

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 10-Q

QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the quarterly period ended June 30, 2023
or

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the transition period from _____ to _____

Commission File Number: 1-10899 (Kimco Realty Corporation)
Commission File Number: 333-269102-01 (Kimco Realty OP, LLC)

KIMCO REALTY CORPORATION
KIMCO REALTY OP, LLC

(Exact name of registrant as specified in its charter)

Maryland (Kimco Realty Corporation)
Delaware (Kimco Realty OP, LLC)

13-2744380
92-1489725

(State or other jurisdiction of incorporation or organization)

(I.R.S. Employer Identification No.)

500 North Broadway, Suite 201, Jericho, NY 11753
(Address of principal executive offices) (Zip Code)

(516) 869-9000
(Registrant's telephone number, including area code)

Securities registered pursuant to Section 12(b) of the Act:

Kimco Realty Corporation

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, par value \$.01 per share.	KIM	New York Stock Exchange
Depository Shares, each representing one-thousandth of a share of 5.125% Class L Cumulative Redeemable, Preferred Stock, \$1.00 par value per share.	KIMprL	New York Stock Exchange
Depository Shares, each representing one-thousandth of a share of 5.250% Class M Cumulative Redeemable, Preferred Stock, \$1.00 par value per share.	KIMprM	New York Stock Exchange

Kimco Realty OP, LLC

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
None	N/A	N/A

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days.

Kimco Realty Corporation Yes No

Kimco Realty OP, LLC Yes No

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§ 232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files).

Kimco Realty Corporation Yes No

Kimco Realty OP, LLC Yes No

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

Kimco Realty Corporation:

Large accelerated filer Accelerated filer Non-accelerated filer Smaller reporting company Emerging growth company

Kimco Realty OP, LLC:

Large accelerated filer Accelerated filer Non-accelerated filer Smaller reporting company Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

Kimco Realty Corporation

Kimco Realty OP, LLC

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Act).

Kimco Realty Corporation Yes No

Kimco Realty OP, LLC Yes No

(APPLICABLE ONLY TO CORPORATE REGISTRANTS)

Indicate the number of shares outstanding of each of the registrant's classes of common stock, as of the latest practicable date.

As of July 20, 2023, Kimco Realty Corporation had 619,883,074 shares of common stock outstanding.

EXPLANATORY NOTE

This report combines the quarterly reports on Form 10-Q for the quarterly period ended June 30, 2023, of Kimco Realty Corporation (the "Company") and Kimco Realty OP, LLC ("Kimco OP"). Prior to January 1, 2023, the Company's business was conducted through a predecessor entity also known as Kimco Realty Corporation (the "Predecessor"). On December 14, 2022, the Predecessor's Board of Directors approved the entry into an Agreement and Plan of Merger (the "UPREIT Merger") with the company formerly known as New KRC Corp., which was a Maryland corporation and wholly owned subsidiary of the Predecessor (the "Parent Company"), and KRC Merger Sub Corp., which was a Maryland corporation and wholly owned subsidiary of the Parent Company ("Merger Sub"), to effect the reorganization (the "Reorganization") of the Predecessor's business into an umbrella partnership real estate investment trust, or "UPREIT".

On January 1, 2023, pursuant to the UPREIT Merger, Merger Sub merged with and into the Predecessor, with the Predecessor continuing as the surviving entity and a wholly-owned subsidiary of the Parent Company, and each outstanding share of capital stock of the Predecessor was converted into one equivalent share of capital stock of the Parent Company (each of which has continued to trade under their respective existing ticker symbol with the same rights, powers and limitations that existed immediately prior to the Reorganization).

In connection with the Reorganization, the Parent Company changed its name to Kimco Realty Corporation, and replaced the Predecessor as the New York Stock Exchange-listed public company. Effective as of January 3, 2023, the Predecessor converted into a limited liability company, organized in the State of Delaware, known as Kimco Realty OP, LLC, the entity we refer to herein as "Kimco OP".

Following the Reorganization, substantially all of the Company's assets are held by, and substantially all of the Company's operations are conducted through, Kimco OP (either directly or through its subsidiaries), as the Company's operating company, and the Company is the managing member of Kimco OP. The officers and directors of the Company are the same as the officers and directors of the Predecessor immediately prior to the Reorganization.

The Parent Company is a real estate investment trust ("REIT") and is the sole member and managing member of Kimco OP. As of June 30, 2023, the Parent Company owned 100% of the outstanding limited liability company interests (the "OP Units") in Kimco OP.

Stockholders' equity and members' capital are the primary areas of difference between the unaudited Condensed Consolidated Financial Statements of the Parent Company and those of Kimco OP. Kimco OP's capital currently includes OP Units owned solely by the Parent, and may in the future include non-controlling OP Units owned by third parties. OP Units owned by third parties, if any, will be accounted for within capital on Kimco OP's financial statements and in non-controlling interests in the Parent Company's financial statements.

The Parent Company consolidates Kimco OP for financial reporting purposes, and the Parent Company does not have significant assets other than its investment in Kimco OP. Therefore, while stockholders' equity and members' capital differ as discussed above, the assets and liabilities of the Parent Company and Kimco OP are the same on their respective financial statements.

The Company believes combining the quarterly reports on Form 10-Q of the Parent Company and Kimco OP into this single report provides the following benefits:

- Enhances investors' understanding of the Parent Company and Kimco OP by enabling investors to view the businesses as a whole in the same manner as management views and operates the business;
- Eliminates duplicative disclosure and provides a more concise and readable presentation because a substantial portion of the disclosure applies to both the Parent Company and Kimco OP; and
- Creates time and cost efficiencies through the preparation of one combined report instead of two separate reports.

In order to highlight the differences between the Parent Company and Kimco OP, there are sections in this Quarterly Report that separately discuss the Parent Company and Kimco OP, including separate financial statements (but combined footnotes), separate controls and procedures sections, and separate Exhibit 31 and 32 certifications. In the sections that combine disclosure for the Parent Company and Kimco OP, unless context otherwise requires, this Quarterly Report refers to actions or holdings of Parent Company and/or Kimco OP as being the actions or holdings of the Company (either directly or through its subsidiaries, including Kimco OP).

Throughout this Quarterly Report, unless the context requires otherwise:

- The "Company," "we," "our" or "us" refer to:
 - for the period prior to January 1, 2023 (the period preceding the UPREIT Merger), the Predecessor and its business and operations conducted through its directly or indirectly owned subsidiaries;
 - for the period on or after January 1, 2023, (the period from and following the UPREIT Merger), the Parent Company and its business and operations conducted through its directly or indirectly owned subsidiaries, including Kimco OP; and
 - in statements regarding qualification as a real estate investment trust ("REIT"), such terms refer solely to the Predecessor or Parent Company, as applicable.
- "Kimco OP" refers to Kimco Realty OP, LLC, our operating company following the UPREIT Merger.
- References to "shares" and "shareholders" refer to the shares and shareholders of the Predecessor prior to January 1, 2023 and of the Parent Company on or after January 1, 2023, and not the limited liability company interests of Kimco OP.

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KIMCO REALTY CORPORATION AND SUBSIDIARIES
CONDENSED CONSOLIDATED BALANCE SHEETS
(b unaudited)
(in thousands, except share information)

	June 30, 2023	December 31, 2022
Assets:		
Real estate, net of accumulated depreciation and amortization of \$ 3,631,686 and \$3,417,414, respectively	\$ 15,019,986	\$ 15,039,828
Investments in and advances to real estate joint ventures	1,098,336	1,091,551
Other investments	136,555	107,581
Cash and cash equivalents	536,477	149,829
Marketable securities	314,826	597,732
Accounts and notes receivable, net	294,608	304,226
Operating lease right-of-use assets, net	130,287	133,733
Other assets	396,643	401,642
Total assets (1)	\$ 17,927,718	\$ 17,826,122
Liabilities:		
Notes payable, net	\$ 6,775,080	\$ 6,780,969
Mortgages payable, net	359,609	376,917
Accounts payable and accrued expenses	207,545	207,815
Dividends payable	5,308	5,326
Operating lease liabilities	111,129	113,679
Other liabilities	620,706	601,574
Total liabilities (1)	8,079,377	8,086,280
Redeemable noncontrolling interests	92,933	92,933
Commitments and Contingencies (Footnote 17)		
Stockholders' equity:		
Preferred stock, \$1.00 par value, authorized 7,054,000 shares; Issued and outstanding (in series) 19,367 and 19,435 shares, respectively; Aggregate liquidation preference \$484,179 and \$485,868, respectively	19	19
Common stock, \$.01 par value, authorized 750,000,000 shares; Issued and outstanding 619,888,890 and 618,483,565 shares, respectively	6,199	6,185
Paid-in capital	9,621,686	9,618,271
Cumulative distributions in excess of net income	(20,748)	(119,548)
Accumulated other comprehensive income	15,942	10,581
Total stockholders' equity	9,623,098	9,515,508
Noncontrolling interests	132,310	131,401
Total equity	9,755,408	9,646,909
Total liabilities and equity	\$ 17,927,718	\$ 17,826,122

(1) Total assets include restricted assets of consolidated variable interest entities ("VIEs") at June 30, 2023 and December 31, 2022 of \$396,352 and \$436,605, respectively. Total liabilities include non-recourse liabilities of consolidated VIEs at June 30, 2023 and December 31, 2022 of \$186,157 and \$199,132, respectively. See Footnote 12 of the Notes to Condensed Consolidated Financial Statements.

The accompanying notes are an integral part of these condensed consolidated financial statements.

