

DCT Industrial Trust Inc.  
Form 424B5  
June 01, 2009  
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Filed Pursuant to Rule 424(b)(5)  
Registration No. 333-145253

**The information in this preliminary prospectus supplement is not complete and may be changed. This preliminary prospectus supplement and the accompanying prospectus are not an offer to sell these securities, and they are not soliciting an offer to buy these securities, in any jurisdiction where the offer or sale is not permitted.**

**SUBJECT TO COMPLETION, DATED JUNE 1, 2009**

**PRELIMINARY PROSPECTUS SUPPLEMENT**

(To Prospectus dated August 8, 2007)

**22,500,000 Shares**

**DCT INDUSTRIAL TRUST INC.**

**Common Stock**

We are offering 22,500,000 shares of our common stock, par value \$0.01 per share. We have granted the underwriters an option to purchase up to 3,375,000 additional shares of our common stock within 30 days from the date of this prospectus supplement to cover over-allotments.

We are organized and conduct our operations to qualify as a real estate investment trust, or REIT, for federal income tax purposes. In part, to assist us in complying with certain federal income tax requirements applicable to REITs, our charter contains certain restrictions relating to the ownership and transfer of our stock, including an ownership limit of 9.8% on our common stock.

Our common stock currently trades on the New York Stock Exchange, or NYSE, under the symbol DCT . On May 29, 2009, the closing sale price per share for our common stock was \$4.48.

**Investing in our common stock involves risks. See Risk Factors beginning on page S-4 of this prospectus supplement and page 6 of our Annual Report on Form 10-K for the year ended December 31, 2008.**

	<b>Per Share</b>	<b>Total</b>
Public Offering Price	\$	\$
Underwriting Discount	\$	\$
Proceeds, before expenses, to us	\$	\$

The underwriters expect to deliver the shares on or about June , 2009.

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

**Joint Book-Running Managers**

**Merrill Lynch & Co.**

**J.P.Morgan  
Co-Managers**

**Wachovia Securities**

**Deutsche Bank Securities**

**Morgan Keegan & Company, Inc.**  
The date of this prospectus supplement is June , 2009

**PNC Capital Markets LLC**

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**ABOUT THIS PROSPECTUS SUPPLEMENT**

No person has been authorized to give any information or to make any representations other than those contained in this prospectus supplement, the accompanying prospectus or any free writing prospectus prepared by us or incorporated by reference herein or therein and, if given or made, such information or representation must not be relied upon as having been authorized. This prospectus supplement, the accompanying prospectus and any free writing prospectus prepared by us do not constitute an offer to sell or the solicitation of an offer to buy any securities other than the securities described in this prospectus supplement or an offer to sell or the solicitation of an offer to buy such securities in any circumstances in which such offer or solicitation is unlawful. Neither the delivery of this prospectus supplement, the accompanying prospectus or any free writing prospectus prepared by us nor any sale made hereunder or thereunder shall, under any circumstances, create any implication that the information contained herein or therein is correct as of any time subsequent to the date of such information.

You should read this prospectus supplement along with the accompanying prospectus. This prospectus supplement and the accompanying prospectus form one single document and both contain information you should consider when making your investment decision. This prospectus supplement, or the information incorporated by reference herein, may add, update or change information in the accompanying prospectus. If the information contained in this prospectus supplement is inconsistent with the accompanying prospectus, you should rely on this prospectus supplement. You should rely only on the information contained or incorporated by reference in this prospectus supplement and the accompanying prospectus. We have not authorized anyone to provide you with information that is different. The information in this prospectus supplement and the accompanying prospectus may only be accurate as of their respective dates. See *Where You Can Find More Information* in the accompanying prospectus.

*Unless the context otherwise requires, or unless otherwise specified, all references in this prospectus supplement to the terms we, us, our and our company refer to DCT Industrial Trust Inc., which we refer to as DCT, together with its subsidiaries, including DCT Industrial Operating Partnership LP, which we refer to as our operating partnership. When we say you without any further specification, we mean any person to whom this prospectus supplement is delivered.*

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**PROSPECTUS SUPPLEMENT SUMMARY**

*Except for statements under Recent Developments, this summary only highlights the more detailed information appearing elsewhere, or incorporated by reference in this prospectus supplement and the accompanying prospectus. It may not contain all of the information that is important to you. You should carefully read this entire prospectus supplement, the accompanying prospectus and the documents incorporated by reference in this prospectus supplement and the accompanying prospectus before deciding whether to invest in our common stock.*

**About DCT Industrial Trust Inc.**

We are a leading industrial real estate company that owns, operates and develops high-quality bulk distribution and light industrial properties in high-volume distribution markets in the U.S. and Mexico. We were formed as a Maryland corporation in April 2002 and have elected to be treated as a real estate investment trust, or REIT, for United States federal income tax purposes commencing with our taxable year ended December 31, 2003. We are structured as an umbrella partnership REIT under which substantially all of our current and future business is, and will be, conducted through a majority owned and controlled subsidiary, DCT Industrial Operating Partnership LP, a Delaware limited partnership, for which DCT Industrial Trust Inc. is the sole general partner. As of March 31, 2009 we owned approximately 85% of the outstanding units of limited partnership in our operating partnership. After giving effect to this offering, but before giving effect to the underwriters' over-allotment option, we will own approximately 86% of the outstanding units.

