

KILROY REALTY CORP
Form POSASR
September 15, 2010
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As filed with the Securities and Exchange Commission on September 15, 2010

Registration No. 333-153584

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

Post-Effective
Amendment No. 1 to
FORM S-3
REGISTRATION STATEMENT

UNDER

THE SECURITIES ACT OF 1933

KILROY REALTY CORPORATION

(Exact name of Registrant as specified in its charter)

KILROY REALTY, L.P.

(Exact name of Registrant as specified in its charter)

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Maryland
(State or Other Jurisdiction of
Incorporation or Organization)

95-4598246
(I.R.S. Employer
Identification Number)

Delaware
(State or Other Jurisdiction of
Incorporation or Organization)

95-4612685
(I.R.S. Employer
Identification Number)

12200 West Olympic Boulevard, Suite 200,

Los Angeles, California 90064,

(310) 481-8400

(Address, including zip code, and telephone number, including area code, of Registrant's principal executive offices)

Tyler H. Rose

Executive Vice President and Chief Financial Officer

Kilroy Realty Corporation

12200 West Olympic Boulevard, Suite 200

Los Angeles, California 90064

(310) 481-8400

(Name, address, including zip code, and telephone number, including area code, of agent for service)

Copies to:

J. Scott Hodgkins, Esq.

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355 South Grand Avenue

Los Angeles, California 90071-1560

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Approximate date of commencement of proposed sale to the public: From time to time after the effective date of this Registration Statement as determined by market conditions.

If the only securities being registered on this Form are being offered pursuant to dividend or interest reinvestment plans, please check the following box.

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, other than securities offered only in connection with dividend or interest reinvestment plans, check the following box.

If this form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement of the same offering.

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a registration statement pursuant to General Instruction I.D. or a post-effective amendment thereto that shall become effective upon filing with the Commission pursuant to Rule 462(e) under the Securities Act, check the following box.

If this Form is a post-effective amendment to a registration statement filed pursuant to General Instruction I.D. filed to register additional securities or additional classes of securities pursuant to Rule 413(b) under the Securities Act, check the following box.

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of large accelerated filer, accelerated filer and smaller reporting company in Rule 12b-2 of the Exchange Act.

Kilroy Realty Corporation:

Large accelerated filer	<input checked="" type="checkbox"/>	Accelerated filer	<input type="checkbox"/>
Non-accelerated filer	<input type="checkbox"/> (Do not check if a smaller reporting company)	Smaller reporting company	<input type="checkbox"/>

Kilroy Realty, L.P.:

Large accelerated filer	<input type="checkbox"/>	Accelerated filer	<input type="checkbox"/>
Non-accelerated filer	<input checked="" type="checkbox"/> (Do not check if a smaller reporting company)	Smaller reporting company	<input type="checkbox"/>

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Title of each class of securities to be registered	Amount to be registered	Proposed	Proposed	Amount of registration fee
		maximum offering price per unit	maximum aggregate offering price	
Kilroy Realty, L.P. Debt Securities(4)	(1)(2)	(1)(2)	(1)(2)	(3)
Kilroy Realty Corporation Guarantees of Debt Securities(4)	(5)			(5)
Common Stock, \$.01 par value	(1)(2)	(1)(2)	(1)(2)	(3)
Preferred Stock, \$.01 par value	(1)(2)	(1)(2)	(1)(2)	(3)
Depository Shares and Warrants	(1)(2)	(1)(2)	(1)(2)	(3)

- (1) Omitted pursuant to Form S-3 General Instruction II.E.
- (2) An unspecified number of the securities of each identified class is being registered for possible issuance from time to time at indeterminate prices. Separate consideration may or may not be received for securities that are issuable on exercise, conversion or exchange of other securities or that are issued in units or represented by depository shares. In accordance with Rules 456(b) and 457(r), we are deferring payment of all applicable registration fees.
- (3) Deferred in reliance upon Rule 456(b) and Rule 457(r).
- (4) The debt securities will be issued by Kilroy Realty, L.P., a majority-owned subsidiary of Kilroy Realty Corporation. The debt securities offered by Kilroy Realty, L.P. may be accompanied by guarantees issued by Kilroy Realty Corporation.
- (5) No separate consideration will be received for the guarantees. Pursuant to Rule 457(n), no separate fee is payable with respect to the guarantees being registered hereby.