KIMCO REALTY CORPORATION AND SUBSIDIARIES
CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS
(b unaudited)
(in thousands, except per share data)

	Three Months Ended June 30, 2023	June 30, 2022	Six Months Ended June 30, 2023	June 30, 2022
Revenues				
Revenues from rental properties, net	\$ 439,008	\$ 423,273	\$ 877,346	\$ 845,927
Management and other fee income	3,832	3,925	8,386	8,520
Total revenues	442,840	427,198	885,732	854,447
Operating expenses				
Rent	(4,145)	(4,070)	(8,158)	(8,151)
Real estate taxes	(57,621)	(56,075)	(115,127)	(110,389)
Operating and maintenance	(75,073)	(69,784)	(150,315)	(139,009)
General and administrative	(32,734)	(27,981)	(67,483)	(57,929)
Impairment charges	-	(14,419)	(11,806)	(14,691)
Depreciation and amortization	(129,245)	(124,611)	(255,546)	(254,905)
Total operating expenses	(298,818)	(296,940)	(608,435)	(585,074)
Gain on sale of properties	13,170	2,944	52,376	7,137
Operating income	157,192	133,202	329,673	276,510
Other income/(expense)				
Special dividend income	-	-	194,116	-
Other income, net	7,571	6,642	10,703	12,625
Gain/(loss) on marketable securities, net	14,561	(261,467)	4,417	(139,703)
Interest expense	(60,674)	(56,466)	(121,980)	(113,485)
Early extinguishment of debt charges	-	(57)	-	(7,230)
Income/(loss) before income taxes, net, equity in income of joint ventures, net, and equity in income from other investments, net	118,650	(178,146)	416,929	28,717
(Provision)/benefit for income taxes, net	(31,027)	(96)	(61,856)	57
Equity in income of joint ventures, net	17,128	44,130	41,332	67,700
Equity in income of other investments, net	4,519	3,385	6,641	8,758
Net income/(loss)	109,270	(130,727)	403,046	105,232
Net (income)/loss attributable to noncontrolling interests	(2,644)	11,226	(6,657)	12,569
Net income/(loss) attributable to the Company	106,626	(119,501)	396,389	117,801
Preferred dividends, net	(6,200)	(6,250)	(12,451)	(12,604)
Net income/(loss) available to the Company's common shareholders	\$ 100,426	\$ (125,751)	\$ 383,938	\$ 105,197
Per common share:				
Net income/(loss) available to the Company's common shareholders:				
-Basic	\$ 0.16	\$ (0.21)	\$ 0.62	\$ 0.17
-Diluted	<u>\$ 0.16</u>	<u>\$ (0.21)</u>	<u>\$ 0.62</u>	<u>\$ 0.17</u>
Weighted average shares:				
-Basic	617,077	615,642	616,785	615,207
-Diluted	<u>617,257</u>	<u>615,642</u>	<u>619,749</u>	<u>616,943</u>

The accompanying notes are an integral part of these condensed consolidated financial statements.

KIMCO REALTY CORPORATION AND SUBSIDIARIES
CONDENSED CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME
(unaudited)
(in thousands)

	Three Months Ended June 30, 2023	2022	Six Months Ended June 30, 2023	2022
Net income/(loss)	\$ 109,270	\$ (130,727)	\$ 403,046	\$ 105,232
Other comprehensive income:				
Change in unrealized gains related to defined benefit plan	-	4,260	-	4,260
Change in unrealized gains related to equity method investments	5,361	-	5,361	-
Other comprehensive income	<u>5,361</u>	<u>4,260</u>	<u>5,361</u>	<u>4,260</u>
Comprehensive income/(loss)	114,631	(126,467)	408,407	109,492
Comprehensive (income)/loss attributable to noncontrolling interests	(2,644)	11,226	(6,657)	12,569
Comprehensive income/(loss) attributable to the Company	<u>\$ 111,987</u>	<u>\$ (115,241)</u>	<u>\$ 401,750</u>	<u>\$ 122,061</u>

The accompanying notes are an integral part of these condensed consolidated financial statements.

KIMCO REALTY CORPORATION AND SUBSIDIARIES
CONDENSED CONSOLIDATED STATEMENTS OF CHANGES IN EQUITY
For the Three Months Ended June 30, 2023 and 2022
(unaudited)
(in thousands)

	Preferred Stock	Common Stock	Paid-in	Retained Earnings/ (Cumulative Distributions in Excess of Net Income)	Accumulated Other Comprehensive Income	Stockholders' Total	Noncontrolling Interests	Total
	Issued	Amount	Issued	Amount	Capital	Income	Equity	Equity
Balance at April 1, 2022	20	\$ 20	618,002	\$ 6,180	\$ 9,589,955	\$ 412,659	\$ 2,216	\$ 10,011,030
Net loss	-	-	-	-	-	(119,501)	-	(119,501)
Other comprehensive income:								
Change in unrealized gains related to defined benefit plan	-	-	-	-	-	-	4,260	4,260
Redeemable noncontrolling interests income	-	-	-	-	-	-	-	-
Dividends declared to preferred shares	-	-	-	-	-	(6,315)	-	(6,315)
Dividends declared to common shares	-	-	-	-	-	(123,697)	-	(123,697)
Repurchase of preferred stock	(1)	(1)			(3,505)	64	-	(3,442)
Distributions to noncontrolling interests	-	-	-	-	-	-	-	(1,718)
Issuance of common stock	-	-	450	5	11,276	-	-	11,281
Exercise of common stock options	-	-	46	-	989	-	-	989
Surrender of restricted common stock	-	-	(15)	-	(101)	-	-	(101)
Amortization of equity awards	-	-	-	-	6,472	-	-	6,472
Redemption/conversion of noncontrolling interests	-	-	-	-	77	-	-	(303)
Balance at June 30, 2022	19	\$ 19	618,483	\$ 6,185	\$ 9,605,163	\$ 163,210	\$ 6,476	\$ 9,781,053
								\$ 190,684
								\$ 9,971,737
Balance at April 1, 2023	19	\$ 19	619,892	\$ 6,199	\$ 9,614,913	\$ 21,390	\$ 10,581	\$ 9,653,102
Contributions from noncontrolling interests	-	-	-	-	-	-	-	3
Net income	-	-	-	-	-	106,626	-	106,626
Other comprehensive income:								
Change in unrealized gains related to equity method investments	-	-	-	-	-	-	5,361	5,361
Redeemable noncontrolling interests income	-	-	-	-	-	-	-	(1,558)
Dividends declared to preferred shares	-	-	-	-	-	(6,200)	-	(6,200)
Dividends declared to common shares	-	-	-	-	-	(142,564)	-	(142,564)
Repurchase of preferred stock	-	-	-	-	(1,311)	-	-	(1,311)
Distributions to noncontrolling interests	-	-	-	-	-	-	-	(1,584)
Surrender of restricted common stock	-	-	(3)	-	(40)	-	-	(40)
Amortization of equity awards	-	-	-	-	8,124	-	-	8,124
Balance at June 30, 2023	19	\$ 19	619,889	\$ 6,199	\$ 9,621,686	\$ (20,748)	\$ 15,942	\$ 9,623,098
								\$ 132,310
								\$ 9,755,408

The accompanying notes are an integral part of these condensed consolidated financial statements.

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KIMCO REALTY CORPORATION AND SUBSIDIARIES
CONDENSED CONSOLIDATED STATEMENTS OF CHANGES IN EQUITY
For the Six Months Ended June 30, 2023 and 2022
(unaudited)
(in thousands)

	Preferred Stock	Common Stock	Paid-in	Retained Earnings/ (Cumulative Distributions in Excess of Net Income)	Accumulated Other Comprehensive Income	Total Stockholders' Equity	Noncontrolling Interests	Total Equity
	Issued	Amount	Issued	Amount	Capital	Income	Equity	Equity
Balance at January 1, 2022	20	\$ 20	616,659	\$ 6,167	\$ 9,591,871	\$ 299,115	\$ 2,216	\$ 9,899,389
Contributions from noncontrolling interests	-	-	-	-	-	-	-	891
Net income/(loss)	-	-	-	-	-	117,801	-	117,801
Other comprehensive income:								(12,569)
Change in unrealized gains related to defined benefit plan	-	-	-	-	-	-	4,260	4,260
Redeemable noncontrolling interests income	-	-	-	-	-	-	-	(534)
Dividends declared to preferred shares	-	-	-	-	-	(12,669)	-	(12,669)
Dividends declared to common shares	-	-	-	-	-	(241,101)	-	(241,101)
Repurchase of preferred stock	(1)	(1)	-	-	(3,505)	64	-	(3,442)
Distributions to noncontrolling interests	-	-	-	-	-	-	-	(6,058)
Issuance of common stock	-	-	2,162	22	11,259	-	-	11,281
Surrender of restricted common stock	-	-	(585)	(6)	(13,539)	-	-	(13,545)
Exercise of common stock options	-	-	174	1	3,556	-	-	3,557
Amortization of equity awards	-	-	-	-	13,909	-	-	13,909
Redemption/conversion of noncontrolling interests	-	-	73	1	1,612	-	-	1,613
Balance at June 30, 2022	19	\$ 19	618,483	\$ 6,185	\$ 9,605,163	\$ 163,210	\$ 6,476	\$ 9,781,053
Balance at January 1, 2023	19	\$ 19	618,484	\$ 6,185	\$ 9,618,271	\$ (119,548)	\$ 10,581	\$ 9,515,508
Contributions from noncontrolling interests	-	-	-	-	-	-	-	3
Net income	-	-	-	-	-	396,389	-	396,389
Other comprehensive income:								6,657
Change in unrealized gains related to equity method investments	-	-	-	-	-	-	5,361	5,361
Redeemable noncontrolling interests income	-	-	-	-	-	-	-	(3,104)
Dividends declared to preferred shares	-	-	-	-	-	(12,450)	-	(12,450)
Dividends declared to common shares	-	-	-	-	-	(285,139)	-	(285,139)
Repurchase of preferred stock	-	-	-	-	(1,631)	-	-	(1,631)
Distributions to noncontrolling interests	-	-	-	-	-	-	-	(2,647)
Issuance of common stock	-	-	1,988	20	(20)	-	-	-
Surrender of restricted common stock	-	-	(756)	(8)	(16,129)	-	-	(16,137)
Exercise of common stock options	-	-	173	2	3,725	-	-	3,727
Amortization of equity awards	-	-	-	-	17,470	-	-	17,470
Balance at June 30, 2023	19	\$ 19	619,889	\$ 6,199	\$ 9,621,686	\$ (20,748)	\$ 15,942	\$ 9,623,098

The accompanying notes are an integral part of these condensed consolidated financial statements.