As of March 31, 2009, we owned interests in, managed, or had under development 450 industrial real estate buildings comprised of approximately 75.9 million square feet. Our portfolio of consolidated operating properties included 373 industrial real estate buildings, which consisted of 218 bulk distribution properties, 113 light industrial properties and 42 service center properties comprised of approximately 52.1 million square feet. Our portfolio of 373 consolidated operating properties was 89.8% occupied as of March 31, 2009. As of March 31, 2009, we also consolidated 12 development properties and six redevelopment properties. In addition, as of March 31, 2009, we had ownership interests ranging from 4% to 20% in unconsolidated institutional joint ventures, or funds, that owned 45 properties comprised of approximately 14.1 million square feet, and investments in three unconsolidated operating properties and ten unconsolidated development joint venture properties.

Our principal executive office is located at 518 Seventeenth Street, Suite 800, Denver, Colorado 80202 and our telephone number is (303) 597-2400. Our website address is [www.dctindustrial.com](http://www.dctindustrial.com).

**Recent Developments**

***Distributions***

The payment of quarterly distributions is determined by our Board of Directors and may be adjusted at its discretion at any time. During the three months ended March 31, 2009, our Board of Directors declared distributions totaling approximately \$16.8 million, including distributions to our stockholders and our operating partnership's unitholders, which equaled \$0.08 per share of common stock.

We currently intend to pay annualized distributions of approximately \$67.0 million in the aggregate to our stockholders and our operating partnership's unitholders, rounded each quarter to the nearest whole cent per share. Accordingly, as a result of the increased number of shares to be outstanding upon completion of this offering, we currently intend to reduce quarterly distributions on our common stock on a per share basis for the remainder of 2009 from \$0.08 per share to \$0.07 per share. This will not impact the \$0.08 per share dividend previously declared and payable on July 17, 2009 to stockholders of record as of July 8, 2009.

The statements above concerning the remaining distributions for 2009 reflect our current intentions. However, the actual distributions payable will be determined by our Board of Directors, in its discretion, based

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upon the circumstances at the time of declaration, and the actual distributions payable to our stockholders may vary from the amounts we currently intend to distribute to our stockholders. Any change in our actual or expected distributions or our distribution policy could have a material adverse effect on the market price of our common stock.

***Development Projects***

As of March 31, 2009, our estimated costs to complete our development projects were approximately \$48.7 million. Of this \$48.7 million, we expect that approximately \$22.2 million relating to our consolidated development projects will need to be funded by us in cash and that the remainder relating to our unconsolidated development projects may be funded from existing construction loans. As of March 31, 2009, our pro rata share of our unconsolidated development joint ventures' total construction loans, including undrawn amounts, was \$127.8 million, of which \$91.0 million is scheduled to mature by the end of 2010. Currently, all of our development projects are shell complete.

***Leasing Activity***

From January 1, 2009 through April 30, 2009, we have leased approximately 3.5 million square feet, which includes, among others, our lease of 158,000 square feet in Southwest Minneapolis to a video game distributor and our lease for 557,000 square feet at our Southcreek IV development building in Atlanta to a national food manufacturer. We had a weighted average tenant retention rate of approximately 66% and 76%, respectively, for the quarter ended March 31, 2009 and the year ended December 31, 2008.

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**The Offering**

Issuer	DCT Industrial Trust Inc., a Maryland corporation.
Common Stock Offered by Us	22,500,000 shares (or 25,875,000 shares if the underwriters' option to purchase additional shares is exercised in full).
Common Stock to be Outstanding after this Offering	199,034,386 <sup>(1)</sup>
Common Stock and Operating Partnership Units to be Outstanding after this Offering	231,921,557 <sup>(1)(2)</sup>
NYSE Listing Symbol	DCT
Use of Proceeds	We expect that the net proceeds from this offering will be approximately \$ _____ million after deducting the underwriting discount and our estimated expenses (or approximately \$ _____ million if the underwriters exercise in full its option to purchase additional shares of our common stock). We intend to contribute the net proceeds from this offering to our operating partnership for general corporate purposes, which may include the repayment of debt. See "Use of Proceeds" in this prospectus supplement.
Risk Factors	An investment in our common stock involves various risks, and prospective investors should carefully consider the matters discussed under the caption entitled "Risk Factors" beginning on page S-3 of this prospectus supplement and in the documents incorporated by reference in this prospectus supplement and the accompanying prospectus before making a decision to invest in our common stock.
Restrictions on ownership and transfer	In part, to assist us in complying with certain federal income tax requirements applicable to REITs, among other purposes, our charter imposes certain restrictions on ownership and transfer of our common stock. See "Description of Common Stock" "Restriction on Ownership of Common Stock" beginning on page 12 in the accompanying prospectus.

<sup>(1)</sup> Based on shares outstanding as of May 29, 2009. Includes 373,311 shares of restricted stock and excludes 3,375,000 shares issuable upon exercise of the underwriters' over-allotment option, 2,225,355 shares available for future issuance under our 2006 long-term incentive plan, 4,030,856 shares underlying options granted under our 2006 long-term incentive plan and 100,227 shares underlying outstanding phantom share awards granted under our 2006 long-term incentive plan.

<sup>(2)</sup> Based on units outstanding as of May 29, 2009. Includes 31,356,148 common units and 1,531,023 LTIP units in our operating partnership held by limited partners, other than DCT Industrial Trust Inc. common units and LTIP units, assuming the LTIP units have vested and have been converted into an equal number of common units in accordance with their terms. Subject to limits in the partnership agreement for our operating partnership, common units may be exchanged for cash or, at our option, shares of our common stock on a one-for-one basis.