EXPLANATORY NOTE

This registration statement is a Post-Effective Amendment to the registration statement on Form S-3 of Kilroy Realty Corporation. (File No. 333-153584) (the Registration Statement). This Post-Effective Amendment No. 1 to the Registration Statement is being filed for the purposes of (i) adding Kilroy Realty, L.P. as an additional registrant under the Registration Statement; (ii) adding debt securities of Kilroy Realty, L.P. and guarantees by Kilroy Realty Corporation of debt securities of Kilroy Realty, L.P. as additional securities to be offered under the prospectus included herein, which replaces the prospectus in the Registration Statement; and (iii) filing additional exhibits to the Registration Statement under Item 16 of Part II thereof. No changes or additions are being made hereby to any other item in Part II of the Registration Statement. Therefore, such other items have been omitted from this Post-Effective Amendment No. 1. This Post-Effective Amendment No. 1 to the Registration Statement on Form S-3 shall become effective immediately upon filing with the U.S. Securities and Exchange Commission, or the SEC.

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PROSPECTUS

KILROY REALTY CORPORATION

Common Stock, Preferred Stock, Depositary Shares, Warrants and Guarantees

KILROY REALTY, L.P.

Debt Securities

We may offer from time to time in one or more series or classes (i) debt securities of Kilroy Realty, L.P. which may be fully and unconditionally guaranteed by Kilroy Realty Corporation, (ii) shares of Kilroy Realty Corporation's common stock, par value \$.01 per share, (iii) shares or fractional shares of Kilroy Realty Corporation's preferred stock, par value \$.01 per share, (iv) shares of Kilroy Realty Corporation's preferred stock represented by depositary shares and (v) warrants to purchase preferred stock or common stock, referred to collectively in this prospectus as the offered securities, separately or together, in separate series in amounts, at prices and on terms to be set forth in one or more supplements to this prospectus.

The specific terms of the offered securities with respect to which this prospectus is being delivered will be set forth in the applicable prospectus supplement and will include, where applicable (i) in the case of debt securities and, as applicable, related guarantees, the specific terms of such debt securities and related guarantees, (ii) in the case of common stock, the specific title and any initial public offering price; (iii) in the case of preferred stock, the specific title and any dividend, liquidation, redemption, conversion, voting and other rights and any initial public offering price; (iv) in the case of depositary shares, the fractional share of preferred stock represented by each such depositary share; and (v) in the case of warrants, the duration, offering price, exercise price and detachability. In addition, such specific terms may include limitations on actual or constructive ownership and restrictions on transfer of the offered securities, in each case as may be appropriate to preserve Kilroy Realty Corporation's status as a real estate investment trust, or REIT, for federal income tax purposes.

The applicable prospectus supplement will also contain information, where applicable, about certain United States federal income tax consequences relating to, and any listing on a securities exchange of, the offered securities covered by such prospectus supplement.

The offered securities may be offered directly, through agents we may designate from time to time or by, to or through underwriters or dealers. If any agents or underwriters are involved in the sale of any of the offered securities, their names, and any applicable purchase price, fee, commission or discount arrangement between or among them, will be set forth in, or will be calculable from the information set forth in, the applicable prospectus supplement. See Plan of Distribution. No offered securities may be sold without delivery of this prospectus and the applicable prospectus supplement describing the method and terms of the offering of such series of offered securities.