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KIMCO REALTY CORPORATION AND SUBSIDIARIES
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS
(b unaudited)
(in thousands)

	Six Months Ended June 30,	
	2023	2022
Cash flow from operating activities:		
Net income	\$ 403,046	\$ 105,232
Adjustments to reconcile net income to net cash flow provided by operating activities:		
Depreciation and amortization	255,546	254,905
Impairment charges	11,806	14,691
Straight-line rental income adjustments, net	(12,001)	(17,437)
Amortization of above-market and below-market leases, net	(10,002)	(6,980)
Amortization of deferred financing costs and fair value debt adjustments, net	(4,656)	(14,066)
Early extinguishment of debt charges	-	7,230
Equity award expense	17,457	13,994
Gain on sale of properties	(52,376)	(7,137)
(Gain)/loss on marketable securities, net	(4,417)	139,703
Equity in income of joint ventures, net	(41,332)	(67,700)
Equity in income of other real estate investments, net	(6,641)	(8,758)
Distributions from joint ventures and other investments	35,742	45,775
Change in accounts and notes receivable, net	21,605	16,234
Change in accounts payable and accrued expenses	1,237	(12,636)
Change in other operating assets and liabilities, net	(14,735)	(20,717)
Net cash flow provided by operating activities	<u>600,279</u>	<u>442,333</u>
Cash flow from investing activities:		
Acquisition of operating real estate and other related net assets	(98,546)	(29,282)
Improvements to operating real estate	(108,346)	(78,958)
Investment in marketable securities	(2,988)	(1,870)
Proceeds from sale of marketable securities	290,311	201
Investment in cost method investment	(1,532)	(3,000)
Investments in and advances to real estate joint ventures	(18,751)	(72,947)
Reimbursements of investments in and advances to real estate joint ventures	7,961	22,865
Investments in and advances to other investments	(10,192)	(9,473)
Reimbursements of investments in and advances to other investments	419	29,104
Investment in mortgage and other financing receivables	(11,211)	(53,063)
Collection of mortgage and other financing receivables	84	63
Proceeds from sale of properties	115,714	41,224
Net cash flow provided by/(used for) investing activities	<u>162,923</u>	<u>(155,136)</u>
Cash flow from financing activities:		
Principal payments on debt, excluding normal amortization of rental property debt	(49,187)	(115,166)
Principal payments on rental property debt	(5,621)	(4,827)
Proceeds from mortgage loan financings	-	19,000
Proceeds from issuance of unsecured notes	-	600,000
Repayments of unsecured notes	-	(547,063)
Financing origination costs	(6,041)	(10,281)
Payment of early extinguishment of debt charges	-	(6,527)
Contributions from noncontrolling interests	4	891
Redemption/distribution of noncontrolling interests	(5,752)	(7,029)
Dividends paid	(297,748)	(253,809)
Proceeds from issuance of stock, net	3,727	14,838
Repurchase of preferred stock	(1,491)	(3,441)
Shares repurchased for employee tax withholding on equity awards	(16,124)	(13,521)
Change in tenants' security deposits	1,679	1,873
Net cash flow used for financing activities	<u>(376,554)</u>	<u>(325,062)</u>
Net change in cash, cash equivalents and restricted cash	386,648	(37,865)
Cash, cash equivalents and restricted cash, beginning of the period	149,829	334,663
Cash, cash equivalents and restricted cash, end of the period	<u>\$ 536,477</u>	<u>\$ 296,798</u>
Interest paid, including payment of early extinguishment of debt charges of \$ 0 and \$6,527, respectively (net of capitalized interest of \$854 and \$277, respectively)	<u>\$ 124,674</u>	<u>\$ 132,912</u>
Income taxes paid, net of refunds	<u>\$ 56,774</u>	<u>\$ 2,138</u>

The accompanying notes are an integral part of these condensed consolidated financial statements.

KIMCO REALTY OP, LLC AND SUBSIDIARIES
CONDENSED CONSOLIDATED BALANCE SHEETS
(b unaudited)
(in thousands, except unit information)

	June 30, 2023	December 31, 2022
Assets:		
Real estate, net of accumulated depreciation and amortization of \$ 3,631,686 and \$3,417,414, respectively	\$ 15,019,986	\$ 15,039,828
Investments in and advances to real estate joint ventures	1,098,336	1,091,551
Other investments	136,555	107,581
Cash and cash equivalents	536,477	149,829
Marketable securities	314,826	597,732
Accounts and notes receivable, net	294,608	304,226
Operating lease right-of-use assets, net	130,287	133,733
Other assets	396,643	401,642
Total assets (1)	\$ 17,927,718	\$ 17,826,122
Liabilities:		
Notes payable, net	\$ 6,775,080	\$ 6,780,969
Mortgages payable, net	359,609	376,917
Accounts payable and accrued expenses	207,545	207,815
Dividends payable	5,308	5,326
Operating lease liabilities	111,129	113,679
Other liabilities	620,706	601,574
Total liabilities (1)	8,079,377	8,086,280
Redeemable noncontrolling interests	92,933	92,933
Commitments and Contingencies (Footnote 17)		
Members' capital:		
Preferred units; Issued and outstanding 19,367 and 19,435 units, respectively	467,396	469,027
Common units; Issued and outstanding 619,888,890 and 618,483,565 units, respectively	9,139,760	9,035,900
Accumulated other comprehensive income	15,942	10,581
Total members' capital	9,623,098	9,515,508
Noncontrolling interests	132,310	131,401
Total capital	9,755,408	9,646,909
Total liabilities and capital	\$ 17,927,718	\$ 17,826,122

(1) Total assets include restricted assets of consolidated variable interest entities ("VIEs") at June 30, 2023 and December 31, 2022 of \$396,352 and \$436,605, respectively. Total liabilities include non-recourse liabilities of consolidated VIEs at June 30, 2023 and December 31, 2022 of \$186,157 and \$199,132, respectively. See Footnote 12 of the Notes to Condensed Consolidated Financial Statements.

The accompanying notes are an integral part of these condensed consolidated financial statements.

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KIMCO REALTY OP, LLC AND SUBSIDIARIES
CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS
(b unaudited)
(in thousands, except per unit data)

	Three Months Ended June 30, 2023	2022	Six Months Ended June 30, 2023	2022
Revenues				
Revenues from rental properties, net	\$ 439,008	\$ 423,273	\$ 877,346	\$ 845,927
Management and other fee income	3,832	3,925	8,386	8,520
Total revenues	<u>442,840</u>	<u>427,198</u>	<u>885,732</u>	<u>854,447</u>
Operating expenses				
Rent	(4,145)	(4,070)	(8,158)	(8,151)
Real estate taxes	(57,621)	(56,075)	(115,127)	(110,389)
Operating and maintenance	(75,073)	(69,784)	(150,315)	(139,009)
General and administrative	(32,734)	(27,981)	(67,483)	(57,929)
Impairment charges	-	(14,419)	(11,806)	(14,691)
Depreciation and amortization	(129,245)	(124,611)	(255,546)	(254,905)
Total operating expenses	<u>(298,818)</u>	<u>(296,940)</u>	<u>(608,435)</u>	<u>(585,074)</u>
Gain on sale of properties	13,170	2,944	52,376	7,137
Operating income	157,192	133,202	329,673	276,510
Other income/(expense)				
Special dividend income	-	-	194,116	-
Other income, net	7,571	6,642	10,703	12,625
Gain/(loss) on marketable securities, net	14,561	(261,467)	4,417	(139,703)
Interest expense	(60,674)	(56,466)	(121,980)	(113,485)
Early extinguishment of debt charges	-	(57)	-	(7,230)
Income/(loss) before income taxes, net, equity in income of joint ventures, net, and equity in income from other investments, net	118,650	(178,146)	416,929	28,717
(Provision)/benefit for income taxes, net	(31,027)	(96)	(61,856)	57
Equity in income of joint ventures, net	17,128	44,130	41,332	67,700
Equity in income of other investments, net	4,519	3,385	6,641	8,758
Net income/(loss)	109,270	(130,727)	403,046	105,232
Net (income)/loss attributable to noncontrolling interests	(2,644)	11,226	(6,657)	12,569
Net income/(loss) attributable to the Company	106,626	(119,501)	396,389	117,801
Preferred distributions, net	(6,200)	(6,250)	(12,451)	(12,604)
Net income/(loss) available to the Company's common unitholders	\$ 100,426	\$ (125,751)	\$ 383,938	\$ 105,197
Per common unit:				
Net income/(loss) available to the Company's common unitholders:				
-Basic	\$ 0.16	\$ (0.21)	\$ 0.62	\$ 0.17
-Diluted	\$ 0.16	\$ (0.21)	\$ 0.62	\$ 0.17
Weighted average units:				
-Basic	617,077	615,642	616,785	615,207
-Diluted	617,257	615,642	619,749	616,943

The accompanying notes are an integral part of these condensed consolidated financial statements.

KIMCO REALTY OP, LLC AND SUBSIDIARIES
CONDENSED CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME
(unaudited)
(in thousands)

	Three Months Ended June 30, 2023	2022	Six Months Ended June 30, 2023	2022
Net income/(loss)	\$ 109,270	\$ (130,727)	\$ 403,046	\$ 105,232
Other comprehensive income:				
Change in unrealized gains related to defined benefit plan	-	4,260	-	4,260
Change in unrealized gains related to equity method investments	5,361	-	5,361	-
Other comprehensive income	5,361	4,260	5,361	4,260
Comprehensive income/(loss)	114,631	(126,467)	408,407	109,492
Comprehensive (income)/loss attributable to noncontrolling interests	(2,644)	11,226	(6,657)	12,569
Comprehensive income/(loss) attributable to the Company	<u>\$ 111,987</u>	<u>\$ (115,241)</u>	<u>\$ 401,750</u>	<u>\$ 122,061</u>

The accompanying notes are an integral part of these condensed consolidated financial statements.

KIMCO REALTY OP, LLC AND SUBSIDIARIES
CONDENSED CONSOLIDATED STATEMENTS OF CHANGES IN CAPITAL
For the Three Months Ended June 30, 2023 and 2022
(unaudited)
(in thousands)

		Preferred Units		Common Units		Accumulated Other Comprehensive Income		Total Members' Capital		Noncontrolling Interests		Total Capital
		Issued	Amount	Issued	Amount							
Balance at April 1, 2022	20	\$ 472,533		618,002	\$ 9,536,281	\$ 2,216		\$ 10,011,030		\$ 204,132		\$ 10,215,162
Net income/(loss)	-	6,250		-	(125,751)	-		(119,501)		(11,226)		(130,727)
Other comprehensive income												
Change in unrealized gains related to defined benefit plan	-	-	-	-	-	4,260		4,260		-		4,260
Redeemable noncontrolling interests income	-	-	-	-	-	-		-		(201)		(201)
Distributions declared to preferred unitholders	-	(6,250)		-	-	-		(6,250)		-		(6,250)
Distributions declared to common unitholders	-	-	-	-	(123,698)	-		(123,698)		-		(123,698)
Repurchase of preferred units	(1)	(3,506)		-	-	-		(3,506)		-		(3,506)
Distributions to noncontrolling interests	-	-	-	-	-	-		-		(1,718)		(1,718)
Issuance of common units	-	-	450	11,281	-	-		11,281		-		11,281
Surrender of restricted common units	-	-	(15)	(101)	-	-		(101)		-		(101)
Exercise of common stock options	-	-	46	989	-	-		989		-		989
Amortization of equity awards	-	-	-	6,472	-	-		6,472		-		6,472
Redemption/conversion of noncontrolling interests	-	-	-	77	-	-		77		(303)		(226)
Balance at June 30, 2022	19	\$ 469,027		618,483	\$ 9,305,550	\$ 6,476		\$ 9,781,053		\$ 190,684		\$ 9,971,737
Balance at April 1, 2023	19	\$ 468,707		619,892	\$ 9,173,814	\$ 10,581		\$ 9,653,102		\$ 132,805		\$ 9,785,907
Contributions from noncontrolling interests	-	-	-	-	-	-		-		3		3
Net income	-	6,200		-	100,426	-		106,626		2,644		109,270
Other comprehensive income												
Change in unrealized gains related to equity method investments	-	-	-	-	-	5,361		5,361		-		5,361
Redeemable noncontrolling interests income	-	-	-	-	-	-		-		(1,558)		(1,558)
Distributions declared to preferred unitholders	-	(6,200)		-	-	-		(6,200)		-		(6,200)
Distributions declared to common unitholders	-	-	-	(142,564)	-	-		(142,564)		-		(142,564)
Repurchase of preferred units	-	(1,311)		-	-	-		(1,311)		-		(1,311)
Distributions to noncontrolling interests	-	-	-	-	-	-		-		(1,584)		(1,584)
Surrender of restricted common units	-	-	(3)	(40)	-	-		(40)		-		(40)
Amortization of equity awards	-	-	-	8,124	-	-		8,124		-		8,124
Balance at June 30, 2023	19	\$ 467,396		619,889	\$ 9,139,760	\$ 15,942		\$ 9,623,098		\$ 132,310		\$ 9,755,408

The accompanying notes are an integral part of these condensed consolidated financial statements.

