be filled by a vote of the shareholders. A trustee so chosen by the shareholders shall hold office for the balance of the term then remaining. A trustee so chosen by the remaining trustees shall hold office until the next annual meeting of shareholders, at which time the shareholders shall elect a trustee to hold office for the balance of the term then remaining. No decrease in the number of trustees constituting the Board of Trustees shall affect the tenure of office of any trustee.

(c) Whenever the holders of any one or more series of Preferred Stock of the Trust shall have the right, voting separately as a class, to elect one or more trustees of the Trust, the Board of Trustees shall consist of said trustees so elected in addition to the number of trustees of fixed as provided above in this Article. Notwithstanding the foregoing, and except as otherwise may be required by law, whenever the holders of any one or more series of Preferred Stock of the Trust shall have the right, voting separately as a class, to elect one or more trustees of the Trust, the terms of the trustee or trustees elected by such holders shall expire at the next succeeding annual meeting of shareholders.

(d) Subject to the rights of the holders of any class separately entitled to elect one or more trustees, any trustee, or the entire Board of Trustees, may be removed from office at any time, but only for cause and then only by the affirmative vote of the holders of at least 80% of the combined voting power of all classes of shares of beneficial interest entitled to vote in the election for trustees.

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(e) The names of the Trustees who will serve until ~~the first annual meeting of the Trust and until~~ their successors are elected and qualify are as follows:

[Michael L. Ashner](#)

[Clifford Broser](#)

[William J. Borruso](#)

[Geoffrey Dohrmann](#)

[T. Wilson Eglin](#)

[Richard Frary](#)

[Carl D. Glickman](#)

[James Grosfeld](#)

[Kevin W. Lynch](#)

E. Robert Roskind

Richard J. Rouse

~~T. Wilson Eglin~~
~~Kevin W. Lynch~~
~~Carl D. Glickman~~
~~John D. McGurk~~
~~Seth M. Zachary~~

EIGHTH: (a) The following provisions are hereby adopted for the purpose of defining, limiting, and regulating the powers of the Trust and of the trustees and the shareholders:

(1) The Board of Trustees is hereby empowered to authorize the issuance from time to time ~~of shares~~ of its shares of any class, whether now or hereafter authorized, or securities convertible into shares of its shares of any class or classes, whether now or hereafter authorized, for such consideration as may be deemed advisable by the Board of Trustees and without any action by the shareholders.

(2) No holder of any shares or any other securities of the Trust, whether now or hereafter authorized, shall have any preemptive right to subscribe for or purchase any shares or any other securities of the Trust other than such, if any, as the Board of Trustees, in its sole discretion, may determine and at such price or prices and upon such other terms as the Board of Trustees, in its sole discretion, may fix; and any shares or other securities which the Board of Trustees may determine to offer for subscription may, as the Board of Trustees in its sole discretion shall determine, be offered to the holders of any class, series or type of shares or other securities at the time outstanding to the exclusion of the holders of any or all other classes, series or types of shares or other securities at the time outstanding.

(3) The Board of Trustees of the Trust shall, consistent with applicable law, have the power, in its sole discretion, to determine from time to time in accordance with sound accounting practice or other reasonable valuation methods, what constitutes annual or other net profits, earnings, surplus, or net assets in excess of capital; to fix and vary from time to time the amount to be reserved as working capital, or determine that retained earnings or surplus shall remain in the hands of the Trust; to set apart out of any funds of

the Trust such reserve or reserves in such amount or amounts and for such proper purpose or purposes as it shall determine and to abolish any such reserve or any part thereof; to distribute and pay distributions or dividends in shares, cash or other securities or property, out of surplus or any other funds or amounts legally available therefor, at such times and to the shareholders of record on such dates as it may from time to time determine; and to determine whether and to what extent and at what times and places and under what conditions and regulations the books, accounts and documents of the Trust, or any of them, shall be open to the inspection of shareholders, except as otherwise provided by statute or by the By-Laws, and, except as so provided, no shareholder shall have any right to inspect any book, account or document of the Trust unless authorized so to do by resolution of the Board of Trustees.

(4) Notwithstanding any provision of law requiring the authorization of any action by a greater proportion than a majority of the total number of shares of all classes of beneficial interest or of the total number of shares of any class of beneficial interest, such action shall be valid and effective if authorized by the affirmative vote of the holders of a majority of the total number of shares of all classes outstanding and entitled to vote thereon, except as otherwise provided in this Declaration.

(5) The Trust shall provide any indemnification permitted by the laws of Maryland and shall indemnify trustees, officers, agents and employees as follows: (A) the Trust shall indemnify its trustees and officers, whether serving the Trust or at its request any other entity, to the full extent required or permitted by the General Laws of the State of Maryland now or hereafter in force, including the advance of expenses under the procedures and to the full extent permitted by law and (B) the Trust shall indemnify other employees and agents, whether serving the Trust or at its request any other entity, to such extent as shall be authorized by the Board of Trustees or the Trust's By-Laws and be permitted by law. The foregoing rights of indemnification shall not be exclusive of any other rights to which those seeking indemnification may be entitled. The Board of Trustees may take such action as is necessary to carry out these indemnification provisions and is expressly empowered to adopt, approve and amend from time to time such By-Laws, resolutions or contracts implementing such provisions or such further indemnification arrangements as may be permitted by law. No amendment of this Declaration shall limit or eliminate the right to indemnification provided hereunder with respect to acts or omissions occurring prior to such amendment or repeal.

(6) To the fullest extent permitted by Maryland statutory or decisional law, as amended or interpreted, no trustee or officer of the Trust shall be personally liable to the Trust or its shareholders for money damages. No amendment of this Declaration or repeal of any of its provisions shall limit or eliminate the benefits provided to trustees and officers under this provision with respect to any act or omission which occurred prior to such amendment or repeal.

(7) Any written instrument creating an obligation of the Trust shall, to the extent practicable, include a reference to this Declaration and provide that neither the shareholders nor the Trustees nor any officers, employees or agents of the Trust shall be liable thereunder and that all persons shall look solely to the Trust estate for the payment

of any claim thereunder or for the performance thereof; however, the omission of such provision from any such instrument shall not render the shareholders, any Trustee, or any officer, employee or agent of the Trust liable nor shall the shareholders, any Trustee or any officer, employee or agent of the Trust be liable to any one for such omission.

(8) Any Trustee or officer, employee or agent of the Trust may acquire, own, hold, and dispose of shares in the Trust, for such individual's account, and may exercise all rights of a shareholder to the same extent and in the same manner as if such individual were not a Trustee or officer, employee or agent of the Trust. Any Trustee or officer, employee or agent of the Trust may, in such individual's personal capacity or in the capacity of trustee, officer, director, shareholder, partner, member, advisor or employee of any person or otherwise, have business interests and engage in business activities similar to or in addition to those relating to the Trust, which interests and activities may be similar to and competitive with those of the Trust and may include the acquisition, syndication, holding, management, development, operation or disposition, for such individual's own account, or for the account of such person or others, of interests in mortgages, interests in real property, or interests in persons engaged in the real estate business. Each Trustee, officer, employee and agent of the Trust shall be free of any obligation to present to the Trust any investment opportunity which comes to such person in any capacity other than solely as Trustee, officer, employee or

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agent of the Trust even if such opportunity is of a character which, if presented to the Trust, could be taken by the Trust. Subject to the provisions of Section (a)(10) below, any Trustee or officer, employee or agent of the Trust may be interested as trustee, officer, director, shareholder, partner, member, advisor or employee of, or otherwise have a direct or indirect interest in, any person who may be engaged to render advice or services to the Trust, and may receive compensation from such person as well as compensation as Trustee, officer, employee or agent or otherwise hereunder. None of these activities shall be deemed to conflict with such person's duties and powers as Trustee or officer, employee or agent of the Trust.

(9) Except as otherwise provided by this Declaration, and in the absence of fraud, a contract, act or other transaction between the Trust and any other person in which the Trust is interested, shall be valid, and no Trustee or officer, employee or agent of the Trust shall have any liability as a result of entering into any such contract, act or transaction, even though (a) one or more of the Trustees, or officers, employee or agents of the Trust are directly or indirectly interested in or connected with, or are trustees, partners, directors, employees, officers or agents of, such other person, or (b) one or more of the Trustees or officers, employees or agents of the Trust, individually or jointly with others, is a party or are parties to, or are directly or indirectly interested in or connected with, such contract, act or transaction; provided that in each such case (i) such interest or connection is disclosed or known to the Trustees and thereafter the Trustees authorize or ratify such contract, act or other transaction by affirmative vote of a majority of the Trustees who are not so interested or (ii) such interest or connection is disclosed or known to the shareholders, and thereafter such contract, act or transaction is approved by shareholders holding a majority of the shares then outstanding and entitled to vote thereon.

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Notwithstanding any other provision of this Declaration, the Trust may engage in a transaction with (a) any Trustee, officer, employee or agent of the Trust (acting in such person's individual capacity), (b) any director, trustee, partner, officer, employee or agent (acting in such person's individual capacity) of any investment advisor of the Trust, (c) any investment advisor of the Trust or (d) an Affiliate of any of the foregoing, provided that such transaction has, after disclosure of such affiliation, been approved or ratified by the affirmative vote of a majority of the Trustees not having any interest in such transaction after a determination by them that such transaction is fair to the Trust and the shareholders.

(10) Any act of the Trustees or of the officers, employees or agents of the Trust purporting to be done in their capacity as such, shall, as to any persons dealing with such Trustees, officers, employees or agents, be conclusively deemed to be within the purposes of this Trust and within the powers of such Trustees or officers, employees or agents. No person dealing with the Trustees or any of them or with the officers, employees or agents of the Trust shall be bound to see to the application of any funds or property passing into their hands or control.

(11) The Trustees and the officers, employees and agents of the Trust may consult with counsel (which may be a firm in which one or more of the Trustees or the officers, employees or agents of the Trust is or are members) and the advice or opinion of such counsel shall be full and complete personal protection to all the Trustees and the officers, employees and agents of the Trust in respect of any action taken or suffered by them in good faith and in reliance on or in accordance with such advice or opinion. In discharging their duties, Trustees or officers, employees or agents of the Trust, when acting in good faith, may rely upon financial statements of the Trust represented to them to fairly present the financial position or results of operations of the Trust by the chief financial officer of the Trust or the officer of the Trust having charge of its books of account, or stated in a written report by an independent certified public accountant fairly to present the financial position or results of operations of the Trust. The Trustees and the officers, employees and agents of the Trust may rely, and shall be personally protected in acting, upon any instrument or other document believed by them to be genuine.

(12) For any shareholder proposal to be presented in connection with an annual meeting of shareholders of the Trust, including any proposal relating to the nomination of a trustee to be elected to the Board of Trustees of the Trust, the shareholders must have given timely notice thereof in writing to the Secretary of the Trust in the manner, and containing the information, required by the By-Laws. Shareholder proposals to be presented in connection with a special meeting of shareholders will be presented by the Trust only to the extent required by Section 2-502 of the Corporations and Associations Article of the Annotated Code of Maryland.

(b) The Trust reserves the right to amend, alter, change or repeal any provision contained in this Declaration, including any amendments changing the terms or contract rights, as expressly set forth herein, of any of its outstanding shares by classification, reclassification or otherwise, by a majority of the trustees adopting a resolution setting forth the proposed change, declaring its advisability, and either calling a special meeting of the shareholders certified to vote

on the proposed change, or directing the proposed change to be considered at the next annual shareholders meeting. Unless otherwise provided herein, the proposed change will be effective only if it is adopted upon the affirmative vote of the holders of not less than a majority of the aggregate votes entitled to be cast thereon (considered for this purpose as a single class); provided, however, that any amendment to, repeal of or adoption of any provision inconsistent with Article SEVENTH or subparagraph (a)(7), this subparagraph (b) or subparagraph (c) of Article EIGHTH will be effective only if it is adopted upon the affirmative vote of not less than 80% of the aggregate votes entitled to be cast thereon (considered for this purpose as a single class).

(c) In furtherance and not in limitation of the powers conferred by statute, the Board of Trustees is expressly authorized to make, alter or repeal the By-Laws of the Trust; provided that any such alteration or repeal by the Board of Trustees shall require the vote of a majority of the Board of Trustees at a meeting held in accordance with the provisions of the By-Laws.

(d) The Trustees shall be entitled to receive such reasonable compensation for their services as Trustees as the Board of Trustees may determine from time to time. The Trustees and Trust officers shall be entitled to receive remuneration for services rendered to the Trust in any other capacity. Subject to Sections (a)(8) and (a)(9) of Article EIGHTH, such services may include, without limitation, services as an officer of the Trust, legal, accounting or other professional services, or services as a broker, transfer agent or underwriter, whether performed by a Trustee or any person affiliated with a Trustee.

~~(e) The right, title and interest of the Trustees and to the trust estate shall also vest in successor and additional Trustees upon their qualification, and they shall thereupon have all the rights and obligations of Trustees whether or not conveyancing documents having been executed and delivered pursuant to this Declaration or otherwise. Appropriate written evidence of the election and qualification of successor and additional Trustees shall be filed with the records of the Trust and in such other offices or places as the Trustees may deem necessary, appropriate or desirable.~~

(f) The Trustees, subject only to the specific limitations contained in this Declaration, shall have, without further or other authorization, and free from any power or control on the part of the shareholders, full, absolute and exclusive power, control and authority over the Trust estate and over the business and affairs of the Trust to the same extent as if the Trustees were the sole owners thereof in their own right, and may do all such acts and things as in their sole judgment and discretion are necessary for or incidental to or desirable for carrying out or conducting the business of the Trust. Any construction of this Declaration or any determination made in good faith by the Trustees as to the purposes of the Trust or the existence of any power or authority hereunder shall be conclusive. In construing the provisions of this Declaration, the presumption shall be in favor of the grant of powers and authority to the Trustees.

(g) The enumeration and definition of particular powers of the Board of Trustees included in the foregoing shall in no way be limited or restricted by reference to or inference from the terms of any other clause of this or any other Article of this Declaration, or construed as or deemed by inference or otherwise in any manner to exclude or limit any powers conferred

upon the Board of Trustees under the ~~General Corporation Laws~~ [laws](#) of the State of Maryland now or hereafter in force.

NINTH: (a) (1) For the purposes of this Article NINTH, the following terms shall have the following meanings:

Beneficial Ownership shall mean ownership of Capital Stock by a Person who would be treated as an owner of such shares of Capital Stock either directly or indirectly through the application of Section 544 of the Code as modified by Section 856(h)(1)(B) of the Code. The terms Beneficial Owner, Beneficially Owns and Beneficially Owned shall have correlative meanings.

Beneficiary shall mean a beneficiary of the Charitable Trust as determined pursuant to subparagraph (b)(5) of this Article NINTH.

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Board of Trustees shall mean the Board of Trustees of the Trust.

By-Laws shall mean the By-Laws of the Trust.

Capital Stock shall mean shares of beneficial interest in the Trust which are classified as Common Stock, Excess Stock or Preferred Stock, if any.

Charitable Trust shall mean the trust created pursuant to subparagraph (b)(1) of this Article NINTH.

Charitable Trustee shall mean the Trust, acting as trustee for the Charitable Trust, or any successor trustee appointed by the Trust.

Code shall mean the Internal Revenue Code of 1986, as amended from time to time.

Constructive Ownership shall mean ownership of Capital Stock by a Person who would be treated as an owner of such shares of Capital Stock either directly or indirectly through the application of Section 318 of the Code, as modified by Section 856(d)(5) of the Code. The terms Constructive Owner, Constructively Owns and Constructively Owned shall have correlative meanings.

Equity Stock shall mean shares of beneficial interest in the Trust which are classified as Common Stock or Preferred Stock.

Market Price on any date shall mean, with respect to the Common Stock, the average of the daily market price for ten consecutive trading days immediately preceding the date. The market price for each such trading day shall be determined as follows: (A) if the Common Stock is listed or admitted to trading on any securities exchange or included for quotation on the NASDAQ-National Market System, the closing price, regular way, on such day, or if no such sale takes place on such day, the average of the closing bid and asked prices on such day, as reported by a reliable quotation source designated by the Trust; (B) if the Common Stock is not listed or admitted to trading on any securities exchange or included for quotation on the NASDAQ-National Market System, the last

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reported sale price on such day or, if no sale takes place on such day, the average of the closing bid and asked prices on such day, as reported by a reliable quotation source designated by the Trust; or (C) if the Common Stock is not listed or admitted to trading on any securities exchange or included for quotation on the NASDAQ-National Market System and no such last reported sale price or closing bid and asked prices are available, the average of the reported high bid and low asked prices on such day, as reported by a reliable quotation source designated by the Trust, or if there shall be no bid and asked prices on such day, the average of the high bid and low asked prices, as so reported, on the most recent day (not more than ten days prior to the date in question) for which prices have been so reported; provided that if there are no bid and asked prices reported during the ten days prior to the date in question, the Market Price of the Common Stock shall be determined by the Trust acting in good faith on the basis of such quotations and other information as it considers, in its reasonable judgment, appropriate.

Ownership Limit shall mean 9.8% of the value of the outstanding Equity Stock of the Trust.

Person shall mean an individual, corporation, partnership, estate, trust (including a trust qualified under Section 401(a) or 501(c)(17) of the Code), a portion of a trust permanently set aside for or to be used exclusively for the purposes described in Section 642(c) of the Code, association, private foundation within the meaning of Section 509(a) of the Code, joint stock company or other entity and also includes a group as that term is used for purposes of Section 13(d)(3) of the Securities Exchange Act of 1934, as amended.

Purported Beneficial Transferee shall mean, with respect to any purported Transfer that results in Excess Stock, the purported beneficial transferee for whom the Purported Record Transferee would have acquired shares of Equity Stock if such transfer had been valid under subparagraph (a)(2) of this Article NINTH.

REIT shall mean a Real Estate Investment Trust under Section 856 of the Code.

Restriction Termination Date shall mean the first day after the date hereof on which the Board of Trustees of the Trust determines that it is no longer in the best interests of the Trust to attempt to, or continue to, qualify as a REIT.

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Transfer shall mean any sale, transfer, gift, hypothecation, pledge, assignment, devise or other disposition of Capital Stock (including (i) the granting of any option or entering into any agreement for the sale, transfer or other disposition of Equity Stock or (ii) the sale, transfer, assignment or other disposition of any securities or rights convertible into or exchangeable for Capital Stock), whether voluntary or involuntary, whether of record, constructively or beneficially and whether by operation of law or otherwise.

(2) (A) Except as provided in subparagraph (a)(9) of this Article NINTH, from the date hereof and prior to the Restriction Termination Date, no Person shall Beneficially Own or Constructively Own shares of the outstanding Equity Stock in excess of the Ownership Limit; (B) except as provided in subparagraph (a)(9) of this Article NINTH, from the date hereof and prior to the Restriction Termination Date, any Transfer that, if effective, would result in any Person Beneficially Owning or Constructively Owning Equity Stock in excess of the Ownership Limit shall be void *ab initio* as to the Transfer of that number of shares of Equity Stock which would be otherwise Beneficially or Constructively Owned by such Person in excess of the Ownership Limit; and the intended transferee shall acquire no rights in such excess shares of Equity Stock; (C) except as provided in subparagraph (a)(9) of this Article

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NINTH, from the date hereof and prior to the Restriction Termination Date, any Transfer that, if effective, would result in the Equity Stock being Beneficially Owned by fewer than 100 Persons (determined without reference to any rules of attribution) shall be void *ab initio* as to the Transfer of that number of shares which would be otherwise Beneficially or Constructively Owned by the transferee; and the intended transferee shall acquire no rights in such excess shares of Equity Stock; and (D) from the date hereof and prior to the Restriction Termination Date, any Transfer of shares of Equity Stock that, if effective, would result in the Trust being closely held within the meaning of Section 856(h) of the Code shall be void *ab initio* as to the Transfer of that number of shares of Equity Stock which would cause the Trust to be closely held within the meaning of Section 856(h) of the Code; and the intended transferee shall acquire no rights in such shares of Equity Stock.

(3) (A) If, notwithstanding the other provisions contained in this Article NINTH, at any time after the date hereof and prior to the Restriction Termination Date, there is a purported Transfer or other change in the capital structure of the Trust such that any Person would either Beneficially Own or Constructively Own Equity Stock in excess of the Ownership Limit, then, except as otherwise provided in subparagraph (a)(9), such shares of Equity Stock in excess of the Ownership Limit (rounded up to the nearest whole share) shall be automatically converted into an equal number of shares of Excess Stock (such conversion shall be effective as of the close of business on the business day prior to the date of the Transfer or change in capital structure); and (B) if, notwithstanding the other provisions contained in this Article NINTH, at any time after the date hereof and prior to the Restriction Termination Date, there is a purported Transfer or other change in the capital structure of the Trust which, if effective, would cause the Trust to become closely held within the meaning of Section 856(h) of the Code, then the shares of Equity Stock being Transferred or which are otherwise affected by the change in capital structure and which, in either case, would cause the Trust to be closely held within the meaning of Section 856(h) of the Code (rounded up to the nearest whole share) shall be automatically converted into an equal number of shares of Excess Stock. Such conversion shall be effective as of the close of business on the business day prior to the date of the transfer or change in capital structure.

(4) If the Board of Trustees or its designees at any time determine in good faith that a transfer has taken place in violation of subparagraph (a)(2) of this Article NINTH or that a Person intends to acquire or has attempted to acquire Beneficial Ownership or Constructive Ownership of any shares of Equity Stock in violation of subparagraph (a)(2) of this Article NINTH, the Board of Trustees or its designees shall take such action as it or they deem advisable to refuse to give effect to or to prevent such Transfer, including, but not limited to, refusing to give effect to such transfer on the books of the Trust or instituting proceedings to enjoin such Transfer; provided, however,

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that any Transfers or attempted Transfers in violation of subparagraph (a)(2) of this Article NINTH shall be void *ab initio* and automatically result in the conversion described in subparagraph (a)(3), irrespective of any action (or non-action) by the Board of Trustees or its designees.

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(5) Any Person who acquires or attempts to acquire shares of Equity Stock in violation of subparagraph (a)(2) of this Article NINTH, or any Person who is a transferee such that Excess Stock results under subparagraph (a)(3) of this Article NINTH, shall immediately give written notice to the Trust of such event and shall provide to the Trust such other information as the Trust may request in order to determine the effect, if any, of such transfer or attempted transfer on the Trust's status as a REIT.

(6) From the date hereof and prior to the Restriction Termination Date: (A) every Beneficial Owner or Constructive Owner of 5.0% or more (during any periods in which the number of such Beneficial Owners or Constructive Owners exceeds 1,999) or of more than 1% (during any periods in which the number of such Beneficial Owners or Constructive Owners is fewer than 2,000), or such lower percentages as required pursuant to regulations under the Code, of the outstanding Equity Stock of the Trust shall, within 30 days after January 1 of each year, give written notice to the Trust stating the name and address of such Beneficial Owner or Constructive Owner, the number of shares of Equity Stock Beneficially Owned or Constructively Owned, and a description of how such shares are held. Each such Beneficial Owner or Constructive Owner shall provide to the Trust such additional information as the Trust may request in order to determine the effect, if any, of such Beneficial Ownership on the Trust's status as a REIT and to ensure compliance with the Ownership Limit; and (B) each Person who is a Beneficial Owner or Constructive Owner of Equity Stock and each Person (including the stockholder of record) who is holding Equity Stock for a Beneficial Owner or Constructive Owner shall provide to the Trust such information as the Trust may request in order to determine the Trust's status as a REIT and to ensure compliance with the Ownership Limit.

(7) Nothing contained in this Article NINTH shall limit the authority of the Board of Trustees to take such other action as it deems necessary or advisable to protect the Trust and the interests of its shareholders by preservation of the Trust's status as a REIT and to ensure compliance with the Ownership Limit.

(8) In the case of an ambiguity in the application of any of the provisions of paragraph (a) of this Article NINTH, including any definition contained in subparagraph (a)(1), the Board of Trustees shall have the power to determine the application of the provisions of this paragraph (a) with respect to any situation based on the facts known to it.

(9) The Board of Trustees, upon receipt of a ruling from the Internal Revenue Service or an opinion of counsel or other evidence satisfactory to the Board of Trustees and upon such other conditions as the Board of Trustees may direct, in each case provided that the restrictions contained in subparagraph (a)(2)(C) and/or subparagraph (a)(2)(D) of this Article NINTH will not be violated, may exempt a Person from the Ownership Limit.

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(10) Legend. Each certificate for Equity Stock shall bear the following legend:

The shares represented by this certificate are subject to restrictions on transfer for the purpose of the Trust's maintenance of its status as a real estate investment trust under the Internal Revenue Code of 1986, as amended (the "Code"). Subject to certain exceptions, no Person may (1) Beneficially Own or Constructively Own shares of Equity Stock in excess of 9.8% of the value of the outstanding Equity Stock of the Trust; or (2) Beneficially Own Equity Stock that would result in the Trust's being "closely held" under Section 856(h) of the Code. Any Person who attempts to Beneficially Own or Constructively Own shares of Equity Stock in excess of the above limitations must immediately notify the Trust. All capitalized terms in this legend have the meanings defined in ~~this~~the Declaration, as the same may be further amended from time to time, a copy of which including the restrictions on transfer, will be sent without charge to each shareholder who so requests. If the restrictions on transfer are violated, the shares of Equity Stock represented hereby will be automatically converted for shares of Excess Stock which will be held in trust by the Trust.

(b) (1) Upon any purported Transfer that results in Excess Stock pursuant to subparagraph (a)(3) of this Article NINTH, such Excess Stock shall be deemed to have been transferred to the Trust, as Charitable Trustee of a Charitable Trust for the exclusive benefit of such Beneficiary or Beneficiaries to whom an interest in such Excess Stock may later be transferred pursuant to subparagraph (b)(5) of this Article NINTH. Shares of Excess Stock so held in trust shall be issued and outstanding shares of the Trust. The Purported Record Transferee shall have no rights in such Excess Stock except the right to designate a transferee of such Excess Stock upon the terms specified in subparagraph (b)(5) of this Article NINTH. The Purported Beneficial Transferee shall have no rights in such Excess Stock except as provided in subparagraph (b)(5) of this Article NINTH.

(2) Excess Stock shall not be entitled to any dividends. Any dividend or distribution paid prior to the discovery by the Trust that the shares of Equity Stock have been converted for Excess Stock shall be repaid to the Trust upon demand, and any dividend or distribution declared

but unpaid shall be rescinded as void *ab initio* with respect to such shares of Equity Stock.

(3) Subject to the preferential rights of the Preferred Stock, if any, as may be determined by the Board of Trustees of the Trust pursuant to Article SIXTH of this Declaration, in the event of any voluntary or involuntary liquidation, dissolution or winding up of, or any distribution of the assets of, the Trust, each holder of shares of Excess Stock shall be entitled to receive, ratably with each other holder of Common Stock and Excess Stock, that portion of the assets of the Trust available for distribution to its shareholders as the number of shares of the Excess Stock held by such holder bears to the total number of shares of Common Stock and Excess Stock then outstanding. The Trust, as holder of the Excess Stock in trust or, if the Trust has been dissolved, any trustee appointed by the Trust prior to its dissolution, shall distribute ratably to the Beneficiaries of the Charitable Trust, when determined, any such assets received in respect of the Excess Stock in any liquidation, dissolution or winding up of, or any distribution of the assets of, the Trust.

(3) Subject to the preferential rights of the Preferred Stock, if any, as may be determined by the Board of Trustees of the Trust pursuant to Article SIXTH of this Declaration, in the event of any voluntary or involuntary liquidation, dissolution or winding up of, or any distribution of the assets of, the Trust, each holder of shares of Excess Stock shall be entitled to receive, ratably with each other holder of Common Stock and Excess Stock, that portion of the assets of the Trust available for distribution to its shareholders as the number of shares of the Excess Stock held by such holder bears to the total number of shares of Common Stock and Excess Stock then outstanding. The Trust, as holder of the Excess Stock in trust or, if the Trust has been dissolved, any trustee appointed by the Trust prior to its dissolution, shall distribute ratably to the Beneficiaries

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of the Charitable Trust, when determined, any such assets received in respect of the Excess Stock in any liquidation, dissolution or winding up of, or any distribution of the assets of, the Trust.

(4) The holders of shares of Excess Stock shall not be entitled to vote on any matters (except as required by the General Corporation Laws of the State of Maryland).

(5) (A) Excess Stock shall not be transferable. The Purported Record Transferee may freely designate a Beneficiary of its interest in the Charitable Trust (representing the number of shares of Excess Stock held by the Charitable Trust attributable to a purported transfer that resulted in the Excess Stock), if (i) the shares of Excess Stock held in the Charitable Trust would not be Excess Stock in the hands of such Beneficiary and (ii) the Purported Beneficial Transferee does not receive a price for designating such Beneficiary that reflects a price per share for such Excess Stock that exceeds (x) the price per share such Purported Beneficial Transferee paid for the Equity Stock in the purported Transfer that resulted in the Excess Stock, or (y) if the Purported Beneficial Transferee did not give value for such shares of Excess Stock (such as through a gift, devise or other transaction), a price per share equal to the Market Price on the date of the purported Transfer that resulted in the Excess Stock. Upon such transfer of an interest in the Charitable Trust, the corresponding shares of Excess Stock in the Charitable Trust shall be automatically converted for an equal number of shares of Equity Stock, and such shares of Equity Stock shall be transferred of record to the Beneficiary of the interest in the Charitable Trust designated by the Purported Record Transferee as described above if such Equity Stock would not be Excess Stock in the hands of such Beneficiary. Prior to any transfer of any interest in the Charitable Trust, the Purported Record Transferee must give advance notice to the Trust of the intended transfer, and the Trust must have waived in writing its purchase rights under subparagraph (b)(6) of this Article NINTH; (B) notwithstanding the foregoing, if a Purported Beneficial Transferee receives a price for designating a Beneficiary of an interest in the Charitable Trust that exceeds the amounts allowable under subparagraph (b)(5)(A) of this Article NINTH, such Purported Beneficial Transferee shall pay, or cause the Beneficiary of the interest in the Charitable Trust to pay, such excess to the Trust.

(6) Shares of Excess Stock shall be deemed to have been offered for sale to the Trust, or its designee at a price per share equal to the lesser of (i) the price per share in the transaction that created such Excess Stock (or, in the case of devise or gift, the Market Price at the time of such devise or gift) and (ii) the Market Price on the date the Trust, or its designee, accepts such offer. Subject to the satisfaction of any applicable requirements of the ~~General Trust Laws of the State of~~ Maryland [REIT Law](#), the Trust shall have the right to accept such offer for a period of 90 days after the later of (i) the date of the transfer that resulted in such Excess Stock and (ii) the date the Board of Trustees determines in good faith that a Transfer resulting in Excess Stock has occurred, if the Trust does not receive a notice of such Transfer pursuant to subparagraph (a)(5) of this Article NINTH.

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(c) Nothing contained in this Article NINTH or in any other provision of this Declaration shall limit the authority of the Board of Trustees to take such other action as it, in its

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sole discretion, deems necessary or advisable to protect the Trust and the interests of the shareholders by maintaining the Trust's eligibility to be, and preserving the Trust's status as, a qualified REIT under the Code.

(d) If any of the foregoing restrictions on transfer of Excess Stock is determined to be void, invalid or unenforceable by any court of competent jurisdiction, the Purported Beneficial Transferee may be deemed, at the option of the Board of Trustees, to have acted as an agent of the Trust in acquiring such Excess Stock and to hold such Excess Stock on behalf of the Trust.

(e) Nothing in this Article NINTH precludes the settlement of transactions entered into through the facilities of the New York Stock Exchange.

TENTH: (a) The duration of the Trust shall be perpetual. The Trust shall be subject to termination at any time by the vote of the holders of two-thirds of the outstanding shares of Common Stock.

~~(b)~~ Upon the termination of the Trust:

~~+~~(1) the Trust shall carry on no business except for the purpose of winding up its affairs;

~~2-~~ (2) the Trustees shall proceed to wind up the affairs of the Trust and all the powers of the Trustees under this Declaration shall continue until the affairs of the Trust shall have been wound up, including the power to fulfill or discharge the contracts of the Trust, collect its assets, sell, convey, assign, exchange, transfer or otherwise dispose of all or any part of the remaining trust estate to one or more persons at public or private sale (for consideration which may consist in whole or in part of cash, securities or other property of any kind), discharge or pay its liabilities, and do all other acts appropriate to liquidate its business; and

~~3-~~ (3) after paying or adequately providing for the payment of all liabilities, and upon receipt of such releases, indemnities and refunding agreements, as they deem necessary for their protection, the Trustees may distribute the remaining trust estate (in case or in kind or partly each) among the shareholders according to their respective rights.

ELEVENTH: (a) There shall be an annual meeting of the shareholders, to be held on proper notice at such time ~~and place~~(after the delivery of the annual report) and convenient location as shall be determined by or in the manner prescribed in the ~~By-Laws, at which the trustees shall be elected and any other proper business may be conducted. The annual meeting of shareholders shall be held no fewer than 15 days after delivery to the shareholders of the Annual Report (as defined below) and within six (6) months after the end of each fiscal year, commencing with the fiscal year ending December 31, 1997.~~Bylaws, for the election of the Trustees, if required, and for the transaction of any other business within the powers of the Trust. Special meetings of the shareholders may only be called by a majority of the trustees. Except as otherwise provided in the Declaration of Trust, special meetings of shareholders may be called in the manner provided in the Bylaws. If there shall be no trustees, the officers of the Trust shall promptly call a special meeting of the shareholders entitled to vote for the election of successor

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trustees. Any meeting may be adjourned and reconvened as the Trustees determine or as provided in the Bylaws.

No business shall be transacted by the shareholders at a special meeting other than business that is either (i) specified in the notice of meeting (or any supplement thereto) given by or at the direction of the trustees (or any duly authorized committee thereof) or (ii) otherwise properly brought before the shareholders by or at the direction of the trustees.

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~~(b) Not later than ninety (90) days after the close of each fiscal year of the Trust following the end of fiscal year 1997, the trustees shall mail or deliver a report of the business and operations of the Trust during such fiscal year to the shareholders, which report shall constitute the accounting of the trustees for such fiscal year. Subject to Section 8-401 of the Annotated Code of Maryland, the report (the Annual Report) shall be in such form and have such content as the trustees deem proper. The Annual Report shall include a balance sheet, an income statement and a surplus statement, each prepared in accordance with generally accepted accounting principles. Such financial statements shall be certified by an independent public accountant based on a full examination of the books and records of the Trust conducted in accordance with generally accepted auditing procedure. Manually signed copies of the Annual Report and of the auditor's certificate will be filed with the Maryland Department of Assessments and Taxation. A manually signed copy of the accountant's report shall be filed with the trustees.~~

(b) ~~(e)~~ Any notice of meeting or other notice, communication or report to any shareholder shall be deemed duly delivered to such shareholder when such notice, communication or report is deposited, with postage thereon prepaid, in the United States mail, addressed to such shareholder at his address as it appears on the records of the Trust or is delivered in person to such shareholder.

(c) ~~(d)~~ After termination of the Trust and distribution of the trust estate to the shareholders as herein provided, a majority of the Trustees shall execute and lodge among the records of the Trust an instrument in writing setting forth the fact of such termination and such distribution, a copy of which instrument shall be filed with the ~~Maryland~~State Department of Assessments and Taxation ~~of Maryland~~, and the Trustees shall thereupon be discharged from all further liabilities and duties hereunder and the rights and interests of all shareholders shall thereupon cease.

(d) ~~(e)~~ This Declaration may be amended (except that the provisions governing the personal liability of the shareholders, Trustees and of the officers, employees and agents of the Trust and the prohibition of assessments upon shareholders may not be amended in any respect that could increase the personal liability of such shareholders, Trustees or officers, employees and agents of the Trust) at a meeting of shareholders by holders of shares representing a majority of the total number of votes authorized to be cast in respect of shares then outstanding and entitled to vote thereon; provided that any amendment of Article TENTH shall require the approval of holders of shares representing two-thirds (~~23~~2/3) of the total number of votes authorized to be cast in respect of shares then outstanding and entitled to vote thereon. A two-thirds (2/3) majority of the Trustees may, after fifteen (15) days' written notice to the shareholders, also amend this Declaration without the vote or consent of shareholders if in good

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faith they deem it necessary to conform this Declaration to the requirements of the REIT Provisions of the Internal Revenue Code, but the Trustees shall not be liable for failing to do so.

(e) ~~(f)~~ This Declaration is executed and acknowledged by the Trustees with reference to the statutes and laws of the State of Maryland, and the rights of all parties and the construction and effect of every provision hereof shall be subject and construed according to the statutes and laws of such State. ~~To the extent not otherwise provided in this Declaration, the provisions of Titles 1, 2, 3 and 8 of the Corporations and Associations Articles of the Annotated Code of Maryland shall be deemed to apply to the Trust. In defining or interpreting the powers and duties of the Trust and its Trustees and officers, reference may be made by the Trustees or officers, to the extent appropriate and not inconsistent with this Declaration, the Bylaws or the Maryland REIT Law, to the provisions of the Maryland General Corporation Law.~~

TWELFTH: In the event any term, provision, sentence or paragraph of this Declaration of Trust is declared by a court of competent jurisdiction to be invalid or unenforceable, such term, provision, sentence or paragraph shall be deemed severed from the remainder of the Declaration, and the balance of the Declaration shall remain in effect and be enforced to the fullest extent permitted by law and shall be construed to preserve the intent and purposes of the Declaration. Any such invalidity or unenforceability in any jurisdiction shall not invalidate or render unenforceable such term, provision, sentence or paragraph of this Declaration in any other jurisdiction.

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ANNEX C

AMENDED AND RESTATED BY-LAWS

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LEXINGTON CORPORATE PROPERTIES TRUST

AMENDED AND RESTATED BY-LAWS

ARTICLE I.

SHAREHOLDERS

SECTION 1.01. Annual Meeting. The Company shall hold an annual meeting of its shareholders to elect trustees and transact any other business within its powers, either at 10:00 a.m. on the first day of May in each year if not a legal holiday, or at such other time on such other day falling on or before the 30th day thereafter as shall be set by the Board of Trustees. Except as the Declaration of Trust or statute provides otherwise, any business may be considered at an annual meeting without the purpose of the meeting having been specified in the notice. Failure to hold an annual meeting does not invalidate

the Company's existence or affect any otherwise valid corporate acts.

SECTION 1.02. Special Meeting. At any time in the interval between annual meetings, a special meeting of the shareholders may be called by the Chairman of the Board of Trustees or the President or by a majority of the Board of Trustees by vote at a meeting or in writing (addressed to the Secretary of the Company) with or without a meeting. Special meetings of the shareholders shall be called as may be required by law.

SECTION 1.03. Place of Meetings. Meetings of shareholders shall be held at such place in the United States as is set from time to time by the Board of Trustees.

SECTION 1.04. Notice of Meetings; Waiver of Notice. Not less than ten nor more than 90 days before each shareholders' meeting, the Secretary shall give written notice of the meeting to each shareholder entitled to vote at the meeting and each other shareholder entitled to notice of the meeting. The notice shall state the time and place of the meeting and, if the meeting is a special meeting or notice of the purpose is required by statute, the purpose of the meeting. Notice is given to a shareholder when it is personally delivered to

him, left at his residence or usual place of business, or mailed to him at his address as it appears on the records of the Company. Notwithstanding the foregoing provisions, each person who is entitled to notice waives notice if he before or after the meeting signs a waiver of the notice which is filed with the records of shareholders' meetings, or is present at the meeting in person or by proxy.

SECTION 1.05. Quorum Voting. Unless statute or the Declaration of Trust provides otherwise, at a meeting of shareholders the presence in person or by proxy of shareholders entitled to cast a majority of all the votes entitled to be cast at the meeting constitutes a quorum, and a majority of all the votes cast at a meeting at which a quorum is present is sufficient to approve any matter which properly comes before the meeting,

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except that a plurality of all the votes cast at a meeting at which a quorum is present is sufficient to elect a trustee.

SECTION 1.06. Adjournments. Whether or not a quorum is present, a meeting of shareholders convened on the date for which it was called may be adjourned from time to time without further notice ~~by a majority vote of the shareholders present in person or by proxy~~ to a date not more than 120 days after the original record date. Any business which might have been transacted at the meeting as originally notified may be deferred and transacted at any such adjourned meeting at which a quorum shall be present.

SECTION 1.07. General Right to Vote; Proxies. Unless the Declaration of Trust provides for a greater or lesser number of votes per share or limits or denies voting rights, each outstanding share of beneficial interest, regardless of class, is entitled to one vote on each matter submitted to a vote at a meeting of shareholders. In all elections for trustees, each share of beneficial interest may be voted for as many individuals as there are trustees to be elected and for whose election the share is entitled to be voted. A shareholder may vote the beneficial interest he owns of record either in person or by

written proxy signed by the shareholder or by his duly authorized attorney in fact. Unless a proxy provides otherwise, it is not valid more than 11 months after its date.

SECTION 1.08. List of Shareholders. At each meeting of shareholders, a full, true and complete list of all shareholders entitled to vote at such meeting, showing the number and class of shares held by each and certified by the transfer agent for such class or by the Secretary, shall be furnished by the Secretary.

SECTION 1.09. Conduct of Business and Voting. At all meetings of shareholders, unless the voting is conducted by an inspector, the proxies and ballots shall be received, and all questions touching the qualification of voters and the validity of proxies, the acceptance or rejection of votes and procedures for the conduct of business not otherwise specified by these By-Laws, the Declaration of Trust or law, shall be decided or determined by the chairman of the meeting. If demanded by shareholders, present in person or by proxy, entitled to cast 10% in number of votes entitled to be cast, or if ordered by the chairman of the meeting, the vote upon any election or question shall be

taken by ballot and, upon like demand or order, the voting shall be conducted by an inspector, in which event the proxies and ballots shall be received, and all questions touching the qualification of voters and the validity of proxies and the acceptance or rejection of votes shall be decided, by such inspector. Unless so demanded or ordered, no vote need be by ballot and voting need not be conducted by an inspector. The

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shareholders at any meeting may choose an inspector to act at such meeting, and in

default of such election, the chairman of the meeting may appoint an inspector. No candidate for election as trustee at a meeting shall serve as an inspector thereat.

SECTION 1.10. Informal Action by Shareholders. Except as provided below, any action required or permitted to be taken at a meeting of shareholders may be

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taken without a meeting if there is filed with the records of shareholder's meetings a unanimous written consent which sets forth the action and is signed by each shareholder entitled to vote on the matter and a written waiver of any right to dissent signed by each shareholder entitled to notice of the meeting but not entitled to vote at it. Unless the Declaration of Trust provides otherwise, the holders of any class of shares, other than the common stock of the Company entitled to vote generally in the election of trustees, may take action or consent to any action by delivering a written consent of the shareholders entitled to cast not less than the minimum number of votes that would be necessary to authorize or take any such action at a shareholders meeting, provided that the Company gives notice of the action to each shareholder not later than 10 days after the effective time of the action.

SECTION 1.11. Shareholder Proposals. For any shareholder proposal to be presented in connection with an annual meeting of shareholders of the Company, including any proposal relating to the nomination of a trustee to be elected to the Board of Trustees of the Company, the shareholders must have given timely notice thereof in writing to the Secretary of the Company. To be timely, a shareholder's proposal shall be delivered to the Secretary at the principal executive offices of the Company not less than 120 days in advance of the release date of the Company's proxy statement to shareholders in connection with the preceding year's annual meeting; provided, however, that in the event that the date of the annual meeting is advanced by more than 30 days or delayed by more than 60 days from such anniversary date, notice by the shareholder to be timely must be so delivered not earlier than the 90th day prior to such annual meeting and not later than the close of business on the later of the 60th day prior to such annual meeting or the tenth day following the day on which public announcement of the date of such meeting is first made. Such shareholders' notice shall set forth (a) as to each person whom the shareholder proposes to nominate for election or re-election as a trustee all information relating to such person that is required to be disclosed in solicitations of proxies for election of trustees, or is otherwise required, in each case, pursuant to Regulation 14A under the Securities Exchange Act of 1934, as amended (the "Exchange Act") (including such person's written consent to being named in the proxy statement as a nominee and to serving as a trustee if elected); (b) as to any other business that the shareholder proposes to bring before the meeting, a brief description of the business desired to be brought before the meeting, the reasons for conducting such business at the meeting and any material interest in such business of such shareholder and of the beneficial owner, if any, on whose behalf the proposal is made; and (c) as to the shareholder giving the notice and the beneficial owner, if any, on whose behalf the nomination or proposal is made, (i) the name and address of such shareholder, as they appear on the Company's books, and of such beneficial owner and (ii) the class and number of shares of beneficial interest of the Company which are owned beneficially and of record by such shareholders and such beneficial owner. For the 1995 annual meeting the previous year's meeting shall be deemed to have taken place on May 12, 1994; provided that this sentence shall cease to be a part of these By-Laws after the holding of the 1995 annual meeting and any adjournments thereof.

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SECTION 1.12. Control Share Acquisition Act. Notwithstanding any other provision of the Declaration of Trust of the Trust or these Bylaws, Title 3, Subtitle 7 of the Maryland General Corporation Law (the "MGCL") (or any successor statute) shall not apply to any acquisition by any person of shares of beneficial interest of the Trust. This section may be repealed, in whole or in part, at any time, whether before or after an acquisition of control shares and, upon such repeal, may, to the extent provided by any successor bylaw, apply to any prior or subsequent control share acquisition.