Kilroy Realty Corporation's common stock is listed on the New York Stock Exchange, or NYSE, under the symbol KRC. On September 14, 2010, the last reported sales price of Kilroy Realty Corporation's common stock on the NYSE was \$33.36 per share.

Before you invest in the offered securities, you should consider the risks discussed in Risk Factors beginning on page 1.

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

The date of this prospectus is September 15, 2010.

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Kilroy Realty, L.P., or the operating partnership, is a Delaware limited partnership. Kilroy Realty Corporation, or the Company or guarantor, is the sole general partner of the operating partnership. Unless otherwise expressly stated or the context otherwise requires, in this prospectus, we, us and our refer collectively to the Company, the operating partnership and the Company s other subsidiaries, references to Company common stock or similar references refer to the common stock, par value \$0.01 per share, of the Company and references to common units or similar references refer to the common units of the operating partnership.

You should rely only on the information contained in this prospectus, any accompanying prospectus supplement and in any document incorporated by reference. We have not authorized anyone to provide you with information or make any representation that is different. If anyone provides you with different or inconsistent information, you should not rely on it. This prospectus and any accompanying prospectus supplement are not an offer to sell or a solicitation of an offer to buy any securities other than the registered securities to which they relate and this prospectus and any accompanying prospectus supplement are not an offer to sell or the solicitation of an offer to buy securities in any jurisdiction where, or to any person to whom, it is unlawful to make an offer or solicitation. You should not assume that the information contained in this prospectus and any accompanying prospectus supplement is correct on any date after the date of the prospectus or the date of the accompanying prospectus supplement even though this prospectus and any accompanying prospectus supplement are delivered or securities are sold pursuant to the prospectus and the accompanying prospectus supplement at a later date. Since the date of this prospectus and the date of any accompanying prospectus supplement, our business, financial condition, results of operations and prospects may have changed.

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RISK FACTORS

Investment in the offered securities involves risks. Before acquiring any offered securities pursuant to this prospectus, you should carefully consider the information contained or incorporated by reference in this prospectus or in any accompanying prospectus supplement, including, without limitation, the risks of an investment in our Company set forth below and under the captions Item 1A. Risk Factors and Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations (or similar captions) in Kilroy Realty Corporation's most recent annual report on Form 10-K, under the caption Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations in Kilroy Realty Corporation's quarterly reports on Form 10-Q, under the caption Item 1A. Risk Factors in Kilroy Realty, L.P.'s General Form for Registration of Securities on Form 10 filed with the SEC on August 18, 2010 and as described in other filings of Kilroy Realty Corporation and Kilroy Realty, L.P. with the SEC. The occurrence of any of these risks might cause you to lose all or a part of your investment in the offered securities. Please also refer to the section below entitled Forward-Looking Statements.

FORWARD-LOOKING STATEMENTS

This prospectus and any accompanying prospectus supplement, including the documents incorporated by reference herein, contain certain forward-looking statements within the meaning of federal securities law.

Additionally, documents we subsequently file with the SEC and incorporate by reference will contain forward-looking statements. In particular, statements pertaining to our capital resources, portfolio performance, results of operations, pending and potential or proposed acquisitions contain forward-looking statements. Likewise, all of our statements regarding anticipated growth in our funds from operations and anticipated market conditions, demographics and results of operations are forward-looking statements. Forward-looking statements involve numerous risks and uncertainties, and you should not rely on them as predictions of future events. Forward-looking statements depend on assumptions, data or methods which may be incorrect or imprecise, and we may not be able to realize them. We do not guarantee that the transactions and events described will happen as described (or that they will happen at all). You can identify forward-looking statements by the use of forward-looking terminology such as believes, expects, may, will, should, seeks, approximately, intends, plans, pro forma, estimates or any of these words and phrases or similar words or phrases. You can also identify forward-looking statements by discussions of strategies, plans or intentions. The following factors, among others, could cause actual results and future events to differ materially from those set forth or contemplated in the forward-looking statements:

global market and general economic conditions;

defaults on or non-renewal of leases by tenants, particularly any of our largest office tenants and our largest industrial tenants;

adverse economic or real estate developments in California, and particularly the Southern California region;

our ability to re-lease property at or above current market rates;

increased interest rates and operating costs;

significant competition, which may decrease the occupancy and rental rates of properties;

potential losses that may not be covered by insurance;

our ability to successfully complete acquisitions and operate acquired properties;