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KIMCO REALTY OP, LLC AND SUBSIDIARIES
CONDENSED CONSOLIDATED STATEMENTS OF CHANGES IN CAPITAL
For the Six Months Ended June 30, 2023 and 2022
(unaudited)
(in thousands)

	Preferred Units Issued	Preferred Units Amount	Common Units Issued	Common Units Amount	Accumulated Other Comprehensive Income	Total Members' Capital	Noncontrolling Interests	Total Capital
Balance at January 1, 2022	20	\$ 472,533	616,659	\$ 9,424,640	\$ 2,216	\$ 9,899,389	\$ 210,793	\$ 10,110,182
Contributions from noncontrolling interests	-	-	-	-	-	-	891	891
Net income/(loss)	-	12,604	-	105,197	-	117,801	(12,569)	105,232
Other comprehensive income								
Change in unrealized gains related to defined benefit plan	-	-	-	-	4,260	4,260	-	4,260
Redeemable noncontrolling interests income	-	-	-	-	-	-	(534)	(534)
Distributions declared to preferred unitholders	-	(12,604)	-	-	-	(12,604)	-	(12,604)
Distributions declared to common unitholders	-	-	-	(241,102)	-	(241,102)	-	(241,102)
Repurchase of preferred units	(1)	(3,506)	-	-	-	(3,506)	-	(3,506)
Distributions to noncontrolling interests	-	-	-	-	-	-	(6,058)	(6,058)
Issuance of common units	-	-	2,162	11,281	-	11,281	-	11,281
Surrender of restricted common units	-	-	(585)	(13,545)	-	(13,545)	-	(13,545)
Exercise of common stock options	-	-	174	3,557	-	3,557	-	3,557
Amortization of equity awards	-	-	-	13,909	-	13,909	-	13,909
Redemption/conversion of noncontrolling interests	-	-	73	1,613	-	1,613	(1,839)	(226)
Balance at June 30, 2022	19	\$ 469,027	618,483	\$ 9,305,550	\$ 6,476	\$ 9,781,053	\$ 190,684	\$ 9,971,737
Balance at January 1, 2023	19	\$ 469,027	618,484	\$ 9,035,900	\$ 10,581	\$ 9,515,508	\$ 131,401	\$ 9,646,909
Contributions from noncontrolling interests	-	-	-	-	-	-	3	3
Net income	-	12,451	-	383,938	-	396,389	6,657	403,046
Other comprehensive income								
Change in unrealized gains related to equity method investments	-	-	-	-	5,361	5,361	-	5,361
Redeemable noncontrolling interests income	-	-	-	-	-	-	(3,104)	(3,104)
Distributions declared to preferred unitholders	-	(12,451)	-	-	-	(12,451)	-	(12,451)
Distributions declared to common unitholders	-	-	-	(285,138)	-	(285,138)	-	(285,138)
Repurchase of preferred units	-	(1,631)	-	-	-	(1,631)	-	(1,631)
Distributions to noncontrolling interests	-	-	-	-	-	-	(2,647)	(2,647)
Issuance of common units	-	-	1,988	-	-	-	-	-
Surrender of restricted common units	-	-	173	3,727	-	3,727	-	3,727
Exercise of common stock options	-	-	(756)	(16,137)	-	(16,137)	-	(16,137)
Amortization of equity awards	-	-	-	17,470	-	17,470	-	17,470
Balance at June 30, 2023	19	\$ 467,396	619,889	\$ 9,139,760	\$ 15,942	\$ 9,623,098	\$ 132,310	\$ 9,755,408

The accompanying notes are an integral part of these condensed consolidated financial statements.

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KIMCO REALTY OP, LLC AND SUBSIDIARIES
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS
(b unaudited)
(in thousands)

	Six Months Ended June 30,	
	2023	2022
Cash flow from operating activities:		
Net income	\$ 403,046	\$ 105,232
Adjustments to reconcile net income to net cash flow provided by operating activities:		
Depreciation and amortization	255,546	254,905
Impairment charges	11,806	14,691
Straight-line rental income adjustments, net	(12,001)	(17,437)
Amortization of above-market and below-market leases, net	(10,002)	(6,980)
Amortization of deferred financing costs and fair value debt adjustments, net	(4,656)	(14,066)
Early extinguishment of debt charges	-	7,230
Equity award expense	17,457	13,994
Gain on sale of properties	(52,376)	(7,137)
Loss/(gain) on marketable securities, net	(4,417)	139,703
Equity in income of joint ventures, net	(41,332)	(67,700)
Equity in income of other investments, net	(6,641)	(8,758)
Distributions from joint ventures and other investments	35,742	45,775
Change in accounts and notes receivable, net	21,605	16,234
Change in accounts payable and accrued expenses	1,237	(12,636)
Change in other operating assets and liabilities, net	(14,735)	(20,717)
Net cash flow provided by operating activities	<u>600,279</u>	<u>442,333</u>
Cash flow from investing activities:		
Acquisition of operating real estate and other related assets	(98,546)	(29,282)
Improvements to operating real estate	(108,346)	(78,958)
Investment in marketable securities	(2,988)	(1,870)
Proceeds from sale of marketable securities	290,311	201
Investment in cost method investment	(1,532)	(3,000)
Investments in and advances to real estate joint ventures	(18,751)	(72,947)
Reimbursements of investments in and advances to real estate joint ventures	7,961	22,865
Investments in and advances to other investments	(10,192)	(9,473)
Reimbursements of investments in and advances to other investments	419	29,104
Investment in mortgage and other financing receivables	(11,211)	(53,063)
Collection of mortgage and other financing receivables	84	63
Proceeds from sale of properties	115,714	41,224
Net cash flow provided by/(used for) investing activities	<u>162,923</u>	<u>(155,136)</u>
Cash flow from financing activities:		
Principal payments on debt, excluding normal amortization of rental property debt	(49,187)	(115,166)
Principal payments on rental property debt	(5,621)	(4,827)
Proceeds from mortgage loan financings	-	19,000
Proceeds from issuance of unsecured notes	-	600,000
Repayments of unsecured notes	-	(547,063)
Financing origination costs	(6,041)	(10,281)
Payment of early extinguishment of debt charges	-	(6,527)
Contributions from noncontrolling interests	4	891
Redemption/distribution of noncontrolling interests	(5,752)	(7,029)
Distributions to common and preferred unitholders	(297,748)	(253,809)
Proceeds from issuance of stock, net	3,727	14,838
Repurchase of preferred units	(1,491)	(3,441)
Shares repurchased for employee tax withholding on equity awards	(16,124)	(13,521)
Change in tenants' security deposits	1,679	1,873
Net cash flow used for financing activities	<u>(376,554)</u>	<u>(325,062)</u>
Net change in cash, cash equivalents and restricted cash	386,648	(37,865)
Cash, cash equivalents and restricted cash, beginning of the period	149,829	334,663
Cash, cash equivalents and restricted cash, end of the period	<u>\$ 536,477</u>	<u>\$ 296,798</u>
Interest paid, including payment of early extinguishment of debt charges of \$ 0 and \$6,527, respectively (net of capitalized interest of \$854 and \$277, respectively)	<u>\$ 124,674</u>	<u>\$ 132,912</u>
Income taxes paid, net of refunds	<u>\$ 56,774</u>	<u>\$ 2,138</u>

The accompanying notes are an integral part of these condensed consolidated financial statements.

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KIMCO REALTY CORPORATION AND SUBSIDIARIES AND KIMCO REALTY OP, LLC AND SUBSIDIARIES

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

1. Business and Organization

Kimco Realty Corporation (the "Parent Company") is a real estate investment trust ("REIT"), of which substantially all of the Parent Company's assets are held by, and substantially all of the Parent Company's operations are conducted through, Kimco Realty OP, LLC ("Kimco OP"), either directly or through its subsidiaries, as the Parent Company's operating company. The Parent Company is the sole managing member and exercises exclusive control over Kimco OP. As of June 30, 2023, the Parent Company owned 100% of the outstanding limited liability company interests (the "OP Units") in Kimco OP. The term "the Company", means the Parent Company and Kimco OP, collectively.

The Company is North America's largest publicly traded owner and operator of open-air, grocery-anchored shopping centers and a growing portfolio of mixed-use assets. The Company's portfolio is primarily concentrated in the first-ring suburbs of the top major metropolitan markets, including those in high-barrier-to-entry coastal markets and rapidly expanding Sun Belt cities, with a tenant mix focused on essential, necessity-based goods and services that drive multiple shopping trips per week. The Company, its affiliates and related real estate joint ventures are engaged principally in the ownership, management, development and operation of open-air shopping centers, including mixed-use assets which, are anchored primarily by grocery stores, off-price retailers, discounters or service-oriented tenants. Additionally, the Company provides complementary services that capitalize on the Company's established retail real estate expertise. The Company's mission is to create destinations for everyday living that inspire a sense of community and deliver value to our many stakeholders.

The Company elected status as a REIT for federal income tax purposes beginning in its taxable year ended December 31, 1992 and operates in a manner that enables the Company to maintain its status as a REIT. To qualify as a REIT, the Company must meet several organizational and operational requirements, and is required to annually distribute at least 90% of its net taxable income, determined without regard to the dividends paid deduction and excluding any net capital gain. In addition, the Company will be subject to federal income tax at regular corporate rates to the extent that it distributes less than 100% of its net taxable income, including any net capital gains. In January 2023, the Company consummated the Reorganization into an UPREIT structure as described in the Explanatory Note at the beginning of this Quarterly Report on Form 10-Q. If, as the Company believes, it is organized and operates in such a manner so as to qualify and remain qualified as a REIT under the Code, the Company, generally will not be subject to U.S. federal income tax, provided that distributions to its stockholders equal at least the amount of its REIT taxable income, as defined in the Code. The Company maintains certain subsidiaries that have made joint elections with the Company to be treated as taxable REIT subsidiaries ("TRSs"), that permit the Company to engage through such TRSs in certain business activities that the REIT may not conduct directly. A TRS is subject to federal and state income taxes on its income, and the Company includes, when applicable, a provision for taxes in its condensed consolidated financial statements.