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**RISK FACTORS**

*In addition to other information contained in this prospectus supplement and the accompanying prospectus, you should carefully consider the risks described below and in the documents incorporated by reference in this prospectus supplement and the accompanying prospectus, including (i) DCT Industrial Trust Inc.'s Annual Report on Form 10-K for the year ended December 31, 2008, (ii) DCT Industrial Trust Inc.'s Quarterly Report on Form 10-Q for the quarter ended March 31, 2009 and (iii) documents filed by DCT Industrial Trust Inc. with the SEC after the date of this prospectus supplement and which are deemed incorporated by reference in this prospectus supplement and the accompanying prospectus, before making an investment decision. These risks are not the only ones facing our company. Additional risks not presently known to us or that we currently deem immaterial may also impair our business operations. Our business, financial condition and results of operations could be materially adversely affected by the materialization of any of these risks. The trading price of our common stock could decline due to the materialization of any of these risks, and you may lose all or part of your investment.*

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

The decision to declare and pay distributions on our common stock in the future, as well as the timing, amount and composition of any such future distributions, will be at the sole discretion of our Board of Directors and will depend on our earnings, funds from operations, liquidity, financial condition, capital requirements or contractual prohibitions, the annual distribution requirements under the REIT provisions of the Internal Revenue Code of 1986, as amended, state law and such other factors as our Board of Directors deems relevant. While the statements under Prospectus Supplement Summary Recent Developments concerning the remaining distributions for 2009 reflect the Company's current intentions, the actual distribution payable will be determined by our Board of Directors based upon the circumstances at the time of declaration and the actual distribution payable may vary from such expected amounts. Any change in our distribution policy could have a material adverse effect on the market price of our common shares.

***The trading price of our common stock has been and may continue to be subject to wide fluctuations.***

The sale price of our common stock on the NYSE has fluctuated significantly in recent quarters. Our stock price may fluctuate in response to a number of events and factors, such as those described elsewhere in this Risk Factors section and those events described or incorporated by reference in this prospectus supplement.

***This offering is expected to be dilutive, and there may be future dilution of our common stock.***

Giving effect to the issuance of common stock in this offering, the receipt of the expected net proceeds and the use of those proceeds, we expect that this offering will have a dilutive effect on our expected earnings per share and funds from operations per share for the year ending December 31, 2009. The actual amount of such dilution cannot be determined at this time and will be based on numerous factors. Additionally, subject to the 60 day lock-up restrictions described in Underwriting, we are not restricted from issuing additional shares of our common stock or preferred stock, including any securities that are convertible into or exchangeable for, or that represent the right to receive, common stock or preferred stock or any substantially similar securities in the future. The market price of our common stock could decline as a result of sales of a large number of shares of our common stock in the market after this offering or the perception that such sales could occur.

**FORWARD-LOOKING STATEMENTS**

We make statements in this prospectus supplement and accompanying prospectus, and the documents incorporated by reference that are forward-looking statements within the meaning of the federal securities laws. In particular, statements pertaining to our capital resources, portfolio performance and results of operations contain forward-looking statements. Likewise, all of our statements regarding anticipated market conditions,

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demographics and results of operations are forward-looking statements. 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, anticipates or the negative of these words and phrases or similar words or phrases which are predictions of or indicate future events or trends and which do not relate solely to historical matters. You can also identify forward looking statements by discussions of strategy, plans or intentions.

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). 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:

national, international, regional and local economic conditions, including, in particular, the current economic slow-down in the U.S. and internationally;

the general level of interest rates and the availability of debt financing, particularly in light of the recent disruption in the credit markets;

the competitive environment in which we operate;

real estate risks, including fluctuations in real estate values and the general economic climate in local markets and competition for tenants in such markets, particularly in light of the current economic slow-down in the U.S. and internationally;

decreased rental rates or increasing vacancy rates;

defaults on or non-renewal of leases by tenants;

acquisition and development risks, including failure of such acquisitions and development projects to perform in accordance with projections;

the timing of acquisitions and dispositions;

natural disasters such as fires, hurricanes and earthquakes;

energy costs;

the terms of governmental regulations that affect us and interpretations of those regulations, including changes in real estate and zoning laws and increases in real property tax rates;

financing risks, including the risk that our cash flows from operations may be insufficient to meet required payments of principal, and interest and other commitments;

lack of or insufficient amounts of insurance;

litigation, including costs associated with prosecuting or defending claims and any adverse outcomes;

the consequences of future terrorist attacks;

possible environmental liabilities, including costs, fines or penalties that may be incurred due to necessary remediation of contamination of properties presently owned or previously owned by us; and

other risks and uncertainties detailed in the section entitled "Risk Factors"

While forward-looking statements reflect our current beliefs, they are not guaranties of future performance. We disclaim any obligation to publicly update or revise any forward-looking statement to reflect changes in underlying assumptions or factors, new information, data or methods, future events or other changes. For a further discussion of these and other factors that could impact our future results, performance or transactions, see the section entitled "Risk Factors" in this prospectus supplement and the documents referred to in that section.

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We expect that the net proceeds from this offering will be approximately \$            million after deducting underwriting discounts and commissions and our estimated expenses of approximately \$            million (or approximately \$            million if the underwriters over-allotment option is exercised in full).

We intend to contribute the net proceeds from this offering to our operating partnership in exchange for additional units of limited partnership interest in our operating partnership, which have substantially identical economic terms as our common stock. Our operating partnership will use the net proceeds from the offering for general corporate purposes, which may include the repayment of debt.