ARTICLE II.

BOARD OF TRUSTEES

SECTION 2.01. Function of Trustees. The business and affairs of the Company shall be managed under the direction of its Board of Trustees. All powers of the Company may be exercised by or under authority of the Board of Trustees, except as conferred on or reserved to the shareholders by statute or by the Declaration of Trust or By-Laws.

SECTION 2.02. Number of Trustees. ~~The Company shall have at least three trustees; provided that, if there are no shares of beneficial interest outstanding, the number of Trustees may be less than three but not less than one, and, if there are shares of beneficial interest outstanding and so long as there are less than three shareholders, the number of Trustees may be less than three but not less than the number of shareholders. The Company shall have the number of Trustees provided in the Declaration of Trust until changed as herein provided. Except as the Declaration of Trust provides otherwise~~At any regular meeting or at any special meeting called for that purpose, a majority of the entire Board of Trustees may alter the number of trustees set by the Declaration of Trust to not exceeding nine nor~~establish, increase or decrease the number of Trustees, provided that the number thereof shall never be~~ less than the minimum number ~~then permitted herein, but the action may not affect~~required by the Maryland REIT Law and further provided that the tenure of office of ~~any trustee~~a Trustee shall not be affected by any decrease in the number of Trustees.

SECTION 2.03. Election and Tenure of Trustees. At each annual meeting the shareholders shall elect trustees to hold office until the next annual meeting and until their successors are elected and qualify.

SECTION 2.04. Removal of Trustee. Any trustee or the entire Board of Trustees may be removed only in accordance with the provisions of the Declaration of Trust.

SECTION 2.05 Vacancy on Board of Trustees. The shareholders shall elect a successor to fill a vacancy on the Board of Trustees which results from the removal of a trustee. A trustee elected by the shareholders to fill a vacancy which results from the removal of a trustee serves for the balance of the term of the removed trustee. A majority of the remaining Trustees, whether or not sufficient to constitute a quorum, may

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fill a vacancy on the Board of Trustees which results from any increase in the authorized number of Trustees, or death, resignation, retirement or other cause. A trustee elected by the Board of Trustees to fill a vacancy serves until the next annual meeting of shareholders and until his successor is elected and qualifies.

SECTION 2.06. Regular Meetings. After each meeting of shareholders at which trustees shall have been elected, the Board of Trustees shall meet as soon as practicable for the purpose of organization and the transaction of other business. In the event that no other time and place are specified by resolution of the Board of Trustees, the President or the Chairman of the Board of Trustees, with notice in accordance with Section 2.08, the Board of Trustees shall meet immediately following the close of, and at the place of, such shareholders' meeting. Any other regular meeting of the Board of Trustees shall be held on such date and at any place as may be designated from time to time by the Board of Trustees.

SECTION 2.07. Special Meetings. Special meetings of the Board of Trustees may be called at any time by the Chairman of the Board of Trustees or the President or by a majority of the Board of Trustees by vote at a meeting or in writing with or without a meeting. A special meeting of the Board of Trustees shall be held on such date and at any place as may be designated from time to time by the Board of Trustees. In the absence of designation such meeting shall be held at such place as may be designated in the call.

SECTION 2.08. Notice of Meeting. Except as provided in Section 2.06, the Secretary shall give notice to each trustee of each regular and special meeting of the Board of Trustees. The notice shall state the time and place of the meeting. Notice is given to a trustee when it is delivered personally to him, left at his residence or usual place of business, or sent by telegraph, facsimile transmission or telephone, at least 24 hours before the time of the meeting or, in the alternative by mail to his address as it shall appear on the records of the Company, at least 72 hours before the time of the meeting. Unless these By-Laws or a resolution of the Board of Trustees provides otherwise, the notice need not state the business to be transacted at or the purposes of any regular or special meeting of the Board of Trustees. No notice of any meeting of the Board of Trustees need be given to any trustee who attends except where a trustee attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened, or to any trustee who, in writing executed and filed with the records of the meeting either before or after the holding thereof, waives such notice. Any meeting of the Board of Trustees, regular or special, may adjourn from time to time to reconvene at the same or some other place, and no notice need be given of any such adjourned meeting other than by announcement.

SECTION 2.09. Action by Trustees. Unless statute, the Declaration of Trust or these By-Laws requires a greater proportion, the action of a majority of the trustees present at a meeting at which a quorum is present is action of the Board of

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Trustees. A majority of the entire Board of Trustees shall constitute a quorum for the transaction of business. In the absence of a quorum, the trustees present by majority vote and without notice other than by announcement may adjourn the meeting from time to time until a quorum shall attend. At any such adjourned meeting at which a quorum shall be present, any business may be transacted which might have been transacted at the Meeting as originally notified. Any action required or permitted to be taken at a meeting of the Board of Trustees may be taken without a meeting, if a unanimous written or electronic consent which sets forth the action is signed or authorized by each member of the Board of Trustees and filed with the minutes of proceeding of the Board of Trustees. Notwithstanding the foregoing, in the event any of Lepercq Corporate Income Fund, L.P., Lepercq Corporate Income Fund II, L.P., Net 3 Acquisition L.P. or any other similar "UPREIT" partnership in which the Company or its affiliates is the general partner (each, an "Operating Partnership"), determines to distribute, on a per unit basis, to its limited partners an amount which is in excess of the largest corresponding distribution to be made by any other Operating Partnership, on a per

unit basis (an "Excess Distribution"), such Excess Distribution shall require the approval of a majority of the Independent Trustees. For purposes of this Section 2.09, "Independent Trustees" means those members of the Board of Trustees who (i) have been designated by the Board of Trustees as "independent" under the applicable rules of the New York Stock Exchange (or other exchange on which the Company is then listed) and (ii) are not a limited partner of the Operating Partnership which is making the Excess Distribution. The prior two sentences of this Section 2.09 and any provision relating to the making of distributions in the organizational documents of the general partner of an Operating Partnership may only be amended by the vote of a majority of the Independent Trustees.

SECTION 2.10. Meeting by Conference Telephone. Members of the Board of Trustees may participate in a meeting by means of a conference telephone or similar communications equipment if all persons participating in the meeting can hear each other at the same time. Participation in a meeting by these means constitutes presence in person at a meeting.

SECTION 2.11. Compensation. By resolution of the Board of Trustees a fixed sum and expenses, if any, for attendance at each regular or special meeting of the Board of Trustees or of committees thereof, and other compensation for their services as such or on committees of the Board of Trustees, may be paid to trustees. Trustees who are full-time employees of the Company need not be paid for attendance at meetings of the Board of Trustees or committees thereof for which fees are paid to other trustees. A trustee who

serves the Company in any other capacity also may receive compensation for such other services, pursuant to a resolution of the Board of Trustees.

SECTION 2.12. Advisory Trustees. The Board of Trustees may by resolution appoint advisory trustees to the Board of Trustees, who may also serve as trustees emeriti, and shall have such authority and receive such compensation and reimbursement as the Board of Trustees shall provide. Advisory trustees or trustees emeriti shall not have the authority to participate by vote in the transaction of business.

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ARTICLE III.

COMMITTEES

SECTION 3.01. Committees. The Board of Trustees may appoint from among its members an Audit Committee, a Compensation Committee, a Nominating and Corporate Governance Committee and other committees composed of one or more trustees and delegate to these committees any of the powers of the Board of Trustees, except (i) the power to authorize dividends on stock (other than as provided below), (ii) elect directors, (iii) issue stock (other than as provided below), (iv) recommend to the shareholders any action which requires shareholder approval, (v) amend these By-Laws, or (vi) approve any merger or share exchange which does not require shareholder approval. The entire Audit Committee and the entire Nominating and Corporate Governance Committee shall be trustees who are independent of management. The entire Compensation Committee shall be trustees who are "disinterested persons" within the meaning of Rule 16b-3 of the Securities Exchange Act of 1934, as amended. If the Board of Trustees has given general authorization for a distribution and provides for or establishes a method or procedure for determining the maximum amount of the distribution, a committee of the Board of Trustees or an officer of the Company, in accordance with that general authorization, may fix the amount and other terms of the distribution. If the Board of Trustees has given general authorization for the issuance of beneficial interest, a committee of the Board of Trustees, in accordance with a general formula or method specified by the Board of Trustees by resolution or adoption of a beneficial interest option or other plan, may fix the terms of beneficial interest

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subject to classification or reclassification and the terms on which any beneficial interest may be issued, including all terms and conditions required or permitted to be established or authorized by the Board of Trustees.

SECTION 3.02. Committee Procedure. Each committee may fix rules of procedure for its business. A majority of the members of a committee shall constitute a quorum for the transaction of business and the act of a majority of those present at a meeting at which a quorum is present shall be the act of the committee. The members of a committee present at any meeting, whether or not they constitute a quorum, may appoint a trustee to act in the place of an absent member. Any action required or permitted to be taken at a meeting of a committee may be taken without a meeting, if a unanimous written or electronic consent which sets forth the action is signed or authorized by each member of the committee and filed with the minutes of the committee. The members of a committee may conduct any meeting thereof by conference telephone in accordance with the provisions of Section 2.10.

SECTION 3.03. Emergency. In the event of a state of disaster of sufficient severity to prevent the conduct and management of the affairs and business of the Company by its trustees and officers as contemplated by the Declaration of Trust and these By-Laws, the available trustees shall elect a Special Executive Committee consisting of any two members of the Board of Trustees, whether or not they be officers

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of the Company, which two members shall constitute the Special Executive Committee for the full conduct and management of the affairs of the Company in accordance with the foregoing provisions of this Section. This Section shall be subject to implementation by resolution of the Board of Trustees passed from time to time for that purpose, and any provisions of these By-Laws (other than this Section) and any resolutions which are contrary to the provisions of this Section or to the provisions of any such implementary resolutions shall be suspended until it shall be determined by any Special Executive Committee acting under this Section that it shall be to the advantage of the Company to resume the conduct and management of its affairs and business under all the other provisions of these By-Laws.

ARTICLE IV.

OFFICERS

SECTION 4.01. Executive and Other Officers. The Company shall have a President, a Secretary, and a Treasurer. It may also have a Chairman of the Board of Trustees. ~~The Board of Trustees shall designate who shall serve as chief executive officer, who shall have general supervision of the business and affairs of the Company, and may designate a chief operating officer, who shall have supervision of the operations of the Company. In the absence of any designation, the Chairman of the Board of Trustees, if there be one, shall serve as chief executive officer and the President shall serve as chief operating officer. In the absence of the Chairman of the Board of Trustees, or if there be none, the President shall be the chief executive officer. The same person may hold both offices,~~ a Vice Chairman of the Board, a Chief Executive Officer, a Chief Operating Officer, a Chief Information Officer, a Chief Financial Officer, and a Chief Accounting Officer. In addition, the Board of Trustees may from time to time elect such other officers with such powers and duties as they shall deem necessary or desirable. The Company may also have one or more Vice-Presidents, assistant officers, and subordinate officers as may be established by the Board of Trustees. A person may hold more than one office in the Company except that no person may serve concurrently as both President and a Vice-President of the Company. The Chairman of the Board of Trustees shall be a trustee; the other officers may be trustees.

SECTION 4.02. Chief Executive Officer. The Chief Executive Officer, if one be designated by the Board of Trustees, shall have general supervision of the business and affairs of the Company. He or she may execute any deed, mortgage, bond, contract or other instrument, except in cases where the execution thereof shall be expressly delegated by the Board of Trustees or by these Bylaws to some other officer or agent of the Company or shall be required by law to be otherwise executed; and in general shall perform all duties incident to the office of Chief Executive Officer and such other duties as may be prescribed by the Board of Trustees from time to time. In the absence of any designation by the Board of Trustees, the Chairman of the Board of Trustees, if there be one, shall serve as Chief Executive Officer. In the absence of the Chairman of the Board of Trustees, or if there be none, the President shall be the Chief

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Executive Officer. The same person may hold both offices of President and Chief Executive Officer.

SECTION 4.03. Chief Operating Officer. The Chief Operating Officer, if one be designated by the Board of Trustees, shall have supervision of the operations of the Company and the responsibilities and duties set forth by the Board of Trustees or the Chief Executive Officer. In the absence of any designation by the Board of Trustees, the President shall serve as Chief Operating Officer.

SECTION 4.04. Chief Financial Officer. The Board of Trustees may designate a Chief Financial Officer. The Chief Financial Officer shall have the responsibilities and duties as set forth by the Board of Trustees or the Chief Executive Officer.

SECTION 4.05. Chief Information Officer. The Board of Trustees may designate a Chief Information Officer. The Chief Information Officer shall have the responsibilities and duties as set forth by the Board of Trustees or the Chief Executive Officer.

SECTION 4.06. Chief Accounting Officer. The Board of Trustees may designate a Chief Accounting Officer. The Chief Accounting Officer shall have the responsibilities and duties as set forth by the Board of Trustees or the Chief Executive Officer.

SECTION 4.07. Chairman of the Board of Trustees. The Chairman of the Board of Trustees, if one be elected, shall preside at all meetings of the Board of Trustees and of the shareholders at which he shall be present. Unless otherwise specified by the Board of Trustees, he shall be the chief executive officer of the Company and perform the duties customarily performed by chief executive officers, and may perform any duties of the President. In general, he shall perform all such duties as are from time to time assigned to him by the Board of Trustees.

SECTION ~~4.03-4.08~~ 4.08. President. Unless otherwise provided by resolution of the Board of Trustees, the President, in the absence of the Chairman of the Board of Trustees, shall preside at all meetings of the Board of Trustees and of the shareholders at which he shall be present. Unless otherwise specified by the Board of Trustees, the President shall be the chief operating officer of the Company and perform the duties customarily performed by chief operating officers. He may sign and execute, in the name of the Company, all authorized deeds, mortgages, bonds, contracts or other instruments, except in cases in which the signing and execution thereof shall have been expressly delegated to some other officer or agent of the Company. In general, he shall perform such other duties usually performed by a president of a Company and such other duties as are from time to time assigned to him by the Board of Trustees or the chief executive officer of the Company.

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SECTION ~~4.04~~4.09. Vice-Presidents. The Vice-President or Vice-Presidents, at the request of the chief executive officer or the President, or in the President's absence or during his inability to act, shall perform the duties and exercise the

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functions of the President, and when so acting shall have the powers of the President. If there be more than one Vice-President, the Board of Trustees may determine which one or more of the Vice-Presidents shall perform any of such duties or exercise any of such functions, or if such determination is not made by the Board of Trustees, the chief executive officer, or the President may make such determination; otherwise any of the Vice-Presidents may perform any of such duties or exercise any of such functions. The Vice-President or Vice-Presidents shall have such other powers and perform such other duties, and have such additional descriptive designations in their titles (if any), as are from time to time assigned to them by the Board of Trustees, the chief executive officer, or the President.

SECTION ~~4.05~~4.10. Secretary. The Secretary shall keep the minutes of the meetings of the shareholders, of the Board of Trustees and of any committees, in books provided for the purpose; he shall see that all notices are duly given in accordance with the provisions of these By-Laws or as required by law; he shall be custodian of the records of the Company; he may witness any document on behalf of the Company, the execution of which is duly authorized, see that the corporate seal is affixed where such document is required or desired to be under its seal, and, when so affixed, may attest the same; and, in general, he shall perform all duties incident to the office of a secretary of a Company, and such other duties as are from time to time assigned to him by the Board of Trustees, the chief executive officer or the President.

SECTION ~~4.06~~4.11. Treasurer. The Treasurer shall have charge of and be responsible for all funds, securities, receipts and disbursements of the Company, and shall deposit, or cause to be deposited, in the name of the Company, all moneys or other valuable effects in such banks, trust companies or other depositories as shall, from time to time, be selected by the Board of Trustees; he shall render to the President and to the Board of Trustees, whenever requested, an account of the financial condition of the Company; and, in general, he shall perform all the duties incident to the office of a treasurer of a Company, and such other duties as are from time to time assigned to him by the Board of Trustees, the chief executive officer, or the President. The Treasurer shall also be the Chief Financial Officer of the Company.

SECTION ~~4.07~~4.12. Assistant and Subordinate Officers. The assistant and subordinate officers of the Company are all officer below the office of Vice-President, Secretary or Treasurer. The assistant or subordinate officers shall have such duties as are from time to time assigned to them by the Board of Trustees, the chief executive officer, or the President.

SECTION ~~4.08~~4.13. Election; Tenure and Removal of Officers. The Board of Trustees shall elect the officers. The Board of Trustees may from time to time authorize any committee or officer to appoint assistant and subordinate officers. Election or appointment of an officer, employee or agent shall not of itself create contract rights. All officers shall be appointed to hold their offices, respectively, at the pleasure of the Board of Trustees. The Board of Trustees (or, as to any assistant or subordinate officer, any committee or officer authorized by the Board of Trustees) may remove an officer at

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any time. The removal of an officer does not prejudice any of his contract rights. The Board of Trustees (or, as to any assistant or subordinate officer, any committee or officer authorized by the Board of Trustees) may fill a vacancy which occurs in any office for the unexpired portion of the term.

SECTION ~~4.09~~4.14. Compensation. The Board of Trustees shall have power to fix the salaries and other compensation and remuneration, of whatever kind, of all officers of the Company. No officer shall be prevented from receiving such salary by reason of the fact that he is also a trustee of the Company. The Board of Trustees may authorize any committee or officer, upon whom the power of appointing assistant and subordinate officers may have been conferred, to fix the salaries, compensation and remuneration of such assistant and subordinate officers.

ARTICLE V.

DIVISIONAL TITLES

SECTION 5.01. Conferring Divisional Titles. The Board of Trustees may from time to time confer upon any employee of a division of the Company the title of President, Vice President, Treasurer or Secretary of such division or any other title or titles deemed appropriate, or may authorize the Chairman of the Board of Trustees or the President to do so. Any such titles so conferred may be discontinued and withdrawn at any time by the Board of Trustees, or by the Chairman of the Board of Trustees or the President if so authorized by the Board of Trustees. Any employee of a division designated by such a divisional title shall have the powers and duties with respect to such division as shall be prescribed by the Board of Trustees, the Chairman of the Board of Trustees or the President.

SECTION 5.02. Effect of Divisional Titles. The conferring of divisional titles shall not create an office of the Company under Article IV unless specifically designated as such by the Board of Trustees; but any person who is an officer of the Company may also have a divisional title.

ARTICLE VI .

BENEFICIAL INTEREST

SECTION 6.01. Certificates for Beneficial Interest. The Board of Trustees may determine to issue certificated or uncertificated shares of beneficial interest and other securities of the Company. For certificated shares of beneficial interest, each shareholder is entitled to certificates which represent and certify the shares of beneficial interest the shareholder holds in the Company. Each certificate (a) shall be in such form, not inconsistent with law or with the Declaration of Trust, as shall be approved by the Board of Trustees or any officer or officers designated for such purpose by resolution of the Board of Trustees, (b) shall include on its face the name of the Company, the name of the shareholder or other person to whom it is issued, and the class of shares of beneficial

interest and number of shares of beneficial interest it represents, (c) shall be signed by the Chairman of the Board of Trustees, the President, or a Vice-President, and countersigned by the Secretary, an Assistant Secretary, the Treasurer, or an Assistant Treasurer, (d) may be sealed with the actual seal of the Company or a facsimile of it or in any other form and signatures may be either manual or facsimile signatures. Each certificate shall also include on its face or back (a) a statement of any restrictions on transferability and a statement of the designations and any preferences, conversion and other rights, voting powers, restrictions, limitations as to dividends, qualifications, and terms and conditions of redemption of the shares of beneficial interest of each class which the Company is authorized to issue, of the differences in the relative rights and preferences between the shares of beneficial interest of each series of a preferred or special class in a series which the Company is authorized to issue, to the extent they have been set, and of the authority of the Board of Trustees to set the relative rights and preferences of subsequent series of a preferred or special class of shares of beneficial interest or (b) a statement which provides in substance that the Company will furnish a full statement of such information to any shareholder on request and without charge.

Such request may be made to the Secretary or to the transfer agent for the shares of beneficial interest. Except as provided in the Maryland Uniform Commercial Code - Investment Securities, the fact that a certificate does not contain or refer to a restriction on transferability that is adopted after the date of issuance does not mean that the restriction is invalid or unenforceable. A certificate is valid and may be issued whether or not an officer who signed it is still an officer when it is issued. A certificate may not be issued until the shares of beneficial interest represented by it are fully paid. Upon the issuance of uncertificated shares of beneficial interest, the Company shall send the shareholder a written statement of the same information required above on the certificate and by the Maryland Uniform Commercial Code - Investment Securities.

SECTION 6.02. Transfers. The Board of Trustees shall have power and authority to make such rules and regulations as it may deem expedient concerning the issue, transfer and registration of certificates of beneficial interest; and may appoint transfer agents and registrars thereof. The duties of transfer agent and registrar may be combined.

SECTION 6.03. Record Dates and Closing of Transfer Books. The Board of Trustees may set a record date or direct that the beneficial interest transfer books be closed for a stated period for the purpose of making any proper determination with respect to shareholders, including which shareholders are entitled to notice of a meeting, vote at a meeting, receive a dividend or be allotted other rights. The record date may not be prior to the close of business on the day the record date is fixed nor, subject to Section 1.06, more than 90 days before the date on which the action requiring the determination will be taken; the transfer books may not be closed for a period longer than 20 days; and, in the case of a meeting of shareholders, the record date or the closing of the transfer books shall be at least ten days before the date of the meeting.

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SECTION 6.04. Beneficial Interest Ledger. The Company shall maintain a beneficial interest ledger which contains the name and address of each shareholder and the number of shares of beneficial interest of each class which the shareholder holds. The beneficial interest ledger may be in written form or in any other form which can be converted within a reasonable time into written form for visual inspection. The original or a duplicate of the beneficial interest ledger shall be kept at the offices of a transfer agent for the particular class of beneficial interest, or, if none, at the principal office in the State of Maryland or the principal executive offices of the Company.

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SECTION 6.05. Certification of Beneficial Owners. The Board of Trustees may adopt by resolution a procedure by which a shareholder of the Company may certify in writing to the Company that any shares of beneficial interest registered in the name of the shareholder are held for the account of a specified person other than the shareholder. The resolution shall set forth the class of shareholders who may certify; the purpose for which the certification may be made; the form of certification and the information to be contained in it; if the certification is with respect to a record date or closing of the beneficial interest transfer books, the time after the record date or closing of the beneficial interest transfer books within which the certification must be received by the Company; and any other provisions with respect to the procedure which the Board of Trustees considers necessary or desirable. On receipt of a certification which complies with the procedure adopted by the Board of Trustees in accordance with this Section, the person specified in the certification is, for the purpose set forth in the certification, the holder of record of the specified beneficial interest in place of the shareholder who makes the certification.

SECTION 6.06. Lost Beneficial Interest Certificates. The Board of Trustees of the Company may determine the conditions for issuing a new beneficial interest certificate in place of one which is alleged to have been lost, stolen, or destroyed, or the Board of Trustees may delegate such power to any officer or officers of the Company. In their discretion, the Board of Trustees or such officer or officers may refuse to issue such new certificate save upon order of some court having jurisdiction in the premises.

ARTICLE VII.

FINANCE

SECTION 7.01. Checks, Drafts, Etc . All checks, drafts ~~and/or other~~ orders for the payment of money, notes ~~and/or~~ other evidences of indebtedness; issued in the name of the Company, ~~shall, unless otherwise provided by resolution of the Board of Trustees, be signed by the President, a Vice President or an Assistant Vice President and countersigned by the Treasurer, an Assistant Treasurer, the Secretary or an Assistant Secretary~~ shall be signed by such officer or agent of the Company in such manner as shall from time to time be determined by the Board of Trustees.

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SECTION 7.02. Annual Statement of Affairs. The President or chief accounting officer shall prepare annually a full and correct statement of the affairs of the Company, to include a balance sheet and a financial statement of operations for the preceding fiscal year. The statement of affairs shall be submitted at the annual meeting of the shareholders and, within 20 days after the meeting, placed on file at the Company's principal.

SECTION 7.03. Fiscal Year. The fiscal year of the Company shall be the twelve calendar months ending December 31 in each year, unless otherwise provided by the Board of Trustees.

SECTION 7.04. Dividends. If declared by the Board of Trustees at any meeting thereof, the Company may pay dividends on its shares in cash, property, or in shares of the capital beneficial interest of the Company, unless such dividend is contrary to law or to a restriction contained in the Declaration of Trust.

SECTION 7.05. Contracts. To the extent permitted by applicable law, and except as otherwise prescribed by the Declaration of Trust or these By-Laws with respect to certificates for shares, the Board of Trustees may authorize any officer, employee, or agent of the Company to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Company. Such authority may be general or confined to specific instances.

ARTICLE VIII.

INDEMNIFICATION

SECTION 8.01. Procedure. Any indemnification, or payment of expenses in advance of the final disposition of any proceeding, shall be made promptly, and in any event within 60 days, upon the written request of the trustee or officer entitled to seek indemnification (the "Indemnified Party"). The right to indemnification and advances hereunder shall be enforceable by the Indemnified Party in any court of competent jurisdiction, if (i) the Company denies such request, in whole or in part, or (ii) no disposition thereof is made within 60 days. The Indemnified Party's costs and expenses incurred in connection with successfully establishing his right to indemnification, in whole or in part, in any such action shall also be reimbursed by the Company. It shall be a defense to any action for advance of expenses that (a) a determination has been made

that the facts then known to those making the determination would preclude indemnification or (b) the Company has not received either (i) an undertaking as required by law to repay such advances in the event it shall ultimately be determined that the standard of conduct has not been met or (ii) a written affirmation by the Indemnified Party of such Indemnified Party's good faith belief that the standard of conduct necessary for indemnification by the Company has been met.

SECTION 8.02. Exclusivity; Etc. The indemnification and advance of expenses provided by the Declaration of Trust and these By-Laws shall not be deemed

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exclusive of any other rights to which a person seeking indemnification or advance of expenses may be entitled under any law (common or statutory), or any agreement, vote of shareholders or disinterested trustees or other provision that is consistent with law, both as to action in his official capacity and as to action in another capacity while holding office or while employed by or acting as agent for the Company, shall continue in respect of all events occurring while a person was a trustee or officer after such person has ceased to be a trustee or officer, and shall inure to the benefit of the estate, heirs, executors and administrators of such person. All rights to indemnification and advance of expenses under the Declaration of Trust of the Company and hereunder shall be deemed to be a contract between the Company and each trustee or officer of the Company who serves or served in such capacity at any time while this By-Law is in effect. Nothing herein shall prevent the amendment of this By-Law, provided that no such amendment shall diminish the rights' of any person hereunder with respect to events occurring or claims made before its adoption or as to claims made after its adoption in respect of events occurring before its adoption. Any repeal or modification of this By-Law shall not in any way diminish any rights to indemnification or advance of expenses of such trustee or officer or the obligations of the Company arising hereunder with respect to events occurring, or claims made, while this By-Law or any provision hereof is in force.

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SECTION 8.03. Severability: Definitions. The invalidity or unenforceability of any provision of this Article VIII shall not affect the validity or enforceability of any other provision hereof. The phrase "this By-Law" in this Article VIII means this Article VIII in its entirety.

ARTICLE IX.

SUNDRY PROVISIONS

SECTION 9.01. Books and Records. The Company shall keep correct and complete books and records of its accounts and transactions and minutes of the proceedings of its shareholders and Board of Trustees and of any committee when exercising any of the powers of the Board of Trustees. The books and records of a Company may be in written form or in any other form which can be converted within a reasonable time into written form for visual inspection. Minutes shall be recorded in written form but may be maintained in the form of a reproduction. The original or a certified copy of these By-Laws shall be kept at the principal office of the Company.

SECTION 9.02. Corporate Seal. The Board of Trustees shall provide a suitable seal, bearing the name of the Company, which shall be in the charge of the Secretary. The Board of Trustees may authorize one or more duplicate seals and provide for the custody thereof. If the Company is required to place its corporate seal to a document, it is sufficient to meet the requirement of any law, rule, or regulation relating to a corporate seal to place the word "Seal" adjacent to the signature of the person authorized to sign the document on behalf of the Company.

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SECTION 9.03. Bonds. The Board of Trustees may require any officer, agent or employee of the Company to give a bond to the Company, conditioned upon the faithful discharge of his duties, with one or more sureties and in such amount as may be satisfactory to the Board of Trustees.

SECTION 9.04. Voting Upon Shares in Other Companies. Beneficial interest of other Companies or associations, registered in the name of the Company, may be voted by the President, a Vice-President, or a proxy appointed by either of them. The Board of Trustees, however, may by resolution appoint some other person to vote such shares, in which case such person shall be entitled to vote such shares upon the production of a certified copy of such resolution.

SECTION 9.05. Mail. Any notice or other document which is required by these By-Laws to be mailed shall be deposited in the United States mails, postage prepaid.

SECTION 9.06. Execution of Documents. A person who holds more than one office in the Company may not act in more than one capacity to execute, acknowledge, or verify an instrument required by law to be executed, acknowledged, or verified by more than one officer.

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SECTION 9.07. Amendments. Subject to the special provisions of Section 2.02, in accordance with the Declaration of Trust, these By-Laws may be repealed, altered, amended or rescinded (a) by the shareholders of the Company only by vote of not less than 80% of the outstanding shares of beneficial interest of the Company entitled to vote generally in the election of trustees (considered for this purpose as one class) cast at any meeting of the shareholders called for that purpose (provided that notice of such proposed repeal, alteration, amendment or rescission is included in the notice of such meeting) or (b) by vote of two-thirds of the Board of Trustees at a meeting held in accordance with the provisions of these By-Laws.

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ANNEX D

WACHOVIA SECURITIES FAIRNESS OPINION

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ANNEX D

July 23, 2006

Board of Trustees

Lexington Corporate Properties Trust

One Penn Plaza, Suite 4015

New York, NY 10119-4015

Gentlemen:

You have asked Wachovia Capital Markets, LLC (Wachovia Securities) to advise you with respect to the fairness, from a financial point of view, to Lexington Corporate Properties Trust (the Company), of the Exchange Ratio (as defined below) pursuant to the Agreement and Plan of Merger, dated as of July 23, 2006 (the Agreement), by and among the Company, a Maryland real estate investment trust, and Newkirk Realty

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Trust, a Maryland corporation (NRT). Capitalized terms in this letter shall have the meaning ascribed to them in the Agreement unless the context clearly requires otherwise.

The Agreement provides for the acquisition of NRT by the Company pursuant to a merger in which NRT is merged with and into the Company (the REIT Merger). At the Effective Time (as defined in the Agreement), each issued and outstanding share of common stock, par value \$.01 per share, of NRT (NRT Common Stock), shall be converted into the right to receive the 0.80 common shares of beneficial interest, par value \$0.0001 per share, of the Company (Company Common Shares) (the Exchange Ratio). In addition, the Agreement provides that the Company may, prior to the Effective Time, make a one time distribution of \$0.17 per Company Common Share, as more fully described in the Agreement.

In arriving at our opinion, we have, among other things:

Reviewed the Agreement, including the financial terms of the Agreement.

Reviewed Annual Reports to Shareholders and Annual Reports on Form 10-K for the Company for the five years ended December 31, 2005.

Reviewed the Annual Report to Shareholders and Annual Report on Form 10-K for NRT for the year ended December 31, 2005.

Reviewed certain interim reports to shareholders and Quarterly Reports on Form 10-Q for the Company and NRT.

Reviewed certain business, financial, and other information regarding each of the Company and NRT that was publicly available.

Reviewed certain business, financial, and other information regarding the Company (and the combined company following the REIT Merger) and its prospects, including

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Board of Trustees

Lexington Corporate Properties Trust

July 23, 2006

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financial forecasts, which were furnished to us by the management of the Company, and discussed the business and prospects of the Company (and the combined company following the REIT Merger) with the Company's management.

Reviewed certain business, financial, and other information regarding NRT and its prospects, including financial forecasts, which were furnished to us by the managements of the Company and NRT, and discussed the business and prospects of NRT and the combined company following the REIT Merger with managements of the Company and NRT.

Participated in discussions and negotiations among representatives of the Company and NRT and their financial and legal advisors.

Reviewed the reported prices and trading activity of each of the Company Common Shares and NRT Common Stock.

Compared certain publicly available business, financial, and other information regarding each of the Company and NRT with similar information regarding certain other publicly traded companies that we deemed relevant.

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Compared the proposed financial terms of the Agreement with the financial terms of certain other business combinations and transactions that we deemed relevant.

Reviewed the potential pro forma impact of the REIT Merger on the Company's financial statements.

Considered other information such as financial studies, analyses, and investigations as well as financial and economic and market criteria that we deemed relevant.

In connection with our review, we have relied upon the accuracy and completeness of the foregoing financial and other information, and we have not assumed any responsibility for any independent verification of such information. We have also assumed the accuracy and completeness of the financial forecasts provided by the Company and NRT for purposes of this opinion. With respect to the financial forecasts, we have assumed that the estimates and judgments expressed by management of each of NRT and the Company in such forecasts have been reasonably formulated and that they are the best currently available estimates and judgments of the respective managements of each of the Company and NRT, respectively, regarding the anticipated future financial performance, in the case of the Company, the Company, in the case of NRT, the Company and NRT and, in the case of the combined company following the REIT Merger, the Company, and that such combined company forecasts will be realized in the amount and timeframes contemplated thereby. We assume no responsibility for and express no view as to any such forecasts or the

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Board of Trustees

Lexington Corporate Properties Trust

July 23, 2006

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assumptions upon which they are based. In arriving at our opinion, we have not prepared or obtained any independent evaluations or appraisals of the assets or liabilities of either the Company or NRT or been provided with any such evaluations or appraisals.

In rendering our opinion, we have assumed that the REIT Merger will be consummated on the terms described in the Agreement, without waiver of any material terms or conditions, and that in the course of obtaining any necessary legal, regulatory or third-party consents or approvals, no restrictions will be imposed that will have an adverse effect on the REIT Merger, the Company or other actions contemplated by the Agreement in any respect meaningful to our opinion. Our opinion is necessarily based on economic, market, financial and other conditions and the information made available to us as of the date hereof. Our opinion does not address any of the provisions of the Second Amended and Restated NRT Partnership Agreement.

Wachovia Securities is a trade name of Wachovia Capital Markets, LLC, an investment banking subsidiary and affiliate of Wachovia Corporation. We have been engaged to render certain financial advisory services to the Board of Trustees of the Company in connection with the Agreement and will receive a fee for such services, a significant portion of which is payable upon consummation of the REIT Merger. We will also receive a fee on delivery of this opinion, and this fee will be credited in full against any advisory fees paid in connection with the transaction. In addition, the Company has agreed to reimburse certain of our expenses and indemnify us against certain liabilities arising out of our engagement.

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Wachovia Securities and our affiliates provide a full range of financial advisory, securities and lending services in the ordinary course of business for which we receive customary fees. In connection with unrelated matters, Wachovia Securities and its affiliates in the past have provided financing services to the Company. In addition, Wachovia Securities and its affiliates (including Wachovia Corporation and its affiliates) have, in the past, had, or currently have, certain other relationships with each of NRT and the Company. Wachovia Securities acted as placement agent for the Company for secured mortgage indebtedness of \$10.1 million in aggregate principal amount in 2005, \$51.5 million in aggregate principal amount in 2004, and \$13.4 million in aggregate principal amount in 2003. Additionally, Wachovia Securities acted as lender to the Company for \$7.7 million of secured mortgage indebtedness in 2004. In addition, Wachovia Securities acted as sole book-running manager in public offerings of Company Common Shares for \$61.7 million in July 2005, \$127.2 million in February 2004, \$102.6 million in October 2003, \$77.0 million in April 2003 and \$42.6 million in September 2002. Furthermore, Wachovia Securities acted as lead arranger for the Company's \$200.0 million credit facility in June 2005, pursuant to which Wachovia Securities committed \$45.0 million. Wachovia Securities also acted as

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Board of Trustees

Lexington Corporate Properties Trust

July 23, 2006

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placement agent for the Company in a private placement of Company Common Shares of \$35.0 million in June 2004.

Wachovia Securities also maintains active equity research on the Company. In addition, we currently, and in the future may, provide similar or other banking and financial services to, and maintain our relationship with, the Company and NRT. Additionally, in the ordinary course of our business, we may trade in the securities of the Company and NRT and their respective affiliates for our own account and for the accounts of our customers and, accordingly, may at any time hold a long or short position in such securities. An affiliate of Wachovia Securities currently holds approximately 616,000 Company Common Shares.

It is understood that this opinion is for the information and use of the Board of Trustees of the Company in connection with its consideration of the REIT Merger. Our opinion does not address the merits of the underlying decision by the Company to enter into the Agreement and does not and shall not constitute a recommendation to any holders of Company Common Shares as to how they should vote in connection with the REIT Merger. In addition, we are not expressing any opinion herein with respect to the prices at which Company Common Shares will trade at any time. Our opinion may not be disclosed, summarized, excerpted from, or otherwise publicly referred to without our prior written consent.

Based upon and subject to the foregoing, our experience as investment bankers, our work as described above, and other factors we deem relevant, we are of the opinion that, as of the date hereof, the Exchange Ratio pursuant to the Agreement is fair, from a financial point of view, to the Company.

Very truly yours,

/s/ Wachovia Capital Markets, LLC

WACHOVIA CAPITAL MARKETS, LLC

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ANNEX E

BEAR STEARNS FAIRNESS OPINION

Annex E-1

ANNEX E

Bear, Stearns & Co. Inc.

383 Madison Avenue

New York, NY 10179

Tel (212) 272-2000

www.bearstearns.com

July 23, 2006

The Board of Directors

Newkirk Realty Trust, Inc.

Two Jericho Plaza

Wing A

Jericho, NY 11753

Ladies and Gentlemen:

We understand that Newkirk Realty Trust, Inc. (*Newkirk*) and Lexington Corporate Properties Trust (*Lexington*) propose to enter into an Agreement and Plan of Merger, to be dated as of July 23, 2006 (the *Agreement*), pursuant to which, among other things, (i) Newkirk will merge with and into Lexington (the *Merger*) and (ii) holders of the common stock, par value \$.01 per share, of Newkirk (the *Newkirk Common Stock*) will receive generally 0.80 common shares of beneficial interest, par value \$0.0001 per share, of Lexington (the *Lexington Common Shares*) for each share of Newkirk Common Stock held by them (the *Exchange Ratio*). We understand that, in connection with the Merger, certain major shareholders of Newkirk will enter into voting agreements pursuant to which such holders will agree, among other things, to vote their Newkirk Common Stock in favor of the Merger and the other transactions contemplated by the Agreement. We further understand that, in connection with the Merger, Newkirk will terminate its advisory agreement with Newkirk Advisors LLC. You have provided us with a copy of the Agreement in substantially final form.

You have asked us to render our opinion as to whether the Exchange Ratio is fair, from a financial point of view, to the public shareholders of Newkirk who are not entering into voting or other types of agreements in connection with the Merger.

In the course of performing our review and analyses for rendering this opinion, we have:

- § reviewed a draft dated July 23, 2006 of the Agreement;
- § reviewed Newkirk's Annual Report to Shareholders and Annual Report on Form 10-K for the year ended December 31, 2005, its Quarterly Report on Form 10-Q for the period ended March 31, 2006, its preliminary results for the quarter ended June 30, 2006 and its Current Reports on Form 8-K filed since December 31, 2005;
- § reviewed certain operating and financial information relating to Newkirk's business and prospects, including projections and projected acquisitions for the five years ended December 31, 2011, all as prepared and provided to us by Newkirk's management (the *Newkirk Projections*);
- § reviewed certain estimates of potential revenue enhancements, cost savings and other combination benefits expected to result from the Merger, all as prepared and provided to us by Newkirk's and Lexington's managements (collectively, the *Synergies*);

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The Board of Directors

Newkirk Realty Trust, Inc.

July 23, 2006

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- § met with certain members of Newkirk's senior management to discuss Newkirk's and Lexington's businesses, operations, historical and projected financial results and future prospects;
- § reviewed Lexington's Annual Reports to Shareholders and Annual Reports on Form 10-K for the years ended December 31, 2003, 2004, and 2005, its Quarterly Report on Form 10-Q for the period ended March 31, 2006, its preliminary results for the quarter ended June 30, 2006 and its Current Reports on Form 8-K filed since December 31, 2005;
- § reviewed certain operating and financial information relating to Lexington's business and prospects, including projections and projected acquisitions for the ten years ended December 31, 2016, (i) as prepared and provided to us by Lexington's management in a Confidential Information Memorandum dated March 24, 2006 and adjusted by Newkirk's management and (ii) as prepared by Lexington's management and provided to us on July 13, 2006 and as adjusted by Newkirk's management (collectively, the Lexington Projections and, together with the Newkirk Projections, the Projections);
- § met with certain members of Lexington's senior management to discuss Lexington's business, operations, historical and projected financial results and future prospects;
- § reviewed the historical prices, trading multiples and trading volumes of the Newkirk Common Stock and the Lexington Common Shares;
- § reviewed publicly available financial data, stock market performance data and trading multiples of companies which we deemed generally comparable to Newkirk and Lexington;
- § reviewed the terms of recent mergers and acquisitions involving companies which we deemed generally comparable to Newkirk;
- § performed discounted cash flow analyses based on various of the Newkirk Projections and Lexington Projections;
- § reviewed the relative contributions of Newkirk and Lexington to the combined company on a pro forma basis;
- § reviewed the pro forma financial results, financial condition and capitalization of Newkirk and the combined company giving effect to the Merger; and
- § conducted such other studies, analyses, inquiries and investigations as we deemed appropriate.

We have relied upon and assumed, without independent verification, the accuracy and completeness of the financial and other information provided to or discussed with us by Newkirk and Lexington, including, without limitation, the Projections and the Synergies, or obtained by us from public sources. With respect to the Projections and the Synergies, we have relied on representations that they have been reasonably prepared on bases reflecting the best currently available estimates and judgments of the senior management of each of Newkirk and Lexington, respectively, as to the expected future performance of Newkirk, Lexington and the combined company following the Merger. We have not assumed any responsibility for the independent verification of any such information, including, without limitation, the Projections and the Synergies, and we have further relied upon the assurances of the senior management of each of Newkirk and Lexington that they are unaware of any facts that would make the information and the Projections and the Synergies incomplete or misleading.

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The Board of Directors

Newkirk Realty Trust, Inc.

July 23, 2006

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In arriving at our opinion, we have not performed or obtained any independent appraisal of the assets or liabilities (contingent or otherwise) of Newkirk and Lexington, nor have we been furnished with any such appraisals. In rendering our opinion, we have analyzed the Merger as a strategic business combination, and we have not solicited, nor were we asked to solicit, third party acquisition interest in Newkirk. We have assumed that the Merger will qualify as a tax-free reorganization within the meaning of Section 368(a) of the Internal Revenue Code. We have assumed that the Merger will be consummated in a timely manner and in accordance with the terms of the Agreement without any limitations, restrictions, conditions, amendments or modifications, regulatory or otherwise, that collectively would have a material effect on Newkirk, Lexington or the combined company.

We do not express any opinion as to the price or range of prices at which the Newkirk Common Stock or the Lexington Common Shares may trade subsequent to the announcement or consummation of the Merger.

We have acted as a financial advisor to Newkirk in connection with the Merger and will receive a customary fee for such services, a substantial portion of which is contingent on successful consummation of the Merger. Bear Stearns has been previously engaged by Newkirk to provide certain investment banking and other services for which we received customary fees. Mr. Carl Glickman is a Trustee of Lexington and also serves on the Board of Directors of The Bear Stearns Companies Inc. In addition, Bear Stearns in the past has been engaged, by Lexington or its affiliates to provide certain investment banking and other services in matters unrelated to the Merger, for which we have received customary fees. Furthermore, Bear Stearns in the past has been engaged by Winthrop Realty Partners, Winthrop Realty Trust, Vornado Realty Trust and Apollo Management LP or its affiliates, each of whom is a stockholder or unit holder or affiliate of Newkirk or an affiliate of a Newkirk stockholder or unit holder, to provide certain investment banking and other services in matters unrelated to the Merger, for which we have received customary fees. In the ordinary course of business, Bear Stearns and its affiliates may actively trade the equity and debt securities and/or bank debt of Newkirk and/or Lexington and their respective affiliates for our own account and for the account of our customers and, accordingly, may at any time hold a long or short position in such securities or bank debt.

It is understood that this letter is intended for the benefit and use of the Board of Directors of Newkirk and does not constitute a recommendation to the Board of Directors of Newkirk or any holders of Newkirk Common Stock as to how to vote in connection with the Merger or otherwise. This opinion does not address Newkirk's underlying business decision to pursue the Merger, the relative merits of the Merger as compared to any alternative business strategies that might exist for Newkirk or the effects of any other transaction in which Newkirk might engage. This opinion does not address the business decision or the terms of relating to termination of any arrangements between Newkirk and its external advisor, Newkirk Advisors LLC. This letter is not to be used for any other purpose, or be reproduced, disseminated, quoted from or referred to at any time, in whole or in part, without our prior written consent; provided, however, that this letter may be included in its entirety in any joint proxy statement/prospectus to be distributed to the holders of Newkirk Common Stock in connection with the Merger. Our opinion is subject to the assumptions and conditions contained herein and is necessarily based on economic, market and other conditions, and the information made available to us, as of the date hereof. We assume no responsibility for updating or revising our opinion based on circumstances or events occurring after the date hereof.