Economic Conditions

The economy continues to face several issues including inflation risk, liquidity constraints, lack of qualified employees, tenant bankruptcies and supply chain issues, which could impact the Company and its tenants. In response to the rising rate of inflation the Federal Reserve has steadily increased interest rates, and may continue to increase interest rates, until the rate of inflation begins to decrease. These increases in interest rates could adversely impact the business and financial results of the Company and its tenants. In addition, slower economic growth and the potential for a recession could have an adverse effect on the Company and its tenants. This could negatively affect the overall demand for retail space, including the demand for leaseable space in the Company's properties. As a result, the Company could feel pricing pressure on rents that it is able to charge to new or renewing tenants, such that future rents and rent spreads could be negatively impacted. Any of these events could materially adversely impact the Company's business, financial condition, results of operations or stock price. The Company continues to monitor economic, financial, and social conditions and will assess its asset portfolio for any impairment indicators. If the Company determines that any of its assets are impaired, the Company would be required to take impairment charges, and such amounts could be material.

2. Summary of Significant Accounting Policies

Basis of Presentation

This report combines the quarterly reports on Form 10-Q for the quarterly period ended June 30, 2023, of the Parent Company and Kimco OP into this single report. The accompanying Condensed Consolidated Financial Statements include the accounts of the Parent Company and Kimco OP and their consolidated subsidiaries. The Reorganization resulted in a merger of entities under common control in accordance with accounting principles generally accepted in the United States ("GAAP"). Accordingly, the accompanying consolidated financial statements including the notes thereto, are presented as if the Reorganization had occurred at the earliest period presented. The Company's subsidiaries include subsidiaries which are wholly owned or which the Company has a controlling interest, including where the Company has been determined to be a primary beneficiary of a variable interest entity ("VIE") in accordance with the consolidation guidance of the Financial Accounting Standards Board ("FASB") Accounting Standards Codification ("ASC"). All inter-company balances and transactions have been eliminated in consolidation. The information presented in the accompanying Condensed Consolidated Financial Statements is unaudited and reflects all adjustments which are, in the opinion of management, necessary to reflect a fair statement of the results for the interim periods presented, and all such adjustments are of a normal recurring nature. These Condensed Consolidated Financial Statements should be read in conjunction with the Company's Annual Report on Form 10-K for the year ended December 31, 2022, as certain disclosures in this Quarterly Report that would duplicate those included in such Annual Report on Form 10-K are not included in these Condensed Consolidated Financial Statements.

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KIMCO REALTY CORPORATION AND SUBSIDIARIES AND KIMCO REALTY OP, LLC AND SUBSIDIARIES

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (continued)

Subsequent Events

The Company has evaluated subsequent events and transactions for potential recognition or disclosure in its Condensed Consolidated Financial Statements.

Reclassifications

Certain amounts in the prior period have been reclassified in order to conform to the current period's presentation. For comparative purposes, for the six months ended June 30, 2022, the Company reclassified certain cash flows (used for)/provided by operating activities on the Company's Condensed Consolidated Statements of Cash Flows as follows (in millions):

	Six Months Ended June 30, 2022
Operating activities:	
Straight-line rental income adjustments, net	\$ (17.4)
Amortization of above-market and below-market leases, net	\$ (7.0)
Amortization of deferred financing costs and fair value debt adjustments, net	\$ (14.1)
Change in accounts and notes receivable, net	\$ 17.4
Change in other operating assets and liabilities, net	\$ 21.1

New Accounting Pronouncements

The following table represents an Accounting Standards Update ("ASU") to the FASB's ASCs that, as of June 30, 2023, is not yet effective for the Company and for which the Company has not elected early adoption, where permitted:

ASU	Description	Effective Date	Effect on the financial statements or other significant matters
ASU 2022-03, Fair Value Measurement (Topic 820): Fair Value Measurement of Equity Securities Subject to Contractual Sale Restrictions	This ASU clarifies the guidance in Topic 820, Fair Value Measurement, when measuring the fair value of an equity security subject to contractual restrictions that prohibit the sale of an equity security and provides new disclosure requirements for equity securities subject to contractual sale restrictions that are measured at fair value in accordance with Topic 820.	January 1, 2024; Early adoption permitted	The Company is assessing the impact this ASU will have on the Company's financial position and/or results of operations.

The following ASUs to the FASB's ASCs have been adopted by the Company as of the date listed:

ASU	Description	Adoption Date	Effect on the financial statements or other significant matters
ASU 2021-08, Business Combinations (Topic 805): Accounting for Contract Assets and Contract Liabilities from Contracts with Customers	The amendments in this update require acquiring entities to apply Topic 606 to recognize and measure contract assets and contract liabilities in a business combination rather than at fair value on the acquisition date required by Topic 805.	January 1, 2023	The adoption of this ASU did not have a material impact on the Company's financial position and/or results of operations.

3. Real Estate

Acquisitions

During the six months ended June 30, 2023, the Company acquired the following operating properties, through direct asset purchases or consolidation due to change in control resulting from the purchase of additional interests in certain operating properties held in an unconsolidated joint venture (in thousands):

Property Name	Location	Month Acquired	Purchase Price					GLA*
			Cash	Debt	Other	Total		
Portfolio (2 properties) (1)	Various	Jan-23	\$ 69,130	\$ 19,637	\$ 13,019	\$ 101,786	342	
Crossroads Plaza Parcel	Cary, NC	Jan-23	2,173	-	-	2,173	5	
Northridge Shopping Center Parcel	Arvada, CO	Jan-23	728	-	-	728	57	
Stafford Marketplace Parcel (2)	Stafford, VA	Feb-23	-	-	12,527	12,527	87	
Tustin Heights (1)	Tustin, CA	Mar-23	26,501	17,550	4,910	48,961	137	
			\$ 98,532	\$ 37,187	\$ 30,456	\$ 166,175	628	

* Gross leasable area ("GLA")

(1) Other includes the Company's previously held equity investments in the Prudential Investment Program and net gains on change in control. The Company evaluated these transactions pursuant to the FASB's Consolidation guidance and as a result, recognized gains on change in control of interest of \$7.7 million, in aggregate, resulting from the fair value adjustments associated with the Company's previously held equity interests, which are included in Equity in income of joint ventures, net on the Company's Condensed Consolidated Statements of Operations. The Company previously held an ownership interest of 15.0% in these property interests. See Footnote 4 of the Notes to the Company's Condensed Consolidated Financial Statements.

(2) During March 2023, the Company received a land parcel as consideration resulting from the exercise of a termination option of an operating lease.

Included in the Company's Condensed Consolidated Statements of Operations is \$ 6.7 million in total revenues from the date of acquisition through June 30, 2023, for operating properties acquired/consolidated during the six months ended June 30, 2023.

The purchase price for these acquisitions was allocated to real estate and related intangible assets and liabilities acquired, as applicable, in accordance with our accounting policies for asset acquisitions. The purchase price allocation for properties acquired/consolidated during the six months ended June 30, 2023, is as follows (in thousands):

	Allocation as of June 30, 2023	Weighted Average Amortization Period (in Years)
Land	\$ 51,116	n/a
Building	99,947	50.0
Building improvements	10,125	45.0
Tenant improvements	8,320	4.1
In-place leases	11,080	4.1
Above-market leases	1,329	5.7
Below-market leases	(16,551)	23.6
Other assets	1,777	n/a
Other liabilities	(968)	n/a
Net assets acquired	\$ 166,175	

During the six months ended June 30, 2022, the Company acquired four parcels for an aggregate purchase price of \$23.2 million, in separate transactions.

Dispositions

The table below summarizes the Company's disposition activity relating to consolidated operating properties and parcels for the six months ended June 30, 2023 and 2022 (dollars in millions):

	Six Months Ended June 30,	
	2023	2022
Aggregate sales price/gross fair value (1) (2)	\$ 163.8	\$ 43.3
Gain on sale of properties (3)	\$ 52.4	\$ 7.1
Number of properties sold	4	1
Number of parcels sold/(deconsolidated) (1)	8	8

(1) During 2023, the Company contributed a land parcel and related entitlements, located in Admore, PA, into a preferred equity investment with a gross value of \$19.6 million. As a result, the Company no longer consolidates this land parcel and has a non-controlling interest in this investment. See Footnote 5 of the Notes to the Company's Condensed Consolidated Financial Statements for preferred equity investment disclosure.

(2) During 2023, the Company provided as lender seller financing of \$ 25.0 million related to the sale of an operating property located in Gresham, OR. See Footnote 9 of the Notes to the Company's Condensed Consolidated Financial Statements for mortgage receivable loan disclosure.

(3) Before noncontrolling interests of \$1.6 million and taxes of \$ 1.5 million for the six months ended June 30, 2023.

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KIMCO REALTY CORPORATION AND SUBSIDIARIES AND KIMCO REALTY OP, LLC AND SUBSIDIARIES

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (continued)

Impairments

During the six months ended June 30, 2023, the Company recognized aggregate impairment charges of \$11.8 million related to adjustments to property carrying values for properties which the Company is marketing for sale as part of its select capital recycling program and as such, has adjusted the anticipated hold period for such properties. The Company's estimated fair values of these properties were primarily based upon estimated sales prices from signed contracts or letters of intent from third party offers. See Footnote 13 to the Notes to the Company's Condensed Consolidated Financial Statements for fair value disclosure.

4. Investments in and Advances to Real Estate Joint Ventures

The Company has investments in and advances to various real estate joint ventures. These joint ventures are engaged primarily in the operation of shopping centers which are either owned or held under long-term operating leases. The Company and the joint venture partners have joint approval rights for major decisions, including those regarding property operations. As such, the Company holds noncontrolling interests in these joint ventures and accounts for them under the equity method of accounting. The Company manages certain of these joint venture investments and, where applicable, earns acquisition fees, leasing commissions, property management fees, asset management fees and construction management fees. The table below presents unconsolidated joint venture investments for which the Company held an ownership interest at June 30, 2023 and December 31, 2022 (dollars in millions):

Joint Venture	Noncontrolling Ownership Interest As of June 30, 2023	The Company's Investment		December 31, 2022
		June 30, 2023	2022	
Prudential Investment Program	15.0%	\$ 144.8	\$ 153.6	
Kimco Income Opportunity Portfolio ("KIR")	52.1%	285.4	281.5	
Canada Pension Plan Investment Board ("CPP")	55.0%	200.8	190.8	
Other Institutional Joint Ventures	Various	252.6	256.8	
Other Joint Venture Programs	Various	214.7	208.9	
Total*		\$ 1,098.3	\$ 1,091.6	

* Representing 108 property interests and 21.9 million square feet of GLA, as of June 30, 2023, and 111 property interests and 22.4 million square feet of GLA, as of December 31, 2022.