**CAPITALIZATION**

The following table shows our cash and cash equivalents and capitalization as of March 31, 2009 on a historical basis and on an as adjusted basis to give effect to the offering and sale of 22,500,000 shares of our common stock in this offering at a public offering price of \$            per share, after deducting underwriting discounts and commissions and estimated transaction expenses payable by us. You should read the information included in the table in conjunction with our consolidated financial statements and the related notes included in our Quarterly Report on Form 10-Q for the quarter ended March 31, 2009 filed with the SEC and incorporated by reference in this prospectus supplement and the accompanying prospectus.

	<b>As of March 31, 2009</b>	
	<b>Historical</b>	<b>Pro Forma As Adjusted</b>
	<b>(unaudited)</b>	
	<b>(in thousands)</b>	
Cash and cash equivalents	\$ 16,237	\$
Debt:		
Unsecured line of credit	\$	\$
Senior unsecured notes	625,000	625,000
Mortgage notes	572,664	572,664
Total consolidated debt	1,197,664	1,197,664
Total stockholders' equity	1,130,888	
Noncontrolling interests	271,397	271,397
Total equity	1,402,285	
Total capitalization	\$ 2,599,949	\$

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**SUPPLEMENTAL UNITED STATES FEDERAL INCOME TAX CONSIDERATIONS**

**General**

The following is a summary of certain United States federal income tax considerations associated with an investment in our common shares that may be relevant to you. The statements made in this section of the prospectus supplement are based upon current provisions of the Internal Revenue Code and Treasury Regulations promulgated thereunder, as currently applicable, currently published administrative positions of the Internal Revenue Service and judicial decisions, all of which are subject to change, either prospectively or retroactively. We cannot assure you that any changes will not modify the conclusions expressed in counsel's opinions described herein. This summary does not address all possible tax considerations that may be material to an investor and does not constitute legal or tax advice. Moreover, this summary does not deal with all tax aspects that might be relevant to you, as a prospective holder of common stock in light of your personal circumstances, nor does it deal with particular types of stockholders that are subject to special treatment under the federal income tax laws, such as insurance companies, holders whose shares are acquired through the exercise of stock options or otherwise as compensation, holders whose shares are acquired through the distribution reinvestment plan or who intend to sell their shares under the share redemption program, tax-exempt organizations except as provided below, financial institutions or broker-dealers, a trust, an estate, a regulated investment company, a person who holds 10% or more (by vote or value) of our stock, foreign corporations or persons who are not citizens or residents of the United States except as provided below, or others who are subject to special treatment under the Internal Revenue Code. The Internal Revenue Code provisions governing the federal income tax treatment of REITs and their stockholders are highly technical and complex, and this summary is qualified in its entirety by the express language of applicable Internal Revenue Code provisions, Treasury Regulations promulgated thereunder and administrative and judicial interpretations thereof.

*This discussion is not intended to be, and should not be construed as, tax advice. We urge you, as a prospective stockholder, to consult your tax advisor regarding the specific tax consequences to you of a purchase of shares, ownership and sale of the shares and of our election to be taxed as a REIT, including the federal, state, local, foreign and other tax consequences of such purchase, ownership, sale and election and of potential changes in applicable tax laws.*

***REIT Qualification***

We elected to be taxable as a REIT commencing with our taxable year ending December 31, 2003. This section of the prospectus discusses the laws governing the tax treatment of a REIT and its stockholders. These laws are highly technical and complex.

Goodwin Procter LLP has delivered an opinion to us that, commencing with our taxable year that began on January 1, 2003, our company was organized in conformity with the requirements for qualification as a REIT under the Internal Revenue Code, and its actual method of operation, and its proposed method of operation has enabled it to meet the requirements for qualification and taxation as a REIT.

It must be emphasized that the opinion of Goodwin Procter LLP is based on various assumptions relating to the organization and operation of our company, and is conditioned upon representations and covenants made by us regarding our organization, our sources of income, our assets and the past, present and future conduct of our business operations. While we intend to operate so that we will qualify as a REIT, given the highly complex nature of the rules governing REITs, the ongoing importance of factual determinations, and the possibility of future changes in our circumstances, no assurance can be given by Goodwin Procter LLP or by us that we will so qualify for any particular year. Goodwin Procter LLP has no obligation to advise us or the holders of our common stock of any subsequent change in the matters stated, represented or assumed in the opinion, or of any subsequent change in the applicable law. You should be aware that opinions of counsel are not binding on the Internal Revenue Service or any court, and no assurance can be given that the Internal Revenue Service will not challenge the conclusions set forth in such opinions.

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Qualification and taxation as a REIT depends on our ability to meet on a continuing basis, through actual operating results, distribution levels, and diversity of stock ownership, various qualification requirements imposed upon REITs by the Internal Revenue Code, the compliance with which will not be reviewed by Goodwin Procter LLP. Our ability to qualify as a REIT also requires that we satisfy certain asset tests, some of which depend upon the fair market values of assets directly or indirectly owned by us. Such values may not be susceptible to a precise determination. While we intend to continue to operate in a manner that will allow us to qualify as a REIT, no assurance can be given that the actual results of our operations for any taxable year satisfy such requirements for qualification and taxation as a REIT.