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The Board of Directors

Newkirk Realty Trust, Inc.

July 23, 2006

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Based on and subject to the foregoing, it is our opinion that, as of the date hereof, the Exchange Ratio is fair, from a financial point of view, to the public shareholders of Newkirk who are not entering into voting or other types of agreements in connection with the Merger.

Very truly yours,

BEAR, STEARNS & CO. INC.

By: /s/ Charles S. Edelman

Senior Managing Director

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ANNEX F**ADDITIONAL INFORMATION ABOUT NEWKIRK****AND FINANCIAL STATEMENTS FOR NEWKIRK****INDEX**

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BUSINESS**The IPO**

On November 7, 2005, Newkirk completed its initial public offering which is referred to herein as the IPO. In connection with the IPO:

Newkirk issued 15,000,000 shares of Newkirk's common stock.

Newkirk issued 3,125,000 shares of common stock in a private transaction to Winthrop in exchange for \$50,000,000 and issued an additional 1,250,000 shares of common stock (\$20,000,000 value) in a private transaction to Winthrop in consideration for its assignment to Newkirk of certain exclusivity rights with respect to net-lease business opportunities offered to or generated by Michael L. Ashner, Newkirk's and Winthrop's Chairman and Chief Executive Officer, 625,000 shares (reducing by 17,361 per month) issued in exchange for the assignment of the exclusivity right are subject to forfeiture upon the occurrence of certain events. All shares of Newkirk's common stock issued to Winthrop are subject to a lock-up period expiring November 7, 2008, subject to certain exceptions. Upon the consummation of the merger, the lock-up and forfeiture restrictions will expire.

Both Newkirk and the MLP retained NKT Advisors to manage Newkirk's assets and the day-to-day operations of Newkirk and the MLP, subject to the supervision of Newkirk's board of directors;

Newkirk acquired 15,625,000 newly-issued units of limited partnership interest in the MLP in exchange for \$235,800,000 and an additional 1,250,000 units in exchange for the contribution of the exclusivity rights described above. Newkirk also purchased 2,375,000 outstanding MLP units from Apollo and 125,000 units of limited partnership interest from an entity primarily owned by Newkirk's executive officers for an aggregate purchase price of \$37,700,000, resulting in an aggregate ownership of 19,375,000 units of limited partnership in the MLP or 30.1% of the total outstanding units; Newkirk was admitted as the general partner of the MLP;

NKT Advisors was issued Newkirk's special voting preferred stock entitling it to vote on all matters for which Newkirk's common stockholders are entitled to vote. The number of votes that NKT Advisors will be entitled to cast in respect of the special voting preferred stock was initially 45,000,000 votes or approximately 69.9% of the 64,375,000 votes entitled to be

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cast. The 45,000,000 votes represent the total number of units outstanding immediately following consummation of the IPO (excluding units held by Newkirk). As units are redeemed at the option of a limited partner, the number of votes attaching to NKT Advisors' special voting preferred stock will decrease by an equivalent amount. The advisory agreement provides that on all matters for which NKT Advisors is entitled to cast votes in respect of its special voting preferred stock, it will cast its votes in direct proportion to the votes that are cast by limited partners of the MLP, other than Newkirk, on such matters, except that NKT Advisors (through its managing member) will be entitled to vote in its sole discretion to the extent that the voting rights of affiliates of Vornado are limited under certain circumstances; and Newkirk granted registration rights to Apollo and Vornado in connection with shares issuable upon conversion of their units in the MLP and to Winthrop in connection with their shares of common stock.

Newkirk's Objectives and Strategies

Newkirk operates in a structure commonly referred to as an umbrella partnership real estate investment trust or UPREIT. In this structure, all of Newkirk's investments are made through Newkirk's ownership interest in, and

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control of, the MLP. The MLP's investments are primarily limited to net lease assets although, as leases expire with respect to net-lease assets the MLP may hold non-net lease assets. Further, subject to the approval of Newkirk's board of directors, Newkirk or the MLP may hold interests subject to certain contractual restrictions, in non-net lease assets. Net lease assets include a property that is either triple-net leased or the tenant leases at least 85.0% of the rentable square footage of the property, and, in addition to base rent, the tenant is required to pay some or all of the operating expenses for the property and, in either case, the lease has a remaining term, exclusive of all unexercised renewal terms, of more than 18 months. The term net lease assets also includes management agreements and master leases with terms of greater than three years where a manager or master lessee bears all operating expenses of a property and pays the owner a fixed return. The term net lease assets also includes all re-tenanting and redevelopment associated with net leased properties as well as all agreements, leases and activities incidental thereto. In addition, interests in net lease properties include, without limitation, securities of companies, whether or not publicly traded, that are primarily invested in net lease assets.

Since its initial public offering, Newkirk's primary long-term business objectives have been to increase funds from operations, cash flow available for distribution to its stockholders and net asset value per share. At the time of its initial public offering, most of Newkirk's properties had contractual primary term rental rates that were significantly above market and renewal rates significantly below the primary term rental rates. In addition, leases on approximately 14,000,000 square feet were scheduled to expire over the period extending through 2009. As a result, Newkirk anticipated that over this period its funds from operations and cash flow attributable to existing properties would decline. For the short-term, Newkirk has sought to actively manage its lease rollover and replace the built in step down in cash flow and funds from operations with new rents derived from portfolio growth through acquisitions.

From the closing of Newkirk's initial public offering in November 2005 through July 31, 2006, Newkirk has renewed and/or leased an aggregate of 2,480,000 square feet of space. Although it is not actively seeking to sell properties, during this period Newkirk has sold or agreed to sell approximately 3,436,000 square feet of space. Accordingly, a total of 5,916,000 square feet of space with leases scheduled to expire by the end of 2009 was relet or sold during this period. In the same period, Newkirk acquired 879,000 square feet of industrial space for approximately \$31,000,000, office properties containing 994,000 square feet for approximately \$108,000,000 and acquired or committed to acquire in its 111 Debt Holdings LLC joint venture \$150,600,000 of debt assets. Together these investments represent portfolio acquisitions of over \$289,000,000 since its initial public offering.

Prior to the consummation of the Merger, Newkirk will continue to:

- acquire individual net leased properties and portfolios of net leased properties;

- complete sale/leaseback transactions, through which Newkirk acquires properties and leases the properties back to the seller or operator under a net lease;

- acquire controlling and non-controlling interests in private and public companies primarily engaged in the business of making net lease investments;

- acquire equity and debt interests in entities that own, develop, manage or advise third parties with regard to net leased investments;

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acquire senior and subordinated loans secured by mortgages on net leased properties, mezzanine loans secured by ownership interests in entities that own net leased properties as well as commercial mortgage backed securities, B Notes and bridge loans, relating to net leased properties;
participate in development projects relating to net lease properties;
explore investment opportunities in non-domestic markets;
where opportunity arises, enter into strategic alliances with entities that historically have been leading sellers of net-lease assets; and

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refinance Newkirk's existing indebtedness to the extent strategically viable at lower average interest rates or on more attractive terms and increase Newkirk's access to capital to finance property acquisitions and expansions.

At July 15, 2006, the MLP's primary assets were interests in 166 real properties. See [Properties](#) below for information relating to the MLP's properties. Almost all of the properties are leased to one or more tenants pursuant to net leases. The MLP also holds: (i) a 50% interest in a joint venture formed to acquire and originate loans secured, directly and indirectly, by real estate assets; (ii) subordinated interests in a securitized pool of notes evidencing first mortgage indebtedness secured by certain of the MLP's properties as well as other properties; (iii) limited partnership interests in various partnerships that own commercial net-leased properties; (iv) an interest in a management company that provides services to other real estate partnerships; (v) ground leases, remainder interests or the right to acquire remainder interests in various properties; and (vi) miscellaneous other assets.

Loan Receivables

1. T-Two Loans

On November 7, 2005, the MLP exercised its option to acquire a 100% ownership interest in T-Two Partners, L.P., including \$44,400,000 of reserves, and assumed \$269,700,000 of debt for which T-Two Partners was the obligor and for which the MLP had been the guarantor. See [Loan Obligations - KeyBank Loan](#) below. In connection with this exercise, the MLP effectively purchased first and second mortgages with a contractual balance of \$271,000,000 for which the MLP is the obligor and acquired \$18,200,000 in additional first and second mortgages, the obligors for which are affiliated entities. The additional first and second mortgages had a balance at December 31, 2005, including accrued interest and deficiencies, of \$18,500,000, have interest rates ranging from 9% to 13% and mature on dates from 2014 to 2022.

2. El Segundo Mortgage Loan

The MLP also owns a second mortgage loan on a property in El Segundo, California in which the MLP holds a 53% interest. The mortgage loan was acquired for \$6,250,000 which represented its principal balance and accrued interest. The mortgage loan bears interest at 8.0% per annum and matures in December 2023.

3. Chicago Athletic Loan

On December 29, 2005, a joint venture in which the MLP holds a 50% interest made a \$6,500,000 first mortgage loan to the Chicago Athletic Association. The loan is secured by a property solely occupied by the Chicago Athletic Association and located at 12 S. Michigan, Chicago, Illinois, bears interest at 8.5% per annum, requires monthly payments of approximately \$52,000 and matures on December 15, 2010, at which time the outstanding principal balance of the loan is expected to be approximately \$6,089,000.

4. FINCO Note

The MLP owns a note receivable from Administrator LLC (see [The Management Company](#) below).

Debt Securities

The MLP owns the three most junior classes of interests in a securitized pool of first mortgages which previously included first mortgage loans encumbering a number of the MLP's properties and other properties owned by a partnership controlled by Newkirk's affiliate. In connection with the KeyBank loan obtained in 2005 (see [Loan Obligations - KeyBank Loan](#) below), the risk of loss on account of these classes of interest have effectively been eliminated as the MLP was required to defease the securitized pool of first mortgages. By defeasing the pool of mortgages, the MLP was required to acquire United States government securities with maturities sufficient to make the required payments on the various mortgage loans constituting the pool. Accordingly, the MLP is ensured that it will receive all payments on account of these classes of interest. As a result, the securitized pool is collateralized by the United States government securities, three of the MLP's properties and one other property

owned by a partnership

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controlled by Newkirk's affiliate. In general, the classes of interests in the pool represent priorities of payments. When a payment is made by the MLP on one of these loans, the first amounts are used to make the required payments to the holders of senior interests.

The interests the MLP holds are summarized as follows:

| | Class E Certificate | Class F Certificate | Class G Certificate |
|---|----------------------------|----------------------------|----------------------------|
| Contractual Principal Amount at June 30, 2006 | \$4,824,000 | \$3,859,000 | \$5,793,625 |
| Interest Rate | 8.29% | 8.29% | 8.29% |

The Management Company

The MLP owns a 50.01% interest in Newkirk Capital LLC. Newkirk Capital's wholly-owned subsidiary, Newkirk Asset Management LLC, provides asset management services to most of the MLP's property owning subsidiaries and nine other limited partnerships, the general partners of which are controlled by the MLP. In 2005 and 2004, approximately \$6,269,000 and \$6,738,000, respectively, of asset management fees were paid, or accrued for payment, to Newkirk Asset Management. For financial statement purposes, management fees of approximately \$5,982,000 and \$6,406,000 were eliminated in consolidation as such fees were paid by entities in which the MLP owns all or a portion of the equity interests. All of the fees paid to Newkirk Asset Management inure to the MLP's benefit through the MLP's ownership interest in Newkirk Capital and through the MLP's ownership of Newkirk Finco LLC which is discussed below.

The 49.99% minority interest in Newkirk Capital LLC is owned by Administrator LLC, an unaffiliated third party. Administrator LLC is entitled to receive 100% of the distributions paid by Newkirk Capital until Administrator LLC receives \$2,568,000 annually and thereafter the balance of the distributions are paid to us. Income is allocated to Administrator LLC based on the distributions it receives. The allocation of income and payments to Administrator LLC are treated as minority interest expense and distributions to minority interest partners, respectively, in the financial statements. Administrator LLC acquired its minority interest in 1997 in connection with the sale by the principals of Administrator LLC of various assets that were eventually acquired by the MLP in 2001. As part of the 1997 transaction a \$40,000,000 loan was made to Administrator LLC. This loan is now held by Newkirk Finco LLC, the MLP's wholly-owned subsidiary. The note bears interest at a rate of 6.42% per annum and matures on November 20, 2009. Prior to maturity, the note requires payments of interest only. The priority distribution to Administrator LLC enables Administrator LLC to pay interest on the note and therefore the MLP effectively receives 100% of the fees paid to Newkirk Capital. The note is secured solely by Administrator LLC's 49.99% membership interest in Newkirk Capital and is otherwise non-recourse. Accordingly, if Administrator LLC were to default on the note, Newkirk Finco LLC would have the ability to foreclose on Administrator LLC's interest in Newkirk Capital resulting in the MLP owning a 100% interest in Newkirk Asset Management. If Administrator LLC repays the loan, then the first \$10,000,000 of subsequent distributions made by Newkirk Capital will be paid to Newkirk Finco LLC and thereafter 50.01% of distributions will be paid to Newkirk Finco LLC and 49.99% will be paid to Administrator LLC.

Real Estate Securities

At June 30, 2006, the MLP owned securities in publicly traded net lease REITs and partnerships for an aggregate cost of approximately \$9,977,000.

Developments since the IPO

The following summarizes transactions entered into by the MLP from November 7, 2005 through September 1, 2006:

Property Matters*Sales*

In November 2005, the MLP sold its 430,000 square foot facility located in New Kingston, Pennsylvania to Hershey Foods Corporation, the tenant at the property pursuant to the purchase option contained in its lease for \$11,350,000. The MLP also received \$3,838,000 of accrued and deferred rent.

On March 14, 2006, the MLP entered into an agreement to sell its Toledo, Ohio property currently leased to Owens-Illinois for a purchase price of \$33,000,000, \$1,000,000 in cash plus assumption of the \$32,000,000 of outstanding debt encumbering the property at September 29, 2006, the closing date. The purchaser, RVI Group, is the residual value insurer with respect to the property. Owens-Illinois had advised the MLP that it would be vacating the property at the expiration of its lease term, September 30, 2006.

On July 13, 2006, the MLP sold 50 of its retail properties to an unaffiliated third party for a gross purchase price of \$160,000,000. The sold properties were originally leased to Albertson's, Inc., contained an aggregate of 2,300,000 square feet and had current lease terms expiring over the next 4.5 years. After closing costs, the MLP received net proceeds of approximately \$159,000,000, \$22,000,000 of which were used to pay down the MLP's note payable. The balance of the net proceeds were deposited with a Qualified Intermediary for use in 1031 tax free exchanges including \$49,000,000 which were used for reverse 1031 exchanges in connection with the previously acquired property located in Rochester, New York leased to The Frontier Corporation and the Glenwillow, Ohio property leased to Royal Appliance.

In June 2006, the MLP received notice from The Kroger Company exercising its purchase option under its leases at three properties. Two properties are located in Louisville, Kentucky and one property is located in Columbus, Ohio. The properties will be purchased at the end of the primary term in December 2006 for a negotiated fair market value or appraised value.

Property Acquisitions and other Investments

On January 18, 2006, the MLP acquired an approximately 115,500 square foot office building in Bridgewater, New Jersey for a purchase price of \$21,150,000. The property is net leased to Biovail Pharmaceuticals, Inc., a company primarily engaged in the manufacture and sale of generic pharmaceutical products. The lease agreement has a current term scheduled to expire October 31, 2014 with two, five-year renewal terms. Net adjusted rent during the current term is \$1,397,000 per year through October 31, 2009 and then \$1,686,000 thereafter.

On January 26, 2006, the MLP acquired a 99,500 square foot 100% leased office building in Lisle, Illinois for a purchase price of \$15,250,000. Adjusted net rent for the property, commencing January 1, 2007 is projected to be approximately \$1,225,000 per year. The property is 86% leased to National Louis University with the balance being leased to two tenants. The National Louis University lease has a primary term expiring December 31, 2019 with annual base rent during the primary term commencing at \$943,000 through December 31, 2006 (with a 50% rent concession through August 31, 2006), increasing by approximately \$43,000 on each January 1 thereafter.

On March 7, 2006, the MLP acquired two warehouse/distribution centers comprising 240,000 square feet for a purchase price of approximately \$10,550,000. The properties are currently leased on a long-term basis to subsidiaries of Jacobson Companies, a leading third party warehousing company. One lease has a primary term expiring December 31, 2015 with annual base rent during the primary term of \$450,000. The other lease has a primary term expiring December 31, 2014 with an annual base rent of approximately \$331,000 through December 31, 2008 increasing to approximately \$404,000 through December 31, 2014.

On March 29, 2006, the MLP acquired a 639,000 square foot property located in Statesville, North Carolina for a purchase price of approximately \$20,500,000. The property, which serves as a distribution facility, is currently leased to La-Z-Boy Greensboro Inc. and guaranteed by La-Z-Boy Incorporated. The lease has a primary term expiring April 30, 2010 with annual base rent during the primary term of approximately \$1,649,000.

On April 26, 2006, the MLP acquired a 226,000 square foot office building located in Rochester, New York for a purchase price of \$26,400,000. The property is currently leased through 2014 to The Frontier Corporation, a communications company. The annual net rent payable at the property is \$2,567,000 through December 31, 2007, increasing to \$2,624,000 per annum through 2014. Upon expiration of the current lease term, the tenant has two, five-year renewal options each at an annual rental rate equal to the greater of market value or the current rent amount.

On May 5, 2006, the MLP acquired an approximately 96,000 square foot office building in Rockaway, New Jersey for a purchase price of approximately \$22,000,000. The MLP partially satisfied the purchase price by assuming the existing mortgage loan of \$14,900,000. The property is leased to BASF Corporation, the North American affiliate of BASF AG. The lease agreement has a current term scheduled to expire September 30, 2014 with the tenant's option to enter into either two, five-year renewal terms or one, ten-year renewal term, in all cases at fair market rent. Net rent during the current term is \$1,489,000.

On May 26, 2006, the MLP concluded tender offers, pursuant to which it acquired additional limited partnership units in five partially-owned partnerships, two of which were consolidated. The purchase price of these interests aggregated \$1,681,000, \$986,000 of which was paid in cash, and the remainder of which was paid through the issuance of 40,239.58 MLP units. The MLP's ownership in these partnerships ranges between 24.50% and 85.38%. As a result of the tender offer, an additional partnership's results of operations are now consolidated.

On June 30, 2006, the MLP acquired a 458,000 square foot office building and distribution center in Glenwillow, Ohio for a purchase price of \$23,300,000. The property is currently leased to Royal Appliance, a home cleaning products company. The lease agreement has a current term scheduled to expire July 31, 2015 with two, five-year renewal terms. Net rent during the current term is \$1,738,000 through July 31, 2007, \$1,944,000 through July 31, 2012, and \$2,040,000 through the end of the current term. Renewal term option rents are 95% of fair market value. Pursuant to the terms of the lease agreement, if requested by the tenant, the MLP has the obligation to build up to a 160,000 square foot expansion property. The costs that would be incurred in connection with such expansion would be recouped through rent increases.

The MLP has entered into a contract to acquire a parcel of land in Baltimore, Maryland, which is adjacent to its existing property leased to Legg Mason, for \$1,800,000 on which it expects to construct a parking garage. The inspection period currently expires on September 17, 2006.

Debt Placements and Acquisitions

On February 13, 2006, the MLP acquired a 10 year, BBB rated bond secured by net leased properties owned by Kindercare Real Estate LLC with a face value of \$11,700,000 and a projected unleveraged yield to maturity of 7%.

On March 13, 2006, the MLP acquired a \$3,309,000 participation interest in an \$18,750,000 mezzanine loan and an \$11,691,000 participation interest in a \$66,500,000 mezzanine loan. The loans underlying both participation interests are secured by the ownership interests in entities owning fee title to retail stores net leased to Toys 'R Us, bear interest at a rate of LIBOR plus 175 basis points and mature on August 9, 2007, subject to three one year extensions.

On March 20, 2006, the MLP acquired for \$27,732,000 a \$30,750,000 B Note secured by a 757,000 square foot office building in Dallas, Texas presently net leased to JP Morgan Chase. The loan has an effective interest rate of 8.67%.

On March 30, 2006, the MLP entered into a \$300,000,000 repurchase agreement with Column Financial Inc. and effectively leveraged \$32,025,000 of Toys 'R Us loans and JP Morgan B Note at that time. At June 30, 2006, \$36,979,000 was outstanding under the repurchase agreement.

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On March 31, 2006, the MLP entered into a joint venture with a subsidiary of Winthrop to originate and acquire loans secured directly or indirectly by real estate. The foregoing debt assets and repurchase agreement were contributed to the joint venture. In addition, the joint venture made the following investments during the quarter ended June 30, 2006:

a \$1,500,000 mezzanine loan secured by the ownership interests in entities owning fee title to a 130,000 square foot industrial facility that is triple net leased to Rockwell Automation. The loan bears an interest rate of 12% and matures in 10 years.

a \$10,000,000 participation in a mezzanine loan secured by the ownership interests in entities owning fee title to One Madison Avenue, a 1,100,000 square foot office building located in New York City and 95% leased to Credit Suisse. The loan was purchased for \$8,469,030 and has an expected unleveraged yield to maturity of 7.58%.

a \$20,000,000 mezzanine loan secured by the ownership interests in entities owning fee title to One Pepsi Way, a 540,000 square foot Class A office building situated on 206 acres in Westchester County, New York. The two-year loan bears an interest rate of LIBOR plus 4.25% and is subject to three, one-year extensions.

a junior participation in a \$13,000,000 B Note secured by a 638,000 square foot Class A office building in downtown Atlanta for a purchase price of \$10,473,000. The B Note has an interest rate of 6.09%, resulting in a yield of 12.43%.

a \$4,500,000 participation in a B note secured by an office portfolio known as Boston Wharf Properties containing a total of 439,000 square feet located in Boston, Massachusetts. The two-year loan bears an interest rate of LIBOR plus 2.25% and is subject to three, one-year extensions.

a \$3,000,000 BB rated bond, BALL 2003-BBA2 Class L for a price of \$2,984,063.

a \$13,000,000 BB rated bond, BSCMS 2004-BA5A Class K for a price of \$12,870,000.

three BBB-rated CMBS bonds: (i) BALL 2004-BBA4 \$7,000,000 Class K for a price of \$7,061,250; (ii) COMM 2005 FL11 \$15,700,000 Class L for a price of \$15,431,612; and (iii) and BSCMS 2006-BBA7 \$4,785,000 Class K for a price of \$4,783,610.

Financings

On February 10, 2006, the MLP obtained a first mortgage loan from an unaffiliated third party, in the principal amount of \$14,800,000 secured by the MLP's property located in Bridgewater, New Jersey. See *Property Acquisitions and Other Investments* above. The loan bears interest at 5.732%, requires monthly payments of interest only for the first 60 months and then requires monthly payments of principal and interest of approximately \$86,000 and is scheduled to mature on March 6, 2016, at which time the outstanding principal balance is expected to be approximately \$13,730,000. The MLP received net proceeds from this loan, after satisfying closing costs, of approximately \$14,600,000.

On March 6, 2006, NK-Marc CAA LLC, a consolidated joint venture, obtained a \$3,500,000 loan from an unaffiliated third party. The loan bears interest at 6.5%, requires monthly payments of principal and interest of approximately \$24,000 for 60 months and is scheduled to mature on March 1, 2011. The loan is secured by a first mortgage loan receivable owned by NK-Marc CAA LLC.

On April 7, 2006, the MLP entered into an unsecured revolving credit agreement with KeyBank National Association providing for borrowings of up to \$50,000,000, subject to increase up to \$100,000,000. The revolving credit facility matures April 7, 2009 with the option to extend the term for an additional year. Amounts borrowed under the revolving credit line bear interest at rates based on the MLP's leverage ratio ranging from LIBOR plus 1.35% to LIBOR plus 2.00%.

Annex F-8

On May 5, 2006, the MLP obtained a \$10,450,000 loan from an unaffiliated third party lender, which is secured by the MLP's property located at 850-950 Warrenville Road, Lisle, Illinois. The loan bears interest at 6.26%, requires monthly payments of interest only during the first two years of the loan term and thereafter principal (based on a 30-year amortization schedule) and interest for the balance of the term. The loan is scheduled to mature on June 1, 2016, at which time the outstanding principal balance is expected to be approximately \$9,463,000.

On July 20, 2006, the MLP obtained first mortgage loans from an unaffiliated third party with respect to its Rochester, New York; Statesville, North Carolina; and Rockford, Illinois properties. The loans, which had an initial aggregate principal amount of \$39,800,000, are cross-collateralized and cross-defaulted. The loans bear interest at 6.21%, require monthly payments of interest only for 24 months and then require monthly payments of principal and interest in the aggregate of approximately \$244,000. The loans are scheduled to mature on August 1, 2016 at which time the outstanding principal balance is expected to be \$35,438,000. Newkirk received net proceeds from these loans, after satisfying closing costs, of approximately \$39,260,000.

Leasing

As of July 15, 2006, the MLP's properties were 97% leased.

During the first quarter of 2006 the MLP executed a ten-year lease extension with Raytheon Company commencing on January 1, 2009 for approximately 345,000 square feet of office space and 63% of the parking structure relating thereto located in El Segundo, California. In connection with the lease extension, the tenant is obligated to pay annual rent of \$4,921,000 from January 2009 through December 2013, increasing to \$5,267,000 for the period from January 2014 to December 2018. The property owner, which is 53% owned by the MLP, is required to provide the tenant with \$21,500,000 in tenant improvement allowances and rent concessions over the next 40 months. Raytheon Company retained its renewal option for the remaining 37% of the space pursuant to its original lease.

During the first half of 2006

excluding the transaction with Raytheon Company described above, four tenants representing leases at four properties containing approximately 933,000 square feet exercised their renewal option.

excluding the property located in Toledo, Ohio discussed under Property Sales above, one tenant representing a lease at one property containing approximately 42,000 square feet notified the MLP that they would not exercise their renewal options. The MLP is currently marketing this property for lease.

two properties containing approximately 89,000 square feet have been fully leased, and one property has been partially leased to an 8,000 square foot tenant.

one property containing approximately 28,000 square feet was fully leased, and one property was partially leased to an approximately 4,000 square foot tenant.

On July 25, 2006, the MLP entered into a modification of the lease with respect to a 390,000 square foot office building leased to Cummins Inc., located in Columbus, Indiana. The modification extends the lease term for an additional ten years beyond the current three years remaining. Annual rental income from the property will be increased by 9.5% effective August 2006, with further increases of 5% every three years. In connection with this, the MLP agreed to provide the tenant with an \$11,500,000 tenant improvement allowance payable on August 1, 2006.

Miscellaneous

Entities which the MLP holds a 47.51% ownership interest owns two office buildings in New Orleans, Louisiana, containing an aggregate of 403,027 square feet of space that are leased to Hibernia Bank. Both buildings are located in the area affected by Hurricane Katrina. The tenant has remained current in its rent obligations and is responsible for all repairs, maintenance and capital expenditures associated with these properties.

Annex F-9

On January 15, 2006, Newkirk entered into a strategic alliance with U.S. Realty Advisors, LLC (US Realty), a leading net-lease property advisor, pursuant to which Newkirk will acquire single-tenant assets. Pursuant to the agreement with US Realty, Newkirk is obligated to pay to US Realty a fee of 1.5% of the gross purchase price for properties acquired that were offered to Newkirk by US Realty upon the consummation of such purchase and a further contingent fee for additional services to be provided by US Realty equal to 25% of all cash flow and net capital proceeds after Newkirk receives a return of all or invested capital plus a 12% internal rate of return.

Loan Obligations

KeyBank Loan

The MLP is the primary obligor under a \$750,000,000 loan from KeyBank National Association and Bank of America, N.A. In connection with the IPO, \$150,000,000 of the proceeds Newkirk contributed to the MLP was used to make a partial prepayment on the loan. At June 30, 2006, the outstanding principal balance on the KeyBank/Bank of America Loan was \$557,065,000, after deducting approximately \$21,000,000 which was paid on July 13, 2006 in connection with the sale of properties leased to Albertson's, Inc.

The loan bears interest at the MLP's election at a rate equal to either (i) the LIBOR Rate (as defined) plus 175 basis points (200 basis points prior to the consummation of the IPO) or (ii) the prime rate then charged by KeyBank National Association plus 50 basis points. The loan is

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scheduled to mature on August 11, 2008, subject to two one year extensions and requires monthly payments of interest only. The loan requires quarterly principal payments of \$1,875,000, increasing to \$2,500,000 per quarter during the extension periods. The MLP is also required to make principal payments from the proceeds of property sales, refinancings and other asset sales if proceeds are not reinvested in net leased properties. The required principal payments will be based on a minimum release price set forth in the loan agreement for property sales and 100% of proceeds from refinancings, economic discontinuance, insurance settlements and condemnations. The loan is secured by a lien on all of the MLP's assets.

The MLP can currently prepay the loan in whole or in part at any time with no premium. The loan requires that the MLP maintain a (i) minimum consolidated debt service coverage ratio (i.e., the ratio of net cash revenue from investments to required consolidated debt service payments), (ii) leverage ratio (i.e., the ratio of (x) the MLP's allocable share of all indebtedness with respect to investments plus the outstanding balance under the loan, to (y) the MLP's allocable share of all investments, and (iii) the MLP's liquid assets of at least \$5,000,000, and (iv) the MLP's consolidated net worth. The loan also limits the MLP's, and consequently Newkirk's, ability to incur any direct debt or contingent liabilities but permits the MLP to borrow up to \$50,000,000 of non-recourse debt on its properties. There are also limitations on the MLP's use of reinvestment proceeds, which are defined as proceeds generated by the sale of Newkirk's real estate, such that the MLP may invest \$30,000,000 of reinvestment proceeds in new net lease business opportunities and must apply any additional reinvestment proceeds to the prepayment of principal under the facility.

As a result of the acquisition of interest rate swap and cap agreements, (i) LIBOR on the loan is effectively fixed at 4.642% for \$250,000,000 of this loan for five years and (ii) the LIBOR rate on \$295,000,000 of the loan (decreasing to \$290,000,000 as of December 1, 2006) will be capped at 5.0% through November 2006 and 6.0% from December 2006 until August 2008.

Annex F-10

The following is a summary of scheduled principal maturities as of June 30, 2006, excluding principal payments resulting from anticipated property sales, by year, of the MLP's total debt on the KeyBank/Bank of America loan:

| Year | Amount |
|------|----------------|
| 2006 | \$ 3,750,000 |
| 2007 | 7,500,000 |
| 2008 | 545,815,000 |
| | (1) |
| | \$ 557,065,000 |

(1) Unless extended in which event a \$10,000,000 per annum principal payment is required during the extension period.

Revolving Credit Agreement

On April 7, 2006, the MLP entered into an unsecured revolving credit agreement with KeyBank National Association providing for borrowings of up to \$50,000,000, subject to increase up to \$100,000,000. The revolving credit facility matures April 7, 2009 with the MLP's option to extend the term for an additional year. Amounts borrowed under the revolving credit line bear interest at rates based on the MLP's leverage ratio ranging from LIBOR plus 1.35% to LIBOR plus 2.00%. In addition, the MLP is required to pay a 12.5 or 25 basis point fee on the unused portion of the line, depending on the amount borrowed.

The revolving credit line requires monthly payments of interest only. To the extent that the amounts outstanding under the revolving credit line are in excess of the borrowing base (as calculated), the MLP would be required to make a principal payment to the extent of such excess. The MLP may prepay and re-borrow amounts prepaid under the credit line. There were no amounts outstanding under the revolving credit line on June 30, 2006.

The revolving credit line is fully recourse to the MLP, and Newkirk has guaranteed the MLP's obligations under the revolving credit line.

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First Mortgage Debt

Excluding discontinued operations, the MLP had outstanding mortgage notes payable with an aggregate principal balance of \$232,868,000 and \$166,195,000 at June 30, 2006 and December 31, 2005, respectively. The mortgage notes are at fixed interest rates with payments of principal and interest generally due either monthly or semi-annually. All the mortgage notes are collateralized by Newkirk's real estate; some of the mortgage notes are cross-collateralized.

The mortgage notes mature at various dates from 2006 to 2024. Prepayment of most of the mortgage notes is permitted only with a yield maintenance payment or prepayment penalty as defined in the mortgage note agreements. Interest rates on the mortgages ranged from 3.89% to 10.25%, with a weighted average interest rate of 6.06% at June 30, 2006. Interest rates on the mortgages ranged from 5.0% to 9.9% with a weighted average interest rate of 6.1% at December 31, 2005.

Contract Right Mortgage Note Payable

The MLP has one contract right mortgage note payable with a principal balance of \$11,667,000 and \$11,128,000 at June 30, 2006 and December 31, 2005, respectively. The contract right mortgage note has a fixed interest rate of 9.68% and matures in January 2009.

Annex F-11

Employees

At June 30, 2006, neither Newkirk nor the MLP had any employees. However, NKT Advisors has retained two employees to perform acquisition, disposition and investment services for us. The costs of these employees will be reimbursed by the MLP.

Pursuant to the terms of the Advisory Agreement, NKT Advisors has been retained to administer Newkirk's and the MLP's affairs including performing accounting, asset management and investor relation services for Newkirk and the MLP and seeking, servicing and managing Newkirk's and the MLP's investments. The Advisory Agreement has an initial term scheduled to expire December 31, 2008, with annual automatic renewals unless either party elects not to renew. NKT Advisors, in turn, has entered into a sub-Advisory Agreement with Winthrop Realty Partners, L.P., an entity which is the direct employer of Newkirk's executive officers and the entity that had previously provided such services to the MLP. Accordingly, employees of Winthrop Realty Partners continue to indirectly provide the same services to the MLP that they directly provided prior to the IPO. The Advisory Agreement will be terminated upon consummation of the merger.

Pursuant to the Advisory Agreement, Newkirk is required to pay a base management fee to NKT Advisors, which fee is payable quarterly in arrears, equal to the greater of (A) \$4,800,000 or (B) 1.5% per annum of (1) \$273,560,625 (which represents the gross purchase price paid for shares Newkirk's common stock in connection with the IPO and the sale of common stock to Winthrop (excluding shares issued to Winthrop in respect of the assignment of its exclusivity right) net of underwriting discounts plus (2) the sum of the net proceeds from any additional primary issuances of Newkirk's common or preferred equity or from the issuance by the MLP of units, each after deducting any underwriting discounts and commissions and other expenses and costs relating to such issuances, plus (3) as and when, if at all, Apollo sells or converts for shares, in whole or from time to time, up to 5,000,000 units, utilizing a deemed value per unit equal to the lesser of (x) \$19.00 and (y) the per share price at which such units are sold or, if converted, the closing price of the Newkirk's common stock on the day on which such units are converted less (4) any amount that Newkirk or the MLP pay to repurchase shares of Newkirk's common stock or any units (other than amounts paid with proceeds of the IPO to purchase interests units from existing limited partners).

In addition to the base management fee, NKT Advisors will be entitled to an incentive management fee at such time, if at all, as Newkirk's adjusted funds from operations exceed certain thresholds.

Competition

Newkirk expects to face significant competition for Newkirk's targeted investments. Newkirk intends to capitalize on the acquisition and investment opportunities that Newkirk's senior management may bring to Newkirk as a result of its acquisition experience. Through its broad experience, Newkirk's senior management team has established a network of contacts and relationships in the net leased property industry, including relationships with operators, financiers, commercial real estate brokers, potential tenants and other key industry participants. In addition, Newkirk believes that NKT Advisor's significant real estate management infrastructure will provide Newkirk with the economies of

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scale associated with its current business operations and thus will provide Newkirk with a competitive advantage when bidding on investment opportunities.

Newkirk also competes with a large number of real estate property owners and developers for tenants. Principal factors of competition are rent charged, attractiveness of location and property condition. Newkirk's success will depend upon, among other factors, trends of the national and local economies, financial condition and operating results of current and prospective tenants, availability and cost of capital, construction and renovation costs, taxes, governmental regulations, legislation and population trends.

Environmental Regulations

Under various federal, state and local laws and regulations, an owner or operator of real estate may be held liable for the costs of removal or remediation of hazardous or toxic substances located on or in the property. These laws often impose such liability without regard to whether the owner knows of, or was responsible for, the presence of such hazardous or toxic substances. The cost of any required remediation or removal of such substances may be

Annex F-12

substantial. In addition, the owner's liability as to any property is generally not limited under such laws and regulations and could exceed the value of the property and/or the aggregate assets of the owner. The presence of such substances, or the failure to remediate such substances properly, may also adversely affect the owner's ability to sell or lease the property or to borrow using the property as collateral. Under such laws and regulations, an owner or entity who arranges for the disposal or treatment of hazardous or toxic substances at a disposal or treatment facility may also be liable for the costs of removal or remediation of all such substances at such facility, whether or not such facility is owned or operated by such person. Some laws and regulations impose liability for the release of certain materials into the air or water from a property, including asbestos, and such release can form the basis for liability to third parties for personal injury or other damages. Other laws and regulations can limit the development of and impose liability for the disturbance of wetlands or the habitats of threatened or endangered species.

Almost all of the MLP's properties are triple-net leased, and tenants are therefore generally required to pay all of the expenses relating to the leased property. Accordingly, Newkirk believes that compliance with federal, state and local provisions otherwise relating to the properties or the environment will not have a material effect on Newkirk's capital expenditures, earnings or competitive position. However, no assurance can be given that material environmental liabilities do not exist, that despite the leases in place the MLP will not be held liable for environmental liabilities, that any prior owner or operator of a property or land held for development did not create any material environmental condition not known to us, that a material environmental condition does not otherwise exist as to any one or more of the MLP's properties or land held for development, or that future uses and conditions (including changes in applicable environmental laws and regulations and the uses and conditions of properties in the vicinity, such as leaking underground storage tanks and the activities of the tenants) will not result in the imposition of environmental liability. No material expenditures have been made by Newkirk to date relating to environmental matters.

Segment Data

Newkirk operates in only one business segment - net lease assets.

Properties

As of August 1, 2006, the MLP owned 166 properties. Of these properties, 133 properties were wholly-owned, and 33 properties were owned by entities controlled by Newkirk or Newkirk's affiliates and whose operations are consolidated for financial statement purposes with Newkirk's.

Substantially all of the MLP's properties and the consolidated properties are net leased to investment grade corporate tenants. At August 1, 2006, Newkirk had 11 properties that were not fully leased. These properties contained an aggregate of approximately 760,437 square feet or approximately 4.5% of the total space of all properties. The MLP's remaining properties are net leased to various tenants. The leases are similar in many respects and generally: (i) provide for fixed rent payments and obligate the tenant to pay all capital and operating expenses for a property; (ii) obligate the tenant to perform all responsibilities (other than the payment of debt service) relating to the property; (iii) require the tenant to maintain insurance against casualty and liability losses; (iv) permit the tenant to sublet the property; and (v) afford the tenant in many instances the right to terminate the lease at certain points during the primary term if it determines that continued use and occupancy of the property would be uneconomic or unsuitable. Many of the leases grant the tenant an option to purchase the property upon the expiration of the

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primary term of the lease and at the end of one or more renewal terms for a purchase price equal to the fair market value of such property. Newkirk maintains insurance on properties that are not leased and believes that the properties are adequately covered by insurance.

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The table below summarizes, as of August 1, 2006, information on the MLP's 166 properties.

| Property Type | Number | Square Footage | In-Place Annualized Rental Revenues |
|---------------|------------|-------------------|--|
| Office | 45 | 8,318,242 | \$ 169,794,234 |
| Retail | 99 | 3,026,862 | 26,767,507 |
| Industrial | 14 | 4,442,563 | 26,427,165 |
| Other | 8 | <u>1,029,000</u> | <u>16,588,569</u> |
| TOTAL | 166 | 16,816,667 | \$ 239,577,475 |

The following table sets forth certain information on the MLP's properties and the consolidated properties as of August 1, 2006, including discontinued operations.