The table below presents the Company's share of net income for the above investments, which is included in Equity in income of joint ventures, net on the Company's Condensed Consolidated Statements of Operations for the three and six months ended June 30, 2023 and 2022 (in millions):

Joint Venture	Three Months Ended June 30,		Six Months Ended June 30,	
	2023	2022	2023	2022
Prudential Investment Program	\$ 2.2	\$ 2.3	\$ 12.1	\$ 4.7
KIR	8.5	32.0	17.8	45.5
CPP	2.7	2.6	5.4	5.7
Other Institutional Joint Ventures	0.8	4.1	1.5	5.6
Other Joint Venture Programs	2.9	3.1	4.5	6.2
Total	\$ 17.1	\$ 44.1	\$ 41.3	\$ 67.7

During the six months ended June 30, 2023, the Company acquired the remaining 85% interest in three operating properties from Prudential Investment Program, in separate transactions, with an aggregate gross fair value of \$150.7 million. The Company evaluated these transactions pursuant to the FASB's Consolidation guidance and as a result, recognized net gains on change in control of interests of \$7.7 million, in aggregate, resulting from the fair value adjustments associated with the Company's previously held equity interests. See Footnote 3 of the Notes to Condensed Consolidated Financial Statements for the operating properties acquired by the Company.

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NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (continued)

During the six months ended June 30, 2022, certain of the Company's real estate joint ventures disposed of six properties and a land parcel, in separate transactions, for an aggregate sales price of \$268.6 million. These transactions resulted in an aggregate net gain to the Company of \$ 29.8 million for the six months ended June 30, 2022.

The table below presents debt balances within the Company's unconsolidated joint venture investments for which the Company held noncontrolling ownership interests at June 30, 2023 and December 31, 2022 (dollars in millions):

Joint Venture	As of June 30, 2023			As of December 31, 2022		
	Mortgages and Notes Payable, Net	Weighted Average Interest Rate	Weighted Average Remaining Term (months)*	Mortgages and Notes Payable, Net	Weighted Average Interest Rate	Weighted Average Remaining Term (months)*
Prudential Investment Program	\$ 340.5	5.85%	27.7	\$ 380.1	5.20%	33.1
KIR	273.1	5.82%	45.2	297.9	5.46%	47.2
CPP	82.5	5.70%	37.1	83.1	6.14%	43.0
Other Institutional Joint Ventures	233.8	5.76%	41.8	233.5	4.30%	47.7
Other Joint Venture Programs	370.9	4.41%	65.4	388.8	4.10%	71.8
Total	\$ 1,300.8			\$ 1,383.4		

* Includes extension options

5. Other Investments

The Company has provided capital to owners and developers of real estate properties and loans through its Preferred Equity program, which is included in Other investments on the Company's Condensed Consolidated Balance Sheets. In addition, the Company has invested capital in structured investments which are primarily accounted for on the equity method of accounting. As of June 30, 2023, the Company's other investments were \$136.6 million, of which the Company's net investment under the Preferred Equity program was \$96.7 million.

During 2023, the Company contributed a land parcel and related entitlements, located in Admore, PA, into a preferred equity investment with a gross value of \$19.6 million. As a result, the Company no longer consolidates this land parcel and has a non-controlling interest in this investment. As of June 30, 2023, the Company's investment was \$27.1 million.

6. Marketable Securities

The amortized cost and unrealized gains, net of marketable securities as of June 30, 2023 and December 31, 2022, are as follows (in thousands):

	As of June 30, 2023		As of December 31, 2022	
	2023	2022	2023	2022
Marketable securities:				
Amortized cost	\$ 41,713	\$ 87,411		
Unrealized gains, net	273,113	510,321		
Total fair value	<u>\$ 314,826</u>	<u>\$ 597,732</u>		

The Company's net gains/(losses) on marketable securities for three and six months ended June 30, 2023 and 2022, is as follows (in thousands):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2023	2022	2023	2022
Gain/(loss) on marketable securities, net	\$ 14,561	\$ (261,467)	\$ 4,417	\$ (139,703)

During the six months ended June 30, 2023, the Company sold 14.1 million shares of Albertsons Companies Inc. ("ACI") held by the Company, generating net proceeds of \$282.3 million. For tax purposes, the Company recognized a long-term capital gain of \$ 241.2 million. The Company anticipates retaining the proceeds from this stock sale for general corporate purposes and will pay federal and state taxes of \$61.0 million on the taxable gain. As of June 30, 2023, the Company held 14.2 million shares of ACI, which had a value of \$ 310.1 million.

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NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (continued)

In addition, during the six months ended June 30, 2023, the Company received \$194.1 million representing its share of an ACI special dividend payment and recognized this as Special dividend income on the Company's Condensed Consolidated Statements of Operations. As a result, the Company anticipates it may need to make a special dividend payment to maintain its compliance with REIT distribution requirements. The payment of this special dividend may be in the form of cash, common stock or some combination thereof. The Company's determination regarding any such special dividend and the form thereof will be announced during the year ending December 31, 2023.

7. Accounts and Notes Receivable

The components of accounts and notes receivable, net of potentially uncollectible amounts as of June 30, 2023 and December 31, 2022, are as follows (in thousands):

	As of June 30, 2023	As of December 31, 2022
Billed tenant receivables	\$ 26,480	\$ 33,801
Unbilled common area maintenance, insurance and tax reimbursements	39,636	56,001
Deferred rent receivables	943	1,905
Defined benefit plan receivable (1)	14,684	14,421
Other receivables	11,488	8,361
Straight-line rent receivables	201,377	189,737
Total accounts and notes receivable, net	\$ 294,608	\$ 304,226

(1) In August 2021, the Company assumed sponsorship of Weingarten Realty Investors' noncontributory qualified cash balance retirement plan (the "Benefit Plan") in connection with the merger with Weingarten Realty Investors ("Weingarten"). The Benefit Plan was frozen as of the date of the merger and subsequently terminated as of December 31, 2021. As of June 30, 2023, the Benefit Plan has excess assets of \$14.7 million. Additionally, as of June 30, 2023, the Company has unrealized gains related to the Benefit Plan of \$ 10.6 million, which is included in Accumulated other comprehensive income on the Company's Condensed Consolidated Balance Sheet (see Footnote 18 of the Notes to Condensed Consolidated Financial Statements). The Company expects to settle all the Benefit Plan's obligations during the remainder of 2023.

8. Leases

Lessor Leases

The Company's primary source of revenues is derived from lease agreements, which includes rental income and expense reimbursement. The Company's lease income is comprised of minimum base rent, expense reimbursements, percentage rent, lease termination fee income, ancillary income, amortization of above-market and below-market rent adjustments and straight-line rent adjustments.

The disaggregation of the Company's lease income, which is included in Revenues from rental properties, net on the Company's Condensed Consolidated Statements of Operations, as either fixed or variable lease income based on the criteria specified in ASC 842, for the three and six months ended June 30, 2023 and 2022, is as follows (in thousands):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2023	2022	2023	2022
Lease income:				
Fixed lease income (1)	\$ 349,323	\$ 336,370	\$ 697,661	\$ 668,368
Variable lease income (2)	86,258	81,514	176,329	164,961
Above-market and below-market leases amortization, net	7,013	2,683	10,002	6,980
Adjustments for potentially uncollectible revenues and disputed amounts (3)	(3,586)	2,706	(6,646)	5,618
Total lease income	\$ 439,008	\$ 423,273	\$ 877,346	\$ 845,927

(1) Includes minimum base rents, expense reimbursements, ancillary income and straight-line rent adjustments.

(2) Includes minimum base rents, expense reimbursements, percentage rent, lease termination fee income and ancillary income.

(3) The amounts represent adjustments associated with potentially uncollectible revenues and disputed amounts.

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KIMCO REALTY CORPORATION AND SUBSIDIARIES AND KIMCO REALTY OP, LLC AND SUBSIDIARIES

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (continued)

Lessee Leases

The Company currently leases real estate space under non-cancelable operating lease agreements for ground leases and administrative office leases. The Company's operating leases have remaining lease terms ranging from less than one to 62.5 years, some of which include options to extend the terms for up to an additional 75 years.

The weighted-average remaining non-cancelable lease term and weighted-average discount rates for the Company's operating and finance leases as of June 30, 2023 were as follows:

	Operating Leases	Finance Leases
Weighted-average remaining lease term (in years)	24.6	0.5
Weighted-average discount rate	6.63%	4.44%

The components of the Company's lease expense, which are included in interest expense, rent expense and general and administrative expense on the Company's Condensed Consolidated Statements of Operations for the three and six months ended June 30, 2023 and 2022, were as follows (in thousands):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2023	2022	2023	2022
Lease cost:				
Finance lease cost	\$ 316	\$ 250	\$ 635	\$ 576
Operating lease cost	3,697	3,268	7,398	6,251
Variable lease cost	706	1,188	1,267	2,596
Total lease cost	\$ 4,719	\$ 4,706	\$ 9,300	\$ 9,423

9. Other Assets*Mortgages and Other Financing Receivables*

During the six months ended June 30, 2023, the Company provided, as a lender, the following mortgage loans and other financing receivables (dollars in millions):

Date Issued	Face Amount	Interest Rate	Maturity Date
Feb-23	\$ 11.2	14.00%	Dec-24
Mar-23	\$ 25.0	8.00%	Apr-24

10. Notes and Mortgages Payable*Notes Payable*

In February 2023, the Company obtained a new \$ 2.0 billion unsecured revolving credit facility (the "Credit Facility") with a group of banks, which replaced the Company's existing \$2.0 billion unsecured revolving credit facility which was scheduled to mature in March 2024. The Credit Facility is scheduled to expire in March 2027 with two additional six-month options to extend the maturity date, at the Company's discretion, to March 2028. The Credit Facility is guaranteed by the Parent Company. The Credit Facility could be increased to \$2.75 billion through an accordion feature. The Credit Facility is a green credit facility tied to sustainability metric targets, as described in the agreement. The Credit Facility accrues interest at a rate of Adjusted Term SOFR, as defined in the terms of the Credit Facility, plus 77.5 basis points and fluctuates in accordance with the Company's credit ratings. The interest rate can be further adjusted upward or downward by a maximum of four basis points (as of June 30, 2023, a two-basis point reduction was achieved) based on the sustainability metric targets, as defined in the agreement (5.92% as of June 30, 2023). Pursuant to the terms of the Credit Facility, the Company continues to be subject to the same covenants under the Company's prior unsecured revolving credit facility. For a full description of the Credit Facility's covenants refer to the Amended and Restated Credit Agreement dated as of February 23, 2023, filed as Exhibit 10.20 in our Annual Report on Form 10-K for the year ended December 31, 2022. As of June 30, 2023, the Credit Facility had no outstanding balance, no appropriations for letters of credit and the Company was in compliance with its covenants.