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our ability to successfully complete development and redevelopment properties on schedule and within budgeted amounts;

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fluctuations in availability and cost of construction materials and labor resulting from the effects of recent natural disasters and increased worldwide demand;

the Company's ability to maintain its status as a REIT;

future terrorist activity in the United States or war;

adverse changes to, or implementations of, income tax laws, governmental regulations or legislation;

decreases in the population in geographic areas where our properties are located;

elevated utility costs and power outages in California; and

costs to comply with governmental regulations.

You are cautioned not to unduly rely on the forward-looking statements contained in this prospectus and any accompanying prospectus supplement. While forward-looking statements reflect our good faith beliefs, they are not guarantees of future performance. These risks and uncertainties are discussed in more detail under the caption "Risk Factors" in this prospectus, under the caption "Item 1A. Risk Factors" in Kilroy Realty Corporation's annual report on Form 10-K for the year ended December 31, 2009 and under the caption "Item 1A. Risk Factors" in Kilroy Realty, L.P.'s General Form for Registration of Securities on Form 10 filed with the SEC on August 18, 2010.

CONSOLIDATED RATIO OF EARNINGS TO COMBINED FIXED CHARGES AND PREFERRED DIVIDENDS

Kilroy Realty Corporation's (i) consolidated ratio of earnings to fixed charges and (ii) consolidated ratio of earnings to combined fixed charges and preferred dividends for each of the periods indicated was as follows:

	For 6 Months Ended June 30, 2010	For Fiscal Year Ended December 31,				
		2009	2008	2007	2006	2005
Consolidated ratio of earnings to fixed charges	1.14x	1.39x	1.37x	1.34x	1.55x	0.86x
Deficiency (in thousands)						\$ 7,508
Consolidated ratio of earnings to combined fixed charges and preferred dividends	1.00x	1.21x	1.20x	1.17x	1.34x	0.73x
Deficiency (in thousands)						\$ 17,116

Kilroy Realty, L.P.'s consolidated ratio of earnings to fixed charges for each of the periods indicated was as follows:

	For 6 Months Ended June 30, 2010	For Fiscal Year Ended December 31,				
		2009	2008	2007	2006	2005
Consolidated ratio of earnings to fixed charges	1.25x	1.53x	1.49x	1.46x	1.70x	0.96x
Deficiency (in thousands)						\$ 1,920

We have computed the consolidated ratio of earnings to fixed charges for Kilroy Realty Corporation and Kilroy Realty, L.P. by dividing earnings by fixed charges. Earnings consist of income from continuing operations before the effect of noncontrolling interest plus fixed charges and amortization of capitalized interest and reduced by capitalized interest and loan costs. Fixed charges consist of interest costs, whether expensed or capitalized, amortization of loan costs and an estimate of the interest within rental expense. For the year ended December 31, 2005, our earnings were inadequate to cover fixed charges.

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We have computed the consolidated ratio of earnings to combined fixed charges and preferred dividends for Kilroy Realty Corporation by dividing earnings by combined fixed charges and preferred dividends. Earnings consist of income from continuing operations before the effect of noncontrolling interest plus fixed charges and amortization of capitalized interest, reduced by capitalized interest and loan costs and distributions on Series A cumulative redeemable preferred units. Fixed charges consist of interest costs, whether expensed or capitalized, amortization of loan costs, an estimate of the interest within rental expense, and distributions on Series A cumulative redeemable preferred units. For the year ended December 31, 2005, our earnings were inadequate to cover fixed charges.