### ***Taxation of Our Company***

If we qualify for taxation as a REIT, we generally will not be subject to federal corporate income taxes on that portion of our ordinary income or capital gain that we distribute currently to our stockholders, because the REIT provisions of the Internal Revenue Code generally allow a REIT to deduct dividends paid to its stockholders. This substantially eliminates the federal double taxation on earnings (taxation at both the corporate level and stockholder level) that usually results from an investment in a corporation. Even if we qualify for taxation as a REIT, however, we will be subject to federal income taxation as follows:

We will be taxed at regular corporate rates on our undistributed REIT taxable income, including undistributed net capital gains ( REIT taxable income is the taxable income of the REIT subject to special adjustments, including a deduction for dividends paid);

Under some circumstances, we may be subject to the alternative minimum tax on our items of tax preference;

If we have net income from prohibited transactions (which are, in general, sales or other dispositions of property, other than foreclosure property, held primarily for sale to customers in the ordinary course of business), the net income will be subject to a 100% tax;

If we elect to treat property that we acquire in connection with a foreclosure of a mortgage loan or certain leasehold terminations as foreclosure property, we may avoid the 100% tax on gain from a resale of that property (if the sale would otherwise constitute a prohibited transaction), but the net income from the sale of the foreclosure property and certain income derived from such property may be subject to corporate income tax at the highest applicable rate (currently 35%);

If we fail to satisfy any of the asset tests (other than a failure by a de minimis amount of the 5% or 10% asset tests) or other requirements applicable to REITs, as described below, yet nonetheless maintain our qualification as a REIT because there is reasonable cause for the failure and other applicable requirements are met, we may be subject to an excise tax. In that case, the amount of the tax will be at least \$50,000 per failure, and, in the case of certain asset test failures, will be determined as the amount of net income generated by the assets in question multiplied by the highest corporate tax rate (currently 35%) if that amount exceeds \$50,000 per failure;

If we fail to satisfy the 75% gross income test or the 95% gross income test, as discussed below, but have otherwise maintained our qualification as a REIT because certain other requirements are met, we will be required to pay tax equal to (1) the greater of (A) the amount by which 75% of our gross income, excluding gross income from prohibited transactions, exceeds the amount of our income qualifying under the 75% gross income test and (B) the amount by which 95% of our gross income, excluding gross income from prohibited transactions (90% for our taxable years beginning before October 23, 2004) exceeds the amount of our income qualifying under the 95% gross income test, multiplied by (2) a fraction intended to reflect our profitability;

If we fail to distribute during each year at least the sum of (i) 85% of our REIT ordinary income for the year, (ii) 95% of our REIT capital gain net income for such year and (iii) any undistributed taxable income from prior periods, we will be subject to a 4% excise tax on the excess of the required





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distribution over the sum of (A) the amounts actually distributed, plus (B) retained amounts on which corporate level tax is paid by us;

We may be required to pay monetary penalties to the Internal Revenue Service in certain circumstances, including if we fail to meet record-keeping requirements intended to monitor our compliance with rules relating to the composition of our stockholders;

We may elect to retain and pay income tax on our net long-term capital gain. In that case, a stockholder would include its proportionate share of our undistributed long-term capital gain (to the extent we make a timely designation of such gain to the stockholder) in its income, would be deemed to have paid the tax that we paid on such gain, and would be allowed a credit for its proportionate share of the tax deemed to have been paid, and an adjustment would be made to increase the stockholders' basis in our common stock;

If we acquire appreciated assets from a C corporation (*i.e.*, a corporation generally subject to corporate-level tax) in a transaction in which the C corporation would not normally be required to recognize any gain or loss on disposition of the asset and we subsequently recognize gain on the disposition of the asset during the ten year period beginning on the date on which we acquired the asset, then a portion of the gain may be subject to tax at the highest regular corporate rate; and

Any taxable REIT subsidiary of ours will be subject to the regular corporate income tax on its income.

A 100% tax may be imposed on some items of income and expense that are directly or constructively paid between a REIT and a taxable REIT subsidiary if and to the extent that the Internal Revenue Service successfully asserts that such items were not based on market rates.

No assurance can be given that the amount of any such federal income taxes will not be substantial. In addition, we and our subsidiaries may be subject to a variety of taxes other than U.S. federal income tax, including payroll taxes and state, local, and foreign income, franchise, property and other taxes on assets and operations. We could also be subject to tax in situations and on transactions not presently contemplated.

**Requirements for Qualification as a REIT**

We elected to be taxed as a REIT for United States federal income tax purposes commencing with our taxable year ending December 31, 2003. In order for us to have so qualified as a REIT, we must have met and continue to meet the requirements discussed below relating to our organization, sources of income, nature of assets and distributions of income to our stockholders.

***Organizational Requirements***

In order to qualify for taxation as a REIT under the Internal Revenue Code, we must meet tests regarding our income and assets described below and:

- 1) Be a corporation, trust or association that would be taxable as a domestic corporation but for the REIT provisions of the Internal Revenue Code;
- 2) Elect to be taxed as a REIT and satisfy relevant filing and other administrative requirements for each taxable year;
- 3) Be managed by one or more trustees or directors;
- 4) Have our beneficial ownership evidenced by transferable shares;
- 5) Not be a financial institution or an insurance company subject to special provisions of the federal income tax laws;

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- 6) Use a calendar year for U.S. federal income tax purposes;
- 7) Have at least 100 stockholders for at least 335 days of each taxable year of 12 months or during a proportionate part of a taxable year of less than 12 months; and
- 8) Not be closely held as defined for purposes of the REIT provisions of the Internal Revenue Code.