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NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (continued)

Mortgages Payable

During the six months ended June 30, 2023, the Company (i) assumed \$37.2 million of individual non-recourse mortgage debt through the acquisition of two operating properties, which it subsequently repaid in March 2023 and (ii) repaid \$12.0 million of mortgage debt that encumbered a consolidated joint venture operating property.

11. Noncontrolling Interests

Noncontrolling interests represent the portion of equity that the Company does not own in those entities it consolidates as a result of having a controlling interest or having determined that the Company was the primary beneficiary of a VIE in accordance with the provisions of the FASB's Consolidation guidance. The Company accounts and reports for noncontrolling interests in accordance with the Consolidation guidance and the Distinguishing Liabilities from Equity guidance issued by the FASB. The Company identifies its noncontrolling interests separately within the equity section on the Company's Condensed Consolidated Balance Sheets. The amounts of consolidated net income attributable to the Company and to the noncontrolling interests are presented separately on the Company's Condensed Consolidated Statements of Operations.

Included within noncontrolling interests are units that were determined to be contingently redeemable that are classified as Redeemable noncontrolling interests and presented in the mezzanine section between Total liabilities and Stockholders' equity on the Company's Condensed Consolidated Balance Sheets.

The following table presents the change in the redemption value of the Redeemable noncontrolling interests for the six months ended June 30, 2023 and 2022 (in thousands):

	Six Months Ended June 30,	
	2023	2022
Balance at January 1,	\$ 92,933	\$ 13,480
Net income	3,104	534
Distributions	(3,104)	(535)
Redemption/conversion of noncontrolling interests	-	(209)
Balance at June 30,	<u>\$ 92,933</u>	<u>\$ 13,270</u>

12. Variable Interest Entities*Consolidated Operating Properties*

Included within the Company's operating properties at June 30, 2023 and December 31, 2022 are 32 consolidated entities, that are VIEs for which the Company is the primary beneficiary. These entities have been established to own and operate real estate property. The Company's involvement with these entities is through its majority ownership and management of the properties. The entities were deemed VIEs primarily because the unrelated investors do not have substantive kick-out rights to remove the general or managing partner by a vote of a simple majority or less, and they do not have substantive participating rights. The Company determined that it was the primary beneficiary of these VIEs as a result of its controlling financial interest. At June 30, 2023, total assets of these VIEs were \$1.8 billion and total liabilities were \$186.2 million. At December 31, 2022, total assets of these VIEs were \$1.8 billion and total liabilities were \$199.1 million.

The majority of the operations of these VIEs are funded with cash flows generated from the properties. The Company has not provided financial support to any of these VIEs that it was not previously contractually required to provide, which consists primarily of funding any capital expenditures, including tenant improvements, which are deemed necessary to continue to operate the entity and any operating cash shortfalls that the entity may experience.

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NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (continued)

All liabilities of these consolidated VIEs are non-recourse to the Company ("VIE Liabilities"). The assets of the unencumbered VIEs are not restricted for use to settle only the obligations of these VIEs. The remaining VIE assets are encumbered by third-party non-recourse mortgage debt. The assets associated with these encumbered VIEs ("Restricted Assets") are collateral under the respective mortgages and are therefore restricted and can only be used to settle the corresponding liabilities of the VIE. The table below summarizes the consolidated VIEs and the classification of the Restricted Assets and VIE Liabilities on the Company's Condensed Consolidated Balance Sheets as follows (dollars in millions):

	As of June 30, 2023	As of December 31, 2022
Number of unencumbered VIEs	30	29
Number of encumbered VIEs	2	3
Total number of consolidated VIEs	32	32
Restricted Assets:		
Real estate, net	\$ 386.2	\$ 425.5
Cash and cash equivalents	5.3	7.9
Accounts and notes receivable, net	3.5	1.7
Other assets	1.4	1.5
Total Restricted Assets	<u>\$ 396.4</u>	<u>\$ 436.6</u>
VIE Liabilities:		
Mortgages payable, net	\$ 97.6	\$ 109.7
Accounts payable and accrued expenses	13.4	10.9
Operating lease liabilities	5.1	5.2
Other liabilities	70.1	73.3
Total VIE Liabilities	<u>\$ 186.2</u>	<u>\$ 199.1</u>

Unconsolidated Redevelopment Investment

Included in the Company's preferred equity investments at June 30, 2023, is an unconsolidated development project which is a VIE for which the Company is not the primary beneficiary. This preferred equity investment was primarily established to develop real estate property for long-term investment and was deemed a VIE primarily based on the fact that the equity investment at risk was not sufficient to permit the entity to finance its activities without additional financial support. The initial equity contributed to this entity was not sufficient to fully finance the real estate construction as development costs are funded by the partners over the construction period. The Company determined that it was not the primary beneficiary of this VIE based on the fact that the Company has shared control of this entity along with the entity's partners and therefore does not have a controlling financial interest.

As of June 30, 2023, the Company's investment in this VIE was \$27.1 million, which is included in Other investments on the Company's Condensed Consolidated Balance Sheets. The Company's maximum exposure to loss as a result of its involvement with this VIE is estimated to be \$34.3 million, which is the capital commitment obligation. The Company has not provided financial support to this VIE that it was not previously contractually required to provide. All future costs of development will be funded with capital contributions from the Company and the outside partner in accordance with their respective ownership percentages and construction loan financing.

13. Fair Value Measurements

All financial instruments of the Company are reflected in the accompanying Condensed Consolidated Balance Sheets at amounts which, in management's estimation, based upon an interpretation of available market information and valuation methodologies, reasonably approximate their fair values, except those listed below, for which fair values are disclosed. The valuation method used to estimate fair value for fixed-rate and variable-rate debt is based on discounted cash flow analyses, with assumptions that include credit spreads, market yield curves, trading activity, loan amounts and debt maturities. The fair values for marketable securities are based on published values, securities dealers' estimated market values or comparable market sales. The fair value for embedded derivative liability is based on using the "with-and-without" method. Such fair value estimates are not necessarily indicative of the amounts that would be realized upon disposition.

As a basis for considering market participant assumptions in fair value measurements, the FASB's Fair Value Measurements and Disclosures guidance establishes a fair value hierarchy that distinguishes between market participant assumptions based on market data obtained from sources independent of the reporting entity (observable inputs that are classified within Levels 1 and 2 of the hierarchy) and the reporting entity's own assumptions about market participant assumptions (unobservable inputs classified within Level 3 of the hierarchy).

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NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (continued)

The following are financial instruments for which the Company's estimated fair value differs from the carrying value (in thousands):

	June 30, 2023		December 31, 2022	
	Carrying Value	Fair Value	Carrying Value	Fair Value
Notes payable, net (1)	\$ 6,775,080	\$ 5,879,693	\$ 6,780,969	\$ 5,837,401
Mortgages payable, net (2)	\$ 359,609	\$ 298,487	\$ 376,917	\$ 311,659

(1) The Company determined that the valuation of its senior unsecured notes were classified within Level 2 of the fair value hierarchy. The estimated fair value amounts classified as Level 2 as of June 30, 2023 and December 31, 2022, were \$5.9 billion and \$5.8 billion, respectively. The carrying value includes deferred financing costs of \$62.6 million and \$66.4 million as of June 30, 2023 and December 31, 2022, respectively.

(2) The Company determined that its valuation of its mortgages payable were classified within Level 3 of the fair value hierarchy. The carrying value includes deferred financing costs of \$1.4 million and \$1.7 million as of June 30, 2023 and December 31, 2022, respectively.

The Company has certain financial instruments that must be measured under the FASB's Fair Value Measurements and Disclosures guidance, including available for sale securities and embedded derivative liabilities. The Company currently does not have non-financial assets and non-financial liabilities that are required to be measured at fair value on a recurring basis.

In instances where the determination of the fair value measurement is based on inputs from different levels of the fair value hierarchy, the level of the fair value hierarchy within which the entire fair value measurement falls is based on the lowest level input that is significant to the fair value measurement in its entirety. The Company's assessment of the significance of a particular input to the fair value measurement in its entirety requires judgment and considers factors specific to the asset or liability.

The tables below present the Company's financial assets and liabilities measured at fair value on a recurring basis at June 30, 2023 and December 31, 2022, aggregated by the level in the fair value hierarchy within which those measurements fall (in thousands):

	Balance at June 30, 2023		Level 1		Level 2		Level 3	
	Assets:	Liabilities:						
Marketable equity securities	\$ 314,826	\$ 314,826	\$	\$	-	\$	-	-
Embedded derivative liability	\$ 56,000	\$	-	\$	-	\$	56,000	
Assets:		Balance at December 31, 2022		Level 1		Level 2		Level 3
Marketable equity securities	\$ 597,732	\$ 597,732	\$	\$	-	\$	-	-
Embedded derivative liability	\$ 56,000	\$	-	\$	-	\$	56,000	

The significant unobservable input (Level 3 inputs) used in measuring the Company's embedded derivative liability, which is categorized with Level 3 of the fair value hierarchy as of June 30, 2023 and December 31 2022, is the discount rate of 8.00%.

Assets measured at fair value on a non-recurring basis at June 30, 2023 are as follows (in thousands):

	Balance at June 30, 2023		Level 1		Level 2		Level 3	
	Real estate		\$ 15,479	\$	-	\$	-	\$ 15,479

During the six months ended June 30, 2023, the Company recognized impairment charges related to adjustments to property carrying values of \$ 11.8 million. The Company's estimated fair values of these assets were primarily based upon estimated sales prices from letters of intent from third-party offers, which were less than the carrying value of the assets. The Company does not have access to the unobservable inputs used to determine the estimated fair values of third-party offers. Based on these inputs, the Company determined that its valuation of these investments was classified within Level 3 of the fair value hierarchy.

[14. Incentive Plans](#)

In May 2020, the Company's stockholders approved the 2020 Equity Participation Plan (the "2020 Plan"), which is a successor to the Restated Kimco Realty Corporation 2010 Equity Participation Plan (together with the 2020 Plan, the "Plans") that expired in March 2020. The 2020 Plan provides for a maximum of 10,000,000 shares of the Company's common stock to be reserved for the issuance of stock options, stock appreciation rights, restricted stock, restricted stock units, performance awards, dividend equivalents, stock payments and deferred stock awards. At June 30, 2023, the Company had 4.9 million shares of common stock available for issuance under the 2020 Plan.

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (continued)

The Company accounts for equity awards in accordance with FASB's Compensation – Stock Compensation guidance, which requires that all share-based payments to employees, including grants of employee stock options, restricted stock and performance shares, be recognized in the Condensed Consolidated Statements of Operations over the service period based on their fair values. Fair value of performance awards is determined using the Monte Carlo method which is intended to estimate the fair value of the awards at the grant date. Fair value of restricted shares is calculated based on the price on the date of grant.