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THE COMPANY

We own, operate, develop and acquire primarily Class A suburban office and industrial real estate in key submarkets in California, particularly Southern California, which we believe have strategic advantages and strong barriers to entry. Class A real estate encompasses attractive and efficient buildings of high quality that are attractive to tenants, are well-designed and constructed with above-average material, workmanship and finishes and are well-maintained and managed.

As of June 30, 2010, our stabilized portfolio of operating properties was comprised of 100 office buildings and 41 industrial buildings, which encompassed an aggregate of approximately 10.1 million and 3.7 million rentable square feet, respectively. As of June 30, 2010, the office properties were approximately 85.7% leased to 354 tenants and the industrial properties were approximately 83.3% leased to 56 tenants. All of our properties are located in California and the majority are located in Southern California. Our stabilized portfolio excludes undeveloped land, development and redevelopment properties under construction, lease-up properties and one industrial property that we are in the process of reentitling for residential use. We define lease-up properties as properties we have recently developed or redeveloped that have not yet reached 95% occupancy and are within one year following cessation of major construction activities. During the six months ended June 30, 2010, we acquired five new operating properties, which encompass approximately 1.4 million rentable square feet.

Kilroy Realty Corporation is a Maryland corporation organized to qualify as a REIT under the Internal Revenue Code of 1986, as amended, or the Code, which owns its interests in all of its properties through Kilroy Realty, L.P. and Kilroy Realty Finance Partnership, L.P., or the finance partnership, both of which are Delaware limited partnerships. We conduct substantially all of our activities through the operating partnership in which, as of June 30, 2010, the Company owned an approximate 96.7% general partnership interest. The remaining 3.3% common limited partnership interest in the operating partnership as of June 30, 2010 were owned by certain of our executive officers and directors, certain of their affiliates and other outside investors. Kilroy Realty Finance, Inc., one of the Company's wholly-owned subsidiaries, is the sole general partner of the finance partnership and owns a 1.0% general partnership interest. The operating partnership owns the remaining 99.0% limited partnership interest in the finance partnership. We conduct substantially all of our development activities through Kilroy Services, LLC (KSLLC), which is a wholly-owned subsidiary of the operating partnership.

The Company's common stock is listed on the NYSE under the symbol KRC, the Company's 7.80% Series E Cumulative Redeemable Preferred Stock under the symbol KRC-PE and the Company's 7.50% Series F Cumulative Redeemable Preferred Stock under the symbol KRC-PF. Our principal executive offices are located at 12200 West Olympic Boulevard, Suite 200, Los Angeles, California 90064. Our telephone number is (310) 481-8400.

USE OF PROCEEDS

The Company, as general partner of the operating partnership, is required under the terms and conditions of the partnership agreement (as defined below) to invest the net proceeds of any sale of common stock, preferred stock, depositary shares or warrants pursuant to this prospectus in the operating partnership. Unless otherwise indicated in the applicable prospectus supplement, the operating partnership intends to use such net proceeds and any net proceeds from any sale of debt securities pursuant to this prospectus for general corporate purposes, including, without limitation, the acquisition and development of properties and the repayment of debt. Net proceeds from the sale of the offered securities initially may be temporarily invested in short-term securities.

DESCRIPTION OF DEBT SECURITIES

The debt securities will be direct unsecured general obligations of the operating partnership and may be fully and unconditionally guaranteed by the Company. The debt securities may be senior debt securities, which will rank equally with any of our other unsubordinated and unsecured debt, or the debt securities may be subordinated debt securities, which will rank equally with any of our subordinated and unsecured debt. The debt securities that are sold may be exchangeable for and/or convertible into common stock or any of the other securities that may be sold under this

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prospectus. The debt securities will be issued under one or more separate indentures between us and a designated trustee. We will include in a prospectus supplement the specific terms of each series of debt securities and, as applicable, the related guarantees, being offered, including the terms, if any, on which a series of debt securities may be convertible into or exchangeable for other securities. In addition, the material terms of the indenture, which will govern the rights of the holders of our debt securities, will be set forth in the applicable prospectus supplement.