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| <u>City</u> | <u>State</u> | <u>Ground Ownership(1)</u> | <u>Tenant</u> | <u>Type of Property</u> | <u>Sq. Ft.</u> | <u>Lease Term Maturity (Incl</u> |
|-----------------|--------------|----------------------------|--|-------------------------|----------------|----------------------------------|
| Long Beach(2) | CA | LE | Raytheon Company | Industrial | 200,541 | 12/31/08 |
| Palo Alto | CA | GL | Xerox Corporation | Industrial | 123,000 | 01/31/08 |
| Orlando | FL | GL | Walgreen Company | Industrial | 205,016 | 03/31/11 |
| Owensboro(3) | KY | GL | Ragu Foods, Inc. | Industrial | 443,380 | 12/19/08 |
| Rockford(4) | IL | Fee | Jacobsen Companies | Industrial | 240,000 | 12/31/14 |
| North Berwick | ME | Fee | United Technologies Corp. | Industrial | 820,868 | 04/30/10 |
| Statesville | NC | Fee | La-Z-Boy | Industrial | 639,600 | 04/30/10 |
| Saugerties(14) | NY | Fee | Rotron Inc/EG&G/URS | Industrial | 52,000 | 12/31/09 |
| N. Myrtle Beach | SC | GL | Food Lion, LLC (Delhaize America Inc.) | Industrial | 36,828 | 10/31/08 |
| Franklin | TN | GL | Essex Group, Inc. | Industrial | 289,330 | 12/31/08 |
| Memphis | TN | GL | Sears, Roebuck & Company | Industrial | 780,000 | 02/28/17 |
| Lewisville | TX | Fee | Xerox Corporation | Industrial | 256,000 | 06/30/08 |
| Windsor | WI | GL | Walgreen Company | Industrial | 356,000 | 02/28/12 |
| Little Rock | AR | Fee | Entergy Arkansas | Office | 36,361 | 10/31/10 |

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| | | | | | | |
|------------------|----|-----|---|--------|---------|-----------------------|
| Pine Bluff | AR | Fee | Entergy Arkansas | Office | 27,189 | 10/31/10 |
| El Segundo(5) | CA | Fee | Raytheon Company | Office | 184,636 | (5) |
| El Segundo(5) | CA | Fee | Raytheon Company | Office | 184,636 | (5) |
| Irvine(6) | CA | Fee | Associates First Financial Corp./Citigroup | Office | 200,000 | 09/08/08 |
| Long Beach(2) | CA | LE | Raytheon Company | Office | 478,437 | 12/31/08 |
| Pleasanton(7) | CA | LE | Multi-tenant | Office | 41,760 | 11/30/09 |
| San Francisco(8) | CA | LE | Multi-tenant | Office | 172,543 | various |
| Walnut Creek | CA | LE | Hercules Credit, Inc. | Office | 54,528 | 08/31/07 |
| Colorado Springs | CO | Fee | Federal Express Corporation | Office | 71,000 | 04/30/08 |
| Clinton(3) | CT | GL | Chesebrough Ponds/Unilever | Office | 41,188 | 12/19/08 |
| Orlando | FL | GL | Martin Marietta (Lockheed Martin) | Office | 184,000 | 04/30/08 |
| Orlando | FL | Fee | Harcourt Brace & Company (Reed Elsevier) | Office | 357,280 | 03/31/09 |
| Lisle(4) | IL | Fee | National Louis University / Primms / James Benes & Assoc. | Office | 99,414 | 01/19 - 08/09 - 01/14 |

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| <u>City</u> | <u>State</u> | <u>Ownership(1)</u> | <u>Tenant</u> | <u>Type of Property</u> | <u>Sq. Ft.</u> | <u>Lease Term Maturity (Including Exercised Options)</u> |
|----------------|--------------|---------------------|---------------------------------------|-------------------------|----------------|--|
| Columbus | IN | GL | Cummins Engine Company Inc. | Office | 390,100 | 07/31/09 |
| New Orleans(9) | LA | LE | Hibernia Corporation | Office | 222,432 | 09/08/08 |
| New Orleans(9) | LA | LE | Hibernia Corporation | Office | 180,595 | 09/08/08 |
| Baltimore | MD | GL | St Paul Fire and Marine Insurance Co. | Office | 530,000 | 09/30/09 |
| Bridgeton | MO | GL | BCG Healthcare | Office | 54,205 | 03/31/13 |
| Bridgewater | NJ | Fee | Biovail | Office | 115,508 | 10/31/14 |
| Carteret | NJ | Fee | Pathmark Stores, Inc. | Office | 96,400 | 12/31/11 |
| Elizabeth | NJ | Fee | Bank of America | Office | 30,000 | 08/31/08 |
| Morris | NJ | GL | Allied Signal Corp./Honeywell | Office | 225,121 | 05/31/08 |
| Township | | | | | | |
| Morris | NJ | GL | Allied Signal Corp./Honeywell | Office | 49,791 | 05/31/08 |
| Township | | | | | | |
| Morris | NJ | GL | Allied Signal Corp./Honeywell | Office | 136,516 | 05/31/08 |
| Township | | | | | | |
| Morristown | NJ | GL | Allied Signal Corp./Honeywell | Office | 316,129 | 03/31/08 |
| Plainsboro | NJ | Fee | Bank of America | Office | 2,000 | 08/31/08 |
| Rockaway | NJ | Fee | BASF | Office | 95,500 | 09/30/14 |
| Las Vegas | NV | Fee | Nevada Power Company | Office | 282,000 | 01/31/14 |
| Rochester | NY | Fee | Frontier Corporation | Office | 226,000 | 12/31/14 |
| Miamisburg | OH | GL | Reed Elsevier, Inc. | Office | 61,229 | 01/31/08 |
| Miamisburg | OH | GL | Reed Elsevier, Inc. | Office | 85,873 | 01/31/08 |
| Toledo | OH | GL | Owens-Illinois | Office | 707,482 | 09/30/06 |
| Allentown | PA | Fee | Wachovia | Office | 71,230 | 10/31/10 |
| Johnson City | TN | Fee | Sun Trust Bank | Office | 63,800 | 11/30/11 |
| Kingport | TN | Fee | American Electric Power | Office | 42,770 | 06/30/08 |
| Memphis | TN | LE | The Kroger Co. | Office | 75,000 | 07/01/08 |
| Memphis | TN | Fee | Federal Express Corporation | Office | 521,286 | 06/19/09 |
| Beaumont | TX | Fee | Wells Fargo & Co. | Office | 49,689 | 11/29/07 |
| Beaumont | TX | GL | Entergy Gulf States | Office | 426,000 | 07/31/07 |
| Bedford | TX | Fee | Vacant | Office | 206,905 | Vacant |
| Dallas | TX | Fee | Wells Fargo & Co. | Office | 185,000 | 12/31/07 |

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Annex F-16

| <u>City</u> | <u>State</u> | <u>Ownership(1)</u> | <u>Tenant</u> | <u>Type of Property</u> | <u>Sq. Ft.</u> | <u>Lease Term Maturity (Including Exercised Options)</u> |
|-----------------|--------------|---------------------|-----------------------------------|-------------------------|----------------|--|
| Garland | TX | Fee | E Systems Inc. | Office | 278,759 | 05/31/11 |
| Glenwillow | OH | Fee | Royal Appliance | Office/ | 458,000 | 07/31/15 |
| Distribution | | | | | | |
| El Segundo(5) | CA | Fee | Raytheon Company | Office/Parking | 959,000(5) | |
| Sun City | AZ | Fee | Furrs Cafeterias | Other | 10,000 | 04/30/12 |
| Ft. Collins | CO | Fee | Lithia Motors | Other | 10,000 | 05/31/12 |
| Carlsbad | NM | Fee | Furrs Cafeterias | Other | 10,000 | 04/30/12 |
| Corpus Christi | TX | Fee | Furrs Cafeterias | Other | 10,000 | 04/30/12 |
| El Paso | TX | Fee | Furrs Cafeterias | Other | 10,000 | 04/30/12 |
| McAllen | TX | Fee | Furrs Cafeterias | Other | 10,000 | 04/30/12 |
| Victoria | TX | Fee | Furrs Cafeterias | Other | 10,000 | 04/30/12 |
| Florence | AL | LE | The Kroger Co. | Retail | 42,130 | 07/01/08 |
| Montgomery | AL | GL | Vacant | Retail | 53,820 | Vacant |
| Bisbee | AZ | LE | Safeway, Inc. | Retail | 30,181 | 03/31/09 |
| Mesa(10) | AZ | Fee | Albertson's / CSK Auto | Retail | 3,080 | 01/31/09 |
| Tucson | AZ | LE | Safeway, Inc. | Retail | 37,268 | 03/31/09 |
| Atascadero(10) | CA | Fee | Albertson's / CSK Auto | Retail | 4,000 | 01/31/09 |
| Beaumont(10) | CA | Fee | Albertson's / CSK Auto | Retail | 4,000 | 01/31/09 |
| Corona | CA | LE | Mark C. Bloome (Goodyear) | Retail | 9,400 | 09/30/12 |
| Indio | CA | LE | Mark C. Bloome (Goodyear) | Retail | 9,600 | 09/30/12 |
| Lake Forest(11) | CA | Fee | Mark C. Bloome (Goodyear) | Retail | 10,250 | 05/31/09 |
| Mammoth Lakes | CA | LE | Safeway, Inc. | Retail | 44,425 | 05/31/07 |
| Morgan Hill(11) | CA | Fee | Mark C. Bloome (Goodyear) | Retail | 10,250 | 05/31/09 |
| Paso Robles(10) | CA | Fee | Albertson's / CSK Auto | Retail | 7,000 | 01/31/09 |
| Pleasanton | CA | Fee | Federated Western Properties Inc. | Retail | 175,000 | 08/31/12 |
| Redlands(11) | CA | Fee | Mark C. Bloome (Goodyear) | Retail | 11,200 | 05/31/09 |
| San Diego | CA | GL | Nordstrom, Inc. | Retail | 225,919 | 12/31/16 |
| Santa Monica | CA | Fee | Federated Department Stores | Retail | 150,000 | 09/30/12 |
| Tustin(12) | CA | Fee | Target | Retail | 72,000 | 12/31/07 |
| Union City(11) | CA | Fee | Mark C. Bloome (Goodyear) | Retail | 10,800 | 05/31/09 |
| Ventura | CA | GL | City of Buenaventura | Retail | 39,600 | 11/30/13 |

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| <u>City</u> | <u>State</u> | <u>Ownership(1)</u> | <u>Tenant</u> | <u>Type of Property</u> | <u>Sq. Ft.</u> | <u>Lease Term</u> | <u>Maturity (Including Exercised Options)</u> |
|-----------------|--------------|---------------------|--|-------------------------|----------------|-------------------|---|
| Yorba Linda(11) | CA | Fee | Mark C. Bloome (Goodyear) | Retail | 10,800 | 05/31/09 | |
| Aurora | CO | LE | Safeway, Inc. | Retail | 24,000 | 05/31/12 | |
| Aurora | CO | Fee | Vacant | Retail | 41,384 | Vacant | |
| Littleton | CO | Fee | Vacant | Retail | 29,360 | Vacant | |
| Port Richey | FL | GL | Vacant | Retail | 53,820 | Vacant | |
| Tallahassee | FL | GL | Vacant | Retail | 53,820 | Vacant | |
| Atlanta | GA | LE | Bank of America | Retail | 6,260 | 12/31/09 | |
| Atlanta | GA | LE | Bank of America | Retail | 3,900 | 12/31/09 | |
| Chamblee | GA | LE | Bank of America | Retail | 4,565 | 12/31/09 | |
| Cumming | GA | LE | Bank of America | Retail | 14,208 | 12/31/09 | |
| Duluth | GA | LE | Bank of America | Retail | 9,300 | 12/31/09 | |
| Forest Park | GA | LE | Bank of America | Retail | 14,859 | 12/31/09 | |
| Jonesboro | GA | LE | Bank of America | Retail | 4,894 | 12/31/09 | |
| Stone Mountain | GA | LE | Bank of America | Retail | 5,704 | 12/31/09 | |
| Rock Falls | IL | Fee | Albertson's/Lucky Stores | Retail | 27,650 | 9/30/11 | |
| Carmel | IN | Fee | Marsh Supermarkets, Inc. | Retail | 38,567 | 10/31/08 | |
| Lawrence | IN | Fee | Marsh Supermarkets, Inc. | Retail | 28,721 | 10/31/08 | |
| Louisville | KY | LE | The Kroger Co. | Retail | 40,019 | 12/29/11 | |
| Louisville | KY | GL | The Kroger Co. | Retail | 9,600 | 12/28/11 | |
| Minden | LA | Fee | Safeway, Inc. | Retail | 35,000 | 11/30/07 | |
| Columbia(13) | MD | Fee | Giant Foods/Royal Ahold | Retail | 57,209 | 12/31/08 | |
| Billings | MT | GL | Safeway, Inc. | Retail | 40,800 | 05/31/10 | |
| Charlotte | NC | Fee | Food Lion, LLC (Delhaize America Inc.) | Retail | 33,640 | 10/31/08 | |
| Concord | NC | Fee | Food Lion, LLC (Delhaize America Inc.) | Retail | 32,259 | 10/31/08 | |
| Jacksonville | NC | Fee | Food Lion, LLC (Delhaize America Inc.) | Retail | 23,000 | 02/28/08 | |
| Jefferson | NC | GL | Food Lion, LLC (Delhaize America Inc.) | Retail | 23,000 | 02/28/08 | |
| Lexington | NC | GL/Fee | Food Lion, LLC (Delhaize America Inc.) | Retail | 23,000 | 02/28/08 | |
| Thomasville | NC | Fee | Food Lion, LLC (Delhaize America Inc.) | Retail | 21,000 | 10/31/08 | |
| Garwood | NJ | Fee | Pathmark Stores, Inc. | Retail | 52,000 | 05/31/11 | |

Annex F-18

| <u>City</u> | <u>State</u> | <u>Ownership(1)</u> | <u>Tenant</u> | <u>Type of Property</u> | <u>Sq. Ft.</u> | <u>Lease Term</u> | <u>Maturity (Including Exercised Options)</u> |
|-------------|--------------|---------------------|---------------|-------------------------|----------------|-------------------|---|
|-------------|--------------|---------------------|---------------|-------------------------|----------------|-------------------|---|

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|----------------|----|-----|--|--------|--------|----------|
| Albuquerque | NM | Fee | Safeway, Inc. | Retail | 35,000 | 11/30/07 |
| Farmington(10) | NM | Fee | Albertson's / CSK Auto | Retail | 3,030 | 01/31/09 |
| Las Vegas(10) | NV | Fee | Albertson's / CSK Auto | Retail | 2,800 | 01/31/09 |
| Port Chester | NY | GL | Pathmark Stores, Inc. | Retail | 59,000 | 10/31/08 |
| Cincinnati | OH | GL | The Kroger Co. | Retail | 25,628 | 12/28/06 |
| Columbus | OH | LE | The Kroger Co. | Retail | 34,019 | 12/29/11 |
| Franklin | OH | Fee | Marsh Supermarkets, Inc. | Retail | 29,119 | 10/31/08 |
| Lawton | OK | LE | Safeway, Inc. | Retail | 30,757 | 03/31/09 |
| Grants Pass | OR | LE | Safeway, Inc. | Retail | 33,770 | 03/31/09 |
| Doylestown | PA | Fee | Meritor Savings Bank (Mellon Bank / Citizens Bank) | Retail | 3,800 | 08/31/08 |
| Lansdale | PA | Fee | Meritor Savings Bank (Mellon Bank / Citizens Bank) | Retail | 3,800 | 08/31/08 |
| Lima | PA | Fee | Meritor Savings Bank (Mellon Bank / Citizens Bank) | Retail | 3,800 | 08/31/08 |
| Philadelphia | PA | Fee | Meritor Savings Bank (Mellon Bank / Citizens Bank) | Retail | 3,800 | 08/31/08 |
| Philadelphia | PA | Fee | Meritor Savings Bank (Mellon Bank / Citizens Bank) | Retail | 3,800 | 08/31/08 |
| Philadelphia | PA | Fee | Meritor Savings Bank (Mellon Bank / Citizens Bank) | Retail | 3,800 | 08/31/08 |
| Philadelphia | PA | Fee | Meritor Savings Bank (Mellon Bank / Citizens Bank) | Retail | 3,800 | 08/31/08 |
| Philadelphia | PA | Fee | Meritor Savings Bank (Mellon Bank / Citizens Bank) | Retail | 3,800 | 08/31/08 |
| Philadelphia | PA | Fee | Meritor Savings Bank (Mellon Bank / Citizens Bank) | Retail | 3,800 | 08/31/08 |
| Philadelphia | PA | Fee | Meritor Savings Bank (Mellon Bank / Citizens Bank) | Retail | 3,800 | 08/31/08 |

Annex F-19

| <u>City</u> | <u>State</u> | <u>Ownership(1)</u> | <u>Tenant</u> | <u>Type of Property</u> | <u>Sq. Ft.</u> | <u>Lease Term Maturity (Including Exer</u> |
|---------------|--------------|---------------------|--|-------------------------|----------------|--|
| Philadelphia | PA | Fee | Meritor Savings Bank (Mellon Bank / Citizens Bank) | Retail | 3,800 | 08/31/08 |
| Philadelphia | PA | Fee | Pathmark Stores, Inc. | Retail | 50,000 | 11/30/10 |
| Richboro | PA | Fee | Meritor Savings Bank (Mellon Bank / Citizens Bank) | Retail | 3,800 | 08/31/08 |
| Wayne | PA | Fee | Meritor Savings Bank (Mellon Bank / Citizens Bank) | Retail | 3,800 | 08/31/08 |
| Moncks Corner | SC | GL | Food Lion, LLC (Delhaize America Inc.) | Retail | 23,000 | 02/28/08 |
| Chattanooga | TN | LE | The Kroger Co. | Retail | 42,130 | 07/01/08 |
| Paris | TN | LE | The Kroger Co. | Retail | 31,170 | 07/01/08 |
| Carrollton | TX | GL | Hongs Family Grocery | Retail | 61,000 | 01/31/21 |
| Dallas | TX | GL | The Kroger Co. | Retail | 68,024 | 12/28/06 |
| El Paso(10) | TX | Fee | Albertson's / CSK Auto | Retail | 2,625 | 01/31/09 |
| El Paso(10) | TX | Fee | Albertson's / CSK Auto | Retail | 2,800 | 01/31/09 |
| Fort Worth | TX | LE | Safeway, Inc. | Retail | 44,000 | 05/31/07 |
| Garland | TX | LE | Safeway, Inc. | Retail | 40,000 | 11/30/07 |
| Granbury | TX | LE | Safeway, Inc. | Retail | 35,000 | 11/30/07 |
| Grand Prairie | TX | LE | Safeway, Inc. | Retail | 49,349 | 03/31/09 |
| Greenville | TX | GL | Safeway, Inc. | Retail | 48,427 | 05/31/11 |
| Hillsboro | TX | LE | Safeway, Inc. | Retail | 35,000 | 11/30/07 |
| Houston | TX | LE | The Kroger Co. | Retail | 52,200 | 12/29/11 |
| Lubbock(10) | TX | Fee | Albertson's / CSK Auto | Retail | 2,550 | 01/31/09 |
| Lubbock | TX | GL | Vacant | Retail | 53,820 | Vacant |
| Sandy | UT | GL | Albertson's Inc. | Retail | 41,612 | 12/31/06 |

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| | | | | | |
|----------|--------|--|--------|--------|----------|
| Staunton | VA Fee | Food Lion, LLC (Delhaize America Inc.) | Retail | 23,000 | 02/28/08 |
| Edmonds | WA GL | Vacant | Retail | 35,459 | Vacant |
| Graham | WA LE | Safeway, Inc. | Retail | 44,718 | 03/31/09 |
| Milton | WA LE | Safeway, Inc. | Retail | 44,718 | 03/31/09 |

Annex F-20

| <u>City</u> | <u>State</u> | <u>Ownership(1)</u> | <u>Tenant</u> | <u>Type of Property</u> | <u>Sq. Ft.</u> | <u>Lease Term</u> | <u>Maturity (Including Exercised Options)</u> |
|--------------|--------------|---------------------|---|-------------------------|----------------|-------------------|---|
| Port Orchard | WA | GL | Jubilee Fun | Retail | 27,968 | Month to Month | |
| Redmond | WA | LE | Safeway, Inc. | Retail | 44,718 | 03/31/09 | |
| Spokane | WA | LE | Safeway, Inc. | Retail | 38,905 | 03/31/09 | |
| Cheyenne | WY | Fee | Albertson's Inc. | Retail | 31,420 | Vacant | |
| Evanston | WY | Fee | Community First Bank (Bank of the West) | Retail | 10,378 | 03/31/09 | |
| Evanston | WY | Fee | Various | Retail | 28,086 | Multi-Tenant | |

- (1) GL means a ground lease and LE means land estate.
- (2) The MLP holds a 55% ownership interest in the entity that owns this property.
- (3) The MLP holds a 63.2% ownership interest in the entity that owns this property.
- (4) Two properties. Information is for both properties in the aggregate.
- (5) The MLP holds a 53% ownership interest in the entity that owns these properties. Property consists of two 184,636 square foot office towers and a parking garage with approximately 150,000 square feet of office space above the garage. Tenant recently entered into lease extension for a term expiring January 1, 2019 for all of the space at 2200 E. Imperial Highway and approximately 160,741 square feet of office space at 2222 E. Imperial Highway and 63% of the parking structure. In connection with the lease extension, the tenant is obligated to pay annual rent of \$4,921,000 from January 2009 through December 2013, increasing to \$5,267,000 for the period from January 2014 to December 2018. Tenant has (i) three five 5 year renewal terms at fair market rent with respect to 2200 E. Imperial Highway, and (ii) five 5 year renewal terms at fair market rent with respect to one of the office towers (2230 E. Imperial Highway) and the remaining space at 2222 E. Imperial Highway.
- (6) The MLP holds a 59.9% ownership interest in the entity that owns this property.
- (7) The MLP holds the general partner interest in the entity that owns this property.
- (8) The MLP holds a second mortgage on this property that effectively gives the MLP all of the economic rights with respect to the property.
- (9) The MLP holds a 47.5% ownership interest in the entity that owns this property.
- (10) The MLP holds a 49.9% ownership interest in the entity that owns this property.
- (11) The MLP holds a 32.1% ownership interest in the entity that owns this property.
- (12) The MLP holds a 85.4% ownership interest in the entity that owns this property.
- (13) The MLP holds a 45% ownership interest in the entity that owns this property.
- (14) The MLP holds a 57.8% ownership interest in the entity that owns this property

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- (15) The Kroger Co. has elected not to renew. Malone s has entered into an agreement to lease the property from 1/1/07 through 3/31/17 at a rent of \$5.26 per square foot.

Annex F-21

Below is a listing of tenants which accounted for 3% or more of aggregate in-place annualized rental revenues from the MLP s properties as of December 31, 2005:

| <u>Tenant(1)</u> | <u>Number of Properties</u> | <u>Square Footage</u> | <u>2005 Rental Revenues</u> | <u>Percentage of 2005 Aggregate Annual Rental Revenue</u> |
|--|-----------------------------|-----------------------|-----------------------------|---|
| Raytheon Company(2) | 6 | 2,286,009 | \$ 42,863,692 | 17.9 |
| St. Paul Fire and Marine Insurance Co. | 1 | 530,000 | 25,832,664 | 10.8 |
| Albertson's Inc. (3) | 71 | 2,842,909 | 22,590,094 | 9.4 |
| Honeywell, Inc.(4) | 4 | 727,557 | 19,833,669 | 8.3 |
| Federal Express Corporation | 2 | 592,286 | 16,575,578 | 6.9 |
| Owens-Illinois, Inc.(5) | 1 | 707,482 | 13,364,335 | 5.6 |
| Entergy Corporation | 3 | 489,500 | 11,849,734 | 4.9 |
| Safeway Inc. | 19 | 736,036 | 8,494,155 | 3.5 |
| Hibernia National Bank | 2 | 403,027 | 8,286,145 | 3.5 |
| Nevada Power Company | 1 | 282,000 | 7,735,260 | 3.2 |

- (1) The listed company is either the tenant, the obligor or guarantor with respect to the lease or the successor-in-interest to the initial tenant.
 (2) Properties leased to Raytheon represented approximately 12.9% of the MLP s total assets for financial reporting purposes as of December 31, 2005. Raytheon is a public company subject to the reporting requirements of the Securities Exchange Act of 1934. As of December 31, 2005, no other lessee leased property from the MLP representing more than 10% of Newkirk s total assets.
 (3) 50 properties were sold in July 2006.
 (4) In June 2005, the MLP entered into an agreement with Honeywell International, Inc. the tenant of four office buildings owned by the MLP in Morris Township, New Jersey to restructure the lease on the properties.
 (5) In March 2006, the MLP entered into an agreement to sell this property leased to Owens-Illinois.

The following charts set forth certain information as of December 31, 2005 concerning expirations of the current lease terms for Newkirk s properties (assuming no renewals other than those which have already been exercised) from 2006 to 2016:

| <u>Lease Expiration Date</u> | <u>Number of Properties at Which Lease Expires(1)</u> | <u>Approximate Sq. Ft. Covered by Expiring Leases(1)</u> | <u>Aggregate In Place Rental Income(1)(2)</u> | <u>Cumulative Percentage of Aggregate Revenues(1)</u> |
|------------------------------|---|--|---|---|
| 2006 | 13 | 1,283,375 | \$ 17,230,920 | 7.2% |
| 2007 | 32 | 3,005,442 | 37,284,017 | 22.7% |
| 2008 | 63 | 5,755,504 | 99,190,024 | 64.1% |
| 2009 | 45 | 2,746,105 | 58,627,451 | 88.6% |
| 2010 | 12 | 1,295,191 | 4,118,356 | 90.3% |

Annex F-22

| | | | | |
|-----------|-----|------------|---------------|--------|
| 2011 | 16 | 1,158,446 | 9,992,346 | 94.4% |
| 2012 | 9 | 395,000 | 3,187,134 | 95.8% |
| 2013 | 1 | 39,600 | 788,722 | 96.1% |
| 2014 | 1 | 282,000 | 7,735,260 | 99.3% |
| 2015 | | | | 99.3% |
| 2016 | 1 | 225,919 | 1,600,000 | 100.0% |
| Vacant | 10 | 584,442 | | |
| TOTAL | | | | |
| PORTFOLIO | 203 | 16,771,024 | \$239,754,230 | 100.0% |

(1) Covers current term lease expirations only.

(2) Based on rent from continuing operations for the year ended December 31, 2005.

Ground Leases

The following table sets forth certain information with respect to the ground leases to which the MLP properties are subject.

| City | State | Current Term Expiration | Renewal Options | Ground Rent |
|--------------|-------|-------------------------|---|--|
| Russellville | AK | 5/9/2026 | n/a | \$2,200 per year |
| Montgomery | AL | 1/1/2011 | 3-5 year renewal options. | \$78,960 per year increasing by 7/5% each renewal term. |
| Palo Alto | CA | 2/1/2008 | 1 term expiring 12/14/2013, then 2-5 year renewal options | \$61,000 per year current term, fair market value all renewal terms. |
| San Diego | CA | 1/1/2017 | 10-5 year renewal options. | \$60,000 per year thru 7th renewal then fair market value. |
| Tustin(1) | CA | 12/31/2007 | 12-5 year renewal options | \$45,990 per year during current term; \$30,660 per year during 2 nd through 5 th renewal term; then fair market value |
| Ventura | CA | 12/1/2018 | 4-5 year renewal options. | Current term is \$45,000 per year, fair market value for all renewal terms. |
| Clinton | CT | 12/19/2018 | 8-5 year renewal options. | \$7,200 per year for all terms. |
| Port Richey | FL | 12/31/2010 | 8-5 year renewal options. | \$64,420 per year thru 1st renewal term, increases by 10% each renewal term. |
| Orlando | FL | 5/2/2008 | 10-5 year renewal options. | Fair Market Value. Current rent is \$326,066.25 per year. |
| Orlando | FL | 3/31/2011 | 8-5 year renewal options. | \$76,000 per year all terms. |
| Tallahassee | FL | 1/2/2007 | 9-5 year renewal options. | \$64,102 per year through current term, then fair market value all renewal terms with no renewal rent less than the preceding term. Percentage rents are also payable to the extent of 1/2% gross sales in excess of \$13,000,000. |
| Columbus | IN | 2/1/2009 | 9-5 year renewal options. | Fair Market Value. |
| Owensboro | KY | 12/19/2018 | 8-5 year renewal options. | \$30,000 per year for all terms. |
| Louisville | KY | 1/30/2011 | 3-5 year renewal options. | |

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Current rent is \$67,100 and increases by \$5,000 each renewal term.

Annex F-23

| | | | | |
|-----------------|----|------------|--|--|
| Baltimore | MD | 11/2/2014 | 8-5 year renewal options. | \$550,000 per year all terms. |
| Bridgeton | MO | 4/1/2011 | 9- 5 year renewal options. | \$10,000 per year. |
| Billings | MT | 7/7/2010 | 4-5 year renewal options. | \$40,000 per year plus percentage rent for all terms. |
| Jefferson | NC | 10/19/2007 | 4-5 year renewal options. | \$35,000 per year current term, \$37,500 thru 1st renewal then increase by \$2,500 each renewal term plus percentage rent equal to .5% of gross sales in excess of \$11,550,00 to max of \$15,000,000. |
| Lexington | NC | 3/1/2008 | 14-5 year renewal options. | \$3,333 per year through 6th renewal term, fair market value all remaining terms. |
| Morris Township | NJ | 11/30/2010 | 1-2.5 year & 9-5 year renewal options. | \$11,727 per year all terms. |
| Morris Township | NJ | 11/30/2010 | 1-2.5 year & 9-5 year renewal options. | \$5,729 per year all terms. |
| Morris Township | NJ | 11/30/2010 | 1-2.5 year & 9-5 year renewal options. | \$6,060 per year all terms. |
| Morristown | NJ | 9/30/2010 | 1-2.5 year & 9-5 year renewal options. | \$14,766 per year all terms. |
| Port Chester | NY | 10/31/2008 | 6-5 year renewal options. | \$276,367 per year increasing by 13% each renewal term. |
| Cincinnati | OH | 12/30/2006 | 4-5 year renewal options. | Current rent is \$120,000 per year and \$220,000 per year for all renewal terms. |
| Miamisburg | OH | 2/1/2008 | 10-5 year renewal options. | \$10,000 per year thru 6th renewal term then fair market value |
| Toledo | OH | 9/30/2006 | 10-5 year renewal options. | \$113,320 per year, 9% of FMV of the land as encumbered by the improvements. |
| Miamisburg | OH | 2/1/2008 | 10-5 year renewal options. | \$10,000 thru 6th renewal then fair market value. |
| N. Myrtle Beach | SC | 8/16/2008 | 7-5 year renewal options. | \$42,125 through first renewal term then increasing by 12% for each term up to \$88,703 during the last renewal term. |
| Moncks Corner | SC | 1/4/2013 | 2-10 year renewal options. | \$36,380 per year current term, increasing \$2,500 per renewal term. |
| Memphis | TN | 3/1/2007 | 5-10 year renewal options | \$22,500 for current term and thru 3rd renewal then 9% of fair market value |
| Franklin | TN | 1/2/2011 | 1-3 year & 8- 5 year renewal options. | \$36,564 all terms. |
| Carrolton | TX | 2/1/2011 | 9-5 year renewal options. | \$2,500 through 5th renewal term and fair market value thereafter. |
| Dallas | TX | 12/30/2006 | 1-3 year & 5-5 year renewal options. | \$5,800 thru 1st renewal term then increase by \$600 each renewal term. |
| Greenville | TX | 6/6/2006 | 10-5 year renewal options. | \$2,000 per year all terms. |
| Beaumont | TX | 8/1/2007 | 3-10 year & 4-5 year renewal options. | \$123,001 per year during current term, fair market value all renewal terms. |
| Lubbock | TX | 1/2/2011 | 8-5 year renewal options. | \$50,000 per year all terms. Percentage rents also payable to the extent of 1/2% of |

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gross sales in excess of \$20,000,000.

Annex F-24

| | | | | |
|--------------|----|-----------|--------------------------------------|--|
| Bountiful | UT | 1/31/2011 | 4-5 year renewal options. | \$70,000 + percentage rent for all terms. |
| Sandy | UT | 1/1/2007 | 5-5 year renewal options | \$40,000 per year current term, \$40,000 per year all renewal terms plus percentage equal to .5% of gross sales in excess of \$20,000,000. |
| Port Orchard | WA | 1/1/2011 | 6-5 year renewal options. | \$31,000 thru 2nd renewal, \$35,000 thru 4th renewal, \$38,000 for the remaining terms. |
| Edmonds | WA | 1/2/2007 | 7-5 year renewal options. | \$43,420 per year, then fair market value plus \$13,000. |
| Windsor | WI | 3/1/2009 | 1-3 year & 8-5 year renewal options. | \$22,266 per year all terms. |

(1) The MLP owns the land and an 86% ownership interest in the owning entity.

Estate for Years

The following table sets forth certain information with respect to the estate for years held by the MLP. Upon expiration of the estate for years, the MLP has the right to enter into a ground lease with the remainderman on the terms indicated:

| City | State | Land Estate Expiration | Ground Lease Terms | Ground Lease Rent |
|---------------|-------|------------------------|---|---|
| Florence | AL | 7/3/2010 | Option to enter into a ground lease expiring 7/3/13 with 9 5-year renewal options | Commencing 7/4/2010, \$2,500 per year for all terms. |
| Bisbee | AZ | 4/2/2011 | Option to enter ground lease expiring 4/2/2014 with 9-5 year renewal options. | \$1,000 per year all terms. |
| Tucson | AZ | 4/2/2011 | Option to enter ground lease expiring 4/2/2014 with 9-5 year renewal options. | \$1,000 per year all terms. |
| Corona | CA | 1/1/2008 | Option to enter into ground lease expiring 1/1/2013 with 13-5 year renewal options. | Commencing 1/2/2008, \$40,000 per year thru 7th renewal term then fair market value thereafter. |
| Indio | CA | 1/1/2008 | Option to enter into ground lease expiring 1/1/2013 with 13-5 year renewal options. | Commencing 1/2/2008, \$40,000 per year thru 7th renewal term then fair market value thereafter. |
| Long Beach | CA | 1/3/2011 | Option to enter ground lease expiring 1/2/2014 with 9-5 year renewal options. | Commencing 1/3/2011, \$3,076 per year for all terms. |
| Mammoth Lakes | CA | 6/1/2009 | Option to enter ground lease expiring 6/1/2012 with 9-5 year renewal options. | Commencing 6/2/2012, \$2,500 per year for all terms. |

Annex F-25

| | | | | |
|----------------|----|-----------|--|---|
| Pleasanton | CA | 12/1/2009 | Option to enter ground lease expiring 12/1/2014 with 5-5 year renewal options. | \$12,999 per year all terms. |
| San Francisco | CA | 12/1/2009 | Option to enter ground lease expiring 12/1/2014 with 5-5 year renewal options. | \$12,999 per year all terms. |
| Walnut Creek, | CA | 9/2/2009 | Option to enter into ground lease expiring 9/2/2012 with 9-5 year renewal options. | Commencing 9/3/2009, \$10,000 per year all renewal terms. |
| Aurora | CO | 6/1/2009 | Option to enter ground lease expiring 6/1/2012 with 9-5 year renewal options. | Commencing 6/2/2012, \$2,500 per year for all terms. |
| Atlanta | GA | 1/1/2010 | Option to enter into a ground lease expiring 1/1/15 with 9-5 year renewal options | Commencing 1/2/2010, \$1,000 per year for all terms. |
| Atlanta | GA | 1/1/2010 | Option to enter into a ground lease expiring 1/1/15 with 9-5 year renewal options | Commencing 1/2/2010, \$1,000 per year for all terms. |
| Chamblee | GA | 1/1/2010 | Option to enter into a ground lease expiring 1/1/15 with 9-5 year renewal options | Commencing 1/2/2010, \$1,000 per year for all terms. |
| Cumming | GA | 1/1/2010 | Option to enter into a ground lease expiring 1/1/15 with 9-5 year renewal options | Commencing 1/2/2010, \$1,000 per year for all terms. |
| Duluth | GA | 1/1/2010 | Option to enter into a ground lease expiring 1/1/15 with 9-5 year renewal options | Commencing 1/2/2010, \$1,000 per year for all terms. |
| Forest Park | GA | 1/1/2010 | Option to enter into a ground lease expiring 1/1/15 with 9-5 year renewal options | Commencing 1/2/2010, \$1,000 per year for all terms. |
| Jonesboro | GA | 1/1/2010 | Option to enter into a ground lease expiring 1/1/15 with 9-5 year renewal options | Commencing 1/2/2010, \$1,000 per year for all terms. |
| Stone Mountain | GA | 1/1/2010 | Option to enter into a ground lease expiring 1/1/15 with 9-5 year renewal options | Commencing 1/2/2010, \$1,000 per year for all terms. |

Annex F-26

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| | | | | |
|---------------|----|------------|--|---|
| Louisville | KY | 12/31/2008 | Option to enter into ground lease expiring 12/31/2011 with 9-5 year renewal options. | Commencing 1/1/2008, \$3,500 per year for all terms. |
| New Orleans | LA | 9/8/2008 | Option to enter ground lease expiring 9/8/2013 with 9-5 year renewal options. | Annual rent equal to 8% of the fair market value of the land as unencumbered by the improvements. |
| New Orleans | LA | 9/8/2008 | Option to enter ground lease expiring 9/8/2013 with 9-5 year renewal options. | Annual rent equal to 8% of the fair market value of the land as unencumbered by the improvements. |
| Columbus | OH | 12/31/2008 | Option to enter into ground lease expiring 12/31/2011 with 9-5 year renewal options. | Commencing 1/1/2008, \$3,500 per year for all terms. |
| Lawton | OK | 4/2/2011 | Option to enter ground lease expiring 4/2/2014 with 9-5 year renewal options. | \$1,000 per year all terms. |
| Grants Pass | OR | 4/2/2011 | Option to enter ground lease expiring 4/2/2014 with 9-5 year renewal options. | \$1,000 per year all terms. |
| Chattanooga | TN | 7/3/2010 | Option to enter into a ground lease expiring 7/3/13 with 9 5-year renewal options | Commencing 7/4/2010, \$2,500 per year for all terms. |
| Paris | TN | 7/3/2010 | Option to enter into a ground lease expiring 7/3/13 with 9 5-year renewal options | Commencing 7/4/2010, \$2,500 per year for all terms. |
| Memphis | TN | 7/3/2010 | Option to enter into a ground lease expiring 7/3/13 with 9 5-year renewal options | Commencing 7/4/2010, \$2,500 per year for all terms. |
| Houston | TX | 12/31/2008 | Option to enter into ground lease expiring 12/31/2011 with 9-5 year renewal options. | Commencing 1/1/2008, \$3,500 per year for all terms. |
| Fort Worth | TX | 6/1/2009 | Option to enter ground lease expiring 6/1/2012 with 9-5 year renewal options. | Commencing 6/2/2012, \$2,500 per year for all terms. |
| Grand Prairie | TX | 4/2/2011 | Option to enter ground lease expiring 4/2/2014 with 9-5 year renewal options. | \$1,000 per year all terms. |
| Garland | TX | 12/1/2009 | Option to enter into ground lease expiring 12/1/2012 with 9-5 year renewal options. | Commencing 12/2/2009, \$14,280.60 per year all terms. |
| Granbury | TX | 12/1/2009 | Option to enter into ground lease expiring 12/1/2012 with 9-5 year renewal options. | Commencing 12/2/2009, \$14,280.60 per year all terms. |
| Hillsboro | TX | 12/1/2009 | Option to enter into ground lease expiring 12/1/2012 with 9-5 year renewal options. | Commencing 12/2/2009, \$14,280.60 per year all terms. |
| Graham | WA | 4/2/2011 | Option to enter ground lease expiring 4/2/2014 with 9-5 year renewal options. | \$1,000 per year all terms. |
| Milton | WA | 4/2/2011 | Option to enter ground lease expiring 4/2/2014 with 9-5 year renewal options. | \$1,000 per year all terms. |
| Redmond | WA | 4/2/2011 | Option to enter ground lease expiring 4/2/2014 with 9-5 year renewal options. | \$1,000 per year all terms. |

Spokane WA 4/2/2011 Option to enter ground lease \$1,000 per year all terms.
expiring 4/2/2014 with 9-5 year
renewal options.

(1) The MLP subsidiary is the owner of the remainder interest.

LEGAL PROCEEDINGS

Newkirk is not party to any legal proceedings other than personal injury matters covered by insurance at its properties.

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MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

Liquidity and Capital Resources

General

Liquidity is a measurement of the ability to meet potential cash requirements, including ongoing commitments to repay borrowings, fund and maintain investments and other general business needs. Historically, the MLP's principal sources of funds have been operating cash flows, property sales and borrowings. Operating cash flows have been, and are expected to continue to be, derived primarily from rental income received by the MLP from its properties. Pursuant to the terms of the leases, the tenants are responsible for substantially all of the operating expenses with respect to the properties, including maintenance, capital improvements, insurance and taxes. Accordingly, Newkirk does not anticipate significant needs for cash for these costs. To the extent there is a vacancy in a property, the MLP would be obligated for all operating expenses, including real estate taxes and insurance. As of December 31, 2005, ten properties were not subject to leases, representing approximately 3.5% of the MLP's square footage. Newkirk believes that cash flows from operations will continue to provide adequate capital to fund its operating and administrative expenses, regular debt service obligations and all dividend payments in accordance with REIT requirements in both the short-term and long-term. In addition, Newkirk anticipates that cash on hand, borrowings under its credit facility and issuance of equity and debt, as well as other alternatives; will provide the necessary capital required for its investment activities.

Newkirk received net proceeds of approximately \$273,000,000 in connection with the IPO and sale of shares to Winthrop, the proceeds of which were used in connection with the November 7, 2005 transaction to purchase 2,500,000 units from existing limited partners in the MLP for a net cost of approximately \$37,700,000, and the balance of the proceeds were contributed to the MLP in exchange for newly-issued units. The MLP used these proceeds to repay \$150,000,000 of existing debt, and the balance was added to cash reserves to be utilized to fund future acquisitions and fund working capital requirements. Newkirk will conduct all of its operations through the MLP. As a public company, Newkirk has access to public and private equity and debt markets and selective secured indebtedness.

The UPREIT structure enables Newkirk to acquire properties for cash and/or by issuing to sellers, as a form of consideration, units in the MLP. Newkirk intends to utilize this structure to facilitate its ability to acquire individual properties and portfolios of properties by structuring transactions which will defer tax payable by a seller while preserving Newkirk's available cash for other purposes, including the payment of dividends and distributions.

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Future Cash Requirements:

The following table sets forth the timing of the MLP's payment obligations related to off-balance sheet and contractual obligations from continuing operations, including all fixed and variable rate debt obligations, as of December 31, 2005, (in thousands):

Payments Due by Period

| Contractual Obligations | Total | Less than 1 | | | |
|----------------------------------|------------|-------------|------------|-----------|---------------|
| | | Year | 2-3 Years | 4-5 Years | After 5 Years |
| Mortgage Loan Payable | \$ 166,195 | \$ 36,700 | \$ 80,469 | \$ 16,625 | \$ 32,401 |
| Note Payable | 593,463 | 7,500 | 585,963 | -- | -- |
| Contract Right Mortgage Loan (4) | 11,128 | -- | -- | 720 | 10,408 |
| Ground Lease Obligations (1) | 1,291 | 269 | 522 | 497 | 3 |
| Advisors Fee (2) | 14,400(3) | 4,800 | 9,600 | -- | --(3) |
| | \$ 786,477 | \$ 49,269 | \$ 676,554 | \$ 17,842 | \$ 42,812 |
| Commitments (5) | -- | -- | -- | -- | -- |

- (1) Does not include ground lease obligations where the lease agreements require the tenant to pay the ground rent expense.
- (2) Based upon equity in place at December 31, 2005. No effect given to the incentive fee as it is a product of future performance.
- (3) No amounts have been included due to the automatic annual renewal provisions of the Advisory Agreement.
- (4) No payments until 2009.
- (5) Excludes pending acquisitions from January 1, 2006 to January 26, 2006 of \$36,400,000 that were subject to due diligence at December 31, 2005.

The MLP carries comprehensive liability and all risk property insurance: (i) fire; (ii) flood; (iii) extended coverage; (iv) acts of terrorism, as defined in the Terrorism Risk Insurance Act of 2002, and (v) rental loss insurance with respect to its assets. In addition, under the terms of the triple-net tenant leases, the tenant is obligated to maintain adequate insurance coverage.

The MLP's debt instruments, consisting of mortgage loans secured by its properties (which are generally non-recourse to the MLP and Newkirk) and the MLP's secured debt facility contain customary covenants requiring the MLP to maintain insurance. Although Newkirk believes that the coverage is adequate under these agreements, neither Newkirk nor the MLP may be able to obtain an equivalent amount of coverage at reasonable costs in the future. Further, if lenders insist on greater coverage than Newkirk or the MLP are able to obtain, it could adversely affect the MLP's ability to finance and/or refinance its properties and expand its portfolio.

*Cash Flows*Year ended December 31, 2005

For purposes of the following discussion of cash flow for the year ended December 31, 2005 and December 31, 2004, Newkirk has combined the cash flow from its operations for the period from November 7, 2005 through December 31, 2005, and the MLP for the period from January 1, 2005 through November 6, 2005. Internally, Newkirk uses combined reporting to evaluate its operating performance and believes that this presentation will provide investors with additional insight into its financial results.

Newkirk had cash and cash equivalents of \$174,816,000 at December 31, 2005, which consisted of \$94,816,000 in cash and \$80,000,000 in US Treasury Bill cash equivalents with maturities of less than 90 days. U.S. Treasury Bills are classified as cash equivalents. The average annual yields on the U.S. Treasury Bills were 3.0% for the years ended December 31, 2005.

Newkirk's level of liquidity based upon cash and cash equivalents increased by approximately \$153,499,000 during the year ended December 31, 2005. The increase resulted from \$142,463,000 of cash provided by its operating activities, \$20,722,000 of cash provided by its investing activities and \$9,686,000 of cash used by its financing activities.

Cash provided by operating activities of \$142,463,000 was comprised of: (i) net income of \$44,521,000; (ii) adjustments for non-cash items of \$129,923,000, and (iii) a net negative change in operating assets and liabilities of \$31,981,000. The adjustments for non-cash items were primarily comprised of (i) depreciation and amortization of \$53,974,000; (ii) impairment loss of \$29,715,000; (iii) loss on early extinguishment of debt of \$30,460,000; (iv) minority interest of \$20,211,000; (v) compensation expense related to the exclusivity rights of \$10,500,000, (vi) the effect of straight-lining of rental income of \$5,741,000. These amounts were partially offset by (i) net gains on disposal of real estate of \$17,707,000, (ii) equity in net income of partially-owned entities of \$2,729,000, and (iii) interest earned on restricted cash of \$239,000. See Results of Operations below for additional details on Newkirk's operations.

Cash provided by investing activities consisted of \$44,911,000 in proceeds from the sale of real estate, \$44,405,000 from the acquisition of all the partnership interests in T-Two Partners and \$143,000 in proceeds from the sale of real estate securities, partially offset by (i) purchases of various real estate securities for \$5,171,000, (ii) deposits on future real estate acquisitions of \$2,126,000, (iii) the issuance of loans receivable of \$6,500,000, (iv) increases in restricted cash of \$16,777,000, (v) investments in limited partnership interests of \$80,000, (vi) costs to obtain new leases of \$65,000, (vii) \$286,000 of building acquisitions and capital improvements to the MLP's existing properties, and (viii) \$37,732,000 to acquire outside minority interests.

During 2005 financing activities used cash primarily for (i) principal payment on mortgage notes of \$277,685,000, (ii) principal payments on notes payable of \$319,035,000, (iii) principal payments on contract right mortgage notes of \$85,481,000, (iv) \$37,692,000 of distributions made to unitholders, and financing costs of \$6,997,000. Cash provided by financing activities consisted primarily of (i) \$268,871,000 of net proceeds from the sale of shares of Newkirk common stock in connection with the IPO, (ii) \$477,759,000 of net proceeds from the refinancing of the secured debt facility, and (iii) \$1,666,000 received in contributions from minority partners.

Six Months Ended June 30, 2006

Newkirk had cash and cash equivalents of \$48,605,000 at June 30, 2006.

Newkirk's level of liquidity based upon cash and cash equivalents decreased by approximately \$126,211,000 during the six months ended June 30, 2006. The decrease resulted from \$180,145,000 of cash used in investing activities and \$27,810,000 of cash used in financing activities, which was partially offset by \$81,744,000 of cash provided by operating activities.

Cash provided by operating activities of \$81,744,000 was comprised of: (i) net income of \$14,626,000; (ii) adjustments for non-cash items of \$67,681,000, and (iii) a net negative change in operating assets and liabilities of \$563,000. The adjustments for non-cash items were primarily comprised of (i) depreciation and amortization of \$27,264,000; (ii) minority interest of \$37,643,000; (iii) compensation expense related to the exclusivity rights of \$1,667,000; and (iv) the effect of straight-lining of rental income of \$3,031,000, partially offset by: (i) interest earned on restricted cash of \$335,000; (ii) gain from disposal of real estate securities available for sale of \$88,000 and (iii) equity in net income of partially-owned entities of \$1,500,000. See Results of Operations below for additional details on Newkirk's operations.

Cash used in investing activities consisted of: (i) \$127,268,000 of new land and building acquisitions and improvements to existing properties; (ii) purchases of various real estate securities of \$5,980,000; (iii) costs to obtain new leases of \$871,000; (iv) investment in joint venture of \$22,116,000; (v) costs incurred to originate a loan of \$21,000; (vi) deposits for future real estate acquisitions of \$2,630,000; (vii) investments in limited partnerships of \$1,061,000; and (viii) investments in debt securities of \$53,616,000 which were subsequently contributed to a joint venture on March 31, 2006. Cash provided by investing activities consisted of: (i) a change in restricted cash of \$10,124,000; (ii) \$1,379,000 in proceeds from the disposal of real estate securities available for sale; (iii) deposits used in the acquisition of land and buildings of \$4,699,000; (iv) \$32,000 in collections of loans receivable;

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(v) \$419,000 of cash related to previously unconsolidated entities; (vi) proceeds from real estate available for sale of \$5,891,000; and (vii) a return of capital from an investment in joint venture of \$10,874,000.