We would be treated as closely held if, during the last half of any taxable year, more than 50% in value of our outstanding capital stock is owned, directly or indirectly through the application of certain attribution rules, by five or fewer individuals, as defined in the Internal Revenue Code to include certain entities. Items 7 and 8 above do not apply until after the first taxable year for which we elect to be taxed as a REIT. If we comply with Treasury regulations that provide procedures for ascertaining the actual ownership of our common stock for each taxable year and we did not know, and with the exercise of reasonable diligence would not have known, that we failed to meet item 8 above for a taxable year, we will be treated as having met item 8 for that year.

We elected to be taxed as a REIT commencing with our taxable year ending December 31, 2003 and we intend to satisfy the other requirements described in Items 1-6 above at all times during each of our taxable years. In addition, our charter contains restrictions regarding ownership and transfer of shares of our stock that are intended to assist us in continuing to satisfy the share ownership requirements in Items 7 and 8 above.

To qualify as a REIT, we also cannot have at the end of any taxable year any undistributed earnings and profits that are attributable to a non-REIT taxable year. We do not believe that we have any non-REIT earnings and profits and believe that we therefore satisfy this requirement.

For purposes of the requirements described herein, any corporation that is a qualified REIT subsidiary of ours will not be treated as a corporation separate from us and all assets, liabilities, and items of income, deduction and credit of our qualified REIT subsidiaries will be treated as our assets, liabilities and items of income, deduction and credit. A qualified REIT subsidiary is a corporation, other than a taxable REIT subsidiary (as described below under **Operational Requirements Asset Tests**), all of the capital stock of which is owned by a REIT.

In the case of a REIT that is a partner in an entity treated as a partnership for federal tax purposes, the REIT is treated as owning its proportionate share of the assets of the partnership and as earning its allocable share of the gross income of the partnership for purposes of the requirements described herein. In addition, the character of the assets and gross income of the partnership will retain the same character in the hands of the REIT for purposes of the REIT requirements, including the asset and income tests described below. As a result, our proportionate share of the assets, liabilities and items of income of our operating partnership and of any other partnership, joint venture, limited liability company or other entity treated as a partnership for federal tax purposes in which we directly or indirectly through other partnerships or disregarded entities have an interest will be treated as our assets, liabilities and items of income.

The Internal Revenue Code provides relief from violations of the REIT gross income requirements, as described below under **Operational Requirements Gross Income Tests**, in cases where a violation is due to reasonable cause and not willful neglect, and other requirements are met, including the payment of a penalty tax that is based upon the magnitude of the violation. In addition, the Internal Revenue Code includes provisions that extend similar relief in the case of certain violations of the REIT asset requirements (see **Operational Requirements Asset Tests** below) and other REIT requirements, again provided that the violation is due to reasonable cause and not willful neglect, and other conditions are met, including the payment of a penalty tax. If we fail to satisfy any of the various REIT requirements, there can be no assurance that these relief provisions would be available to enable us to maintain our qualification as a REIT, and, if available, the amount of any resultant penalty tax could be substantial.

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***Protection from Stock Concentration***

In order to protect us from a concentration of ownership of stock that would cause us to fail item 8 above, our charter provides that stock owned, or deemed to be owned or transferred to a stockholder in excess of specified ownership limits will be converted automatically into Excess Stock (as defined below) and transferred to a charity for resale. The original stockholder is entitled to receive certain proceeds from such a resale. Excess Stock is a separate class of our capital stock that is entitled to no voting rights but shares ratably with the common stock in dividends and rights upon dissolution. Because of the absence of authority on this issue, however, we cannot assure you that the operation of the Excess Stock or other provisions contained in our charter will, as a matter of law, prevent a concentration of ownership of stock in excess of the applicable ownership limits from causing us to violate item 8 above. If there were such a concentration of ownership and the operation of the Excess Stock or other provisions contained in our charter were not held to cure such violation, we would be disqualified as a REIT. In rendering its opinion that we are organized in a manner that permits us to qualify as a REIT, Goodwin Procter LLP is relying on our representation that the ownership of our stock (without regard to the Excess Stock provisions) satisfies item 8 above. Goodwin Procter LLP expresses no opinion as to whether, as a matter of law, the Excess Stock or other provisions contained in our charter preclude us from failing item 8 above.

To monitor its compliance with item 8 above, a REIT is required to send annual letters to certain stockholders requesting information regarding the actual ownership of its shares. If we comply with the annual letters requirement and we do not know or, exercising reasonable diligence, would not have known of our failure to meet item 8 above, then we will be treated as having met item 8 above. A list of those persons failing or refusing to comply with this demand must be maintained as part of our records. Failure by us to comply with these record-keeping requirements could subject us to monetary penalties. A stockholder that fails or refuses to comply with the demand is required by Treasury Regulations to submit a statement with its tax return disclosing the actual ownership of the shares and other information.

***Operational Requirements Gross Income Tests***

To maintain our qualification as a REIT, we must satisfy annually two gross income requirements.

At least 75% of our gross income, excluding gross income from prohibited transactions (as defined below) and certain other income and gains described below, for each taxable year must be derived directly or indirectly from investments relating to real property or mortgages on real property and from other specified sources, including some types of temporary investments. For these purposes, qualifying gross income includes rents from real property and, in some circumstances, interest, but excludes gross income from dispositions of property held primarily for sale to customers in the ordinary course of a trade or business. These dispositions are referred to as prohibited transactions. This is the 75% Income Test.