DESCRIPTION OF CAPITAL STOCK

We have summarized the material terms and provisions of the Company's capital stock in this section. For more detail you should refer to our charter, which we have previously filed with the SEC.

Common Stock

General. The Company's charter authorizes us to issue 150,000,000 shares of common stock, par value \$0.01 per share. As of June 30, 2010, we had 52,296,219 shares of common stock issued and outstanding. The 52,296,219 outstanding shares excludes the 1,723,131 shares of common stock, as of June 30, 2010, that we may issue in exchange for presently outstanding common units that may be tendered for redemption to the operating partnership.

Shares of our common stock:

are entitled to one vote per share on all matters presented to stockholders generally for a vote, including the election of directors, with no right to cumulative voting;

do not have any conversion rights;

do not have any exchange rights;

do not have any sinking fund rights;

do not have any redemption rights;

do not generally have any appraisal rights;

do not have any preemptive rights to subscribe for any of our securities; and

are subject to restrictions on ownership and transfer.

We may pay distributions on shares of the Company's common stock, subject to the preferential rights of the Company's Series E Preferred Stock and Series F Preferred Stock, and, when issued, the Company's Series A Preferred Stock, and any other series or class of capital stock that we may issue in the future with rights to dividends and other distributions senior to the Company's common stock. However, we may only pay distributions when the board of directors authorizes a distribution out of legally available funds. We make, and intend to continue to make, quarterly distributions on outstanding shares of the Company's common stock.

The board of directors may:

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reclassify any unissued shares of the Company's common stock into other classes or series of capital stock;

establish the number of shares in each of these classes or series of capital stock;

establish any preference rights, conversion rights and other rights, including voting powers, of each of these classes or series of capital stock;

establish restrictions, such as limitations and restrictions on ownership, dividends or other distributions of each of these classes or series of capital stock; and

establish qualifications and terms or conditions of redemption for each of these classes or series of capital stock.

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Certain Provisions of the Maryland General Corporation Law.

Under the Maryland General Corporation Law, or the MGCL, the Company's stockholders are generally not liable for our debts or obligations. If we liquidate, we will first pay all debts and other liabilities, including debts and liabilities arising out of the Company's status as general partner of the operating partnership, and any preferential distributions on any outstanding shares of preferred stock. Each holder of the Company's common stock then will share ratably in our remaining assets. All shares of the Company's common stock have equal distribution, liquidation and voting rights, and have no preference or exchange rights, subject to the ownership limits in the Company's charter or as permitted by the board of directors pursuant to executed waiver agreements.

Under the MGCL, we generally require approval by the Company's stockholders by the affirmative vote of at least two-thirds of the votes entitled to vote before we can:

dissolve;

amend the Company's charter;

merge;

sell all or substantially all of our assets;

engage in a share exchange; or

engage in similar transactions outside the ordinary course of business.

Because the term "substantially all of a company's assets" is not defined in the MGCL, it is subject to Maryland common law and to judicial interpretation and review in the context of the unique facts and circumstances of any particular transaction. Although the MGCL allows the Company's charter to establish a lesser percentage of affirmative votes by the Company's stockholders for approval of those actions, the Company's charter does not include such a provision.

Preferred Stock

The Company's charter authorizes us to issue 30,000,000 shares of preferred stock, par value \$0.01 per share. Of the 30,000,000 authorized shares of preferred stock, we have classified and designated 1,500,000 shares as Series A Preferred Stock, 1,610,000 shares as Series E Preferred Stock and 3,450,000 shares as Series F Preferred Stock. As of the date of this prospectus, 1,610,000 shares of the Company's Series E Preferred Stock are issued and outstanding and 3,450,000 shares of the Company's Series F Preferred Stock are issued and outstanding.