During the six months ended June 30, 2006 financing activities used cash primarily for: (i) principal payment on mortgage notes of \$25,355,000, (ii) principal payments on notes payable of \$15,044,000, (iii) \$12,981,000 of dividends made to Newkirk stockholders; (iv) distributions to minority interest of \$33,517,000; and (v) financing costs of \$1,693,000. Cash provided by financing activities consisted primarily of: (i) \$28,755,000 of proceeds from mortgage notes and (ii) \$32,025,000 of proceeds from a line of credit. The line of credit was contributed to a joint venture on March 31, 2006.

Dividends

In connection with Newkirk's intention to qualify as a REIT for Federal income tax purposes, Newkirk expects to pay regular dividends to stockholders. These dividends are expected to be paid from operating cash flows and/or other sources.

In December 2005, Newkirk declared a dividend of \$0.27 per share which was paid on January 17, 2006 to the stockholders of record as of December 31, 2005.

During the six months ended June 30, 2006, Newkirk paid dividends of \$12,981,000 (\$0.67 per share).

In June 2006, Newkirk declared a dividend of \$7,750,000 (\$0.40 per share) which was paid on July 14, 2006 to the stockholders of record as of June 30, 2006.

Off-Balance Sheet Arrangements

Newkirk did not have any off-balance sheet arrangements as of December 31, 2005 or June 30, 2006.

Capital Expenditures

Due to the net lease nature of the MLP's leases, the MLP does not incur significant expenditures in the ordinary course of business to maintain its properties. However, as leases expire, Newkirk expects that the MLP will incur costs in extending the existing tenant lease or re-tenanting the properties. The amounts of these expenditures can vary significantly depending on tenant negotiations, market conditions and rental rates. These expenditures are expected to be funded from operating cash flows or borrowings.

Results of Operations

Comparison of the year ended December 31, 2005 to the year ended December 31, 2004.

For purposes of the following comparison of operating results for the years ended December 31, 2005 and December 31, 2004, Newkirk has combined its results of operations for the period from November 7, 2005 through December 31, 2005 with the MLP's for the period from January 1, 2005 through November 6, 2005. Internally, Newkirk uses combined reporting to evaluate its operating performance and believes that this presentation will provide investors with additional insight into Newkirk's financial results.

Income from Continuing Operations

Income from continuing operations decreased by \$43,013,000 to \$24,959,000 for the year ended December 31, 2005 from \$67,972,000 for the year ended December 31, 2004. As more fully described below, this decrease is primarily attributable to loss on early extinguishment of debt and impairment charges incurred during 2005 and a 1.6% decline in rental revenues.

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Rental Income

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Rental income decreased by \$3,224,000 or 1.6% to \$204,704,000 for the year ended December 31, 2005 from \$207,928,000 for the year ended December 31, 2004. Approximately \$2,437,000 of the decrease was due to the vacancy of a property located in Bedford, Texas. The decrease was also due to lower rental income resulting from lease renewals at rates that are lower than the primary term rates which, in a number of instances, are above market rate. Leased square footage declined from approximately 99% at December 31, 2004 to approximately 96.5% at December 31, 2005.

Interest Income

Interest income increased by \$779,000 or approximately 22.8% to \$4,198,000 for the year ended December 31, 2005 from \$3,419,000 for the year ended December 31, 2004. The increase was due to higher invested cash balances and an increase in yields earned cash balances.

Management Fee Income

Management fee income decreased by \$45,000 or approximately 13.5% to \$287,000 for the year ended December 31, 2005 from \$332,000 for the year ended December 31, 2004. The decrease is attributable to fewer properties under management resulting from the sale of four properties owned by unconsolidated partnerships.

Interest Expense

Interest expense decreased by \$13,972,000 or approximately 18.0% to \$63,684,000 for the year ended December 31, 2005 compared to \$77,656,000 for the year ended December 31, 2004. The decrease was primarily due to loan prepayments during the period and scheduled principal payments along with a reduced interest rate incurred in connection with Newkirk's August 11, 2005 refinancing. In addition there was a reduction to amortization of deferred financing costs of \$3,239,000.

Loss from early Extinguishment of Debt

The loss from early extinguishment of debt increased by \$27,453,000 to \$27,521,000 for the year ended December 31, 2005 from \$68,000 for the year ended December 31, 2004. The increase was primarily due to the refinancing of MLP debt which occurred on August 11, 2005. The MLP incurred approximately \$22,919,000 of prepayment penalties and approximately \$6,725,000 of deferred mortgage costs were written off as a result of the refinancing. The MLP also recorded a net gain from the early extinguishment of the debt refinanced of approximately \$1,748,000 as the carrying value for financial reporting purposes was higher than the amount paid off.

Depreciation

Depreciation expense increased by \$5,511,000 or approximately 18.2% to \$35,819,000 for the year ended December 31, 2005 compared to \$30,308,000 for the year ended December 31, 2004. The increase is primarily attributable to the shortening of the useful life of four of the MLP's properties. In June 2005, the MLP entered into an agreement with Honeywell International, Inc., the tenant of four office buildings owned by the MLP in Morris Township, New Jersey to restructure the lease on the properties. Under the restructuring, the tenant waived its right to exercise its economic discontinuance option (the ability to terminate its lease and make an offer to purchase the property for a fixed price) and the MLP granted the tenant an option to purchase the properties in 2007. In light of these circumstances, the carrying value of these properties was reduced through an impairment charge and the properties' useful lives were shortened.

Impairment Loss

Newkirk recorded in continuing operations a \$16,954,000 impairment loss for the year ended December 31, 2005. Of this amount, \$14,754,000 is the result of the restructuring of the lease with Honeywell International, Inc. for

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its four office buildings owned in Morris Township, New Jersey as described above. The balance of this amount is an impairment loss of \$2,200,000 was recorded on a property located in Evanston, Wyoming due to an offer to purchase the property which was lower than the property's carrying value. In 2004 an impairment charge of \$9,600,000 was recorded on a property located in Bedford, Texas.

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Amortization Expense

Amortization expense increased by \$188,000 or 7.0% to \$2,882,000 for the year ended December 31, 2005 compared to \$2,694,000 for the year ended December 31, 2004. The increase relates to the amortization of in-place lease intangibles acquired in connection with the November 7, 2005 purchase of MLP units.

Ground Rent

Ground rent expense increased by \$174,000 or approximately 8.3% to \$2,270,000 for the year ended December 31, 2005 compared to \$2,096,000 for the year ended December 31, 2004. The increase in ground rent expense is primarily the result of an increase in the ground rental rate for a property located in Orlando, Florida

State and Local Taxes

State and local tax expense increased by \$234,000 or approximately 17.2% to \$1,597,000 for the year ended December 31, 2005 compared to \$1,363,000 for the year ended December 31, 2004. The increase is primarily the result of an audit by the State of Tennessee.

Equity in Income from Investments in Limited Partnerships

Equity in income from investments in limited partnerships increased by \$466,000 or approximately 17.5% to \$3,128,000 for the year ended December 31, 2005 compared to \$2,662,000 for the year ended December 31, 2004. The increase is primarily the result of lower interest expense at the limited partnerships due to scheduled debt amortization and additional purchases of equity positions in limited partnerships.

Other Expense

Other expense for the year ended December 31, 2005 of \$2,855,000 represents the minority interest expense of the MLP.

Minority Interest Expense

Minority interest expense decreased by \$1,064,000 or approximately 5.8% to \$17,420,000 for the year ended December 31, 2005 compared to \$18,484,000 for the year ended December 31, 2004. The decrease was the result of the MLP's minority interest expense classification as Other Expense for the period November 7, 2005 through December 31, 2005.

Discontinued Operations

During the year ended December 31, 2005, seven properties were sold for a combined net sales price of approximately \$44,900,000. Newkirk recognized a net gain on disposal of one of these properties of \$1,733,000, and the MLP recognized a net gain on disposal of these properties of \$15,974,000. The sale and operations of these properties for all periods presented has been recorded as discontinued operations in compliance with the provisions of SFAS No. 144. Also included in discontinued operations are the operations attributed to the office property located in Toledo, Ohio, 50 retail properties leased to Albertson's and three retail properties leased to Kroger, all of which were or are expected to be sold in 2006.

During the year ended December 31, 2004, the MLP sold 58 properties for a combined net sale price of \$127,231,000. The MLP recognized a net gain on disposal of these properties of \$49,808,000.

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Comparison of the year ended December 31, 2004 to the year ended December 31, 2003.

Income from Continuing Operations

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Income from continuing operations decreased by \$4,785,000 to \$67,972,000 for the year ended December 31, 2004 from \$72,757,000 for the year ended December 31, 2003. As more fully described below, this decrease is attributable to a decrease in total revenue of \$14,634,000 and an increase in minority interest expense of \$187,000 which was partially offset by a decrease in total expenses of \$10,309,000 and an increase in equity in income from investments in limited partnerships of \$608,000.

Rental Income

Rental income decreased by \$14,626,000 or approximately 6.6% to \$207,928,000 for the year ended December 31, 2004 from \$222,554,000 for the year ended December 31, 2003. The decrease was primarily due to lower rental income resulting lease renewals at rates that are lower than the primary term rates. Leased square footage at December 31, 2004 and 2003 was approximately 99%.

Interest Income

Interest income increased by \$449,000 or approximately 15.1% to \$3,419,000 for the year ended December 31, 2004 from \$2,970,000 for the year ended December 31, 2003. The increase was primarily due to interest income of \$456,000 on a loan to T-Two Partners, which was partially offset by a decrease in interest income of \$107,000 on a note held by Newkirk Finco LLC.

Management Fee Income

Management fee income decreased by \$86,000 or approximately 21% to \$332,000 for the year ended December 31, 2004 from \$418,000 for the year ended December 31, 2003. The decrease is attributable to fewer properties under management.

Interest Expense and Loss from the Early Extinguishment of Debt

Interest expense and loss from the early extinguishment of debt decreased by \$12,229,000 or approximately 13.6% to \$77,724,000 for the year ended December 31, 2004 compared to \$89,953,000 for the year ended December 31, 2003. The decrease was primarily due to mortgage loan payoffs, scheduled mortgage principal payments and payments on the note payable to Bank of America.

Depreciation

Depreciation expense remained relatively consistent at \$30,308,000 decreasing 1.8% for the year ended December 31, 2004 compared to \$30,852,000 for the year ended December 31, 2003.

General and Administrative

General and administrative expenses decreased by \$5,056,000 or approximately 57.9% to \$3,670,000 for the year ended December 31, 2004 compared to \$8,726,000 for the year ended December 31, 2003. The decrease is primarily the result of a \$4,437,000 decrease in legal costs due to a \$3,600,000 legal settlement in 2003.

Amortization Expense

Amortization expense decreased by \$1,888,000 or approximately 41.2% to \$2,694,000 for the year ended December 31, 2004 as compared to \$4,582,000 for the year ended December 31, 2003. The decrease in amortization expense is primarily the result of the refinancing of the debt in 2003.

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Ground Rent

Ground rent expense increased by \$16,000 to \$2,096,000 for the year ended December 31, 2004 as compared to \$2,080,000 for the year ended December 31, 2003. The increase in ground rent expense is primarily the result of increases in ground rent rates for two partnerships.

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State and Local Taxes

State and local tax expense increased by \$624,000 or approximately 84.4% to \$1,363,000 for the year ended December 31, 2004 compared to \$739,000 for the year ended December 31, 2003. The increase is the result of higher taxable income in several states with partnership income tax requirements.

Equity in Income from Investments in Limited Partnerships

Equity in income from investments in limited partnerships increased by \$608,000 or approximately 30% to \$2,662,000 for the year ended December 31, 2004 compared to \$2,054,000 for the year ended December 31, 2003. This increase was due to additional purchases of equity positions in limited partnerships.

Minority Interest Expense

Minority interest expense increased by \$187,000 or approximately 1.0% to \$18,484,000 for the year ended December 31, 2004 compared to \$18,297,000 for the year ended December 31, 2003. The increase was the result of increased profitability at the non-wholly owned partnerships.

Discontinued Operations

During the year ended December 31, 2004, the MLP sold 58 properties for a combined net sales price of \$127,231,000. The MLP recognized a net gain on disposal of these properties of \$49,808,000. During the year ended December 31, 2003, the MLP sold 14 properties for a combined net sales price of \$156,409,000. The MLP recognized a net gain on disposal of these properties of \$33,844,000. The sale and operations of these properties for all periods presented have been recorded as discontinued operations in compliance with the provisions of Statement of Financial Accounting Standards ("SFAS") No. 144, "Accounting for the Impairment or Disposal of Long Lived Assets." Also included in discontinued operations are operations of seven properties sold during 2005 and the operations of 54 properties that have been or are scheduled to be sold in 2006.

Comparison of the six months ended June 30, 2006 to the six months ended June 30, 2005

For purposes of the following comparison of operating results for the six months ended June 30, 2006 and 2005, the results of operations for the six months ended June 30, 2005 reflect the results of operations of 100% of the MLP. Net income for the six months ended June 30, 2006 reflects only Newkirk's 30.1% interest in the MLP.

Rental Income

Rental income increased by \$5,966,000 or 5.8% to \$108,926,000 for the six months ended June 30, 2006 from \$102,960,000 for the six months ended June 30, 2005. The increase was primarily due to rental income of approximately \$4,023,000 from new acquisitions, approximately \$5,080,000 of rental income from previously unconsolidated entities, and a lease termination fee of \$399,000 recognized in the current period. The foregoing increases were partially offset by: (i) a decrease in the amount received for rent relating to a settlement with Kmart of approximately \$697,000; (ii) \$823,000 relating to new vacancies; (iii) a decrease of approximately \$886,000 due to lower rental income resulting from lease renewals at rates that are lower than the primary term rates; and (iv) a \$605,000 charge against rental income related to the net amortization on above and below market leases and a \$491,000 charge relating to tenant improvement allowances. Leased square footage at June 30, 2005 was 98.3%. Leased square footage increased from approximately 96.5% at December 31, 2005 to approximately 97.1% at June 30, 2006.

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Interest and Other Income

Interest income increased by \$5,520,000 or approximately 355.9% to \$7,071,000 for the six months ended June 30, 2006 from \$1,551,000 for the six months ended June 30, 2005. The increase was primarily the result of higher cash balances due to the IPO. In addition, Newkirk recognized an increase of approximately \$2,390,000 of interest from loans receivable.

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Management Fee Income

Management fee income decreased by \$35,000 or approximately 22% to \$124,000 for the six months ended June 30, 2006 from \$159,000 for the six months ended June 30, 2005. The decrease is attributable to fewer properties under management resulting from the sale of properties owned by unconsolidated partnerships.

Interest Expense

Interest expense decreased by \$8,748,000 or approximately 25.2% to \$26,019,000 for the six months ended June 30, 2006 compared to \$34,767,000 for the six months ended June 30, 2005. The decrease was primarily due to loan paydowns during the period and scheduled principal payments along with a reduced interest rate incurred in connection with the August 11, 2005 refinancing with KeyBank National Association.

Depreciation

Depreciation expense increased by \$7,723,000 or approximately 52% to \$22,572,000 for the six months ended June 30, 2006 compared to \$14,849,000 for the six months ended June 30, 2005. The increase is primarily attributable to an increase of \$5,659,000 resulting from the shortening of the useful life of the four properties leased to Honeywell International, Inc. located in Morris Township, New Jersey as described above. The increase was also due to the inclusion of depreciation from previously unconsolidated entities of \$913,000 and depreciation on new acquisitions of \$746,000.

Compensation Expense for Exclusivity Rights

The compensation expense for exclusivity rights of \$1,667,000 for the six months ended June 30, 2006, represents the portion of shares of Newkirk common stock issued in exchange for certain exclusivity rights relating to net leased business opportunities offered to or generated by Michael L. Ashner for which the forfeiture rights lapsed during the six months ended June 30, 2006.

General and Administrative Expense

General and administrative expense increased by \$3,188,000 to \$5,018,000 for the six months ended June 30, 2006 from \$1,830,000 for the six months ended June 30, 2005. This increase was primarily due to an increase in management fee expense of \$1,436,000 and expenses incurred in 2006 associated with being a publicly traded company.

Operating Expenses

Operating expenses increased to \$2,984,000 for the six months ended June 30, 2006 from \$223,000 for the six months ended June 30, 2005. This increase was primarily the result of the consolidation of non-net leased property and acquisition of new leased properties under which the MLP is required to bear certain operating costs, as well as operating costs related to vacant properties.

Impairment Loss

An impairment loss of \$16,954,000 was recorded during the six months ended June 30, 2005, \$2,200,000 of which related to a property located in Evanston, Wyoming. The remaining \$14,754,000 was a result of a restructuring of a tenant's lease at four properties in Morris Township, New Jersey.

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Amortization Expense

Amortization expense increased by \$1,491,000 or 113.6% to \$2,804,000 for the six months ended June 30, 2006 compared to \$1,313,000 for the six months ended June 30, 2005. The consolidation of previously unconsolidated entities increased amortization expense by approximately \$500,000. The increase was also due to amortization of approximately \$900,000 of lease intangibles during the six months ended June 30, 2006.

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Ground Rent

Ground rent expense increased by \$123,000 or approximately 11.8% to \$1,166,000 for the six months ended June 30, 2006 compared to \$1,043,000 for the six months ended June 30, 2005. The increase in ground rent expense is primarily the result of an increase in the ground rental rate for a property located in Orlando, Florida.

State and Local Taxes

State and local tax expense increased by \$104,000 or approximately 10% to \$1,181,000 for the six months ended June 30, 2006 compared to \$1,077,000 for the six months ended June 30, 2005. The increase is primarily due to a new entity level tax in the state of Kentucky. Also, additional state tax obligations have been incurred due to the UPREIT structure.

Minority Interest Expense of Partially-Owned Entities

Minority Interest Expense of Partially-Owned Entities for the six months ended June 30, 2006 of \$10,692,000 represents the minority interest expense of the MLP. The minority interest expense related to these interests is classified as minority interest expense in the Consolidated Statement of Operations and Comprehensive Income for the six months ended June 30, 2005.

Equity in Income from Investments in Limited Partnerships and Joint Ventures

Equity in income from investments in limited partnerships and joint ventures increased by \$188,000 or approximately 12.4% to \$1,709,000 for the six months ended June 30, 2006 compared to \$1,521,000 for the six months ended June 30, 2005. The increase was due to \$749,000 from the new investment in 111 Debt Holdings LLC and higher ownership percentage in limited partnerships due to the MLP's tender offer in the second quarter of 2006. The increase was offset as a result of the consolidation of Sunset Park West L.P. and Brown Associates.

Minority Interest Expense

Minority interest expense increased by \$22,327,000 to \$31,639,000 for the six months ended June 30, 2006 compared to \$9,312,000 for the six months ended June 30, 2005. The minority interest expense for the six months ended June 30, 2006 represents the 69.9% minority interest partner's share of the MLP. The minority interest expense for the six months ended June 30, 2005 of \$9,312,000 represents the MLP's minority interest expense relating to partnerships which are not wholly-owned by the MLP. The MLP's minority interest expense for the six months ended June 30, 2006 is classified as Minority Interest Expense of Partially-Owned Entities in the June 30, 2006 statement of operations.

Discontinued Operations

Income from discontinued operations amounted to \$2,450,000 and \$1,035,000 for the six months ended June 30, 2006 and 2005, respectively. At June 30, 2006, there were 54 properties in discontinued operations.

The office property in Toledo, Ohio continues to be in discontinued operations as it is to be sold in September 2006. Loss from discontinued operations relating to this property amounted to \$914,000 and \$8,533,000 for the six months ended June 30, 2006 and 2005, respectively. Included in the six months ended June 30, 2005 is an impairment loss of \$11,328,000.

Annex F-38

On April 3, 2006, the MLP entered into a letter of intent to sell 50 of its retail properties leased to Albertson's Inc. for a gross purchase price of \$160,000,000. These properties were sold on July 13, 2006. Income from discontinued operations relating to this transaction amounted to \$8,670,000 and \$6,810,000 for the six months ended June 30, 2006 and 2005, respectively.

In June 2006, three retail properties in Columbus, Ohio and Louisville, Kentucky were identified as held for sale as Newkirk was notified by The Kroger Company that they were exercising their purchase option under their leases. The transaction will take place in December 2006. Income relating to these properties amounted to \$583,000 and \$534,000 for the six months ended June 30, 2006 and 2005, respectively, and is included in discontinued operations.

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During the six months ended June 30, 2005, the MLP sold four properties for a combined net sales price of approximately \$3,100,000. Newkirk recognized a net gain on disposal of these properties of \$601,000. The loss from discontinued operations includes an \$883,000 impairment loss on two properties located in Texas which were sold during the six months ended June 30, 2005. The six months ended June 30, 2005 income from discontinued operations also includes the operations of three properties sold subsequent to June 30, 2005.

Minority interest (expense) income from discontinued operations was (\$6,004,000) and \$8,000 for the six months ended June 30, 2006 and 2005, respectively.

Comparison of the three months ended June 30, 2006 to the three months ended June 30, 2005

For purposes of the following comparison of operating results for the three months ended June 30, 2006 and 2005, the results of operations for the three months ended June 30, 2005 reflect the results of operations of 100% of the MLP. Net income for the three months ended June 30, 2006 reflects only Newkirk's 30.1% interest in the MLP.

Rental Income

Rental income increased by \$4,403,000 or 7.9% to \$55,458,000 for the three months ended June 30, 2006 from \$51,055,000 for the three months ended June 30, 2005. The increase was due primarily to rental income of approximately \$3,112,000 from new acquisitions, approximately \$2,646,000 of rental income from previously unconsolidated entities, and a lease termination fee of \$399,000 recognized in the current period. The foregoing increases were partially offset by: (i) approximately \$426,000 relating to new vacancies; (ii) a decrease of approximately \$665,000 due to lower rental income resulting from lease renewals at rates that are lower than the primary term rates; and (iii) a \$303,000 charge against rental income related to the net amortization on above and below market leases and \$421,000 relating to tenant improvement allowances. Leased square footage at June 30, 2005 was 98.3%. Leased square footage increased from approximately 96.5% at December 31, 2005 to approximately 97.1% at June 30, 2006.

Interest and Other Income

Interest income increased by \$2,101,000 or approximately 273.9% to \$2,868,000 for the three months ended June 30, 2006 from \$767,000 for the three months ended June 30, 2005. The increase was primarily the result of higher cash balances due to the IPO. In addition, Newkirk recognized an increase of approximately \$1,020,000 of interest from loans receivable.

Management Fee Income

Management fee income decreased by \$18,000 or approximately 23.1% to \$60,000 for the three months ended June 30, 2006 from \$78,000 for the three months ended June 30, 2005. The decrease is attributable to fewer properties under management resulting from the sale of properties owned by unconsolidated partnerships.

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Interest Expense

Interest expense decreased by \$4,241,000 or approximately 24.1% to \$13,330,000 for the three months ended June 30, 2006 compared to \$17,571,000 for the three months ended June 30, 2005. The decrease was primarily due to loan prepayments during the period and scheduled principal payments along with a reduced interest rate incurred in connection with Newkirk's August 11, 2005 refinancing with KeyBank National Association.

Depreciation

Depreciation expense increased by \$4,041,000 or approximately 54.6% to \$11,445,000 for the three months ended June 30, 2006 compared to \$7,404,000 for the three months ended June 30, 2005. The increase is primarily attributable to an increase of \$2,829,000 resulting from the shortening of the useful life of the four properties leased to Honeywell International, Inc. located in Morris Township, New Jersey as described above. The increase was also due to the inclusion of depreciation from previously unconsolidated entities of \$486,000 and depreciation on new

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acquisitions of \$567,000.

Compensation Expense for Exclusivity Rights

The compensation expense for exclusivity rights of \$833,000 for the three months ended June 30, 2006, represents the portion of shares issued by us in exchange for certain exclusivity rights relating to net leased business opportunities offered to or generated by Michael L. Ashner or which the forfeiture rights lapsed during the three months ended June 30, 2006.

General and Administrative Expense

General and administrative expense increased by \$1,503,000 or 152.4% to \$2,489,000 for the three months ended June 30, 2006 from \$986,000 for the three months ended June 30, 2005. This increase was primarily due to an increase in management fee expense of \$718,000 and expenses incurred in 2006 associated with being a publicly traded company.

Operating Expenses

Operating expenses increased by \$1,416,000 to \$1,652,000 for the three months ended June 30, 2006 from \$236,000 for the three months ended June 30, 2005. This increase was primarily the result of the consolidation of a non-net leased property and acquisition of new leased properties under which the MLP is required to bear certain operating costs, as well as operating costs related to vacant properties.

Impairment Loss

A \$14,754,000 impairment loss was recorded during the three months ended June 30, 2005 as a result of a restructuring of a tenant's lease of four properties in Morris Township, New Jersey.

Amortization Expense

Amortization expense increased by \$890,000 or 135.9% to \$1,545,000 for the three months ended June 30, 2006 compared to \$655,000 for the three months ended June 30, 2005. The consolidation of previously unconsolidated entities increased amortization expense by approximately \$240,000. The increase was also due to amortization of approximately \$630,000 of lease intangibles during the three months ended June 30, 2006.

Ground Rent

Ground rent expense increased by \$49,000 or approximately 9.3% to \$577,000 for the three months ended June 30, 2006 compared to \$528,000 for the three months ended June 30, 2005. The increase in ground rent expense is primarily the result of an increase in the ground rental rate for a property located in Orlando, Florida.

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State and Local Taxes

State and local tax expense decreased by \$468,000 or approximately 58% to \$339,000 for the three months ended June 30, 2006 compared to \$807,000 for the three months ended June 30, 2005. The decrease was primarily due to a credit from the State of Tennessee.

Minority Interest Expense of Partially-Owned Entities

Minority Interest Expense of Partially-Owned Entities for the three months ended June 30, 2006 of \$5,346,000 represents the minority interest expense of the MLP. The minority interest expense related to these interests is classified as minority interest expense in the Consolidated Statement of Operations and Comprehensive Income for the three months ended June 30, 2005.

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Equity in Income from Investments in Limited Partnerships

Equity in income from investments in limited partnerships increased by \$479,000 or approximately 62.5% to \$1,245,000 for the three months ended June 30, 2006 compared to \$766,000 for the three months ended June 30, 2005. The increase was due to \$749,000 from the investment in 111 Debt Holdings LLC and higher ownership percentage in limited partnerships due to the MLP's tender offer in the second quarter of 2006. The increase was partially offset as a result of the consolidation of Sunset Park West L.P. and Brown Associates.

Minority Interest Expense

Minority interest expense increased by \$11,347,000 to \$16,007,000 for the three months ended June 30, 2006 compared to \$4,660,000 for the three months ended June 30, 2005. The minority interest expense for the three months ended June 30, 2006 represents the 69.9% minority interest partner's share of the MLP. The minority interest expense for the three months ended June 30, 2005 of \$4,660,000 represents the MLP's minority interest expense relating to partnerships which are not wholly-owned by the MLP. The MLP's minority interest expense for the three months ended June 30, 2006 is classified as Minority Interest Expense of Partially-Owned Entities in the June 30, 2006 statement of operations.

Discontinued Operations

Income (loss) from discontinued operations amounted to \$1,309,000 and (\$6,337,000) for the three months ended June 30, 2006 and June 30, 2005, respectively. At June 30, 2006, there were 54 properties in discontinued operations.

The office property in Toledo, Ohio continues to be in discontinued operations as it is to be sold in September 2006. Loss from discontinued operations relating to this property amounted to \$436,000 and \$9,992,000 for the three months ended June 30, 2006 and 2005, respectively. Included in the three months ended June 30, 2005 is an impairment loss of \$11,328,000.

On April 3, 2006, the MLP entered into a letter of intent to sell 50 of its retail properties leased to Albertson's Inc. for a gross purchase price of \$160,000,000. Income from discontinued operations relating to this transaction amounted to \$4,644,000 and \$3,387,000 for the three months ended June 30, 2006 and 2005, respectively.

In June 2006, three retail properties in Columbus, Ohio and Louisville, Kentucky were identified as held for sale as the MLP was notified by The Kroger Company that they were exercising their purchase option under their leases. The transaction will take place in December 2006. Income relating to these properties amounted to \$258,000 and \$269,000 for the three months ended June 30, 2006 and 2005, respectively, and is included in discontinued operations.

During the three months ended June 30, 2005, the MLP sold three properties for a combined net sales price of approximately \$900,000. Newkirk recognized a net gain on sale of these properties of approximately \$1,000. The

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loss from discontinued operations includes an \$883,000 impairment loss on two properties located in Texas which were sold during the three months ended June 30, 2005. The three months ended June 30, 2005 income from discontinued operations also includes the operations of three properties sold subsequent to June 30, 2005.

Minority interest (expense) income from discontinued operations was (\$3,159,000) and \$7,000 for the three months ended June 30, 2006 and 2005, respectively.

Critical Accounting Policies

The preparation of consolidated financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions in certain circumstances that affect amounts reported in the accompanying consolidated financial statements and related notes. In preparing these consolidated financial statements, management has made its best estimates and judgments of certain amounts included in the consolidated financial statements, giving due consideration to materiality. Management does not believe there is a great likelihood that materially different amounts would be reported related to the accounting policies

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described below. However, application of these accounting policies involves the exercise of judgment and use of assumptions as to future uncertainties and, as a result, actual results could differ from these estimates.

Impairment of long-lived assets.

At December 31, 2005, the MLP had \$943,992,000 of real estate (net) and \$41,685,000 of real estate held for sale (net), which combined, account for approximately 73% of Newkirk's total assets. Buildings, improvements and real estate intangibles are carried at cost net of adjustments for depreciation and amortization. The fair values of Newkirk's buildings, improvements and real estate intangibles are dependent on the performance of the properties.

Newkirk evaluated recoverability of the net carrying value of its real estate and related assets at least annually, and more often if circumstances dictate. If there is an indication that the carrying value of a property might not be recoverable, Newkirk prepares an estimate of the future undiscounted cash flows expected to result from the use of the property and its eventual disposition, generally over a five-year holding period. In performing this review, Newkirk takes into account, among other things, the existing occupancy, the expected leasing prospects of the property and the economic situation in the region where the property is located.

If the sum of the expected future undiscounted cash flows is less than the carrying amount of the property, Newkirk recognizes an impairment loss and reduces the carrying amount of the asset to its estimated fair value. Fair value is the amount at which the asset could be bought or sold in a current transaction between willing parties, that is, other than in a forced or liquidation sale. Newkirk estimates fair value using discounted cash flows or market comparables, as most appropriate for each property. Independent certified appraisers are utilized to assist management when warranted. During the years ended December 31, 2005 and December 31, 2004, Newkirk recorded \$29,715,000 and \$13,065,000, respectively, in impairment losses.

Because the cash flows used to evaluate the recoverability of the assets and their fair values are based upon projections of future economic events, such as property occupancy rates, rental rates, operating cost inflation and market capitalization rates, which are inherently subjective, the amounts ultimately realized at disposition may differ materially from the net carrying values at the balance sheet dates. The cash flows and market comparables used in this process are based on good faith estimates and assumptions developed by management.

Unanticipated events and circumstances may occur, and some assumptions may not materialize; therefore, actual results may vary from the estimates, and variances may be material. Newkirk may provide additional write-downs, which could be material in subsequent years if real estate markets or local economic conditions change.

As discussed above, the MLP owns a 707,482 square foot office building in Toledo, Ohio that is leased to Owens-Illinois Inc. for an initial term that expires on September 30, 2006. The property is encumbered by a non-recourse mortgage which matures in October 2006 at which time a \$32,000,000 balloon payment will be due. The tenant has six five-year renewal options. This tenant is presently not using a substantial portion of the building and

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elected not to renew its lease. Newkirk recognized an \$11,328,000 impairment loss during the second quarter of 2005 in connection with this property.

In the second quarter of 2005, the MLP entered into an agreement with Honeywell International, Inc., the tenant of four office buildings owned in Morris Township, New Jersey to restructure the lease on the properties. Under the restructuring, the tenant waived its right to exercise its economic discontinuance option and the MLP granted the tenant an option to purchase the properties in 2007 for \$41,900,000. As a result of this restructuring, \$14,754,000 impairment loss in the second quarter of 2005 was recognized.

Useful lives of long-lived assets.

Building and improvements and certain other long-lived assets are depreciated or amortized over their useful lives. Depreciation and amortization are computed using the straight-line method over the useful life of the building and improvements. The cost of properties represents the initial cost of the properties plus acquisition and closing costs less impairment adjustments.

Recently Issued Accounting Standards.

In March 2005, the FASB issued Financial Interpretation No. 47, *Accounting for Conditional Asset Retirement Obligations* an Interpretation of FASB Statement No. 143, which specifies the accounting treatment for obligations associated with the sale or disposal of an asset when there are legal requirements attendant to such a disposition. Newkirk adopted this pronouncement in 2005, as required, but there was no impact as there are no legal obligations associated with the planned sale of any properties.

In May 2005, the FASB issued SFAS No. 154, *Accounting changes and Error corrections* A Replacement of APB Opinion No. 20 and SFAS No. 3. SFAS No. 154 changes the requirements for the accounting and reporting of a change in accounting principle by requiring retrospective application to prior period financial statements of the change in accounting principle, unless it is impracticable to do so. SFAS No. 154 also requires that a change in depreciation and amortization for long-lived, non financial assets be accounted for as a change in accounting estimate effected by a change in accounting principle. SFAS No. 154 is effective for accounting changes and correction of errors made in fiscal years beginning after December 15, 2005. Newkirk does not believe that the adoption of SFAS No. 154 will have a material effect on its consolidated financial statements.

In June 2005, the Financial Accounting Standards Board (FASB) ratified the consensus reached by the Emerging Issues Task Force (EITF) on Issue No. 04-05, *Determining Whether a General Partner, or General Partners as a Group, Controls a Limited Partnership or Similar Entity When the Limited Partners Have Certain Rights* (EITF 04-05). EITF 04-05 provides a framework for determining whether a general partner controls, and should consolidate, a limited partnership or a similar entity. EITF 04-05 became effective on June 29, 2005, for all newly formed or modified limited partnership arrangements and January 1, 2006 for all existing limited partnership arrangements. The adoption of this standard resulted in the consolidation of one previously unconsolidated partnership.

The impact of the adoption on the January 1, 2006 balance sheet was as follows (in thousands):

| | Pre-Consolidation | Consolidated |
|--|-------------------|--------------|
| Assets: | | |
| Cash | \$ - | \$ 177 |
| Land | - | 1,028 |
| Building, net | - | 18,663 |
| Equity investment in limited partnership | \$ 6,538 | \$ 20,202 |
| Deferred costs, net | - | 334 |
| Liabilities: | - | 1,028 |
| Mortgage loan | \$ 6,538 | \$ 20,202 |
| | \$ - | \$ 13,664 |

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There have been no other new accounting standards or interpretations that have been issued that Newkirk has not yet adopted and that it believes will have a material impact on its consolidated financial statements upon adoption.

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NEWKIRK REALTY TRUST, INC. AND**THE NEWKIRK MASTER LIMITED PARTNERSHIP****INDEX TO CONSOLIDATED FINANCIAL STATEMENTS**

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| Consolidated Statement of Stockholders' Equity for the Company for the period from November 7, 2005 through December 31, 2005 and the Consolidated Statement of Partners' Equity for the Predecessor for the period from January 1, 2005 through November 6, 2005 and for the years ended December 31, 2004 and 2003 | Annex F-50 |
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| Unaudited Consolidated Statements of Operations and Comprehensive Income for the Company for the Three and Six Months Ended June 30, 2006 and Unaudited Consolidated Statements of Operations and Comprehensive Income for the Predecessor for the Three and Six Months Ended June 30, 2005 | Annex F-78 |
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Report of Independent Registered Public Accounting Firm

To the Board of Directors of the Newkirk Realty Trust, Inc.

We have audited the accompanying consolidated balance sheet of Newkirk Realty Trust, Inc. (the Company) as of December 31, 2005 and the consolidated balance sheet of The Newkirk Master Limited Partnership (the Predecessor), as defined in Note 1, as of December 31, 2004,

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respectively, and the related consolidated statements of operations and comprehensive income, stockholders' equity, and cash flows for the Company for the period from November 7, 2005 (commencement of operations) to December 31, 2005 and the related consolidated statements of operations and comprehensive income, partners' equity and cash flows of the Predecessor for the period from January 1, 2005 through November 6, 2005 and for the year ended December 31, 2004. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on the financial statements and financial statement schedule based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. The Company is not required to have, nor were we engaged to perform, an audit of its internal control over financial reporting. Our audits included consideration of internal control over financial reporting as a basis for designing audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion. An audit also includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, such consolidated financial statements present fairly, in all material respects, the financial position of the Company as of December 31, 2005 and the financial position of the Predecessor as of December 31, 2004, the results of the Company's operations and its cash flows for the period from November 7, 2005 to December 31, 2005, and for the Predecessor's operations and its cash flows from January 1, 2005 through November 6, 2005 and for the year ended December 31, 2004, in conformity with accounting principles generally accepted in the United States of America.

/s/ DELOITTE & TOUCHE LLP

Boston, Massachusetts

March 10, 2006 (September 12, 2006 as to the effect of the discontinued operations described in Note 9 and the subsequent events described in Note 11.)

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Report of Independent Registered Public Accounting Firm

To the Board of Directors of

Newkirk Realty Trust, Inc.

We have audited the accompanying consolidated statements of operations, partners' equity and cash flows of The Newkirk Master Limited Partnership (the Predecessor) for the year ended December 31, 2003. These consolidated financial statements are the responsibility of the Predecessor's management. Our responsibility is to express an opinion on these consolidated financial statements based on our audit.

We conducted our audit in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the consolidated financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the consolidated financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall consolidated financial statement presentation. We believe that our audit provides a reasonable basis for our opinion.

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the results of operations and cash flows of the Predecessor for the year ended December 31, 2003, in conformity with accounting principles generally accepted in the United States of America.

/s/ IMOWITZ KOENIG & CO., LLP

New York, New York

March 10, 2006

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**NEWKIRK REALTY TRUST, INC. (THE COMPANY) AND
THE NEWKIRK MASTER LIMITED PARTNERSHIP (THE PREDECESSOR)
CONSOLIDATED BALANCE SHEETS**

(In thousands, except per-share data)

| | The Company December 31, 2005 | The Predecessor December 31, 2004 |
|---|--|--|
| <u>ASSETS</u> | | |
| Real estate investments: | | |
| Land | \$ 36,593 | \$ 32,172 |
| Land estates | 43,997 | 43,997 |
| Buildings and improvements | 1,407,602 | 1,502,013 |
| Total real estate investments | 1,488,192 | 1,578,182 |
| Less accumulated depreciation and amortization | (544,200) | (545,385) |
| Real estate investments, net | 943,992 | 1,032,797 |
| Real estate held for sale, net of accumulated depreciation of \$44,522 and \$9,713 | 41,685 | 27,536 |
| Cash and cash equivalents | 174,816 | 21,317 |
| Restricted cash | 25,233 | 8,216 |
| Real estate securities held for sale | 5,194 | |
| Receivables (including \$6,078 and \$10,119 from related parties) | 58,727 | 68,661 |
| Deferred rental income receivable | 21,246 | 27,052 |
| Loans receivable | 16,058 | 11,440 |
| Equity investments in limited partnerships | 13,846 | 11,107 |
| Deferred costs, net of accumulated amortization of \$17,677 and \$34,991 | 8,771 | 15,072 |
| Lease intangibles, net of accumulated amortization of \$415 | 7,657 | |
| Other assets (including \$1,304 and \$10,111 from related parties) | 27,314 | 13,687 |
| Other assets of discontinued operations | 545 | 244 |
| Total Assets | \$1,345,084 | \$1,237,129 |

**LIABILITIES, MINORITY INTEREST AND
STOCKHOLDERS /PARTNERS EQUITY**

Liabilities:

| | | |
|---|------------|------------|
| Mortgage notes payable (including \$15,536 and \$14,871 to a related party) | \$ 166,195 | \$ 478,939 |
| Note payable | 593,463 | 165,328 |
| Contract right mortgage notes payable (including 0 and \$178,529 to a related party) | 11,128 | 263,072 |
| Accrued interest payable (including \$378 and \$71,279 to related parties) | 7,514 | 102,141 |
| Accounts payable and accrued expenses | 5,656 | 3,758 |
| Dividend payable | 5,231 | |

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| | | |
|---|-------------|-------------|
| Other liabilities | 4,834 | |
| Liabilities of discontinued operations | 40,491 | 17,497 |
| Total Liabilities | 834,512 | 1,030,735 |
| Contingencies | | |
| Minority interests | 334,531 | 2,609 |
| Stockholders equity/partners equity | | |
| Preferred stock; \$.01 par value; 100,000,000 shares authorized; 1 issued and outstanding | | |
| Common stock; \$.01 par value; 400,000,000 shares authorized; 19,375,000 issued and outstanding | 194 | |
| Additional paid-in capital | 179,871 | |
| Accumulated dividends in excess of net income | (3,882) | |
| Accumulated other comprehensive loss | (142) | |
| Partners Equity (47,864,193 limited partnership units outstanding at December 31, 2004) | | 203,785 |
| Total Stockholders Equity/Partners Equity | 176,041 | 203,785 |
| Total Liabilities, Minority Interests and Stockholders Equity | \$1,345,084 | \$1,237,129 |

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**NEWKIRK REALTY TRUST, INC. (THE COMPANY) AND
THE NEWKIRK MASTER LIMITED PARTNERSHIP (THE PREDECESSOR)
CONSOLIDATED STATEMENTS OF OPERATIONS AND COMPREHENSIVE INCOME**

(In thousands, except per-share data)

| | THE COMPANY | | THE PREDECESSOR | | |
|---|--|-----------|--|---------------------------------|------|
| | For the Period November 7, 2005 to December 31, 2005 | | For the Period January 1, 2005 to November 6, 2005 | Year Ended December 31, 2004 | 2003 |
| Revenue: | | | | | |
| Rental income | \$30,333 | \$174,371 | \$207,928 | \$222,554 | |
| Interest income | 1,366 | 2,832 | 3,419 | 2,970 | |
| Management fees | 38 | 249 | 332 | 418 | |
| Gain from disposal of real estate securities for sale | 2 | | | | |
| Total revenue | 31,739 | 177,452 | 211,679 | 225,942 | |
| Expenses: | | | | | |
| Interest (including \$118, \$15,501, \$19,869 and \$7,546 to related parties, respectively) | 8,466 | 55,218 | 77,656 | 86,685 | |
| Loss from early extinguishment of debt | | 27,521 | 68 | 3,268 | |
| Depreciation | 6,203 | 29,616 | 30,308 | 30,852 | |
| Compensation expense for exclusivity rights | 10,500 | | | | |
| General and administrative (including \$720, \$1,638, \$1,882 and \$1,843 to related parties, respectively) | 1,268 | 3,812 | 3,670 | 8,726 | |
| Operating | 244 | 534 | 430 | 10 | |
| Impairment loss | | 16,954 | 9,600 | | |
| Amortization | 512 | 2,370 | 2,694 | 4,582 | |
| Ground rent | 379 | 1,891 | 2,096 | 2,080 | |
| State and local taxes | 182 | 1,415 | 1,363 | 739 | |

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| | | | | |
|---|---------|----------|-----------|-----------|
| Other expense | 2,855 | | | |
| Total expenses | 30,609 | 139,331 | 127,885 | 136,942 |
| Income from continuing operations before equity in | | | | |
| income from investments in limited partnerships | | | | |
| and minority interest | 1,130 | 38,121 | 83,794 | 89,000 |
| Equity in income from investments in limited | | | | |
| partnerships | 496 | 2,632 | 2,662 | 2,054 |
| Minority interest | (1,482) | (15,938) | (18,484) | (18,297) |
| Income from continuing operations | 144 | 24,815 | 67,972 | 72,757 |
| Discontinued operations: | | | | |
| (Loss) income before minority interest | 2,270 | 15,136 | 23,929 | 45,014 |
| Impairment loss | | (12,761) | (3,465) | (1,560) |
| Gain from disposal of real estate | 1,733 | 15,974 | 49,808 | 33,844 |
| Minority interest | (2,798) | 7 | (436) | (4,891) |
| Income from discontinued operations | 1,205 | 18,356 | 69,836 | 72,407 |
| Net income | \$1,349 | \$43,171 | \$137,808 | \$145,164 |
| Comprehensive income: | | | | |
| Net income | \$1,349 | \$43,171 | \$137,808 | \$145,164 |
| Unrealized gain on real estate securities available | | | | |
| for sale | 164 | | | |
| Unrealized (loss) gain on interest rate derivative | (636) | 1,636 | | |
| Minority interest in other comprehensive loss | 330 | | | |
| Comprehensive income | \$1,207 | \$44,807 | \$137,808 | \$145,164 |
| Per share data: | | | | |
| Income from continuing operations | \$ 0.01 | | | |
| Income from discontinued operations | \$ 0.06 | | | |
| Net income applicable to Common Stock | \$ 0.07 | | | |
| Weighted average Common Stock | 19,375 | | | |

Annex F-49

NEWKIRK REALTY TRUST, INC. (THE COMPANY) AND
THE NEWKIRK MASTER LIMITED PARTNERSHIP (THE PREDECESSOR)
CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY AND PARTNERS' EQUITY