At least 95% of our gross income, excluding gross income from prohibited transactions and certain other income and gains described below, for each taxable year must be derived from the real property investments described above and generally from dividends, interest, and gains from the sale or disposition of stock or securities or from any combination of the foregoing. This is the 95% Income Test.

The rents received by us will qualify as rents from real property for purposes of satisfying the gross income requirements for a REIT only if the following conditions are met:

The amount of rent received from a tenant must not be based in whole or in part on the income or profits of any person; however, an amount received or accrued generally will not be excluded from the term rents from real property solely by reason of being based on a fixed percentage or percentages of gross receipts or sales;

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In general, neither we nor an actual or constructive owner of 10% or more of our stock may directly or constructively own 10% or more of a tenant, or a Related Party Tenant, or a subtenant of the tenant (in which case only rent attributable to the subtenant is disqualified), unless the tenant is a taxable REIT subsidiary and either (1) at least 90% of the property is leased to unrelated tenants and the rent paid by the taxable REIT subsidiary is substantially comparable to the rent paid by the unrelated tenants for comparable space or (ii) the property leased is a qualified lodging facility as defined in Section 856(d)(9)(D) of the Internal Revenue Code or a qualified health care property as defined in Section 856(e)(6)(D)(i) of the Internal Revenue Code, and certain other conditions are satisfied;

Rent attributable to personal property leased in connection with a lease of real property cannot be greater than 15% of the total rent received under the lease; if so, the portion of the rent attributable to the personal property will not qualify as rents from real property; and

Generally, a REIT may provide only an insignificant amount of services unless the services are usually or customarily rendered in connection with the rental of space only and are not otherwise considered rendered to the occupant. We may not provide impermissible tenant services to tenants, other than through an independent contractor who is adequately compensated and from whom we do not derive any income or through a taxable REIT subsidiary, without giving rise to impermissible tenant services income. Impermissible tenant services income is deemed to be at least 150% of the direct cost to us of providing the service. If the impermissible tenant service income exceeds 1% of our total income from a property, then all of the income from that property will fail to qualify as rents from real property. If the total amount of impermissible tenant service income from a property does not exceed 1% of our total income from the property, the services will not cause other rental income from the applicable property to fail to qualify as rents from real property, but the impermissible tenant service income will not qualify as rents from real property.

We may from time to time enter into hedging transactions with respect to interest rate exposure on one or more of our assets or liabilities. Any such hedging transactions could take a variety of forms, including the use of derivative instruments such as interest rate swap contracts, interest rate cap or floor contracts, futures or forward contracts, and options. Except to the extent provided by Treasury Regulations, any income from a hedging transaction which is clearly identified as such before the close of the day on which it was acquired, originated or entered into, including gain from the disposition or termination of such a transaction, will not constitute gross income for purposes of the 75% Income and 95% Income Tests, provided that the hedging transaction is entered into after July 30, 2008 (i) in the normal course of our business primarily to manage risk of interest rate or price changes or currency fluctuations with respect to indebtedness incurred or to be incurred by us to acquire or carry real estate assets or (ii) primarily to manage the risk of currency fluctuations with respect to any item of income or gain that would be qualifying income under the 75% or 95% Income Tests (or any property which generates such income or gain). To the extent we enter into other types of hedging transactions, the income from those transactions is likely to be treated as nonqualifying income for purposes of both the 75% and 95% Income Tests. Prior to July 30, 2008, the rules applicable to hedging transactions were more restrictive. In addition, certain foreign currency gains recognized after July 30, 2008 will be excluded from gross income for purposes of one or both of the income tests.

We intend to structure any hedging transactions in a manner that does not jeopardize our status as a REIT. We may conduct some or all of our hedging activities (including hedging activities relating to currency risk) through a taxable REIT subsidiary or other corporate entity, the income from which may be subject to federal income tax, rather than participating in the arrangements directly. No assurance can be given, however, that our hedging activities will not give rise to income that does not qualify for purposes of either or both of the REIT income tests, and will not adversely affect our ability to satisfy the REIT qualification requirements.

We expect the bulk of our income to qualify under the 75% Income and 95% Income Tests as rents from real property in accordance with the requirements described above. In this regard, we anticipate that most of our leases will be for fixed rentals with annual consumer price index or similar adjustments and that none of the

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rentals under our leases will be based on the income or profits of any person. In addition, none of our tenants are expected to be Related Party Tenants and the portion of the rent attributable to personal property is not expected to exceed 15% of the total rent to be received under any lease. Finally, we anticipate that all or most of the services to be performed with respect to our properties will be performed by our property manager and such services are expected to be those usually or customarily rendered in connection with the rental of real property and not rendered to the occupant of such property. In addition, we anticipate that any non-customary services will be provided by a taxable REIT subsidiary or, alternatively, by an independent contractor that is adequately compensated and from whom we derive no income. However, we can give no assurance that the actual sources of our gross income will allow us to satisfy the 75% Income and the 95% Income Tests described above.