We may classify, designate and issue additional shares of currently authorized shares of preferred stock, in one or more classes, as authorized by the board of directors without the prior consent of the Company's stockholders. The board of directors may afford the holders of preferred stock preferences, powers and rights voting or otherwise senior to the rights of holders of shares of the Company's common stock. The board of directors can authorize the issuance of currently authorized shares of preferred stock with terms and conditions that could have the effect of delaying or preventing a change of control transaction that might involve a premium price for holders of shares of the Company's common stock or otherwise be in their best interest. All shares of preferred stock which are issued and are or become outstanding are or will be fully paid and nonassessable. Before we may issue any shares of preferred stock of any class, the MGCL and the Company's charter require the board of directors to determine the following:

the designation;

the terms;

preferences;

conversion and other rights;

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voting powers;

restrictions;

limitations as to distributions;

qualifications; and

terms or conditions of redemption.

7.45% Series A Cumulative Redeemable Preferred Stock, 7.80% Series E Cumulative Redeemable Preferred Stock and 7.50% Series F Cumulative Redeemable Preferred Stock

General

Of the Company's 30,000,000 authorized preferred shares, 1,500,000 shares have been classified and designated as Series A Preferred Stock, 1,610,000 shares have been classified and designated as Series E Preferred Stock and 3,450,000 shares have been classified and designated as Series F Preferred Stock. Shares of Series A Preferred Stock are issuable on a one-for-one basis only upon redemption or exchange of the Series A Preferred Units of the operating partnership. All of the designated shares of Series E Preferred Stock and Series F Preferred Stock are issued and outstanding.

Dividends

Each share of Series A Preferred Stock, Series E Preferred Stock and Series F Preferred Stock is entitled to receive dividends that are:

cumulative preferential dividends, in cash, from the date of issue payable in arrears on the 15th of February, May, August and November of each year, including in the case of Series A Preferred Stock, any accumulated but unpaid distributions in respect of Series A Preferred Units at the time they are exchanged for shares of Series A Preferred Stock;

on parity with any payments made to each other and with all other preferred stock designated as ranking on parity with the Series A Preferred Stock, Series E Preferred Stock and Series F Preferred Stock;

in preference to any payment made on the Company's common stock or any other classes or series of capital stock or the Company's other equity securities ranking junior to the Series A Preferred Stock, Series E Preferred Stock and Series F Preferred Stock; and

at a rate of 7.45% per annum for shares of Series A Preferred Stock, at a rate of 7.80% per annum for shares of Series E Preferred Stock and at a rate of 7.50% per annum for shares of Series F Preferred Stock.

Ranking

The Series A Preferred Stock, Series E Preferred Stock and Series F Preferred Stock will, with respect to dividends and rights upon voluntary or involuntary liquidation, dissolution or winding-up of our affairs, rank:

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senior to the Company's common stock and all other preferred stock designated as ranking junior to the Series A Preferred Stock, Series E Preferred Stock and Series F Preferred Stock;

on parity with each other and with all other preferred stock designated as ranking on a parity with the Series A Preferred Stock, Series E Preferred Stock and Series F Preferred Stock; and

junior to all other preferred stock designated as ranking senior to the Series A Preferred Stock, Series E Preferred Stock and Series F Preferred Stock.

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Redemption

At our option, we may redeem, in whole or in part, from time to time, upon not less than 30 or more than 60 days written notice:

shares of Series A Preferred Stock at a redemption price payable in cash equal to \$50.00 per share, and shares of Series E Preferred Stock and Series F Preferred Stock at a redemption price payable in cash equal to \$25.00 per share, plus any accumulated but unpaid dividends whether or not declared up to and including the date of redemption;

by paying the redemption price of the Series E Preferred Stock and/or Series F Preferred Stock; and

by paying the redemption price of the Series A Preferred Stock, excluding the portion consisting of accumulated but unpaid dividends, solely out of proceeds from issuance of the Company's capital stock.