(In thousands)

| | Preferred Stock | | Common Stock | | Additional Paid-in Capital | Accumulated Dividends in Excess of Net Income | Accumulated Other Comprehensive Income (Loss) | Partners Equity | Total |
|----------------------------|-----------------|--------|--------------|--------|----------------------------------|--|--|--------------------|-----------|
| | Shares | Amount | Shares | Amount | | | | | |
| THE PREDECESSOR | | | | | | | | | |
| Balance at January 1, 2003 | | \$ | | \$ | \$ | \$ | | \$(6,104) | \$(6,104) |
| | | | | | | | | (13,637) | (13,637) |

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| | | | |
|--|-------|----------|----------|
| Acquisition of entities under common control | | | |
| Minority interest charge | | 12,109 | 12,109 |
| Distributions | | (34,731) | (34,731) |
| Limited partner buyouts | | (3,937) | (3,937) |
| Net income | | 145,164 | 145,164 |
| Balance as of December 31, 2003 | | 98,864 | 98,864 |
| Equity contributions | | 836 | 836 |
| Minority interest charge | | 3,101 | 13,101 |
| Distributions | | (46,106) | (46,106) |
| Limited partner buyouts | | (718) | (718) |
| Net income | | 137,808 | 137,808 |
| Balance as of December 31, 2004 | | 203,785 | 203,785 |
| Minority interest charge | | 11,233 | 11,233 |
| Distributions | | (37,692) | (37,692) |
| Limited partner buyouts | | (2,042) | (2,042) |
| Net income | | 43,171 | 43,171 |
| Other comprehensive income | 1,636 | | 1,636 |
| Balance as of November 6, 2005 | 1,636 | 218,455 | 220,091 |

THE COMPANY

| | | | | | | | |
|--|--------|--------|-----------|-----------|------------|---------|------------|
| Reclassify Predecessor | | | | | | | |
| Partners | Equity | | 220,091 | | (1,636) | | (218,455) |
| Net proceeds from sale of Common Stock | 18,250 | 181 | 271,968 | | | | 272,149 |
| Issuance of Common Stock for Exclusivity Agreement | 1,125 | 13 | 19,987 | | | | 20,000 |
| Issuance of Preferred Stock | | | | | | | |
| Record minority interests for former owners continuing interests | | | (332,175) | | | | (332,175) |
| Net income | | | | 1,349 | | | 1,349 |
| Dividends accrued on Common Stock | | | | (5,231) | | | (5,231) |
| Other comprehensive loss | | | | | (142) | | (142) |
| Balance December 31, 2005 | \$ | 19,375 | \$ 194 | \$179,871 | \$ (3,882) | \$(142) | \$ 176,041 |

Annex F-50

**NEWKIRK REALTY TRUST, INC. (THE COMPANY) AND
THE NEWKIRK MASTER LIMITED PARTNERSHIP (THE PREDECESSOR)**

CONSOLIDATED STATEMENTS OF CASH FLOWS

(In thousands)

THE COMPANY THE PREDECESSOR

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| | For the Period November 7, 2005 to December 31, 2005 | For the Period January 1, 2005 to November 6, 2005 | Year ended December 31, 2004 | Year ended December 31, 2003 |
|--|--|--|---------------------------------|---------------------------------|
| <u>CASH FLOWS FROM OPERATING ACTIVITIES:</u> | | | | |
| Net income | \$1,349 | \$ 43,171 | \$137,808 | \$145,164 |
| Adjustments to reconcile net income to net cash provided by operating activities: | | | | |
| Amortization of deferred costs and land estates | 1,949 | 5,063 | 9,914 | 9,892 |
| Depreciation expense | 8,445 | 38,516 | 36,823 | 40,339 |
| Gain from disposal of real estate securities held for sale | (2) | | | |
| Gain from disposal of real estate | (1,733) | (15,974) | (49,808) | (33,844) |
| Net loss (gain) from early extinguishment of debt | 121 | 30,339 | 6,575 | (4,708) |
| Compensation expense for exclusivity agreement | 10,500 | | | |
| Impairment loss | | 29,715 | 13,065 | 1,560 |
| Minority interest expense | 4,280 | 15,931 | 18,920 | 23,188 |
| Straight-lining of rental income | 1,064 | 4,677 | 5,139 | (3,248) |
| Interest earned on restricted cash | (79) | (160) | (68) | (115) |
| Equity in undisturbed earnings of limited partnerships | (473) | (2,256) | (2,273) | (1,562) |
| Changes in operating assets and liabilities: | | | | |
| Receivables | (6,185) | 3,294 | (7,126) | (7,466) |
| Loans receivable | 325 | 1,556 | 1,768 | 1,851 |
| Accounts payable and accrued expenses | 2,055 | (448) | (5,238) | 3,344 |
| Accrued interest-mortgages and contract rights | 4,402 | (38,560) | (10,819) | (13,613) |
| Other assets | 572 | (1,846) | (308) | 20 |
| Other liabilities | 2,855 | | | |
| Net cash provided by operating activities | 29,445 | 113,018 | 154,372 | 160,802 |
| <u>CASH FLOWS FROM INVESTING ACTIVITIES:</u> | | | | |
| Building improvements and land additions | (127) | (159) | (2,557) | (2,518) |
| Change in restricted cash | (2,110) | (14,667) | (3,000) | 3,076 |
| Proceeds from disposal of real estate securities held for sale | 143 | | | |
| Deposits for future real estate acquisitions | (2,075) | (51) | | |
| Purchase of real estate securities held for sale | (5,171) | | | |
| Issuance of loan receivable | (6,500) | | | |
| Net proceeds from disposal of real estate | 13,570 | 31,341 | 98,771 | 61,491 |
| Leasing costs incurred | (64) | (1) | | |
| Cash related to previously unconsolidated limited partnerships | | 44,405 | | 650 |
| Acquisition of units from existing unitholders | (37,732) | | | |
| Investments in limited partnership interests | | (80) | (1,111) | (1,307) |
| Net cash (used in) provided by investing activities | (40,066) | 60,788 | 92,103 | 61,392 |
| <u>CASH FLOWS FROM FINANCING ACTIVITIES:</u> | | | | |
| Principal payments of mortgage notes | (5,645) | (272,040) | (121,956) | (126,806) |
| Principal payments of notes payable | (138,470) | (180,565) | (43,028) | (287,391) |
| Principal payments of contract right mortgage notes | | (85,481) | (36,179) | (6,623) |
| Proceeds from note payable | | 477,759 | | 262,338 |
| Proceeds from termination of rate cap | 120 | | | |
| Mortgage prepayment penalties | | (23,548) | (326) | (400) |
| Net proceeds from sale of common stock | 268,871 | | | |
| Distributions to partner | | (37,692) | (46,106) | (34,731) |
| Limited partner buyouts | | (2,042) | (718) | (3,937) |
| Distributions to minority interests | (461) | (5,161) | (9,715) | (8,734) |
| Contributions from minority interests | 1,500 | 166 | | |
| Deferred financing costs | (43) | (6,954) | 167 | (8,550) |
| Net cash provided by (used in) financing activities | 125,872 | (135,558) | (257,861) | (214,834) |
| Net increase (decrease) in cash and cash equivalents | 115,251 | 38,248 | (11,386) | 7,360 |
| Cash and Cash Equivalents at Beginning of Year | 59,565 | 21,317 | 32,703 | 25,343 |
| Cash and Cash Equivalents at End of Year | \$174,816 | \$ 59,565 | \$ 21,317 | \$32,703 |

NEWKIRK REALTY TRUST, INC. (THE COMPANY) AND**THE NEWKIRK MASTER LIMITED PARTNERSHIP (THE PREDECESSOR)****CONSOLIDATED STATEMENTS OF CASH FLOWS****(In thousands)**

| | THE COMPANY | THE PREDECESSOR | | |
|---|----------------------------|---------------------------|--------------------------|--------------------------|
| | For the Period | For the Period | | |
| | November 7, 2005 to | January 1, 2005 to | Year ended | Year ended |
| | December 31, 2005 | November 6, 2005 | December 31, 2004 | December 31, 2003 |
| <u>Supplemental Disclosure of Cash Flow Information:</u> | | | | |
| Cash paid for state and local taxes | \$ | \$ 1,562 | \$ 1,353 | \$ 1,072 |
| Cash paid for interest | \$ 3,466 | \$122,460 | \$104,021 | \$124,342 |
| Accrued distributions | \$ 17,381 | \$ | \$ | \$ |

Supplemental Information

In March 2003, in connection with the disposal of real estate, the purchaser of a property assumed \$94,918,000 of the Operating Partnership's debt.

In January 2004, in connection with the sale of a property, the purchaser of the property assumed \$28,460,000 of associated Operating Partnership debt.

In April 2004, the Operating Partnership issued 15,539 units in the Operating Partnership to holders of minority interests in two partially owned consolidated partnerships.

On November 7, 2005, in connection with the Operating Partnership's purchase of all the interests in T-Two Partners LP (T-Two Partners), the Operating Partnership assumed \$269,400,000 of T-Two Partners' debt as well as accounts payable of \$12,800,000 and accrued interest payable of \$300,000. Additionally, the Operating Partnership received contract right mortgage receivables of \$239,700,000.

Also on November 7, 2005, the Company issued \$20,000,000 or 1,250,000 shares to Winthrop Realty Trust in exchange for certain exclusivity rights with respect to net-lease business opportunities offered to or generated by Michael Ashner, the Chairman and Chief Executive Officer of Winthrop Realty Trust and the Company.

Annex F-52

NEWKIRK REALTY TRUST, INC. AND

THE NEWKIRK MASTER LIMITED PARTNERSHIP

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

Note 1 ORGANIZATION AND BUSINESS

Newkirk Realty Trust, Inc. (the Company) is a recently-formed Maryland corporation that intends to qualify as a real estate investment trust or REIT under Sections 856 and 860 of the Internal Revenue Code of 1986, as amended (the Code). The Company was formed in July 2005 and completed its initial public offering (the IPO) on November 7, 2005. The Company was formed to acquire an ownership interest in, and become the general partner of, The Newkirk Master Limited Partnership (the Predecessor or the Operating Partnership), a Delaware limited partnership. The Operating Partnership owns commercial properties, most of which are net leased to investment grade corporate tenants, as well as other real estate assets.

The Operating Partnership was organized in October 2001 as a limited partnership under the Delaware Revised Uniform Limited Partnership Act. The Operating Partnership's term is perpetual unless it is otherwise dissolved in accordance with the terms of its partnership agreement. The Operating Partnership commenced operations on January 1, 2002 following the completion of a transaction (the Exchange) involving the merger into wholly-owned subsidiaries of the Operating Partnership of 90 limited partnerships, each of which owned commercial properties (the

Newkirk Partnerships), and the acquisition by the Operating Partnership of various assets, including those related to the management or capital structure of the Newkirk Partnerships. In connection with the Exchange, limited partners of the merged partnerships and equity owners of the entities that contributed other assets in exchange received units in consideration of the merger and contributions. From January 1, 2002 to November 6, 2005, the Operating Partnership's general partner was MLP GP LLC, an entity effectively controlled by affiliates of Apollo Real Estate Investment Fund III, LP (Apollo), executive officers (WEM) of Winthrop Realty Partners L.P. formerly known as Winthrop Financial Associates, and affiliates of Vornado Realty Trust (Vornado).

As indicated below, the Company holds a controlling 30.1% ownership interest in the Operating Partnership. All of the Company's assets are held through the Operating Partnership and its subsidiaries. The Company expects that as limited partners in the Operating Partnership begin exercising their right to have their limited partnership interests in the Operating Partnership redeemed, which cannot occur until November 7, 2006, for cash or, at the Company's election, shares of the Company's common stock, the Company's interest in the Operating Partnership will increase.

Annex F-53

NEWKIRK REALTY TRUST, INC. AND

THE NEWKIRK MASTER LIMITED PARTNERSHIP

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

Note 1 ORGANIZATION AND BUSINESS (Continued)

The common stock of the Company is traded on the New York Stock Exchange under the symbol NKT. In connection with the IPO on November 7, 2005:

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- o The Company issued 15,000,000 shares of its common stock;
- o The Company issued 3,125,000 common shares in a private transaction to Winthrop Realty Trust (formerly known as First Union Real Estate Equity and Mortgage Investments) in exchange for \$50,000,000 and issued an additional 1,250,000 common shares (\$20,000,000 value) in a private transaction to Winthrop Realty Trust in consideration for its assignment to the Company of certain exclusivity rights with respect to net-lease business opportunities offered to or generated by Michael Ashner, the Company and Winthrop Realty Trust's Chairman and Chief Executive Officer. 625,000 shares (reducing by 17,361 per month) issued in exchange for the assignment of the exclusivity right are subject to forfeiture upon the occurrence of certain events. All shares of our common stock issued to Winthrop Realty Trust are subject to a lock-up period expiring November 7, 2008, subject to certain exceptions.
- o Both the Company and the Operating Partnership retained NKT Advisors LLC (NKT Advisors), an entity partially owned by the Company's executive officers, pursuant to an advisory agreement (the Advisory Agreement) to manage the Company's assets and the day-to-day operations of the Company and the Operating Partnership, subject to the supervision of the Company's Board of Directors;
- o The Company acquired 15,625,000 newly-issued units of limited partnership interest in the Operating Partnership in exchange for \$235,800,000 and an additional 1,250,000 units in exchange for the exclusivity rights described above. The Company also purchased 2,375,000 outstanding units from Apollo and 125,000 units of limited partnership interest from WEM, for an aggregate purchase price of \$37,700,000, resulting in an aggregate ownership of 19,375,000 units of limited partnership in the Operating Partnership or 30.1% of the total outstanding units;
- o The Company was admitted as the general partner of the Operating Partnership;
- o NKT Advisors was issued the Company's special voting preferred stock entitling it to vote on all matters for which the Company's common stockholders are entitled to vote. The number of votes that NKT Advisors will be entitled to cast in respect of the special voting preferred stock will initially be 45,000,000 votes or approximately 69.9% of the 64,375,000 votes entitled to be cast. The 45,000,000 votes represent the total number of units outstanding immediately following consummation of IPO (excluding units held by the Company). As units are redeemed at the option of a limited partner, the number of votes attaching to NKT Advisors' special voting preferred stock will decrease by an equivalent amount. The Advisory Agreement provides that on all matters for which NKT Advisors is entitled to cast votes in respect of its special voting preferred stock, it will cast its votes in direct proportion to the votes that are cast by limited partners of the Operating Partnership, other than the Company, on such matters, except that NKT Advisors (through its managing member) will be entitled to vote in its sole discretion to the extent that the voting rights of affiliates of Vornado are limited under certain circumstances; and
- o The Company granted registration rights to Apollo and Vornado in connection with shares issuable upon conversion of their units in the Operating Partnership and to Winthrop in connection with their shares of common stock.

In 2005, 2004 and 2003, the Operating Partnership acquired from its limited partners 364,193, 155,180 and 871,711, respectively, of its units of limited partnership interest.

Annex F-54

NEWKIRK REALTY TRUST, INC. AND

THE NEWKIRK MASTER LIMITED PARTNERSHIP

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

Note 2 - SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Basis of Presentation

The accompanying consolidated financial statements present the consolidated financial position, results of operations and cash flows of the Company and its controlled subsidiaries. All significant intercompany transactions, receivables and payables have been eliminated in consolidation. Minority interests relate to the interest in the Operating Partnership not owned by the Company. The Company accounts for its investments in partnerships and joint ventures, in which it does not have a controlling interest, using the equity method of accounting. Equity

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investments are recorded initially at cost and subsequently adjusted for the Company's share of the net income or loss and cash contributions to and distributions from these partnerships and joint ventures.

The assets and liabilities of the Company at November 7, 2005 reflect the carryover historical basis of the Predecessor and the \$37,700,000 acquisition of the units from limited partners is accounted for in accordance with SFAS No. 141 Business Combinations.

Use of Estimates

The preparation of consolidated financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the amounts reported in the consolidated financial statements and accompanying notes. Actual results could differ from those estimates.

Real Estate

Investments in real estate are stated at historical cost basis less accumulated depreciation and amortization. Depreciation of buildings and improvements is computed on a straight-line basis over their estimated useful lives, which range from fourteen to forty years. Amortization of the land estates is computed on a straight-line basis over their estimated useful lives, which range from twenty-two to thirty years.

During 2003, the Operating Partnership made a change to its accounting estimates with respect to the depreciable lives of its real estate assets. The change in accounting estimates resulted in a decrease in net income of approximately \$6,800,000 and a decrease in net income of approximately \$0.14 per limited partnership unit for the year ended December 31, 2003.

The Company's real estate investments are reviewed for impairment if events or changes in circumstances indicate that the carrying amount of the real estate may not be recoverable. In such an event, a comparison is made of the current and projected operating cash flows of such real estate on an undiscounted basis to the carrying amount of such real estate. Such carrying amount would be adjusted, if necessary, to estimated fair value to reflect impairment in the value of the real estate. Real estate assets for which the Company has committed to a plan to dispose of the assets, whether by sale or abandonment, are reported at the lower of carrying amount or fair value less cost to sell. Preparation of projected cash flows is inherently subjective and is based on the Company's best estimate of assumptions concerning expected future conditions.

The fair value of the real estate acquired, which includes the impact of mark-to-market adjustments for assumed mortgage debt realized to property acquisitions, is allocated to the acquired tangible assets, consisting of land, building and improvements, fixtures and equipment and identified intangible assets and liabilities, consisting of the value of above-market and below-market leases, other value of in-place leases and value of tenant relationships, based in each case on management's determination of their fair values.

Annex F-55

NEWKIRK REALTY TRUST, INC. AND

THE NEWKIRK MASTER LIMITED PARTNERSHIP

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

Note 2 - SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)

The fair value of the tangible assets of an acquired property is determined by valuing the property as if it were vacant, and the as-if-vacant value is then allocated to land, building and improvements and fixtures and equipment based on management's determination of relative fair values of these assets. Factors

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considered by management in performing these analyses include an estimate of carrying costs during the expected lease-up periods considering current market conditions and costs to execute similar leases. In estimating carrying costs, management includes real estate taxes, insurance and other operating expenses and estimates of lost rental revenue during the expected lease-up periods based on current market demand. Management also estimates costs to execute similar leases including leasing commissions.

In allocating the fair value of the identified intangible assets and liabilities of an acquired property, above-market and below-market in-place lease values are recorded based on the difference between the current in-place lease rent and a management estimate of current market rents. Below-market lease intangibles are recorded as part of deferred revenue and amortized into rental revenue over the non-cancelable periods of the respective leases. Above-market leases are recorded as part of intangible assets and amortized as a direct charge against rental revenue over the non-cancelable portion of the respective leases.

The aggregate value of other acquired intangible assets, consisting of in-place leases and tenant relationships, is measured by the excess of (i) the purchase price paid for a property over (ii) the estimated fair value of the property as-if-vacant, determined as set forth above. This aggregate value is allocated between in-place leases and tenant relationships based on management's evaluation of the specific characteristics of each tenant's lease. The value of in-place leases and customer relationships are amortized to expense over the remaining non-cancelable periods of the respective leases.

The Company accounts for properties as held for sale under the provisions of Statement of Financial Accounting Standards (SFAS) No. 144, Accounting for the Impairment or Disposal of Long-Lived Assets (SFAS No. 144), when all criteria of SFAS No. 144 have been met.

Cash and Cash Equivalents

Cash and cash equivalents consist of all highly liquid investments with original purchase maturity dates of three months or less.

Restricted Cash

Restricted cash includes reserves for tenant improvements, leasing commissions and related costs established pursuant to the Operating Partnership's note payable agreement.

Concentration of Credit Risk

Substantially all of the Company's cash and cash equivalents consist of money market mutual funds which invest in U.S. Treasury Bills and repurchase agreements with original maturity dates of three months or less.

The Company maintains cash with two banking institutions, which amounts at times exceed federally insured limits. The Company has not experienced any losses on its invested cash.

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NEWKIRK REALTY TRUST, INC. AND

THE NEWKIRK MASTER LIMITED PARTNERSHIP

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

Note 2 - SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)

Real Estate Securities Available for Sale

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The Company classifies investments in real estate equity securities with readily determinable fair market values on the balance sheet as available-for-sale, based on the Company's intent with respect to those securities. Specifically, the Company's investments in equity securities with readily determinable fair market values are accounted for as available-for-sale because these securities are held principally for investment purposes and not for sale in the short term. Accordingly, the Company records these investments at fair market value, and unrealized gains and losses are recognized through stockholders' equity, as a component of other comprehensive income. Realized gains and losses and charges for other than-temporary impairments are included in net income. Sales of securities are recorded on the trade date and gains and losses are determined by the specific identification method.

Receivables

Receivables consist of rent from tenants and other receivables which are deemed collectable by the Company. No provision for doubtful accounts was considered necessary based upon the Company's evaluation of the collectability of these amounts.

Loans Receivable

Loans receivable include the note receivable from Administrator LLC and a secured note receivable from an unaffiliated party.

The Company evaluates the collectability of both interest and principal of each of its loans, if circumstances warrant, to determine whether it is impaired. A loan is considered to be impaired, when based on current information and events, it is probable that the Company will be unable to collect all amounts due according to the existing contractual terms. When a loan is considered to be impaired, the amount of the loss accrual is calculated by comparing the recorded investment to the value determined by discounting the expected future cash flows at the loan's effective interest rate. Interest on impaired loans is recognized on a cash basis.

Investments in Debt Securities

Investments in debt securities are classified as held-to-maturity, reported at amortized cost and are included with other assets in the accompanying consolidated balance sheets.

Lease Intangibles

Upon acquisition of real estate, the Company records intangible assets and liabilities acquired at their fair market value. The Company amortizes identified intangible assets and liabilities over the period which the assets are expected to contribute to future cash flows of the property acquired over the terms of the applicable leases.

Deferred Financing Costs

Deferred financing costs consist primarily of fees paid in connection with the financing of the Operating Partnership's properties and are deferred and amortized over the terms of the related agreements as a component of interest expense.

Annex F-57

NEWKIRK REALTY TRUST, INC. AND

THE NEWKIRK MASTER LIMITED PARTNERSHIP

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

Note 2 - SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)

Investments in Partnerships

The Company evaluated its investments in partially-owned entities in accordance with Financial Accounting Standards Board (FASB) Interpretation No. 46 (revised December 2003), Consolidation of Variable Interest Entities, or FIN 46R. If the partially-owned entity is a variable interest entity, or a VIE, and the Company is the primary beneficiary as defined in FIN 46R, the Company would account for such investment as if it were a consolidated subsidiary.

For a partnership investment which is not a VIE or in which the Company is not the primary beneficiary, the Company follows the accounting set forth in AICPA Statement of Position No. 78-9 Accounting for Investments in Real Estate Ventures (SOP 78-9). In accordance with this pronouncement, the Company accounts for its investments in partnerships and joint ventures in which it does not have a controlling interest using the equity method of accounting. Factors that are considered in determining whether or not the Company exercises control include important rights of partners in significant business decisions, including dispositions and acquisitions of assets, financing, operations and capital budgets, other contractual rights, and ultimate removal of the general partner in situations where the Company is the general partner. To the extent that the Company is deemed to control these entities, these entities would be consolidated. Determination is made on a case-by-case basis.

Investments in Partnerships (Continued)

The Company accounts for the purchase of minority interests at fair value utilizing the purchase method of accounting in accordance with SFAS No. 141, Business Combinations .

Revenue Recognition

The Company's lease agreements are operating leases and generally provide for varying rents over the lease terms. The Company records rental income for the full term of each lease on a straight-line basis. Accordingly, deferred rental income is recorded from tenants for the amount that is expected to be collected over the remaining lease term rather than currently. When a property is acquired, the term of existing leases is considered to commence as of the acquisition date for purposes of this calculation. Deferred rent receivable amounted to \$21,200,000 and \$27,100,000 at December 31, 2005 and 2004, respectively.

Income Taxes

The Company operates in a manner intended to enable it to continue to qualify as a real estate investment trust (REIT) under Sections 856-860 of the Code. In order to qualify as a REIT, the Company is generally required each year to distribute to its stockholders at least 90% of its taxable income (excluding any net capital gain). The Company intends to comply with the foregoing minimum distribution requirement.

Taxable income or loss of the Operating Partnership is reported in the income tax returns of its partners. Accordingly, no provision for income taxes is made in the consolidated financial statements of the Operating Partnership. However, the Operating Partnership is required to pay certain state and local entity level taxes which are expensed as incurred.

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NEWKIRK REALTY TRUST, INC. AND

THE NEWKIRK MASTER LIMITED PARTNERSHIP

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

Note 2 - SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)

Unit Split

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On November 7, 2005, the Operating Partnership affected a 7.5801 to 1 unit split of the outstanding units. Partners' equity activity for all periods presented has been restated to give retroactive recognition to the unit split. In addition, all references in the financial statements and notes to the consolidated financial statements, to weighted average limited partnership units and per limited partner unit amounts have been adjusted to give retroactive recognition to the unit split.

Earnings Per Share

The Company has calculated earnings per share in accordance with SFAS No.128, "Earnings Per Share". SFAS No.128 requires that common share equivalents be excluded from the weighted-average shares outstanding for the calculation of basic earnings per share. The Company does not have any common share equivalents.

Segment Reporting

The Company has one reportable segment, net leased commercial real estate. The Company evaluates performance based on net operating income, which is income before depreciation, amortization, interest and non-operating items.

Fair Value of Financial Instruments

Financial instruments held by the Company include cash and cash equivalents, receivables, accounts payable and long-term debt. The fair value of cash and cash equivalents, receivables and accounts payable approximates their current carrying amounts due to their short-term nature. The fair value of long-term debt, which has fixed interest rates, was determined based upon current market conditions and interest rates. The fair value of the mortgage notes payable approximates fair value for debt with similar terms and conditions due to yield maintenance requirements and prepayment penalties. The fair value of the Company's interest rate swap and interest rate caps is approximately \$1,700,000 at December 31, 2005. Such fair value estimates are not necessarily indicative of the amounts that would be realized upon disposition of the Company's financial instruments.

Derivative Financial Instruments

The Company accounts for its interest rate swap agreement and interest rate cap agreements in accordance with FAS No. 133, "Accounting for Derivative Instruments and Hedging Activities," as amended and interpreted. In accordance with FAS No. 133, the interest rate swap and cap agreements are carried on the balance sheet at their fair value, as an asset, if their fair value is positive, or as a liability, if their fair value is negative. Certain of these transactions are designated as cash flow hedges and one of the Company's interest rate cap agreements is not designated as a hedge instrument and is measured at fair value with the resulting gain or loss being recognized in interest expense in the period of change. Since the Company's interest rate swap and one of the Company's interest rate cap agreements are designated as cash flow hedges, comprehensive income or loss for hedges that qualify as effective and the change in the fair value is transferred from other comprehensive income or loss to earnings as the hedged liability affects earnings. The ineffective amount of the interest rate swap and cap agreement, if any, is recognized in earnings each quarter. To date, the Company has not recognized any change in the value of its interest rate swap or cap agreement in earnings as a result of the hedge or a portion thereof being ineffective. Accordingly, changes in value are recorded through other comprehensive income.

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NEWKIRK REALTY TRUST, INC. AND

THE NEWKIRK MASTER LIMITED PARTNERSHIP

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

Note 2 - SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)

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During the year ending December 31, 2006, the Company estimates that it will reclassify approximately \$192,000 from other comprehensive income to earnings as an increase to interest expense.

Upon entering into hedging transactions, the Company documents the relationship between the interest rate swap and cap agreements and the hedged liability. The Company also documents its risk-management policies, including objectives and strategies, as they relate to its hedging activities. The Company assesses, both at inception of a hedge and on an on-going basis, whether or not the hedge is highly effective, as defined by FAS No. 133. The Company discontinues hedge accounting on a prospective basis with changes in the estimated fair value reflected in earnings when: (i) it is determined that the derivative is no longer effective in offsetting cash flows of a hedged item (including forecasted transactions); (ii) it is no longer probable that the forecasted transaction will occur; or (iii) it is determined that designating the derivative as an interest rate swap or cap agreement is no longer appropriate. To date, the Company has not discontinued hedge accounting for its interest rate swap or cap agreement. The Company utilizes interest rate swap and cap agreements to manage interest rate risk and does not anticipate entering into derivative transactions for speculative or trading purposes.

Reclassifications

Certain prior year amounts have been reclassified to conform to the 2005 presentation, due to the reporting of discontinued operations for those assets that have been disposed of or classified as held for sale in accordance with SFAS No. 144.

Recently Issued Accounting Standards and Pronouncements

In March 2005, the FASB issued Financial Interpretation No. 47, *Accounting for Conditional Asset Retirement Obligations* an Interpretation of FASB Statement No. 143, which specifies the accounting treatment for obligations associated with the sale or disposal of an asset when there are legal requirements attendant to such a disposition. The Company adopted this pronouncement in 2005, as required, but there was no impact as there are no legal obligations associated with the planned sale of any properties in our Real Estate Owned portfolio.

In May 2005, the FASB issued SFAS No. 154, *Accounting Changes and Error Corrections* A Replacement of APB Opinion No. 20 and SFAS No. 3. SFAS No. 154 changes the requirements for the accounting and reporting of a change in accounting principle by requiring retrospective application to prior period financial statements of the change in accounting principle, unless it is impracticable to do so. SFAS No. 154 also requires that a change in depreciation and amortization for long-lived, non financial assets be accounted for as a change in accounting estimate affected by a change in accounting principle. SFAS No. 154 is effective for accounting changes and correction of errors made in fiscal years beginning after December 15, 2005. The Company does not believe that the adoption of SFAS No. 154 will have a material effect on the Company's consolidated financial statements.

In June 2005, the FASB ratified the EITF's consensus on Issue 04-5, *Determining Whether a General Partner, or the General Partners as a Group, Controls a Limited Partnership or Similar Entity When the Limited Partners Have Certain Rights*. Issue 04-5 provides a framework for determining whether a general partner controls, and should consolidate, a limited partnership or a similar entity. It became effective for all newly formed limited partnerships and for any pre-existing limited partnerships that modify their partnership agreements after June 29, 2005. General partners of all other limited partnerships will apply the consensus no later than the beginning of the first reporting period in fiscal years beginning after December 15, 2005.

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NEWKIRK REALTY TRUST, INC. AND

THE NEWKIRK MASTER LIMITED PARTNERSHIP

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

Note 2 - SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)

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The Company has not completed the process of evaluating the impact that will result from the adoption of the consensus in EITF 04-5 on the Company's consolidated financial statements.

Note 3 - REAL ESTATE INVESTMENTS

Most of the Company's properties are net leased to a single commercial tenant. The properties are located throughout the United States. The leases are similar in many respects and generally provide for fixed rent payments and obligate the tenant to pay all capital and operating expenses for a property; obligate the tenant to perform all responsibilities (other than the payment of debt service) relating to the property; require the tenant to maintain insurance against casualty and liability losses; permit the tenant to sublet the property; and afford the tenant in many instances the right to terminate the lease at certain points during the primary term if it determines that its continued use and occupancy of the property would be uneconomic or unsuitable.

The Company's ability to maintain and operate its properties and satisfy its contractual obligations is dependent upon the performance by the tenants of their obligations under their lease agreements with the Company. Under certain conditions (including the destruction of the property), many of the tenants have an option to purchase the property upon the expiration of the primary term of the lease and at the end of one or more renewal terms for a price stated in the lease agreement.

The future minimum lease payments that are scheduled to be received under non-cancelable operating leases are as follows (in thousands):

| | |
|------------|---------------|
| 2006 | \$238,365 |
| 2007 | 208,847 |
| 2008 | 156,645 |
| 2009 | 57,680 |
| 2010 | 25,832 |
| Thereafter | <u>43,817</u> |
| | \$ 731,186 |

Three tenants accounted for approximately 37% and 36% of the aggregate rental revenues including discontinued operations of the Company and the Operating Partnership in 2005 and 2004, respectively. Two tenants accounted for approximately 24% of the aggregate rental revenues including discontinued operations of the Operating Partnership in 2003.

The Company owns the fee interest in the land on which certain of its properties are located, leases the land pursuant to ground leases or holds an estate for years with an option to lease the land upon expiration of the estate for years.

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NEWKIRK REALTY TRUST, INC. AND

THE NEWKIRK MASTER LIMITED PARTNERSHIP

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

Note 3 - REAL ESTATE INVESTMENTS (Continued)

The Company's properties are encumbered by mortgage notes payable.

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The rent payable under the ground leases is as follows (in thousands):

| | |
|------------|----------|
| 2006 | \$ 3,122 |
| 2007 | 2,496 |
| 2008 | 1,673 |
| 2009 | 982 |
| 2010 | 569 |
| Thereafter | 192 |
| | 9,034 |

Note 4 - NOTES AND CONTRACT RIGHTS PAYABLE

The Company and the Operating Partnership, excluding discontinued operations, had outstanding mortgage notes payable and contract right mortgage notes payable with an aggregate principal balance of \$177,300,000 and \$742,000,000 at December 31, 2005 and 2004, respectively. The mortgage notes are at fixed interest rates with payments of principal and interest generally due either monthly or semi-annually. All the mortgage notes are collateralized by the Company's real estate; some of the mortgage notes are cross-collateralized.

An aggregate of \$166,200,000 in indebtedness under the mortgage notes mature at various dates from 2006 to 2024. Prepayment of most of the mortgage notes is permitted only with a yield maintenance payment or prepayment penalty as defined in the mortgage note agreements. Interest rates on the mortgages ranged

from 5% to 9.89%, with a weighted average interest rate of 6.1% at December 31, 2005. Interest rates on the mortgages ranged from 5.0% to 10.4% with a weighted average interest rate of 8.1% at December 31, 2004.

The remaining contract right mortgage note at December 31, 2005 of \$11,100,000 has a fixed interest rate of 9.68% and matures in January 2009. The outstanding contract rights of \$263,100,000, excluding discontinued operations at December 31, 2004 had interest rates ranging from 8.11% to 13.9%, with a weighted average interest rate of 10.7%.

Mortgage notes payable and contract right mortgage notes payable aggregating approximately \$1.1 billion and accrued interest thereon were assumed as part of the Exchange. These notes were recorded at their fair value as of the various dates of acquisition. This accounting method resulted in recorded interest expense that was \$3,100,000, \$5,500,000 and \$3,800,000 greater than the contractual interest expense for the period from January 1, 2005 to November 6, 2005 and for the years ended December 31, 2004 and 2003, respectively. The effect of utilizing this accounting method was to increase the principal balance of mortgage and contract rights notes payable and reduce interest accrued on these obligations. The cumulative reduction in liabilities related to utilizing this accounting method was \$35,400,000 at November 6, 2005.

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NEWKIRK REALTY TRUST, INC. AND

THE NEWKIRK MASTER LIMITED PARTNERSHIP

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

Note 4 - NOTES AND CONTRACT RIGHTS PAYABLE (Continued)

Most of these mortgage notes payable and some of the contract right mortgage notes payable were refinanced during 2005 as discussed below. Also, during 2005, the Operating Partnership acquired the entity which owns most of the remaining contract right mortgage notes payable (See

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Note 6 - Related Party Transactions).

During November 2003, the Operating Partnership obtained a \$208,500,000 loan from Bank of America, N.A., which had an outstanding balance of \$165,300,000 at December 31, 2004. The note payable bore interest at a rate elected by the Operating Partnership equal to either (1) LIBOR plus 450 basis points or (2) the prime rate charged by the bank plus 250 basis points. The note payable was scheduled to mature on November 24, 2006, subject to two one-year extensions.

On August 11, 2005, the Operating Partnership obtained a \$477,759,000 loan from KeyBank National Association and Bank of America, N.A. (the Lenders) which bears interest at the election of the Company at a rate equal to either (i) the LIBOR Rate plus 200 basis points (reduced to 175 basis points after consummation of the IPO) or (ii) the prime rate then charged by KeyBank National Association plus 50 basis points. The loan was obtained to (i) replace the existing loan from Bank of America, N.A. which had an outstanding balance including accrued interest of \$163,379,000 and bore interest at the LIBOR Rate plus 450 basis points or prime plus 250 basis points, (ii) satisfy \$186,566,000 of first mortgage debt encumbering the Operating Partnership's real properties, which constituted substantially all of the Operating Partnership's first mortgage debt and (iii) satisfy \$86,801,000 of second mortgage debt encumbering the Operating Partnership's real properties. The Operating Partnership incurred \$6,945,000 of closing costs and \$23,548,000 of prepayment penalties on the transaction. Concurrently with the loan, T-Two Partners also obtained a loan from the Lenders in the principal amount of \$272,241,000 (the T-Two Loan), the proceeds of which were used to satisfy the outstanding balance including accrued interest on a loan made by Bank of America, N.A. to T-Two Partners of \$271,989,000. The interest rate, maturity date and principal terms of the T-Two Loan are the same as the Operating Partnership's loan. The Operating Partnership agreed to guarantee the obligations of T-Two Partners under the T-Two Loan. On November 7, 2005, the Operating Partnership assumed this debt as part of an exercise of an option to acquire the interests of T-Two Partners, (See Note 6 - Related Party Transactions). The loan with the Lenders had an outstanding principal balance of \$593,500,000 at December 31, 2005. The Operating Partnership also advanced closing costs of \$3,903,000 for T-Two Partners. Excess proceeds from the loan of \$6,537,000 were used to make a principal payment on September 1, 2005.

The loan is scheduled to mature on August 11, 2008, subject to two one year extensions and will require monthly payments of interest only. In addition, the loan required (i) initial principal payments of 50% of excess cash flow after debt service during the period between August 11, 2005 and the consummation of the IPO (November 7, 2005) offering, less any amounts paid on account of the T-Two Loan (as described below), (ii) a principal payment equal to \$150,000,000 less the amount of the initial principal payments on the closing of the IPO made pursuant to (i) above, and (iii) quarterly principal payments of \$1,875,000 during the term of the loan, increasing to \$2,500,000 per quarter during the extension periods. The Company is also required to make principal payments from the proceeds of property sales, refinancings and other asset sales if proceeds are not reinvested into net leased properties. The required principal payments are based on a minimum release price set forth in the loan agreement for property sales and 100% of proceeds from refinancings, economic discontinuance, insurance settlements and condemnations.

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NEWKIRK REALTY TRUST, INC. AND

THE NEWKIRK MASTER LIMITED PARTNERSHIP

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

Note 4 - NOTES AND CONTRACT RIGHTS PAYABLE (Continued)

The loan is secured by a lien on the Company's assets and the assets of the Company's subsidiaries, with certain exceptions such as direct liens on most of the real estate owned by the Operating Partnership or the Company's subsidiaries. The Company can prepay the loan in whole or in part at any time together with a premium of 1% if such prepayment occurs on or before August 11, 2006 and thereafter with no premium. The loan contains customary financial and other covenants consistent with the prior loan.

The Operating Partnership entered into the following agreements in order to limit the exposure to interest rate volatility: (i) a five year interest rate swap agreement with KeyBank National Association effectively setting the LIBOR rate at 4.642% for \$250,000,000 of the loan balance;

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(ii) a LIBOR rate cap agreement at 5% with Bank of America, N.A. for \$295,000,000 through November 2006; and (iii) a LIBOR rate cap agreement at 6% with SMBC Derivative Products Limited for the period from November 2006 until August 2008 for a notional amount of \$290,000,000.

In connection with the Operating Partnership's refinancings, real estate sales and repayments of mortgage debt during 2005, the Company has recognized a net loss from debt extinguishment of \$100,000, which is included in discontinued operations for the period November 7, 2005 to December 31, 2005, and the Operating Partnership has recognized a net loss from early extinguishment of debt of \$30,400,000, of which \$2,800,000 is included in discontinued operations. The net loss from early extinguishment of debt consisted of loss from debt extinguishment of \$7,000,000, plus mortgage prepayment penalties of \$23,500,000. During 2004, the Operating Partnership recognized a net loss from early extinguishment of debt of \$6,600,000, \$6,500,000 of which is included in discontinued operations. The net loss from early extinguishment of debt consisted of loss from debt extinguishment of \$6,300,000, plus mortgage prepayment penalties of \$300,000.

Scheduled payments of principal at December 31, 2005, for the next five years and thereafter through maturity, are as follows (in thousands):

| Year | Mortgage Notes | | Contract | Principal Total | Accrued | Total |
|------------|----------------|--------------|------------------------|-----------------|----------|------------|
| | Payable | Note Payable | Mortgage Notes Payable | | Interest | |
| 2006 | \$ 36,700 | \$ 7,500 | \$ -- | \$ 44,200 | \$ 7,514 | \$ 51,714 |
| 2007 | 38,946 | 7,500 | -- | 46,446 | -- | 46,446 |
| 2008 | 41,523 | 578,463 | -- | 619,986 | -- | 619,986 |
| 2009 | 16,245 | -- | 229 | 16,474 | -- | 16,474 |
| 2010 | 380 | -- | 491 | 871 | -- | 871 |
| Thereafter | 32,401 | -- | 10,408 | 42,809 | -- | 42,809 |
| | \$ 166,195 | \$ 593,463 | \$ 11,128 | \$ 770,786 | \$ 7,514 | \$ 778,300 |

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NEWKIRK REALTY TRUST, INC. AND

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NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

Note 5 - EQUITY INVESTMENTS IN LIMITED PARTNERSHIPS

The equity investments in limited partnerships consists of the following (in thousands):

2005

2004

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| | | |
|-----------------------------|----------|----------|
| Balance, beginning of year | \$11,107 | \$8,492 |
| Investments in limited | | |
| partnership | 10 | 342 |
| Equity in income of limited | | |
| partnerships | 3,128 | 2,662 |
| Distributions from limited | | |
| partnerships | (399) | (389) |
| Balance, end of year | \$13,846 | \$11,107 |

The Company and Operating Partnership have paid a premium for its allocable share of the underlying limited partnerships which resulted in an excess of the carrying amounts of the Company and Operating Partnership's investments over the underlying net assets of these limited partnerships of \$5,100,000 and \$5,000,000 as of December 31, 2005 and 2004, substantially all of which relates to the difference between the fair values at the date of acquisition of the Company's underlying properties and historical carrying amounts. Such premium is being amortized as an adjustment to the Company's equity in earnings of the limited partnerships over the useful lives of the underlying properties. The amortization expense amounted to \$19,000; \$109,000; \$126,000; and \$42,000 for the period from November 7, 2005 to December 31, 2005, the period January 1, 2005 to November 6, 2005 and the years ended December 31, 2004 and 2003, respectively.

The limited partnerships condensed combined statements of operations and condensed combined balance sheets are as follows (in thousands):

Condensed Statements of Operations:

| | The Company | The Predecessor For the Period | | |
|------------------------------------|--|--|---|---|
| (Unaudited) | For the Period November 7, 2005 to December 31, 2005 | January 1, 2005 to November 6, 2005 | For the Year ended December 31, 2004 | For the Year Ended December 31, 2003 |
| Rental revenue and interest income | \$3,977 | \$22,613 | \$26,571 | \$26,528 |
| Interest expense | 1,423 | 8,491 | \$11,051 | 12,052 |
| Administrative expense | 15 | 56 | 77 | 54 |
| Depreciation expense | 522 | 2,967 | 3,051 | 3,400 |

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NEWKIRK REALTY TRUST, INC. AND

THE NEWKIRK MASTER LIMITED PARTNERSHIP

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

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Note 5 - EQUITY INVESTMENTS IN LIMITED PARTNERSHIPS (Continued)

| | The Company | The Predecessor For the Period | | |
|----------------------|--|--|---|---|
| (Unaudited) | For the Period November 7, 2005 to December 31, 2005 | January 1, 2005 to November 6, 2005 | For the Year ended December 31, 2004 | For the Year Ended December 31, 2003 |
| Amortization expense | 78 | 447 | 525 | 525 |
| Net income | \$1,939 | \$10,652 | \$11,417 | \$10,497 |

Condensed Balance Sheets

| | December 31, 2005 | December 31, 2004 |
|---|----------------------|----------------------|
| | | (Unaudited) |
| Cash | \$1,744 | \$1,690 |
| Real estate, net | 81,043 | 84,598 |
| Other assets | 2,928 | 3,318 |
| Total assets | \$85,715 | \$89,606 |
| Accounts payable and other liabilities | \$ 1,436 | \$1,920 |
| Mortgages payable | 96,238 | 110,399 |
| Partners' deficit | (11,959) | (22,713) |
| Total liabilities and partners' deficit | \$85,715 | \$89,606 |

Note 6 - RELATED PARTY TRANSACTIONS

Winthrop Realty Partners L.P. performed asset management services for the Operating Partnership and received a fee of \$1,600,000, \$1,900,000 and \$1,800,000 for the period from January 1, 2005 to November 6, 2005 and for the years ended December 31, 2004 and 2003, respectively.

As of November 7, 2005, NKT Advisors performs the asset management services for the Company, previously provided by Winthrop Realty Partners L.P.