Any gain that we realize on the sale of property held as inventory or otherwise held primarily for sale to customers in the ordinary course of business, including our share of any such gain realized by our operating partnership, either directly or through its subsidiary partnerships and limited liability companies, will be treated as income from a prohibited transaction that is subject to a 100% penalty tax, unless such property has been held by us for two years (four years if a property was sold before July 30, 2008) and certain other requirements are satisfied or the gain is realized in a taxable REIT subsidiary. This prohibited transaction income may also adversely affect our ability to satisfy the income tests for qualification as a REIT. Under existing law, whether property is held as inventory or primarily for sale to customers in the ordinary course of a trade or business is a question of fact that depends on all the facts and circumstances surrounding the particular transaction. Our operating partnership intends to hold its properties for investment with a view to long-term appreciation, to engage in the business of acquiring, developing and owning its properties and to make occasional sales of the properties as are consistent with our operating partnership's investment objectives. We do not intend to enter into any sales that are prohibited transactions other than through a taxable REIT subsidiary. However, the Internal Revenue Service may successfully contend that some or all of the sales made by our operating partnership or its subsidiary partnerships or limited liability companies are prohibited transactions. We would be required to pay the 100% penalty tax on our allocable share of the gains resulting from any such sales.

If we fail to satisfy one or both of the 75% Income and the 95% Income Tests for any taxable year, we may still qualify as a REIT for that year if we are eligible for relief under specific provisions of the Internal Revenue Code. These relief provisions generally will be available if:

Our failure to meet these tests was due to reasonable cause and not due to willful neglect; and

following our identification of the failure to meet the 75% or 95% Income Test for any taxable year, we file a schedule with the Internal Revenue Service setting forth each item of our gross income for purposes of such tests for such taxable year in accordance with Treasury regulations to be issued.

It is not possible, however, to state whether, in all circumstances, we would be entitled to the benefit of these relief provisions. In addition, as discussed above in *General Taxation of Our Company*, even if these relief provisions apply, a tax would be imposed with respect to the excess net income.

***Operational Requirements Asset Tests***

At the close of each quarter of our taxable year, we also must satisfy four tests, which we refer to as the Asset Tests, relating to the nature and diversification of our assets.

First, at least 75% of the value of our total assets must be represented by real estate assets, cash, cash items and government securities. The term *real estate assets* includes real property, mortgages on real property, shares in other qualified REITs, and a proportionate share of any real estate assets owned by a partnership in which we are a partner or of any qualified REIT subsidiary of ours. Real estate assets include, for this purpose, stock or debt instruments held for less than one year purchased with the proceeds of an offering of shares of our common stock or certain debt.

Second, no more than 25% of our total assets may be represented by securities other than those in the 75% asset class.



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Third, of the investments included in the 25% asset class, the value of any one issuer's securities that we own may not exceed 5% of the value of our total assets. Additionally, we may not own more than 10% of the voting power or value of any one issuer's outstanding securities. This Asset Test does not apply to securities of a taxable REIT subsidiary. For purposes of this Asset Test and the second Asset Test, securities do not include the equity or debt securities of a qualified REIT subsidiary of ours or an equity interest in any entity treated as a partnership for federal tax purposes.

Fourth, no more than 25% (20% for taxable years beginning on or before July 30, 2008) of the value of our total assets may consist of the securities of one or more taxable REIT subsidiaries. Subject to certain exceptions, a taxable REIT subsidiary is any corporation, other than a REIT, in which we directly or indirectly own stock and with respect to which a joint election has been made by us and the corporation to treat the corporation as a taxable REIT subsidiary of ours and also includes any corporation, other than a REIT, in which a taxable REIT subsidiary of ours owns, directly or indirectly, more than 35 percent of the voting power or value. The Asset Tests must generally be met for any quarter in which we acquire securities or other property.

We own an interest in a number of taxable REIT subsidiaries and may acquire securities in additional taxable REIT subsidiaries in the future. A taxable REIT subsidiary is subject to U.S. federal income tax and state and local income tax, where applicable, as a regular C corporation. Other than some activities relating to lodging and health care facilities, a taxable REIT subsidiary may generally engage in any business, including the provision of customary or non-customary services to tenants of its parent REIT. A taxable REIT subsidiary also can recognize income that, if recognized by a REIT directly, would be subject to the 100% prohibited transaction tax, or income that would be nonqualifying income under the gross income tests, if earned by a REIT. However, several provisions regarding the arrangements between a REIT and its taxable REIT subsidiaries ensure that a taxable REIT subsidiary will be subject to an appropriate level of U.S. federal income taxation. For example, a taxable REIT subsidiary is limited in its ability to deduct interest payments in excess of a certain amount made to us. In addition, we will be obligated to pay a 100% penalty tax on some payments that we receive or on certain expenses deducted by the taxable REIT subsidiary if the economic arrangements among us, our tenants and the taxable REIT subsidiary are not comparable to similar arrangements among unrelated parties. Our taxable REIT subsidiaries may own and operate certain properties, engage in sale of such properties, and realize income and gain from sales or operations, which will be subject to U.S. federal income tax and other applicable taxes, as regular C corporations. The amount of taxes incurred by our taxable REIT subsidiaries could be significant.

If we meet the Asset Tests at the close of any quarter, we will not lose our REIT status for a failure to satisfy the Asset Tests (other than the 10% voting limitation) at the end of a later quarter in which we have not acquired any securities or other property if such failure occurs solely because of changes in asset values. If our failure to satisfy the Asset Tests results from an acquisition of securities or other property during a quarter, we can cure the failure by disposing of a sufficient amount of non-qualifying assets within 30 days after the close of that quarter. We intend to maintain adequate records of the value of our assets to ensure compliance with the Asset Tests and to take other action within 30 days after the close of any quarter as may be required to cure any noncompliance.

The Internal Revenue Code contains a number of provisions applicable to REITs, including relief provisions, that make it easier for REITs to satisfy the asset requirements, or to maintain REIT qualification notwithstanding certain violations of the asset and other requirements.

One such provis