No Maturity, Sinking Fund or Mandatory Redemption

The Series A Preferred Stock, Series E Preferred Stock and Series F Preferred Stock have no maturity date, and we are not required to redeem the Series A Preferred Stock, Series E Preferred Stock or Series F Preferred Stock at any time. Accordingly, the Series A Preferred Stock, Series E Preferred Stock and Series F Preferred Stock will remain outstanding indefinitely, unless we decide, at our option, to exercise our redemption rights. None of the Series A Preferred Stock, Series E Preferred Stock or Series F Preferred Stock is subject to any sinking fund.

Limited Voting Rights

If we do not pay dividends on any shares of Series A Preferred Stock, Series E Preferred Stock or Series F Preferred Stock for six or more quarterly periods, including any periods during which we do not make distributions in respect of Series A Preferred Units prior to their exchange into shares of Series A Preferred Stock, whether or not consecutive, the holders of Series A Preferred Stock, Series E Preferred Stock and Series F Preferred Stock will have the right to vote as a single class with all other shares of capital stock ranking on parity with the Series A Preferred Stock, Series E Preferred Stock and Series F Preferred Stock which have similar vested voting rights for the election of two additional directors to the board of directors. The directors will be elected by a plurality of the votes cast in the election for a one-year term and each such director will serve until his successor is duly elected and qualified or until the director's right to hold the office terminates, whichever occurs earlier, subject to the director's earlier death, disqualification, resignation or removal. The election will take place at:

special meetings called at the request of the holders of at least 10% of the outstanding shares of Series A Preferred Stock, Series E Preferred Stock, or Series F Preferred Stock, or the holders of shares of any other class or series of stock on parity with the Series A Preferred Stock, the Series E Preferred Stock and the Series F Preferred Stock with respect to which dividends are also accumulated and unpaid, if this request is received more than 90 days before the date fixed for our next annual or special meeting of stockholders or, if we receive the request for a special meeting less than 90 days before the date fixed for our next annual or special meeting of stockholders, at our annual or special meeting of stockholders; and

each subsequent annual meeting (or special meeting in its place) until all dividends accumulated on the Series A Preferred Stock, the Series E Preferred Stock, the Series F Preferred Stock and any such other class or series of stock on parity with the Series A Preferred Stock, Series E Preferred Stock and Series F Preferred Stock for all past dividend periods and the dividend for the then current dividend period, including accumulated but unpaid distributions in respect of Series A Preferred Units at the time they are exchanged for shares of Series A Preferred Stock have been fully paid or declared and a sum sufficient for the payment of the dividends is irrevocably set aside in trust for payment in full.

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When all of the dividends have been paid in full, the holders of Series A Preferred Stock, Series E Preferred Stock and Series F Preferred Stock will be divested of their voting rights and the term of any member of the board of directors elected by the holders of Series A Preferred Stock, Series E Preferred Stock, Series F Preferred Stock and holders of any other shares of stock on parity with the Series A Preferred Stock, the Series E Preferred Stock and the Series F Preferred Stock will terminate.

In addition, so long as any shares of Series A Preferred Stock, Series E Preferred Stock or Series F Preferred Stock are outstanding, without the consent of at least two-thirds of the holders of the series of preferred stock then outstanding, as applicable, we may not:

authorize or create, or increase the authorized or issued amount of, any shares of capital stock ranking senior to the Series A Preferred Stock, the Series E Preferred Stock and the Series F Preferred Stock with respect to payment of dividends or rights upon liquidation, dissolution or winding-up of our affairs;

reclassify any of the Company's authorized shares of capital stock into any shares ranking senior to the Series A Preferred Stock, the Series E Preferred Stock and the Series F Preferred Stock;