NKT Advisors receives an annual base management fee which is payable quarterly in arrears in cash. The base management fee is equal to the greater of (A) \$4,800,000 or (B) 1.5% per annum of (1) the gross purchase price paid for shares of the Company's common stock in connection with the IPO and the sale of common stock to Winthrop Realty Trust (excluding in respect of shares of its common stock issued to Winthrop Realty Trust in consideration for its assignment of certain exclusivity rights) net of underwriting discounts (\$273,560,625) plus (2) the sum of the net proceeds from any additional primary issuances of the Company's common or preferred equity or from the issuance of the Operating Partnership's units, each after deducting any underwriting discounts and commissions and other expenses and costs relating to the issuance, plus (3) as and when, if at all, Apollo sells or converts for shares, in whole or from time to time, up to 5,000,000 Operating Partnership units, utilizing a deemed value per Operating Partnership unit equal to the lesser of (x) \$19.00 and (y) the per share price at which such Operating Partnership units are sold

NEWKIRK REALTY TRUST, INC. AND

THE NEWKIRK MASTER LIMITED PARTNERSHIP

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

Note 6 - RELATED PARTY TRANSACTIONS (Continued)

or, if converted, the closing price of the Company's shares on the day on which such Operating Partnership units are converted, less (4) any amount that the Company or the Operating Partnership pays to repurchase shares of the Company's common stock or any Operating Partnership units.

The first \$4,200,000 (subject to an annual consumer price index increase) in base management fees per annum will be paid by NKT Advisors to Winthrop Realty Partners L.P. for services to the Company that NKT Advisors subcontracts to Winthrop Realty Partners L.P.

In addition, NKT Advisors is entitled to receive incentive management fees each fiscal quarter, payable quarterly in arrears, in an annual amount equal to:

20% of the amount by which adjusted funds from operations for the Operating Partnership, before incentive management fees exceeds, for the quarter then ended, the amount of adjusted funds from operations but after providing for dividends on any of the preferred equity issued in the future required to produce an annualized return on the greater of:

A) \$650,000,000, or

B) (i) the gross equity proceeds of the IPO and the sale of shares to Winthrop Realty Trust (\$290,000,000), plus (ii) the book value of partners equity in the Operating Partnership as of June 30, 2005 (approximately \$209,100,000), plus (iii) the gross proceeds of any subsequent issuance of common equity or any subsequent issuance of Operating Partnership units, minus (iv) amounts paid by the Company or the Operating Partnership in any tender for or repurchase of the Company's equity or the Operating Partnership's equity.

Equal to the greater of the yield on 10-year Treasuries as of the last business day of such quarter plus 250 basis points or the returns set forth below:

| <u>Year</u> | <u>Return</u> |
|---------------|---------------|
| 2005 and 2006 | 25% |
| 2007 | 22% |
| 2008 | 20% |
| 2009 | 15% |
| 2010 | 12% |
| Thereafter | 10% |

Adjusted funds from operations represent funds from operations as determined in accordance with standards prescribed by NAREIT, adjusted to add back any asset impairment charges and non-cash restricted stock issuances. NAREIT defines funds from operations as net income, computed in accordance with GAAP, excluding gains (or losses) from debt restructuring and sales of property, plus depreciation and amortization on real estate assets and after adjustments for unconsolidated partnerships and joint ventures. Adjusted funds from operations does not represent cash generated from operating activities in accordance with GAAP and should not be considered as an alternative to net income as an indication of the Company's performance or to cash flows as a measure of liquidity or ability to make distributions.

NKT Advisors received a base management fee of \$720,000 for the period from November 7, 2005 to December 31, 2005. No incentive management fee was earned during the period.

NEWKIRK REALTY TRUST, INC. AND

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NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

Note 6 - RELATED PARTY TRANSACTIONS (Continued)

The Company provides certain asset management, investor and administrative services to some unconsolidated partnerships in which it owns an equity interest and to other affiliated partnerships. Asset management fees of \$38,000, \$249,000, \$332,000 and \$418,000 were earned for the period November 7, 2005 to December 31, 2005 and the period from January 1, 2005 to November 6, 2005 and for the years ended December 31, 2004 and 2003, respectively. The Company and Operating Partnership had receivables for management fees of \$800,000 and \$900,000 due from these partnerships at December 31, 2005 and 2004, respectively.

The Company has an ownership interest in the three most junior tranches of a securitized pool of first mortgages which includes three first mortgage loans encumbering three Company properties and one other property controlled by an affiliate. The Company and the Operating Partnership's ownership interest, net of discount, amounted to \$10,500,000 and \$10,100,000 at December 31, 2005 and 2004, respectively, and the Company and the Operating Partnership earned interest income of \$200,000, \$1,000,000, \$1,200,000 and \$1,200,000 for the period from November 7, 2005 to December 31, 2005 and the period from January 1, 2005 to November 6, 2005 and for the years ended December 31, 2004 and 2003 respectively, related to this ownership interest.

WEM owned \$17,300,000 of a \$145,200,000 Real Estate Mortgage Investment Conduit (REMIC) which was secured by the contract rights payable of the Operating Partnership. WEM earned \$2,200,000 of interest income during 2003. The affiliates and executives were repaid in 2003 when T-Two Partners purchased the T-1 Certificate as discussed in the following paragraph.

T-Two Partners is the 100% beneficial owner of certain of the contract rights. T-Two Partners owned the portion of the contract rights referred to as the T-2 Certificate and during 2003 purchased the portion of the contract rights referred to as the T-1 Certificate. The Operating Partnership, prior to its acquisition of T-Two Partners, as discussed below, incurred \$18,600,000, \$25,000,000 and \$13,800,000 (\$3,800,000, \$5,900,000 and \$7,000,000 of which is included in discontinued operations, respectively) of interest expense on these contract rights during the period from January 1, 2005 to November 6, 2005 and for the years ended December 31, 2004 and 2003, respectively. Contract right mortgage notes and accrued interest payable amounted to \$249,500,000 due to T-Two Partners at December 31, 2004. The Operating Partnership had the right to acquire T-Two Partners' interest in the contract rights in January 2008 by acquiring T-Two Partners in exchange for units. T-Two Partners had the right to require the Operating Partnership to purchase this interest in December 2007 in exchange for units. During 2003, as described below, the Operating Partnership and the owners of T-Two Partners modified these rights.

During November 2003, T-Two Partners obtained a \$316,500,000 loan. This loan is referred to as the Original T-Two Loan. The owners of T-Two Partners agreed to eliminate their put option which could require the Operating Partnership to purchase T-Two Partners in December 2007 and the Operating Partnership agreed to guarantee repayment of the Original T-Two Loan. The Original T-Two Loan was secured by all of the assets of T-Two Partners, including the contract right mortgage notes receivable from the Operating Partnership. T-Two Partners also agreed to provide a credit line to the Operating Partnership bearing interest at LIBOR plus 450 basis points.

In connection with the November 2003 financing transactions described above, the Operating Partnership and the owners of T-Two Partners modified the Operating Partnership option in certain respects. Initially, the Operating Partnership was given the right to exercise the option at any time between November 24, 2006 and November 24, 2009. As part of the November 7, 2005 transactions, the option was modified to permit its immediate exercise. Second, the purchase price was payable in cash rather than units of the Operating Partnership. Finally, the formula for determining the purchase price payable by the Operating Partnership if it exercised the option was

NEWKIRK REALTY TRUST, INC. AND

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NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

Note 6 - RELATED PARTY TRANSACTIONS (Continued)

revised in a manner that the Operating Partnership's general partner believed to be significantly more favorable to the Operating Partnership than the formula previously in effect. Specifically, the purchase price would be calculated as follows: the sum of \$316,526,573 plus T-Two Partners' costs of obtaining the Original T-Two Loan (approximately \$7,346,000), the cost of any refinancing (\$3,903,000, representing amounts allocated in connection with the August 11, 2005

refinancing discussed in Note 4) and the cost of administering the trust that holds the second mortgage loans, together with interest on the foregoing sum at the effective rate of interest paid by T-Two Partners on the Original T-Two Loan, less all payments made from and after November 24, 2003 on the second mortgage loans. The purchase price was to be reduced to the extent of any mortgages assumed by the Operating Partnership but not below zero.

The Operating Partnership had determined that T-Two Partners is a VIE, but that the Operating Partnership was not the primary beneficiary of the VIE and therefore T-Two Partners was not consolidated.

T-Two Partners was to reimburse the Operating Partnership for approximately \$7,300,000 of closing costs incurred in connection with the Original T-Two Loan and \$3,903,000 of closing costs incurred in connection with the refinancing, together with interest thereon at a rate equal to LIBOR plus 450 basis points. The Operating Partnership earned interest income of \$400,000 and \$500,000 on this obligation during the period from January 1, 2005 to November 6, 2005 and the year ended December 31, 2004, respectively.

On November 7, 2005, the Operating Partnership exercised the option. The purchase price was determined to be \$238,100,000 in accordance with the formula described above. However, the purchase price was satisfied by the Operating Partnership's assumption of the T-Two Partners' Loan and accrued interest of \$269,700,000. The Operating Partnership recorded the purchase of the interest in T-Two Partners in accordance with FAS 141 and recorded the acquired assets and liabilities at fair market value at the date of purchase. The Operating Partnership recorded the following assets, liabilities and gain: (in millions)

| | | |
|--|----|---------|
| Cash | \$ | 44.4 |
| Contract right mortgage notes receivable | | 239.7 |
| Accounts payable | | (12.8) |
| Notes payable | | (269.4) |
| Accrued interest payable | | (0.3) |
| Gain | | (1.6) |

The gain recognized in the transaction is recorded in the Company's (gain) loss from early extinguishment of debt. The contract right mortgage notes receivable and accounts payable are eliminated in the Company's consolidated financial statements.

An affiliate of the general partner owns a portion of the second mortgage indebtedness of a property in which the Company has an interest. The second mortgage payable and accrued interest owned by the affiliate aggregated \$15,500,000 and \$15,200,000 at December 31, 2005 and December 31, 2004, respectively. Included in interest expense is \$100,000, \$600,000, \$700,000 and \$700,000 related to this second mortgage payable for the period November 7, 2005 to December 31, 2005, the period January 1, 2005 to November 6, 2005 and for the years ended December 31, 2004 and 2003, respectively.

NEWKIRK REALTY TRUST, INC. AND

THE NEWKIRK MASTER LIMITED PARTNERSHIP

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

Note 6 - RELATED PARTY TRANSACTIONS (Continued)

On July 29, 2004, the Operating Partnership sold 25 properties for a combined net sales price of \$63,800,000 to Vornado, which is a limited partner in the Operating Partnership and, at such time, an affiliate of the Operating Partnership is then general partner. After satisfying existing mortgage debt of \$31,500,000, the net sales proceeds were approximately \$32,300,000 of which \$23,700,000 was applied to a principal payment on the note payable. The Operating Partnership recognized a net gain on the sale of these properties of \$38,700,000.

In August 2005, Winthrop Realty Partners L.P. loaned \$200,000 to a partnership in which the Operating Partnership has an interest. The loan accrues interest at a rate of prime plus 2%. The loan was repaid in the first quarter of 2006.

Also see Note 8 for related party acquisitions.

Note 7 - CONTINGENCIES AND IMPAIRMENTS

The Company owns a 707,482 square foot office building in Toledo, Ohio that is leased to Owens-Illinois for an initial term that expires on September 30, 2006. The property is encumbered by a non-recourse mortgage which matures in October 2006 at which time a \$32,000,000 balloon payment will be due. The tenant has six, five-year renewal options. This tenant is presently not using a substantial portion of the building and elected not to renew its lease. While the Company will attempt to sell or re-lease the property there is substantial risk that the Company will not be able to satisfy the balloon payment due on the mortgage and that the mortgage holder will foreclose on this property. The Operating Partnership recognized an \$11,328,000 impairment loss during the second quarter of 2005. The operations of the property were placed into discontinued operations effective December 31, 2005.

In June 2005, the Operating Partnership entered into an agreement with Honeywell International, Inc., the tenant of four office buildings owned by the Operating Partnership in Morris Township, New Jersey to restructure the lease on the properties. Under the restructuring, the tenant waived its right to exercise its economic discontinuance option and the Operating Partnership granted the tenant an option to purchase the properties in 2007 for \$41,900,000. As a result of this restructuring, the Operating Partnership recognized a \$14,754,000 impairment loss in the second quarter of 2005.

The Operating Partnership received a notice dated August 30, 2005 from Albertson's, Inc. indicating that it intends to exercise its right to terminate the lease for the property located in Rock Falls, Illinois as of May 8, 2006. In accordance with the terms of the lease, Albertson's, Inc. has made an offer to purchase the property for an amount stipulated in the lease of approximately \$861,000. The Operating Partnership can reject this offer by notifying Albertson's, Inc. by April 18, 2006. The Company is currently evaluating whether the offer should be rejected. The Company recorded an impairment loss of \$550,000 on this property during the third quarter of 2005. The operations of the property were placed into discontinued operations effective August 30, 2005.

The Company owns two office buildings in New Orleans, Louisiana, containing an aggregate of 403,027 square feet of space that are leased to Hibernia Bank. Both buildings are located in the area affected by Hurricane Katrina. The tenant has remained current in its rent obligations and is responsible for all repairs, maintenance and capital expenditures associated with these properties.

NEWKIRK REALTY TRUST, INC. AND

THE NEWKIRK MASTER LIMITED PARTNERSHIP

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

Note 8 - ACQUISITIONS

On January 1, 2003, the Operating Partnership acquired from an affiliate of the general partner, limited partnership interests in nine limited partnerships that own net leased commercial properties. The limited partnership interests acquired by the Operating Partnership ranged between 4.9% and 57.75% of each partnership and were acquired in exchange for 317,813 limited partnership units of the Operating Partnership valued at \$22,700,000. In August 2003, the Operating Partnership acquired approximately an additional 10.05% interest in one of these limited partnerships for a cash purchase price of \$525,000, increasing the partnership interest to 23.55% from 13.5%. These interests were acquired from unaffiliated limited partners. In April 2004, the Operating Partnership exercised an option to purchase additional limited partnership interests in two of the partnerships in exchange for 15,539 units. The values of the net leased real estate partnerships and the Operating Partnership units were determined without arms-length negotiations. Independent appraisals were obtained on the value of the properties owned by the limited partnerships. The Operating Partnership has accounted for the acquisition on a historical cost basis. Four of the limited partnerships have been consolidated into the Operating Partnership's financial statements and five of the limited partnerships are being accounted for under the equity method of accounting.

In June 2004, the Operating Partnership acquired for \$297,500, pursuant to a tender offer, approximately 9.85% of the total limited partnership units outstanding in one partially owned consolidated partnership. The Operating Partnership then owned approximately 45.2% of the limited partnership.

In June 2004, the Operating Partnership acquired the land underlying one of its properties in Bedford, Texas. The land was acquired from an unaffiliated party for approximately \$2,600,000.

In July 2004, the Operating Partnership acquired for \$472,500 and \$325,000, pursuant to two separate tender offers, approximately 7% and 4.5% of the total limited partnership units outstanding in two partially owned partnerships. The Operating Partnership currently owns approximately 62.2% in one of the partnerships whose operations are consolidated and 45.3% in the other partnership.

In February 2005, the Operating Partnership acquired for \$10,000 approximately 0.29% of the total limited partnership units outstanding in a partially owned non-consolidated partnership. The Operating Partnership currently owns approximately 23.84% in the partnership.

In June 2005, the Operating Partnership acquired for \$35,000 an additional limited partnership unit in one partially owned consolidated partnership. The Operating Partnership owned approximately 46.35% of the limited partnership following the acquisition.

In September 2005, the Operating Partnership acquired for \$35,000 an additional limited partnership unit in one partially owned consolidated partnership. The Operating Partnership currently owns approximately 47.51% of the limited partnership.

On November 7, 2005, the Operating Partnership acquired 100% of the interests in T-Two Partners. (See Note 6 - Related Party Transactions).

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NEWKIRK REALTY TRUST, INC. AND

THE NEWKIRK MASTER LIMITED PARTNERSHIP

NOTES TO CONSOLIDATED FINANCIAL STATEMENTSNote 9 - DISCONTINUED OPERATIONS AND SALES OF REAL ESTATE

During the period from November 7, 2005 to December 31, 2005, the Company sold one property for a net sales price of \$11,300,000. The Company also received \$3,800,000 of accrued and deferred rent in connection with the sale of this property. The Company recognized a net gain on sale of this property of \$1,700,000.

During the period from January 1, 2005 to November 6, 2005, the Operating Partnership sold six properties for a combined net sales price of \$31,300,000. The Operating Partnership recognized a net gain on sale of these properties of \$16,000,000. During the year ended December 31, 2004, the Operating Partnership sold 58 properties for a combined net sales price of \$127,200,000. The Operating Partnership recognized a net gain on sale of these properties of \$49,800,000. During the year ended December 31, 2003, the Operating Partnership sold 14 properties for a combined net sales price of \$156,400,000. The Operating Partnership recognized a net gain on sale of these properties of \$33,800,000. The sale and operations of these properties for all periods presented have been recorded as discontinued operations in accordance with the provisions of SFAS No. 144. In addition, the Operating Partnership has classified various properties which have met all of the criteria of SFAS No. 144 as real estate held for sale in the accompanying consolidated balance sheets and has classified the operations of the properties and the sold properties as discontinued operations in the accompanying consolidated statements of operations. In June 2006, the Company committed to sell 53 properties. See Note 11 - Subsequent Events.

Discontinued operations for the years ended December 31, 2005, 2004 and 2003 are summarized as follows (in thousands):

| | The Company | | The Predecessor | |
|--|--|--|---|---|
| | For the Period November 7, 2005 to December 31, 2005 | For the Period January 1, 2005 to November 6, 2005 | For the Year ended December 31, 2004 | For the Year Ended December 31, 2003 |
| Revenue | \$5,618 | \$37,148 | \$53,170 | \$69,181 |
| Expenses | (3,227) | (19,194) | (22,783) | (32,900) |
| Impairment loss on real estate | -- | (12,761) | (3,465) | (1,560) |
| Net (loss) gain from early extinguishment of debt | (121) | (2,818) | (6,458) | 8,733 |
| Gain from disposal of real estate | 1,733 | 15,974 | 49,808 | 33,844 |
| Minority interest | (2,798) | 7 | (436) | (4,891) |
| Income from discontinued operations | \$1,205 | \$18,356 | \$69,836 | \$72,407 |

Expenses include interest expense to related parties of \$3,800,000, \$5,900,000 and \$7,000,000 for the period from January 1, 2005 to November 6, 2005 and for the years ended December 31, 2004 and 2003, respectively.

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NEWKIRK REALTY TRUST, INC. AND

THE NEWKIRK MASTER LIMITED PARTNERSHIP

NOTES TO CONSOLIDATED FINANCIAL STATEMENTSNote 9 - DISCONTINUED OPERATIONS AND SALES OF REAL ESTATE (Continued)

Other assets of discontinued operations at December 31, 2005 and 2004 are summarized as follows (in thousands):

| | 2005 | 2004 |
|--------------|-------|-------|
| Receivables | \$213 | \$ 81 |
| Other assets | 332 | 163 |
| | 545 | 244 |

Liabilities of discontinued operations at December 31, 2005 and 2004 are summarized as follows:

| | 2005 | 2004 |
|--|----------|----------|
| Mortgage notes and accrued interest payable | \$40,491 | \$5,672 |
| Contract right mortgage notes and accrued interest payable (including \$0 and \$11,825 to related parties) | -- | 11,825 |
| | \$40,491 | \$17,497 |

Note 10 - INCOME TAXES

The Company has made no provision for current or deferred federal and state income taxes on the basis that it operates in a manner intended to enable it to continue to qualify as a real estate investment trust (REIT) under Sections 856-860 of the Code. In order to qualify as a REIT, the Company is generally required each year to distribute to its stockholders at least 90% of its taxable income (excluding any net capital gain). The Company intends to comply with the foregoing minimum distributions requirements.

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NEWKIRK REALTY TRUST, INC. ANDTHE NEWKIRK MASTER LIMITED PARTNERSHIPNOTES TO CONSOLIDATED FINANCIAL STATEMENTSNote 10 - INCOME TAXES (Continued)

The Operating Partnership's taxable income for 2005, 2004 and 2003 differs from net income for financial reporting purposes as follows (in thousands):

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| | 2005 | 2004 | 2003 |
|---|-----------|------------|-----------|
| Net income for financial reporting purposes | \$49,295 | \$ 137,808 | \$145,164 |
| Depreciation and amortization | 40,729 | 30,472 | 37,364 |
| Compensation expense | 10,500 | -- | -- |
| Interest expense | 3,112 | 4,650 | 10,219 |
| Gain on sale of real estate | 15,084 | 42,290 | 80,517 |
| Impairment loss | 29,715 | 13,06 | 1,560 |
| Other | 3,581 | (8,538) | 85 |
| Net loss (gain) from early extinguishment of debt | 48,311 | 6,269 | (4,266) |
| Straight-line rent adjustment | 5,741 | 5,139 | (3,248) |
| Taxable income | \$206,068 | \$ 231,155 | \$267,395 |

The net basis of the Operating Partnership's assets and liabilities for tax reporting purposes is approximately \$869,000,000 and \$818,000,000 lower than the amount reported for financial statement purposes at December 31, 2005 and 2004, respectively.

Note 11 - SUBSEQUENT EVENTS

On January 15, 2006, the Company entered into a strategic alliance with U.S. Realty Advisors, LLC ("US Realty"), a leading net-lease property advisor, pursuant to which the Company will acquire single-tenant assets. Pursuant to our agreement with US Realty, the Company is obligated to pay to US Realty a fee of 1.5% of the gross purchase price for properties acquired that were offered to us by US Realty upon the consummation of such purchase and an economic interest for additional services to be provided by US Realty equal to 25% of all cash flow and net capital proceeds after the Company receives a return of all its invested capital plus a 12% internal rate of return.

On January 18, 2006, the Company acquired an approximately 115,500 square foot office building in Bridgewater, New Jersey for a purchase price of \$21,150,000. The property is net leased to Biovail Pharmaceuticals, Inc., a company primarily engaged in the manufacture and sale of generic pharmaceutical products. The lease agreement has a current term scheduled to expire October 31, 2014 with two, five-year renewal terms. Net adjusted rent during the current term is \$1,397,000 per year through October 31, 2009 and then \$1,686,000 thereafter.

On January 26, 2006, the Operating Partnership acquired a 99,500 square foot 100% leased office building in Lisle, Illinois for a purchase price of \$15,250,000. Adjusted net rent for the property, commencing January 1, 2007, is projected to be approximately \$1,225,000 per year. The property is 86% leased to National Louis University with the balance of the space being leased to two tenants. The National Louis

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NEWKIRK REALTY TRUST, INC. AND

THE NEWKIRK MASTER LIMITED PARTNERSHIP

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

Note 11 - SUBSEQUENT EVENTS (Continued)

University lease has a primary term expiring December 31, 2018, with annual base rent during the primary term commencing at \$943,000 through December 31, 2006 (with a 50% rent concession through August 31, 2006), increasing by \$43,000 on each January 1 thereafter.

On February 10, 2006, the Company obtained a first mortgage loan from Greenwich Capital Financial Products, Inc., an unaffiliated third party, in the original principal amount of \$14,800,000 secured by the Company's property located in Bridgewater, New Jersey. The loan bears interest

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at 5.732%, requires monthly payments of interest only for the first 60 months and then requires monthly payments of principal and interest of \$86,000 and is scheduled to mature on March 6, 2016, at which time the outstanding principal balance is expected to be approximately \$13,730,000. The Company received net proceeds from this loan, after satisfying closing costs, of approximately \$14,600,000.

On February 13, 2006, the Company purchased a 10 year, BBB rated bond secured by net leased properties owned by Kindercare Real Estate LLC with a face value of \$11,700,000 and a projected unleveraged yield to maturity of 7%. The Company intends to finance this purchase through a securitized financing or other nonrecourse facility.

In June 2006, the Company committed to sell 50 retail properties (the "Albertson's Properties") to an unaffiliated third party for a gross purchase price of \$160,000,000. The sale was consummated on July 13, 2006. The Albertson's Properties were originally leased to Albertson's Inc., contain an aggregate of approximately 2,300,000 square feet and had lease terms expiring over the next 4.5 years. After closing costs, the Company received net proceeds of approximately \$159,000,000, approximately \$21,000,000 of which were used to pay down the note payable. The balance of the net proceeds were deposited with a Qualified Intermediary for use in 1031 tax free exchanges.

It is anticipated that the Company will recognize a gain for financial reporting purposes during the third quarter of 2006 as a result of this transaction of approximately \$62,000,000. The results of operations of the Albertson's Properties have been included in discontinued operations for all periods presented in accordance with SFAS 144.

In June 2006 The Kroger Company notified the Company it is exercising its option to purchase three properties pursuant to the terms of its lease. The properties will be sold at the end of the lease's primary term, December 2006, for a negotiated fair market value or appraised value. The results of operations of these properties have been included in discontinued operations for all periods presented in accordance with SFAS 144.

On July 23, 2006 the Company entered into a definitive Agreement and Plan of Merger with Lexington Corporate Properties Trust ("LXP"), a Maryland real estate investment trust, pursuant to which the Company will merge with and into LXP. If the merger (the "Merger") is consummated, each holder of common stock will be entitled to receive 0.80 common shares of LXP in exchange for each share of common stock. Upon effectiveness of the Merger, the name of the surviving entity will be changed to Lexington Realty Trust (the "Surviving Entity").

Note 12 - SUMMARY OF QUARTERLY RESULTS (UNAUDITED)

The following summary represents the consolidated quarterly financial data for the years ended 2005 and 2004:

(In thousands, except per share amounts)

| | The Predecessor | | | The Company | |
|--------------------------------|-----------------|---------------|--------------------|--|--|
| | Quarter Ended | Quarter Ended | Quarter Ended | Period | Period |
| | March 31, 2005 | June 30, 2005 | September 30, 2005 | October 1, 2005 to November 6, 2005 | November 7, 2005 to December 31, 2005 |
| Revenues | \$52,682 | \$ 51,814 | \$52,072 | \$20,884 | \$31,739 |
| Net income (loss) | \$27,131(1) | \$(1,272)(2) | \$ 7,160(3) | \$10,152(4) | \$ 1,349 (5) |
| Net income per Common Share | N/A | N/A | N/A | N/A | \$.07 |

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Note 12 SUMMARY OF QUARTERLY RESULTS (UNAUDITED) (Continued)

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| The Predecessor | | | | |
|--------------------------------|----------------|---------------|--------------------|-------------------|
| | Quarter Ended | Quarter Ended | Quarter Ended | Quarter Ended |
| | March 31, 2004 | June 30, 2004 | September 30, 2004 | December 31, 2004 |
| Revenues | \$53,667 | \$53,093 | \$52,592 | \$52,327 |
| Net income (loss) | \$37,844(6) | \$19,355 (7) | \$53,886 (8) | \$26,723(9) |
| Net income per Common Share | N/A | N/A | N/A | N/A |

- (1) Includes gain from disposal of real estate of \$600,000.
- (2) Includes loss from early extinguishment of debt of \$100,000.
- (3) Includes gain from disposal of real estate of \$15,500,000 and a loss from early extinguishment of debt of \$29,100,000.
- (4) Includes loss from disposal of real estate of \$100,000 and a gain from early extinguishment of debt of \$400,000.
- (5) Includes gain from disposal of real estate of \$500,000.
- (6) Includes gain from disposal of real estate of \$7,700,000.
- (7) Includes gain from disposal of real estate of \$1,800,000 and an impairment loss of \$9,700,000.
- (8) Includes gain from disposal of real estate of \$38,900,000, an impairment loss of \$3,400,000 and a net loss from early extinguishment of debt of \$6,700,000.
- (9) Includes gain from disposal of real estate of \$1,000,000.

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NEWKIRK REALTY TRUST, INC.

CONSOLIDATED BALANCE SHEETS

(In thousands, except share and per-share data)

| | June 30, | |
|---|--------------------|---------------------|
| | 2006 | December 31, |
| | (Unaudited) | 2005 |
| ASSETS | | |
| Real estate investments: | | |
| Land | \$ 52,194 | \$ 36,593 |
| Land estates | 45,902 | 43,997 |
| Buildings and improvements | 1,435,406 | 1,407,602 |
| Total real estate investments | 1,533,502 | 1,488,192 |
| Less accumulated depreciation and amortization | (520,585) | (544,200) |
| Real estate investments, net | 1,012,917 | 943,992 |
| Real estate held for sale, net of accumulated depreciation of \$99,018 and \$44,522 | 135,329 | 41,685 |
| Cash and cash equivalents | 48,605 | 174,816 |
| Restricted cash | 15,444 | 25,233 |

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| | | |
|--|---------------------|---------------------|
| Real estate securities available for sale | 10,045 | 5,194 |
| Receivables (including \$1,024 and \$6,078 from related parties) | 51,577 | 58,727 |
| Deferred rental income receivable | 22,463 | 21,246 |
| Loans receivable | 14,974 | 16,058 |
| Equity investments in limited partnerships | 8,636 | 13,846 |
| Equity investment in joint venture | 33,952 | - |
| Deferred costs, net of accumulated amortization of \$21,471 and \$17,677 | 11,826 | 8,771 |
| Lease intangibles, net | 19,895 | 7,657 |
| Other assets (including \$1,418 and \$1,304 from related parties) | 31,612 | 27,314 |
| Other assets of discontinued operations | 10,779 | 545 |
| Total Assets | \$ 1,428,054 | \$ 1,345,084 |

LIABILITIES, MINORITY INTEREST AND STOCKHOLDERS' EQUITY

| | | |
|---|---------------------|---------------------|
| Liabilities: | | |
| Mortgage notes payable (including \$15,880 and \$15,536 to a related party) | \$ 232,868 | \$ 166,195 |
| Note payable | 557,065 | 593,463 |
| Contract right mortgage notes payable | 11,667 | 11,128 |
| Accrued interest payable (including \$386 and \$378 to a related party) | 5,518 | 7,514 |
| Accounts payable and accrued expenses | 4,922 | 4,763 |
| Below market lease intangibles, net | 13,434 | 893 |
| Dividend payable | 7,750 | 5,231 |
| Other liabilities | 7,298 | 4,834 |
| Liabilities of discontinued operations | 58,424 | 40,491 |
| Total Liabilities | 898,946 | 834,512 |
| Commitments and contingencies | | |
| Minority interests | 351,954 | 334,531 |
| Stockholders' equity: | | |
| Preferred stock; \$.01 par value; 100,000,000 shares authorized; | | |
| 1 issued and outstanding | - | - |
| Common stock; \$.01 par value; 400,000,000 shares authorized; | | |
| 19,375,000 issued and outstanding | 194 | 194 |
| Additional paid-in capital | 179,871 | 179,871 |
| Accumulated dividends in excess of net income | (4,756) | (3,882) |
| Accumulated other comprehensive income (loss) | 1,845 | (142) |
| Total Stockholders' Equity | 177,154 | 176,041 |
| Total Liabilities, Minority Interests and Stockholders' Equity | \$ 1,428,054 | \$ 1,345,084 |

See Notes to Consolidated Financial Statements

Annex F-77

NEWKIRK REALTY TRUST, INC. (THE "COMPANY")

AND THE NEWKIRK MASTER LIMITED PARTNERSHIP (THE "PREDECESSOR")

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CONSOLIDATED STATEMENTS OF OPERATIONS AND COMPREHENSIVE INCOME

(Unaudited)

(In thousands, except per share data)

| | THE COMPANY Three Months Ended | THE PREDECESSOR Three Months Ended | THE COMPANY Six Months Ended | THE PREDECESSOR Six Months Ended |
|--|-----------------------------------|---------------------------------------|---------------------------------|-------------------------------------|
| | June 30, 2006 | June 30, 2005 | June 30, 2005 | June 30, 2005 |
| Revenue: | | | | |
| Rental income | \$55,458 | \$51,055 | \$ 108,926 | \$ 102,960 |
| Interest income | 2,868 | 767 | 7,071 | 1,551 |
| Management fees | 60 | 78 | 124 | 159 |
| Total revenue | 58,386 | 51,900 | 116,121 | 104,670 |
| Expenses: | | | | |
| Interest | 13,330 | 17,571 | 26,019 | 34,767 |
| Depreciation | 11,445 | 7,404 | 22,572 | 14,849 |
| Compensation expense for exclusivity rights | 833 | - | 1,667 | - |
| General and administrative | 2,489 | 986 | 5,018 | 1,830 |
| Operating | 1,652 | 236 | 2,984 | 223 |
| Impairment loss | - | 14,754 | - | 16,954 |
| Amortization | 1,545 | 655 | 2,804 | 1,313 |
| Ground rent | 577 | 528 | 1,166 | 1,043 |
| State and local taxes | 339 | 807 | 1,181 | 1,077 |
| Minority interest expense of partially-owned entities | 5,346 | - | 10,692 | - |
| Total expenses | 37,556 | 42,941 | 74,103 | 72,056 |
| Income from continuing operations before other income (expense) | 20,830 | 8,959 | 42,018 | 32,615 |
| Other income (expense): | | | | |
| Equity in income from investments in limited partnerships and joint ventures | 1,245 | 766 | 1,709 | 1,521 |
| Gain on sale of securities | 109 | - | 88 | - |
| Minority interest | (16,007) | (4,660) | (31,639) | (9,312) |
| Income from continuing operations | 6,177 | 5,065 | 12,176 | 24,824 |
| Discontinued operations: | | | | |
| Income before minority interest | 4,468 | 5,866 | 8,454 | 12,637 |
| Gain from disposal of real estate | - | - | - | 601 |
| Impairment loss | - | (12,211) | - | (12,211) |
| Minority interest | (3,159) | 7 | (6,004) | 8 |
| Income (loss) from discontinued operations | 1,309 | (6,337) | 2,450 | 1,035 |
| Net income (loss) | \$7,486 | \$(1,272) | \$14,626 | \$ 25,859 |
| Comprehensive income: | | | | |
| Net income (loss) | \$7,486 | \$(1,272) | \$14,626 | \$ 25,859 |
| Unrealized loss on real estate securities available for sale | (455) | - | (96) | - |
| Unrealized gain on interest rate derivative | 2,917 | - | 6,700 | - |
| Minority interest in other comprehensive income | (1,696) | - | (4,617) | - |
| Comprehensive income (loss) | \$8,252 | \$(1,272) | \$16,613 | \$ 25,859 |
| Per share data: | | | | |
| Income from continuing operations | \$0.32 | | \$0.63 | |
| Income from discontinued operations | 0.07 | | 0.13 | |
| Net income applicable to Common Stock | \$0.39 | | \$0.76 | |
| Weighted average Common Stock | 19,375 | | 19,375 | |

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CONSOLIDATED STATEMENT OF STOCKHOLDERS' EQUITY

FOR THE SIX MONTHS ENDED JUNE 30, 2006

(Unaudited)

(In thousands)

| | Preferred Stock Shares | Preferred Stock Amount | Common Stock Shares | Common Stock Amount | Additional Paid-in Capital | Accumulated Dividends of Excess of Net Income | Accumulated Other Comprehensive Income (Loss) | Total |
|--|---------------------------|---------------------------|------------------------|------------------------|-------------------------------|---|---|------------|
| Balance December 31, 2005 - | | \$ - | \$ 19,375 | \$ 194 | \$ 179,871 | \$ (3,882) | \$ (142) | \$ 176,041 |
| Net Income | - | - | - | - | - | 14,626 | - | 14,626 |
| Dividends paid or accrued on Common Stock | - | - | - | - | - | (15,500) | - | (15,500) |
| Other comprehensive income | - | - | - | - | - | - | 1,987 | 1,987 |
| Balance as of June 30, 2006 - | | \$ - | \$ 19,375 | \$ 194 | \$ 179,871 | \$ (4,756) | \$ 1,845 | \$ 177,154 |

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NEWKIRK REALTY TRUST, INC. (THE COMPANY)

AND THE NEWKIRK MASTER LIMITED PARTNERSHIP (THE PREDECESSOR)

CONSOLIDATED STATEMENTS OF CASH FLOWS

(Unaudited)

(In thousands, except supplemental data)

| | THE COMPANY Six Months Ended June 30, 2006 | THE PREDECESSOR Six Months Ended June 30, 2005 |
|--|--|--|
| <u>CASH FLOWS FROM OPERATING ACTIVITIES:</u> | | |
| Net income | \$14,626 | \$25,859 |
| Adjustments to reconcile net income to net cash provided by operating activities: | | |
| Amortization of deferred costs, land estates and in-place lease intangibles | 3,879 | 3,829 |
| Amortization of loan discounts | (10) | |
| Depreciation expense | 23,395 | 18,100 |
| Gain from disposal of real estate securities available for sale | (88) | |
| Gain from disposal of real estate | | (601) |
| Net loss from early extinguishment of debt | | 101 |
| Compensation expense for exclusivity rights | 1,667 | |

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| | | |
|--|---------|----------|
| Impairment loss | | 29,165 |
| Minority interest expense | 37,643 | 9,304 |
| Straight-lining of rental income | 3,030 | 2,619 |
| Interest earned on restricted cash | (335) | (39) |
| Equity in undistributed earnings of limited partnerships | | |
| and joint venture | (1,500) | (1,314) |
| Changes in operating assets and liabilities: | | |
| Receivables | (7,427) | (1,042) |
| Loans receivable | 1,071 | 941 |
| Accounts payable and accrued expenses | 217 | (797) |
| Accrued interest- mortgages and contract rights | (946) | (11,482) |
| Other assets | (4,170) | 324 |
| Other liabilities | 10,692 | |
| Net cash provided by operating activities | 81,744 | 74,967 |

CASH FLOWS FROM INVESTING ACTIVITIES:

| | | |
|---|-----------|---------|
| Land and building additions and improvements | (127,268) | (144) |
| Change in restricted cash | 10,124 | (3,000) |
| Deposits for future real estate acquisitions | (2,630) | |
| Refund of deposits for real estate acquisitions | 4,699 | |
| Investments in debt securities | (53,616) | |
| Proceeds from disposal of real estate securities available for sale | 1,379 | |
| Proceeds from real estate available for sale | 5,891 | |
| Purchase of real estate securities available for sale | (5,980) | |
| Collection of loan receivable | 32 | |
| Loan origination costs | (21) | |
| Net proceeds from disposal of real estate | | 3,120 |
| Leasing costs incurred | (871) | |
| Cash related to previously unconsolidated limited partnerships | 419 | |
| Investments in limited partnerships | (1,061) | (45) |
| Investment in joint venture | (22,116) | |
| Return of capital from investment in joint venture | 10,874 | |
| Net cash used in investing activities | (180,145) | (69) |

CASH FLOWS FROM FINANCING ACTIVITIES:

| | | |
|---|----------|----------|
| Principal payments of mortgage notes | (25,355) | (49,709) |
| Principal payments of notes payable | (15,044) | (1,879) |
| Principal payments of contract right mortgage notes | | (469) |
| Proceeds from mortgage notes | 28,755 | |

Annex F-80

| | THE COMPANY Six Months Ended June 30, 2006 | THE PREDECESSOR Six Months Ended June 30, 2005 |
|---------------------------------------|--|--|
| Proceeds from line of credit | 32,025 | |
| Dividends paid to common stockholders | (12,981) | (24,846) |
| Limited partner buyouts | | (2,042) |
| Distributions to minority interests | (33,517) | (3,191) |
| Deferred financing costs | (1,693) | (8) |

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| | | |
|---|-----------|-----------|
| Net cash used in financing activities | (27,810) | (82,144) |
| Net decrease in cash and cash equivalents | (126,211) | (7,246) |
| Cash and Cash Equivalents at Beginning of Period | 174,816 | 21,317 |
| Cash and Cash Equivalents at End of Period | \$48,605 | \$ 14,071 |
| <u>Supplemental Disclosure of Cash Flow Information:</u> | | |
| Cash paid for state and local taxes | \$ 1,454 | \$ 1,298 |
| Cash paid for interest | \$28,555 | \$ 45,343 |
| Accrued dividends | \$ 7,750 | |

Supplemental Information - Non Cash Activities

On March 31, 2006, the Company contributed net assets with a carrying value of approximately \$22,000,000 to a joint venture. (See Note 4)

On May 5, 2006, the Company assumed a mortgage of \$14,900,000 in connection with the purchase of property located in Rockaway, New Jersey.

On June 1, 2006, the Operating Partnership issued approximately 40,240 units as consideration for the acquisition of limited partnership interests.

See Notes to Consolidated Financial Statements.

Annex F-81

Note 1 ORGANIZATION AND BUSINESS

Newkirk Realty Trust, Inc. (NKT) is a Maryland corporation that has elected to be taxed as a real estate investment trust or REIT . NKT was formed in July 2005 and completed its initial public offering (the IPO) on November 7, 2005. NKT was formed to acquire an ownership interest in, and become the general partner of, The Newkirk Master Limited Partnership (the Predecessor or the Operating Partnership). The Operating Partnership owns commercial properties, most of which are net leased to investment grade corporate tenants and owns other real estate assets as well.

NKT holds a controlling 30.1% ownership interest in the Operating Partnership. All of NKT 's assets are held through the Operating Partnership and its subsidiaries. All references to the Company refer to NKT and its consolidated subsidiaries, including the Operating Partnership.

Note 2 SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Basis of Presentation

The accompanying unaudited consolidated interim financial statements have been prepared in accordance with accounting principles generally accepted in the United States (GAAP) for interim financial statements and with the instructions to Form 10-Q and Rule 10-01 of Regulation S-X. Accordingly, they do not include all of the information and footnotes required by GAAP for complete financial statements, although management believes that the disclosures presented herein are adequate to make the accompanying unaudited consolidated interim financial statements presented not misleading. The accompanying unaudited consolidated interim financial statements should be read in conjunction with the audited consolidated annual financial statements and the related Management 's Discussion and Analysis of Financial Condition and Results of Operations included in the Company 's Annual Report on Form 10-K for the year ended December 31, 2005 filed with the Securities and Exchange Commission. In the opinion of management, all adjustments (which include normal recurring adjustments) considered necessary for a fair presentation have been included. The results of operations for the six months ended June 30, 2006 are not necessarily indicative of the operating results for the full year.

The accompanying unaudited consolidated financial statements present the consolidated financial position, results of operations and cash flows of the Company, its wholly-owned subsidiaries and certain partially-owned entities, in which the Company either (i) has a controlling interest, or (ii) is the primary beneficiary of a variable interest entity. All significant intercompany transactions such as receivables and payables have been

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eliminated in consolidation. Minority interests relate to the 69.9% interest in the Operating Partnership. The Company accounts for its investments in partnerships and joint ventures in which it does not have a controlling interest using the equity method of accounting. Equity investments are recorded initially at cost and subsequently adjusted for the Company's share of the net income or loss and cash contributions to and distributions from these partnerships and joint ventures.

Use of Estimates

The preparation of financial statements in conformity with GAAP requires management to make estimates and assumptions in determining the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the consolidated interim financial statements and the reported amounts of revenue and expenses during the reporting period. Some of the critical estimates made by the Company include, but are not limited to, estimates of useful lives for long-lived assets, reserves for collection on accounts and loans receivable and provisions for impairment of real estate. As a result of the nature of estimates made by the Company, actual results could differ.

Annex F-82

Note 2 SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)

Reclassifications

Certain prior year amounts have been reclassified to conform to the 2006 presentation due to the reporting of discontinued operations for those assets that have been disposed of or classified as held for sale in accordance with SFAS No. 144.

Recently Issued Accounting Standards and Pronouncements

In June 2005, the Financial Accounting Standards Board (FASB) ratified the consensus reached by the Emerging Issues Task Force (EITF) on Issue No. 04-05, Determining Whether a General Partner, or General Partners as a Group, Controls a Limited Partnership or Similar Entity When the Limited Partners Have Certain Rights (EITF 04-05). EITF 04-05 provides a framework for determining whether a general partner controls, and should consolidate, a limited partnership or a similar entity. EITF 04-05 became effective on June 29, 2005, for all newly formed or modified limited partnership arrangements and January 1, 2006 for all existing limited partnership arrangements. The adoption of this standard resulted in the consolidation of one previously unconsolidated partnership.

The impact of the adoption on the January 1, 2006 balance sheet was as follows (in thousands):

| | Pre-Consolidation | Consolidated |
|--|-------------------|--------------|
| Assets: | | |
| Cash | \$ - | \$ 177 |
| Land | - | 1,028 |
| Building, net | - | 18,663 |
| Equity investment in limited partnership | 6,538 | - |
| Deferred costs, net | - | 334 |
| | \$6,538 | \$20,202 |
| Liabilities: | | |
| Mortgage loan | \$ - | \$13,664 |

There have been no new accounting standards or interpretations that have been issued that the Company has not yet adopted and that the Company believes will have a material impact on the consolidated financial statements upon adoption.

Note 3 REAL ESTATE ACQUISITIONS, DISPOSITIONS, FINANCINGS AND SIGNIFICANT LEASING ACTIVITIES

Acquisitions

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On January 18, 2006, the Company acquired an approximately 116,000 square foot office building in Bridgewater, New Jersey for a purchase price of approximately \$21,150,000. The property is net leased to Biovail Pharmaceuticals, Inc., a company primarily engaged in the manufacture and sale of generic pharmaceutical products. The lease agreement has a current term scheduled to expire October 31, 2014 with two, five-year renewal terms. Net rent during the current term is \$1,397,000 per year through October 31, 2009 and \$1,686,000 thereafter.

Annex F-83

Note 3 REAL ESTATE ACQUISITIONS, DISPOSITIONS, FINANCINGS AND SIGNIFICANT LEASING ACTIVITIES (Continued) *Acquisitions (Continued)*

On January 26, 2006, the Company acquired an approximately 99,000 square foot 100% leased office building in Lisle, Illinois for a purchase price of approximately \$15,250,000. Net rent for the property, commencing January 1, 2007 is projected to be approximately \$1,225,000 per year. The property is 86%

leased to National Louis University with the balance being leased to two tenants. The National Louis University lease has a primary term expiring December 31, 2019 with annual base rent during the primary term commencing at \$943,000 through December 31, 2006 (with a 50% rent concession through August 31, 2006), increasing by approximately \$43,000 on each January 1 thereafter.

On March 7, 2006, the Company acquired two warehouse/distribution centers comprising 240,000 square feet for a purchase price of approximately \$10,550,000. The properties are currently leased on a long-term basis to subsidiaries of Jacobson Companies, a leading third party warehousing company. One lease has a primary term expiring December 31, 2015 with annual base rent during the primary term of \$450,000. The other lease has a primary term expiring December 31, 2014 with an annual base rent of approximately \$331,000 through December 31, 2008 increasing to approximately \$404,000 through December 31, 2014.

On March 29, 2006, the Company acquired a 639,000 square foot property located in Statesville, North Carolina for a purchase price of \$20,500,000. The property, which serves as a distribution facility, is currently leased to La-Z-Boy Greensboro Inc. and guaranteed by La-Z-Boy Incorporated. The lease has a primary term expiring April 30, 2010 with annual base rent during the primary term of approximately \$1,649,000.

On April 26, 2006, the Company acquired a 226,000 square foot office building located in Rochester, New York for a purchase price of \$26,400,000. The property is currently leased through 2014 to The Frontier Corporation, a communications company. The annual net rent payable at the property is \$2,567,000 through December 31, 2007, increasing to \$2,624,000 per annum through 2014. Upon expiration of the current lease term, the tenant has two, five-year renewal options each at an annual rental rate equal to the greater of market value or the then current rent amount.

On May 5, 2006, the Company acquired an approximately 96,000 square foot office building in Rockaway, New Jersey for a purchase price of approximately \$22,000,000. The Company partially satisfied the purchase price by assuming the existing mortgage loan of \$14,900,000. The property is leased to BASF Corporation, the North American affiliate of BASF AG. The lease agreement has a current term scheduled to expire September 30, 2014 with the tenant's option to enter into either two, five-year renewal terms or one, ten-year renewal term, in all cases at fair market rent. Net rent during the current term is \$1,489,000.

On May 26, 2006, the Operating Partnership concluded tender offers, pursuant to which additional limited partnership units in five partially-owned partnerships were acquired, two of which were consolidated entities. The purchase price of these interests aggregated \$1,681,000, \$986,000 of which was paid in cash, and the remainder of which was paid through the issuance of 40,239.58 Operating Partnership units. The Operating Partnership's ownership in these partnerships ranges between 24.50% and 85.38%. As a result of the tender offer, an additional partnership's results of operations are now consolidated with the Company.

Annex F-84

Note 3 REAL ESTATE ACQUISITIONS, DISPOSITIONS, FINANCINGS AND SIGNIFICANT LEASING ACTIVITIES (Continued)

On June 1, 2006, the Operating Partnership also acquired an additional minority interest in a consolidated entity for \$68,000 and an additional limited partner interest in an unconsolidated entity for \$8,000. The Operating Partnership's ownership in these partnerships is 63.19% and 23.98%, respectively.

On June 30, 2006, the Company acquired a 458,000 square foot office building and distribution center in Glenwillow, Ohio for a purchase price of \$23,300,000. The property is currently leased to Royal Appliance, a home cleaning products company. The lease agreement has a current term scheduled to expire.

July 31, 2015 with two, five-year renewal terms. Net rent during the current term is \$1,738,000 through July 31, 2007, \$1,944,000 through July 31, 2012, and \$2,040,000 through the end of the current term. Renewal term option rents are 95% of fair market value. Pursuant to the terms of the lease agreement, if requested by the tenant, the Company has an obligation to build up to a 160,000 square foot expansion property. The costs that would be incurred in connection with such expansion would be recouped through rent increases.

The Company has entered into a contract to acquire a parcel of land in Baltimore, Maryland adjacent to its existing property leased to Legg Mason, for \$1,800,000 on which it expects to construct a parking garage. The Company's inspection period currently expires on August 17, 2006.

Dispositions

On March 14, 2006, the Company entered into an agreement to sell its Toledo, Ohio property currently leased to Owens-Illinois for a purchase price of \$33,000,000, \$1,000,000 in cash plus assumption of the \$32,000,000 of outstanding debt encumbering the property at September 29, 2006, the closing date. The purchaser, RVI Group, is the residual value insurer with respect to the property. Owens-Illinois had advised the Company that it would be vacating the property at the expiration of its lease term, September 30, 2006.

On April 3, 2006, the Company entered into a letter of intent to sell 50 of its retail properties that are leased to Albertson's Inc. to an unaffiliated third party for a gross purchase price of \$160,000,000. The sale was subject to a number of conditions including buyer's due diligence review of the properties and the consummation by buyers of their acquisition of certain assets of Albertson's Inc. The transaction was consummated on July 13, 2006. See Note 11 Subsequent Events.

In June 2006, the Company received notice from The Kroger Company exercising their option to purchase three properties. Two properties are located in Louisville, Kentucky and one property is located in Columbus, Ohio. The properties will be purchased at the end of the primary term of the leases in December 2006 for a negotiated fair market value or appraised value.

Financings

On February 10, 2006, the Company obtained a first mortgage loan from an unaffiliated third party, in the principal amount of \$14,800,000 secured by the Company's property located in Bridgewater, New Jersey. The loan bears interest at 5.732%, requires monthly payments of interest only for the first 60 months and then requires monthly payments of principal and interest of \$86,000 and is scheduled to mature on March 6, 2016, at which time the outstanding principal balance is expected to be approximately \$13,730,000. The Company received net proceeds from this loan, after satisfying closing costs, of approximately \$14,600,000.

Annex F-85

Note 3 REAL ESTATE ACQUISITIONS, DISPOSITIONS, FINANCINGS AND SIGNIFICANT LEASING ACTIVITIES (Continued)

On March 6, 2006, NK-Marc CAA LLC, a joint venture which is consolidated by the Company, obtained a \$3,500,000 loan from an unaffiliated third party. The loan bears interest at 6.5%, requires monthly payments of principal and interest of approximately \$24,000 for 60 months and is scheduled to mature on March 1, 2011. The loan is secured by a first mortgage loan receivable owned by NK-Marc CAA LLC.

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On May 5, 2006, the Company obtained a \$10,450,000 loan from an unaffiliated third party lender, which is secured by the Company's property located at 850-950 Warrenville Road, Lisle, Illinois. The loan bears interest at 6.5%, requires monthly payments of interest only during the first two years of the loan term and thereafter principal (based on a 30-year amortization schedule) and interest for the balance of the term. The loan is scheduled to mature on June 1, 2016, at which time the outstanding principal balance is expected to be approximately \$9,463,000.

Significant Leasing Activities

During the first quarter, the Operating Partnership executed a ten-year lease extension with Raytheon Company commencing on January 1, 2009 for approximately 345,000 square feet of office space and 63% of the parking structure relating thereto located in El Segundo, California. In connection with the lease extension, the tenant is obligated to pay annual rent of \$4,921,000 from January 2009 through December 2013, increasing to \$5,267,000 for the period from January 2014 to December 2018. The property owner, which is 53% owned by the Operating Partnership, is required to provide the tenant with \$21,500,000 in tenant improvement allowances and rent concessions over the next 40 months. The tenant improvement allowance is a lease incentive and is being amortized into rental income over the life of the lease. Raytheon Company retained its renewal option for the remaining 37% of the space pursuant to its original lease.

Note 4 INVESTMENT IN JOINT VENTURE

On March 31, 2006, the Company and WRT Realty L.P. (Winthrop), entered into a joint venture agreement to acquire and originate loans secured, directly and indirectly, by real estate assets through 111 Debt Holdings, LLC (111 Debt Holdings). Winthrop is a wholly-owned subsidiary of Winthrop Realty Trust (NYSE: FUR) which owns a 6.8% interest in the Company and is managed by an affiliate of NKT Advisors, LLC (NKT Advisors), the Company's external advisor. The Company and Winthrop each own 50% of the joint venture and have committed to invest up to \$50,000,000 each in the joint venture. Prior to the admission of Winthrop, 111 Debt Holdings was a wholly owned subsidiary of the Company, which, through its wholly owned subsidiary, 111 Debt Acquisition, LLC, owned loan assets which had been acquired in anticipation of the formation of the joint venture.

Upon Winthrop's admission to 111 Debt Holdings, Winthrop paid the Company approximately \$10,900,000, which represented 50% of the cost of the acquired assets plus the interest accrued thereon, less the debt encumbering such assets.

On March 30, 2006, 111 Debt Acquisition LLC and its wholly-owned subsidiary, 111 Debt Acquisition Mezz LLC, entered into a \$300,000,000 repurchase agreement with Column Financial Inc. pursuant to which they expect to leverage up to 75% of the assets held. 111 Debt Acquisition LLC had a balance outstanding under the Column Financial, Inc. repurchase agreement of \$36,979,000 at June 30, 2006. On May 24, 2006, 111 Debt Acquisition - Two, LLC, a wholly owned subsidiary of 111 Debt Holdings, entered into a second repurchase agreement with Bear Stearns International Limited (Bear Stearns) enabling the joint venture to obtain an additional \$200,000,000 in leverage. 111 Debt Acquisition - Two, LLC had a balance outstanding under the Bear Stearns repurchase agreement of \$42,588,000 at June 30, 2006. Accordingly, it is presently contemplated that the joint venture will acquire and originate up to an aggregate of approximately

Annex F-86

Note 4 INVESTMENT IN JOINT VENTURE (Continued)

\$600,000,000 in loan obligations secured directly or indirectly by real estate assets. Upon acquisition and origination of a sufficient level of loan obligations, the joint venture may form one or more collateral debt obligation pools.

The joint venture is governed by an investment committee which consists of two members appointed by each of the Company and Winthrop with one additional member being appointed by the common

management of the Company and Winthrop. All decisions requiring the consent of the investment committee require the affirmative vote by three of the four members appointed by the Company and Winthrop. Pursuant to the terms of the joint venture agreement of 111 Debt Holdings, all material actions to be taken by 111 Debt Holdings, including investments in excess of \$20,000,000, requires the consent of the investment committee of 111 Debt Holdings, provided, however, the consent of both the Company and Winthrop is required for the merger or consolidation of 111 Debt Holdings, the admission of additional members, the taking of any action that, if taken directly by the Company or Winthrop, would require consent of Winthrop's Conflicts Committee or the Company's independent directors, the entering into of any agreement with FUR Advisors LLC or the amendment of the joint venture agreement.

The Company accounts for this investment using the equity method.

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The investment in joint venture consists of the following (in thousands):

| | |
|--------------------------------------|------------|
| Balance, beginning of year | \$ - |
| Investment in joint venture | 44,077 |
| Return of capital from joint venture | (10,874) |
| Equity in income of joint venture | <u>749</u> |
| Balance, June 30, 2006 | \$ 33,952 |

The condensed balance sheet of the joint venture was as follows (in thousands):

| | |
|--|----------------------|
| | <u>June 30, 2006</u> |
| Cash and restricted cash | \$ 4,027 |
| Investment in debt securities and interest | 142,279 |
| receivable | |
| Other assets | 1,475 |
| Total assets | \$147,781 |
| Accounts payable and other liabilities | \$ 505 |
| Line of credit payable | 79,567 |
| Members' equity | 67,709 |
| Total liabilities and members' equity | \$147,781 |
| On the Company's Consolidated Balance | |
| Sheet: | |
| Equity investment in joint venture | \$ 33,952 |

Annex F-87

Note 4 INVESTMENT IN JOINT VENTURE (Continued)

The condensed statement of operations of the joint venture from inception to June 30, 2006 was as follows (in thousands):

| | |
|----------------------------|----------|
| Revenue | \$2,441 |
| Interest expense | (624) |
| General and administrative | (318) |
| Net income | \$ 1,499 |

On the Company's Consolidated Statement of

Operations and Comprehensive Income:

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Equity in income from investments in limited partnerships and joint ventures \$ 749

partnerships and joint ventures

The joint venture commenced operations on March 31, 2006.

Note 5 EQUITY INVESTMENTS IN LIMITED PARTNERSHIPS

The equity investments in limited partnerships consist of the following (in thousands):

| | |
|--|-----------|
| Balance, beginning of year | \$ 13,846 |
| Equity in income of limited partnerships | 959 |
| Distributions from limited partnerships | (209) |
| Investment in limited partnerships | 724 |
| Consolidation of previously unconsolidated | (6,684) |

limited partnership

Balance, June 30, 2006 \$ 8,636

The Company has paid a premium for its allocable share of the underlying limited partnerships which resulted in an excess of the carrying amounts of the Company's investment over the underlying net assets of these limited partnerships of approximately \$4,900,000 and \$5,100,000 as of June 30, 2006 and December 31, 2005, substantially all of which relates to the difference between the fair values at the date of acquisition of the Company's underlying properties and historical carrying amounts. Such premium is being amortized as an adjustment to the Company's equity in earnings of the limited partnerships over the useful lives of the underlying properties. The amortization expense amounted to \$52,000 and \$64,000 for the six months ended June 30, 2006 and 2005 and \$29,000 and \$32,000 for the three months ended June 30, 2006 and 2005, respectively.

Annex F-88

Note 5 EQUITY INVESTMENTS IN LIMITED PARTNERSHIPS (Continued)

The limited partnerships' condensed combined statements of operations for the three and six months ended June 30, 2006 and 2005 and condensed combined balance sheets as of June 30, 2006 and December 31, 2005 are as follows (in thousands):

Condensed Combined Statements of Operations:

| | <u>Three Months Ended</u> | | <u>Six Months Ended</u> | |
|------------------------------------|--------------------------------|-------------|--------------------------------|-------------|
| | <u>June 30,</u> <u>2006</u> | <u>2005</u> | <u>June 30,</u> <u>2006</u> | <u>2005</u> |
| Rental revenue and interest income | \$ 5,533 | \$ 6,995 | \$ 10,743 | \$ 13,640 |
| Interest expense | (1,930) | (2,530) | (3,894) | (5,106) |
| Administrative expenses | (362) | (371) | (374) | (380) |
| Depreciation expense | (725) | (872) | (1,448) | (1,744) |
| Amortization expense | (66) | (131) | (132) | (263) |
| Net income | \$ 2,450 | \$ 3,091 | \$ 4,895 | \$ 6,147 |

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On the Company's Consolidated Statements of Operations
and Comprehensive Income:

| | | | | |
|--------------------------------------|--------|--------|--------|----------|
| Equity in income from investments in | \$ 496 | \$ 766 | \$ 960 | \$ 1,521 |
|--------------------------------------|--------|--------|--------|----------|

limited partnerships and joint venture
Condensed Combined Balance Sheets:

| | <u>June 30, 2006</u> | <u>December 31, 2005</u> |
|---|----------------------|--------------------------|
| Cash | \$ 1,290 | \$ 1,744 |
| Real estate, net | 64,749 | 81,043 |
| Other assets | 2,386 | 2,928 |
| Total assets | \$ 68,425 | \$ 85,715 |
| Accounts payable and other liabilities | \$ 1,097 | \$ 1,436 |
| Mortgages payable | 76,055 | 96,238 |
| Partners' deficit | (8,727) | (11,959) |
| Total liabilities and partners' deficit | \$ 68,425 | \$ 85,715 |
| On the Company's Consolidated Balance Sheet: | | |
| Equity investments in limited partnerships | \$ 8,636 | \$ 13,846 |

Annex F-89

Note 6 VARIABLE INTEREST ENTITIES

FASB issued FASB Interpretation No. 46R, Consolidation of Variable Interest Entities (FIN 46), which requires a variable interest entity (VIE) to be consolidated by its primary beneficiary. The primary beneficiary is the party that absorbs a majority of the VIE's anticipated losses and/or a majority of the expected returns. The Company evaluates its loans and investments to determine whether they are variable interests in a VIE. This evaluation resulted in the Company determining that its loans and joint venture interests were potential variable interests. For each of these investments, the Company has evaluated (1) the sufficiency of the fair value of the entities' equity investments at risk to absorb losses, (2) that as a group the holders of the equity investments at risk have (a) the direct or indirect ability through voting rights to make decisions about the entities' significant activities, (b) the obligation to absorb the expected losses of the entity and their obligations are not protected directly or indirectly and, (c) the right to receive the expected residual return of the entity and their rights are not capped and, (3) the voting rights of these investors are not proportional to their obligations to absorb the expected losses of the entity, their rights to receive the expected returns of the entity, or both, and that substantially all of the entities' activities do not involve or are not conducted on behalf of an investor that has disproportionately few voting rights.

During the quarter ended March 31, 2006, the Company identified one loan which was made to a VIE, Camfex Associates Limited Partnership (Camfex). The Operating Partnership has loaned approximately \$5,900,000 to Camfex as of June 30, 2006. The Company did not consider Camfex to be a VIE prior to 2006 as the projected amount at risk was expected to be covered by a priority provision under the loan agreement. Due to Camfex undertaking additional activities that will require additional subordinate investment by the Company, the Company has reconsidered whether Camfex is a VIE and has determined Camfex to be a VIE. The Company further determined that it is the primary beneficiary of the VIE and, as such, the VIE is consolidated in the Company's consolidated financial statements. Camfex owns two multi-tenanted office buildings in California, with a carrying value of approximately \$31,000,000 at June 30, 2006. Camfex has additional mortgage debt of approximately \$28,500,000 as of June 30, 2006. The lenders of the additional mortgage debt hold no recourse to other Company assets. The Company has determined that its other loans and investments are not VIEs. As such, the Company has continued to account for these loans and investments as a loan or equity investment, as appropriate.

Note 7 MORTGAGE NOTES PAYABLE, NOTE PAYABLE AND CONTRACT RIGHT MORTGAGE NOTE PAYABLE

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Mortgage Notes Payable

The Company, excluding discontinued operations, had outstanding mortgage notes payable with an aggregate principal balance of \$232,868,000 and \$166,195,000 at June 30, 2006 and December 31, 2005, respectively. The mortgage notes are at fixed interest rates with payments of principal and interest generally due either monthly or semi-annually. All the mortgage notes are collateralized by the Company's real estate; some of the mortgage notes are cross-collateralized.

The mortgage notes mature at various dates from 2006 to 2024. Prepayment of most of the mortgage notes is permitted only with a yield maintenance payment or prepayment penalty as defined in the mortgage note agreements. Interest rates on the mortgages ranged from 3.89% to 10.25%, with a weighted average interest rate of 6.06% at June 30, 2006. Interest rates on the mortgages ranged from 5.0% to 9.9% with a weighted average interest rate of 6.1% at December 31, 2005.

Annex F-90

Note 7 MORTGAGE NOTES PAYABLE, NOTE PAYABLE AND CONTRACT RIGHT MORTGAGE NOTE PAYABLE (Continued) *Note Payable*

In August 2005, the Operating Partnership refinanced its then existing loan with Bank of America with a loan from KeyBank National Association and Bank of America, N.A. The loan had an outstanding principal balance from continuing operations of \$557,065,000 and \$593,463,000 at June 30, 2006 and December 31, 2005, respectively, and bears interest at the election of the Company at a rate equal to either (i) the LIBOR Rate plus 175 basis points or (ii) the prime rate then charged by KeyBank National Association plus 50 basis points. The loan is scheduled to mature on August 11, 2008, subject to two, one-year extensions and will require monthly payments of interest only. In addition, the loan requires quarterly principal payments of \$1,875,000 during the term of the loan, increasing to \$2,500,000 per quarter during the extension periods. The Company is also required to make principal payments from the proceeds of property sales, refinancings and other asset sales if proceeds are not reinvested into net leased properties. The required principal payments are based on a minimum release price set forth in the loan agreement for property sales and 100% of proceeds from refinancings, economic discontinuance, insurance settlements and condemnations. The loan is secured by a lien on the Company's assets and the assets of the Company's subsidiaries, with certain exceptions such as direct liens on most of the real estate owned by the Company or the Company's subsidiaries. The Company can prepay the loan in whole or in part at any time together with a premium of 1% if such prepayment occurs on or before August 11, 2006 and thereafter with no premium. The loan contains customary financial and other covenants.

The Company entered into the following agreements in order to limit the exposure to interest rate volatility: (i) a five year interest rate swap agreement with KeyBank National Association effectively setting the LIBOR rate at 4.642% for \$250,000,000 of the loan balance; (ii) a LIBOR rate cap agreement at 5% with Bank of America, N.A. for \$295,000,000 through November 2006; and (iii) a LIBOR rate cap agreement at 6% with SMBC Derivative Products Limited for the period from November 2006 until August 2008 for a notional amount of \$290,000,000.

Revolving Credit Line

On April 7, 2006, the Company entered into an unsecured revolving credit agreement with KeyBank National Association providing for borrowings of up to \$50,000,000, subject to increase up to \$100,000,000. The revolving credit facility matures April 7, 2009 with the option on the part of the Company to extend the term for an additional year. Amounts borrowed under the revolving credit line bear interest at rates based on the Company's leverage ratio ranging from LIBOR plus 1.35% to LIBOR plus 2.00%. In addition, the Company is required to pay a 12.5 or 25 basis point fee on the unused portion of the line, depending on the amount borrowed.

The revolving credit line requires monthly payments of interest only. The Company may prepay and re-borrow amounts prepaid under the credit line. There were no amounts outstanding under the revolving credit line on June 30, 2006.

The revolving credit line is fully recourse to the Operating Partnership, and the Company has guaranteed the Operating Partnership's obligations under the revolving credit line.

Contract Right Mortgage Note Payable

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The Company has one contract right mortgage note payable with a principal balance of \$11,667,000 and \$11,128,000 at June 30, 2006 and December 31, 2005, respectively. The contract right mortgage note has a fixed interest rate of 9.68% and matures in January 2009.

Annex F-91

Note 8 RELATED PARTY TRANSACTIONS

Winthrop Realty Partners L.P. (WRP) performed asset management, investor relations and administrative services for the Operating Partnership and its subsidiaries and received a fee of \$482,000 and \$964,000 for the three and six months ended June 30, 2005, respectively. Effective November 7, 2005, NKT Advisors LLC performs the asset management, investor relations and administrative services for the Company previously provided by WRP.

For providing such services, NKT Advisors receives an annual base management fee which is payable quarterly in arrears in cash. The annual base management fee is equal to the greater of (A) \$4,800,000 or (B) 1.5% per annum of equity as defined.

In addition, NKT Advisors is entitled to receive incentive management fees each fiscal quarter, payable quarterly in arrears, in an annual amount equal to 20% of the amount by which adjusted funds from operations for the Company, before incentive management fees exceeds certain hurdle amounts as defined in the agreement.

NKT Advisors received a base management fee of \$1,200,000 and \$2,400,000 for the three and six months ended June 30, 2006, respectively. No incentive management fee was earned during the period.

The first \$4,200,000 (subject to an annual consumer price index increase) in base management fees per annum will be paid by NKT Advisors to WRP for services to the Company that NKT Advisors subcontracts to WRP.

The Company provides certain asset management, investor and administrative services to certain unconsolidated partnerships in which it owns an equity interest and to other affiliated partnerships. The Company earned \$124,000 and \$159,000 of management fees for these services for the six months ended

June 30, 2006 and 2005, respectively and \$60,000 and \$78,000 for the three months ended June 30, 2006 and 2005, respectively. The Company had receivables for management fees of \$870,000 and \$894,000 due from these partnerships at June 30, 2006 and December 31, 2005, respectively.

The Company has an ownership interest in the three most junior tranches of a securitized pool of first mortgages which includes among other assets, three first mortgage loans encumbering three Company properties and one other property controlled by an affiliate. The Company's ownership interest, net of discount, amounted to \$10,716,000 and \$10,493,000 at June 30, 2006 and December 31, 2005, respectively, and the Company earned interest income of \$600,000 and \$601,000 for the six months ended June 30, 2006 and 2005, respectively, and \$300,000 and \$301,000 for the three months ended June 30, 2006 and 2005, respectively, related to this ownership interest.

An affiliate owns a portion of the second mortgage indebtedness of a property in which the Company has an interest. The second mortgage payable and accrued interest owned by the affiliate aggregated \$16,266,000 and \$15,914,000 at June 30, 2006 and December 31, 2005, respectively. Included in interest expense is interest related to this second mortgage payable of \$193,000 and \$185,000 for the three months ended June 30, 2006 and June 30, 2005, respectively and \$386,000 and \$369,000 for the six months ended June 30, 2006 and 2005, respectively.

Annex F-92

Note 8 RELATED PARTY TRANSACTIONS (Continued)

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T-Two Partners LP is the beneficial owner of certain contract right mortgage loans. On November 7, 2005, the Operating Partnership acquired ownership of T-Two Partners LP. Interest expense for the three and six months ended June 30, 2005 includes interest expense of \$4,388,000 and \$8,777,000, respectively, relating to these contract right mortgage loans.

In August 2005, WRP loaned \$200,000 to a partnership in which the Operating Partnership has an interest. The loan accrues interest at a rate of prime plus 2%. The loan was repaid in the first quarter of 2006. Interest paid on this loan during the first quarter of 2006 was approximately \$9,000.

Note 9 COMMITMENTS AND CONTINGENCIES

In June 2005, the Operating Partnership entered into an agreement with Honeywell International, Inc., the tenant of four office buildings owned by the Operating Partnership in Morris Township, New Jersey to restructure the lease on the properties. Under the restructuring, the tenant waived its right to exercise its economic discontinuance option and the Operating Partnership granted the tenant an option to purchase the properties in 2007 for \$41,900,000. As a result of this restructuring, the Operating Partnership recognized a \$14,754,000 impairment loss in the second quarter of 2005.

The Company has entered into an agreement with U.S. Realty Advisors, LLC (USRA), whereby the Company agreed to pay to USRA the following amounts with respect to any properties acquired by the Company or a subsidiary in which USRA served as the identifying party:

1. 1.5% of the gross purchase price
2. 25% of net proceeds and net cash flow (as defined) after the Company receives a return of all its invested capital plus a 12% IRR.

The property owned by the Company located in Bridgewater, New Jersey is subject to the USRA agreement. Approximately \$275,000 was paid to USRA during the six months ended June 30, 2006 as 1.5% due to the purchase of the Bridgewater, New Jersey property. No other amounts have been paid or accrued as of June 30, 2006.

Note 10 DISCONTINUED OPERATIONS AND SALES OF REAL ESTATE

The Company has classified various properties which have met all of the criteria of SFAS No. 144 as real estate held for sale in the accompanying consolidated balance sheets and has classified the operations of the properties and the sold properties as discontinued operations in the accompanying consolidated statements of operations. At June 30, 2006, the Company determined that 54 properties should be classified as discontinued operations.

The office property located in Toledo, Ohio is in discontinued operations as the Company has an agreement to sell the property in September 2006. See Note 3 Real Estate, Acquisitions, Dispositions, Financings and Significant Leasing Activities Dispositions.

Fifty retail properties that are leased to Albertson's Inc. are in discontinued operations as the Company has an agreement to sell the properties. The transaction was consummated on July 13, 2006 See Note 11 Subsequent Events.

Three properties are in discontinued operations, two of which are located in Louisville, Kentucky and one located in Columbus, Ohio. These properties are in discontinued operations as The Kroger Company, the tenant at such properties, has notified the Company that it is exercising its option to

Annex F-93

Note 10 DISCONTINUED OPERATIONS AND SALES OF REAL ESTATE (Continued)

purchase the properties under its lease. The properties will be purchased at the end of the primary term in December 2006 for a negotiated fair market value or appraised value.

Discontinued operations for the three and six months ended June 30, 2006 and 2005 are summarized as follows (in thousands):

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| | <u>The Company</u> <u>Three Months Ended</u> | <u>The Predecessor</u> <u>Three Months Ended</u> | <u>The Company</u> <u>Six Months Ended</u> | <u>The Predecessor</u> <u>Six Months Ended</u> |
|-------------------------|---|---|---|---|
| | <u>June 30, 2006</u> | <u>June 30, 2005</u> | <u>June 30, 2006</u> | <u>June 30, 2005</u> |
| Revenue | \$6,112 | \$10,743 | \$12,451 | \$22,402 |
| Expenses | (1,644) | (4,877) | (3,997) | (9,765) |
| Impairment loss | - | (12,211) | - | (12,211) |
| Gain from disposal | | | | |
| of real estate | - | 1 | - | 601 |
| Minority interest | (3,159) | 7 | (6,004) | 8 |
| Income (loss) from | | | | |
| discontinued operations | \$1,309 | \$(6,337) | \$2,450 | \$1,035 |

Expenses include interest expense to related parties of \$0 and \$1,176,000 for the three months ended June 30, 2006 and 2005, respectively and \$0 and \$2,358,000 for the six months ended June 30, 2006 and 2005, respectively.

Other assets of discontinued operations at June 30, 2006 and December 31, 2005 are summarized as follows (in thousands):

| | <u>June 30, 2006</u> | <u>December 31, 2005</u> |
|--------------|----------------------|--------------------------|
| Receivables | \$10,105 | \$213 |
| Other assets | 674 | 332 |
| | \$10,779 | \$545 |

Liabilities of discontinued operations at June 30, 2006 and December 31, 2005 are summarized as follows (in thousands):

| | <u>June 30, 2006</u> | <u>December 31, 2005</u> |
|---|----------------------|--------------------------|
| Mortgage notes and accrued interest payable | \$58,054 | \$40,491 |
| Other liabilities | 370 | - |
| | \$58,424 | 40,491 |

Annex F-94

Note 11 SUBSEQUENT EVENTS

On July 13, 2006, the Company sold 50 retail properties to an unaffiliated third party for a gross purchase price of \$160,000,000. The sold properties were originally leased to Albertson's, Inc., contain an aggregate of approximately 2,300,000 square feet and had current lease terms expiring over the next 4.5 years. After closing costs, the Company received net proceeds of approximately \$159,000,000, \$22,000,000 of which were used to pay down the note payable. The balance of the net proceeds were deposited with a Qualified Intermediary for use in 1031 tax free exchanges including approximately \$49,000,000 which were used for reverse 1031 exchanges in connection with the previously acquired property located in Rochester, New

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York leased to The Frontier Corporation and the Glenwillow, Ohio property leased to Royal Appliance. The Company is in the process of identifying properties to complete the 1031 tax free exchange. It is anticipated that the Company will recognize a gain for financial reporting purposes during the third quarter of 2006 as a result of this transaction of approximately \$62,000,000. The results of operations of the properties sold have been included in discontinued operations for all periods presented in accordance with SFAS 144 as real estate held for sale.

On July 20, 2006, the Company obtained first mortgage loans from an unaffiliated third party with respect to its Rochester, New York; Statesville, North Carolina; and Rockford, Illinois properties. The loans, which had an initial aggregate principal amount of \$39,800,000, are cross-collateralized and cross-defaulted. The loans bear interest at 6.21%, require monthly payments of interest only for 24 months and then require monthly payments of principal and interest in the aggregate of approximately \$244,000. The loans are scheduled to mature on August 1, 2016 at which time the outstanding principal balance is expected to be \$35,438,000. The Company received net proceeds from these loans, after satisfying closing costs, of approximately \$39,260,000.

On July 23, 2006, the Company entered into a definitive Agreement and Plan of Merger with Lexington Corporate Properties Trust (LXP), a Maryland real estate investment trust, pursuant to which the Company will merge with and into LXP. If the merger (the Merger) is consummated, each holder of common stock will be entitled to receive 0.80 common shares of LXP in exchange for each share of common stock. Upon effectiveness of the Merger, the name of the surviving entity will be changed to Lexington Realty Trust (the Surviving Entity).

The Merger Agreement has been approved by the Board of Directors and a Special Committee of the Board of Directors of the Company and by the Board of Trustees and a Special Committee of the Board of Trustees of LXP. The Merger is subject to the approval of the shareholders of the Company and LXP, as well as the effectiveness of a Registration Statement on Form S-4 to be filed by LXP. The Merger is intended to qualify as a tax-free reorganization under Section 368(a) of the Internal Revenue Code of 1986, as amended.

The parties have each made customary representations, warranties and covenants in the Merger Agreement, including, among others, covenants to conduct their businesses in the usual, regular and ordinary course during the interim period between the execution of the Merger Agreement and the consummation of the Merger and not to engage in various kinds of transactions during such period. In addition, Lexington intends, at the sole discretion of Lexington s board of trustees, to make a one-time special dividend/distribution of \$0.17 per Lexington common share/operating partnership unit to the holders thereof on a record date on or prior to the completion of the merger.

Annex F-95

Note 11 SUBSEQUENT EVENTS (Continued)

The Merger Agreement contains certain termination rights for both the Company and LXP and provides that in certain specified circumstances, a terminating party must pay the other party s expenses up to \$5,000,000 in connection with the proposed transaction. In addition, the Merger Agreement provides that in certain specified circumstances (generally in the event a terminating party enters into an alternative transaction within six months of termination), a terminating party must also pay the other party a break-up fee of up to \$25,000,000 (less expenses, if any, previously paid by the terminating party to the non-terminating party).

Following the closing of the transactions contemplated by the Merger Agreement, Michael L. Ashner, Chairman of the Board of Directors and Chief Executive Officer of the Company, will enter into a new three-year employment agreement with LXP and Lara S. Johnson, Executive Vice President of the Company, will serve as Executive Vice President of Strategic Transactions. The Surviving Entity s Board of Trustees will consist of eleven members, three of whom will be appointed by the Company and eight of whom will be appointed by LXP.

In connection with the Merger, the Company will terminate its advisory agreement with Newkirk Advisors LLC for an aggregate payment by the Company of \$12,500,000. In addition, the Surviving Entity will obtain the benefit of the Company s exclusivity arrangement with Mr. Ashner with respect to all business opportunities related to net-leased properties that are offered to or generated by Mr. Ashner.

Simultaneously with the execution of the Merger Agreement, beneficial owners of approximately 46% of the Company s voting securities, entered into voting agreements pursuant to which they agreed, among other things, to vote to approve the Merger.

On July 25, 2006, the Company entered into a modification of the lease with respect to a 390,000 square foot office building leased to Cummins Inc., located in Columbus, Indiana. The modification extends the lease term for an additional ten years beyond the current three years remaining. Annual rental income from the property will be increased by 9.5% effective August 2006, with further increases of 5% in base rental income every three years. In connection with this, the Company agreed to provide the tenant with an \$11,500,000 tenant improvement allowance

payable on August 1, 2006. The tenant improvement allowance will be treated as a lease incentive and as such will be amortized into rental income over the life of the lease.

Annex F-96

PART II.

INFORMATION NOT REQUIRED IN JOINT PROXY STATEMENT/PROSPECTUS

ITEM 20. INDEMNIFICATION OF DIRECTORS AND OFFICERS

Lexington's trustees and officers are and will be indemnified against certain liabilities under Maryland law, and under Lexington's Declaration of Trust. Lexington's Declaration of Trust requires Lexington to indemnify its trustees and officers to the fullest extent permitted from time to time by the laws of Maryland. Lexington's Declaration of Trust also provides that, to the fullest extent permitted under Maryland law, Lexington's trustees and officers will not be liable to Lexington or Lexington's shareholders for money damages. Maryland law permits a Maryland real estate investment trust to limit the liability of its trustees and officers to the trust and its shareholders for money damages except for liability resulting from (i) actual receipt of an improper benefit or profit in money, property or services or (ii) active and deliberate dishonesty established by a final judgment and which is material to the cause of action.

The Maryland REIT Law and Section 2-418 of the Maryland General Corporation Law generally permits indemnification of any trustee or officer, among others, made a party to any proceedings by reason of service in such capacity unless it is established that: (i) the act or omission of such person was material to the matter giving rise to the proceeding and was committed in bad faith or was the result of active and deliberate dishonesty; (ii) such person actually received an improper personal benefit in money, property or services; or (iii) in the case of any criminal proceeding, such person had reasonable cause to believe that the act or omission was unlawful. The indemnity may include judgments, penalties, fines, settlements and reasonable expenses actually incurred by the trustee or officer in connection with the proceeding; but, if the proceeding is one by or in the right of the trust, indemnification is not permitted with respect to any proceeding in which the trustee or officer has been adjudged to be liable to the trust, or if the proceeding is one charging improper personal benefit to the trustee or officer, whether or not involving action in the trustee's or officer's official capacity, indemnification of the trustee or officer is not permitted if the trustee or officer was adjudged to be liable on the basis that personal benefit was improperly received. The termination of any proceeding by conviction or upon a plea of nolo contendere or its equivalent, or any entry of an order of probation prior to judgment, creates a rebuttable presumption that the trustee or officer did not meet the requisite standard of conduct required for permitted indemnification. The termination of any proceeding by judgment, order or settlement, however, does not create a presumption that the trustee or officer failed to meet the requisite standard of conduct for permitted indemnification. It is the position of the Securities and Exchange Commission that indemnification of trustees and officers for liabilities arising under the Securities Act of 1933, as amended, or the Securities Act, is against public policy and is unenforceable pursuant to Section 14 of the Securities Act.

The foregoing reference is necessarily subject to the complete text of our Declaration of Trust and the statute referred to above and is qualified in its entirety by reference thereto.

We have also entered into indemnification agreements with certain officers and trustees for the purpose of indemnifying such persons from certain claims and action in their capacities as such.

ITEM 21. EXHIBITS AND FINANCIAL STATEMENT SCHEDULES

- (a) *Financial Statements.* See page F-1 for an index of the financial statements included in the registration statement.
- (b) *Exhibits.* The following exhibits are filed as part of, or incorporated by reference into, this registration statement.

| EXHIBIT | DESCRIPTION OF DOCUMENT |
|---------|--|
| 2.1 | Agreement and Plan of Merger dated as of July 23, 2006, by and among Lexington Corporate Properties Trust and Newkirk Realty Trust, Inc. (included as Annex A to the joint proxy statement/prospectus forming part of this registration statement) and previously filed as Exhibit 2.1 to Lexington's Current Report on Form 8-K dated July 23, 2006). |
| 2.2 | Amendment No. 1, dated as of September 11, 2006, to the Agreement and Plan of Merger, as of July 23, 2006, by and among Lexington Corporate Properties Trust and Newkirk Realty Trust, Inc. (included in Annex A to the joint proxy statement/prospectus forming part of this registration statement). |
| 5.1 | Opinion of Venable LLP regarding legality of shares issued |
| 8.1 | Opinion of Paul Hastings Janofsky & Walker LLP as to certain federal income tax matters regarding the status of Lexington as a real estate investment trust. |
| 8.2 | Opinion of Katten Muchin Rosenman LLP as to certain federal income tax matters regarding the status of Newkirk as a real estate investment trust. |
| 12 | Statement of Computation of Ratio of Earnings to Combined Fixed Charges and Preferred Dividend (Previously filed as Exhibit 12 to Lexington's Annual Report on Form 10-K/A for the fiscal year ended December 31, 2005, filed March 15, 2006 and incorporated herein by reference) |
| 23.1 | Consent of KPMG LLP with respect to Lexington. |
| 23.2 | Consent of Deloitte & Touche LLP with respect to Newkirk. |
| 23.3 | Consent of Imowitz Koenig & Co., LLP with respect to Newkirk |
| 23.4 | Consent of Paul Hastings Janofsky & Walker LLP (included in Exhibit 8.1). |
| 23.5 | Consent of Katten Muchin Rosenman LLP (included in Exhibit 8.2). |
| 23.6 | Consent of Venable LLP (included in Exhibit 5.1). |
| 24.1 ** | Power of Attorney (included on the Signature Page in this Part II). |
| 99.1 ** | Consent of Clifford Broser to be named as a trustee of Lexington Realty Trust. |
| 99.2 ** | Consent of Richard Frary to be named as a trustee of Lexington Realty Trust. |
| 99.3 ** | Consent of William J. Borruso to be named as a trustee of Lexington Realty Trust. |
| 99.4 ** | Consent of Michael L. Ashner to be named as a trustee of Lexington Realty Trust. |
| 99.5 ** | Consent of Wachovia Capital Markets, LLC. |
| 99.6 ** | Consent of Bear, Stearns & Co. Inc. |
| 99.7 | Form of proxy solicited by the Board of Trustees of Lexington. |
| 99.8 | Form of proxy solicited by the Board of Directors of Newkirk. |

** Previously filed as an exhibit to this joint proxy statement/prospectus.

ITEM 22. UNDERTAKINGS

The undersigned registrant hereby undertakes:

- (1) That prior to any public reoffering of the securities registered hereunder through use of a prospectus which is a part of this registration statement, by any person or party who is deemed to be an underwriter within the meaning of Rule 145(c), the issuer undertakes that such reoffering prospectus will contain the information called for by the applicable registration form with respect to reofferings by persons who may be deemed underwriters, in addition to the information called for by the other items of the applicable form.

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- (2) That every prospectus (i) that is filed pursuant to paragraph (1) immediately preceding or (ii) that purports to meet the requirements of Section 10(a)(3) of the Securities Act of 1933 and is used in connection with an offering of securities subject to Rule 415, will be filed as a part of an amendment to the registration statement and will not be used until such amendment is effective, and that, for purposes of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time will be deemed to be the initial bona fide offering thereof.
- (3) To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement:
- (i) To include any prospectus required by Section 10(a)(3) of the Securities Act of 1933;
- (ii) To reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement. Notwithstanding the foregoing, any increase or decrease in the volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the SEC pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than a 20% change in the maximum aggregate offering price set forth in the Calculation of Registration Fee table in the effective registration statement;
- (iii) To include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement.
- (4) That, for purposes of determining any liability under the Securities Act of 1933, each filing of the registrant's annual report pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934 (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Securities Exchange Act of 1934) that is incorporated by reference in the registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.
- (5) That, for the purpose of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered herein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

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- (6) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.
- (7) Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to our directors, officers and controlling persons pursuant to the foregoing provisions, or otherwise, we have been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Act and is, therefore, unenforceable. If a claim for indemnification against such liabilities (other than the payment by Lexington of expenses incurred or paid by one of its trustees, officers or controlling persons in the successful defense of any action, suit or proceeding) is asserted by such trustee, officer or controlling person in connection with the notes being registered, Lexington will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Act and will be governed by the final adjudication of such issue.
- (c) The undersigned registrant hereby undertakes to respond to requests for information that is incorporated by reference into the prospectus pursuant to Items 4, 10(b), 11 or 13 of this Form, within one business day of receipt of such request, and to send the incorporated documents by first class mail or other equally prompt means. This includes information contained in documents filed subsequent to the effective date of the registration statement through the date of responding to the request.
- (d) The undersigned registrant hereby undertakes to supply by means of a post-effective amendment all information concerning a transaction, and the company being acquired involved therein, that was not the subject of and included in the registration statement when it

became effective.

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SIGNATURES AND POWERS OF ATTORNEY

Pursuant to the requirements of the Securities Act of 1933, as amended, the registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-4 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of New York, State of New York, on September 25, 2006.

LEXINGTON CORPORATE PROPERTIES TRUST

By: /s/ T. Wilson Eglin
 Name: T. Wilson Eglin
 Title: Chief Executive Officer, President and Chief
 Operating Officer

| <u>Signature</u> | <u>Capacity</u> | <u>Date</u> |
|--|--|--------------------|
| * E. Robert Roskind | Chairman and Trustee | September 25, 2006 |
| /s/ T. Wilson Eglin T. Wilson Eglin | Chief Executive Officer, President, Chief Operating Officer and Trustee | September 25, 2006 |
| * Richard J. Rouse | Vice Chairman, Chief Investment Officer and Trustee | September 25, 2006 |
| /s/ Patrick Carroll Patrick Carroll | Chief Financial Officer, Executive Vice President and Treasurer | September 25, 2006 |
| * John B. Vander Zwaag | Executive Vice President | September 25, 2006 |
| * Paul R. Wood | Chief Accounting Officer, Vice President and Secretary | September 25, 2006 |
| * Geoffrey Dohrmann | Trustee | September 25, 2006 |

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| | | |
|-----------------------|---------|---------------------|
| * Carl D. Glickman | Trustee | September 25 , 2006 |
| * James Grosfeld | Trustee | September 25 , 2006 |
| * Kevin W. Lynch | Trustee | September 25 , 2006 |
| * Stanley R. Perla | Trustee | September 25 , 2006 |
| * Seth M. Zachary | Trustee | September 25 , 2006 |

* By: /s/ T. Wilson Eglin
T. Wilson Eglin

Attorney-in-Fact

EXHIBIT INDEX

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- 99.2** Consent of Richard Frary to be named as a trustee of Lexington Realty Trust.
- 99.3** Consent of William J. Borruso to be named as a trustee of Lexington Realty Trust.
- 99.4** Consent of Michael L. Ashner to be named as a trustee of Lexington Realty Trust.
- 99.5** Consent of Wachovia Capital Markets, LLC.
- 99.6** Consent of Bear, Stearns & Co. Inc.
- 99.7 Form of proxy solicited by the Board of Trustees of Lexington.
- 99.8 Form of proxy solicited by the Board of Directors of Newkirk.

** Previously filed as an exhibit to this joint proxy statement/prospectus.