The Company recognized expenses associated with its equity awards of \$ 17.5 million and \$14.0 million for the six months ended June 30, 2023 and 2022, respectively. As of June 30, 2023, the Company had \$67.3 million of total unrecognized compensation cost related to unvested stock compensation granted under the Plans. That cost is expected to be recognized over a weighted-average period of approximately 3.0 years.

15. Stockholders' Equity

Preferred Stock

The Company's Board of Director's authorized the repurchase of up to 894,000 depositary shares of Class L preferred stock and 1,048,000 depositary shares of Class M preferred stock, representing up to 1,942 shares of the Company's preferred stock, par value \$ 1.00 per share, through December 31, 2023. During the six months ended June 30, 2023, the Company repurchased the following preferred stock:

Class of Preferred Stock	Depository Shares Repurchased		Purchase Price (in thousands)
	Class L	Class M	
	43,777	\$	973.4
	23,791	\$	515.9

The Company's outstanding Preferred Stock is detailed below (in thousands, except share data and par values):

As of June 30, 2023							
Class of Preferred Stock	Shares Authorized	Shares Issued and Outstanding	Liquidation Preference	Dividend Rate	Annual Dividend per Depository Share	Par Value	Optional Redemption Date
Class L	10,350	8,902	\$ 222,543	5.125%	\$ 1.28125	\$ 1.00	8/16/2022
Class M	10,580	10,465	\$ 261,636	5.250%	\$ 1.31250	\$ 1.00	12/20/2022
		<u>19,367</u>	<u>\$ 484,179</u>				

As of December 31, 2022							
Class of Preferred Stock	Shares Authorized	Shares Issued and Outstanding	Liquidation Preference	Dividend Rate	Annual Dividend per Depository Share	Par Value	Optional Redemption Date
Class L	10,350	8,946	\$ 223,637	5.125%	\$ 1.28125	\$ 1.00	8/16/2022
Class M	10,580	10,489	\$ 262,231	5.250%	\$ 1.31250	\$ 1.00	12/20/2022
		<u>19,435</u>	<u>\$ 485,868</u>				

Common Stock

The Company has a share repurchase program, which is scheduled to expire February 29, 2024. Under this program, the Company may repurchase shares of its common stock, par value \$0.01 per share, with an aggregate gross purchase price of up to \$ 300.0 million. The Company did not repurchase any shares under the share repurchase program during the six months ended June 30, 2023. As of June 30, 2023, the Company had \$224.9 million available under this common share repurchase program.

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KIMCO REALTY CORPORATION AND SUBSIDIARIES AND KIMCO REALTY OP, LLC AND SUBSIDIARIES

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (continued)

Dividends Declared

The following table provides a summary of the dividends declared per share:

	Three Months Ended June 30,		Six Months Ended June 30,	
	2023	2022	2023	2022
Common Shares	\$ 0.23000	\$ 0.20000	\$ 0.46000	\$ 0.39000
Class L Depositary Shares	\$ 0.32031	\$ 0.32031	\$ 0.64062	\$ 0.64062
Class M Depositary Shares	\$ 0.32813	\$ 0.32813	\$ 0.65626	\$ 0.65626

16. Supplemental Schedule of Non-Cash Investing / Financing Activities

The following schedule summarizes the non-cash investing and financing activities of the Company for the six months ended June 30, 2023 and 2022 (in thousands):

	Six Months Ended June 30,	
	2023	2022
Acquisition of real estate interests from a lease modification	\$ 12,527	\$ -
Disposition of real estate interests through the issuance of mortgage receivables	\$ 25,000	\$ -
Deconsolidation of real estate interests through contribution to other investments	\$ 19,618	\$ -
Surrender of common stock	\$ 16,137	\$ 13,545
Declaration of dividends paid in succeeding period	\$ 5,308	\$ 5,326
Capital expenditures accrual	\$ 32,949	\$ 23,225
Decrease in redeemable noncontrolling interests from redemption of units for common stock	\$ -	\$ 1,613
Consolidation of Joint Ventures:		
Increase in real estate and other net assets	\$ 54,345	\$ -
Increase in mortgage payables	\$ 37,187	\$ -

The following table provides a reconciliation of cash, cash equivalents and restricted cash recorded on the Company's Condensed Consolidated Balance Sheets to the Company's Condensed Consolidated Statements of Cash Flows (in thousands):

	As of June 30, 2023	As of December 31, 2022
Cash and cash equivalents	\$ 533,380	\$ 146,970
Restricted cash	3,097	2,859
Total cash, cash equivalents and restricted cash	<u>\$ 536,477</u>	<u>\$ 149,829</u>

17. Commitments and Contingencies*Letters of Credit*

The Company has issued letters of credit in connection with the completion and repayment guarantees primarily on certain of the Company's redevelopment projects and guaranty of payment related to the Company's insurance program. At June 30, 2023, these letters of credit aggregated \$39.8 million.

Funding Commitments

The Company has investments with funding commitments of \$ 64.7 million, of which \$45.5 million has been funded as of June 30, 2023.

Other

The Parent Company guarantees the debt securities of Kimco OP. These guarantees by the Parent Company are full, irrevocable, unconditional and absolute joint and several guarantees to the holders of each series of such guaranteed debt securities.

In connection with the construction of its development and redevelopment projects and related infrastructure, certain public agencies require posting of performance and surety bonds to guarantee that the Company's obligations are satisfied. These bonds expire upon the completion of the improvements and infrastructure. As of June 30, 2023, there were \$17.4 million in performance and surety bonds outstanding.

The Company provides a guaranty for the payment of any debt service shortfalls on the Sheridan Redevelopment Agency issued Series A bonds which are tax increment revenue bonds issued in connection with a development project in Sheridan, Colorado. These tax increment revenue bonds have a balance of \$45.5 million outstanding at June 30, 2023. The bonds are to be repaid with incremental sales and property taxes and a public improvement fee ("PIF") to be assessed on current and future retail sales and, to the extent necessary, any amounts we may have to provide under a guaranty. The revenue generated from incremental sales, property taxes and PIF have satisfied the debt service requirements to date. The incremental taxes and PIF are to remain intact until the earlier of the payment of the bond liability in full or 2040.

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KIMCO REALTY CORPORATION AND SUBSIDIARIES AND KIMCO REALTY OP, LLC AND SUBSIDIARIES

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (continued)

The Company is subject to various other legal proceedings and claims that arise in the ordinary course of business. Management believes that the final outcome of such matters will not have a material adverse effect on the financial position, results of operations or liquidity of the Company taken as a whole as of June 30, 2023.

18. Accumulated Other Comprehensive Income ("AOCI")

The following table displays the change in the components of AOCI for the six months ended June 30, 2023 and 2022:

	Unrealized Gains Related to Defined Benefit Plan	Unrealized Gains Related to Equity Method Investments	Total
Balance as of January 1, 2023	\$ 10,581	\$ -	\$ 10,581
Other comprehensive income before reclassifications	-	5,361	5,361
Amounts reclassified from AOCI	-	-	-
Net current-period other comprehensive income	-	5,361	5,361
Balance as of June 30, 2023	\$ 10,581	\$ 5,361	\$ 15,942
	Unrealized Gains Related to Defined Benefit Plan		
Balance as of January 1, 2022	\$ 2,216		
Other comprehensive income before reclassifications	4,260		
Amounts reclassified from AOCI	-		
Net current-period other comprehensive income	4,260		
Balance as of June 30, 2022	\$ 6,476		

19. Earnings Per Share

The following table sets forth the reconciliation of earnings and the weighted-average number of shares used in the calculation of basic and diluted earnings per share (amounts presented in thousands except per share data):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2023	2022	2023	2022
<i>Computation of Basic and Diluted Earnings Per Share:</i>				
Net income/(loss) available to the Company's common shareholders	\$ 100,426	\$ (125,751)	\$ 383,938	\$ 105,197
Earnings attributable to participating securities	(647)	(533)	(2,074)	(1,000)
Net income/(loss) available to the Company's common shareholders for basic earnings per share	99,779	(126,284)	381,864	104,197
Distributions on convertible units	-	-	1,479	-
Net income/(loss) available to the Company's common shareholders for diluted earnings per share	<u>\$ 99,779</u>	<u>\$ (126,284)</u>	<u>\$ 383,343</u>	<u>\$ 104,197</u>
Weighted average common shares outstanding – basic	617,077	615,642	616,785	615,207
Effect of dilutive securities (1):				
Equity awards	122	-	490	1,689
Assumed conversion of convertible units	58	-	2,474	47
Weighted average common shares outstanding – diluted	<u>617,257</u>	<u>615,642</u>	<u>619,749</u>	<u>616,943</u>
Net income/(loss) available to the Company's common shareholders:				
Basic earnings per share	\$ 0.16	\$ (0.21)	\$ 0.62	\$ 0.17
Diluted earnings per share	<u>\$ 0.16</u>	<u>\$ (0.21)</u>	<u>\$ 0.62</u>	<u>\$ 0.17</u>

(1) The effect of the assumed conversion of certain convertible units had an anti-dilutive effect upon the calculation of Net income available to the Company's common shareholders per share. Accordingly, the impact of such conversions has not been included in the determination of diluted earnings per share calculations.

The Company's unvested restricted share awards contain non-forfeitable rights to distributions or distribution equivalents. The impact of the unvested restricted share awards on earnings per share has been calculated using the two-class method whereby earnings are allocated to the unvested restricted share awards based on dividends declared and the unvested restricted shares' participation rights in undistributed earnings.

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

Forward-Looking Statements

This Quarterly Report on Form 10-Q, together with other statements and information publicly disseminated by the Company contains certain forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended (the "Securities Act"), and Section 21E of the Securities Exchange Act of 1934, as amended (the "Exchange Act"). The Company intends such forward-looking statements to be covered by the safe harbor provisions for forward-looking statements contained in the Private Securities Litigation Reform Act of 1995 and includes this statement for purposes of complying with the safe harbor provisions. Forward-looking statements, which are based on certain assumptions and describe the Company's future plans, strategies and expectations, are generally identifiable by use of the words "believe," "expect," "intend," "commit," "anticipate," "estimate," "project," "will," "target," "plan," "forecast" or similar expressions. You should not rely on forward-looking statements since they involve known and unknown risks, uncertainties and other factors which, in some cases, are beyond the Company's control and could materially affect actual results, performances or achievements. Factors which may cause actual results to differ materially from current expectations include, but are not limited to, (i) general adverse economic and local real estate conditions, (ii) the impact of competition, including the availability of acquisition or development opportunities and the costs associated with purchasing and maintaining assets; (iii) the inability of major tenants to continue paying their rent obligations due to bankruptcy, insolvency or a general downturn in their business, (iv) the reduction in the Company's income in the event of multiple lease terminations by tenants or a failure of multiple tenants to occupy their premises in a shopping center, (v) the potential impact of e-commerce and other changes in consumer buying practices, and changing trends in the retail industry and perceptions by retailers or shoppers, including safety and convenience, (vi) the availability of suitable acquisition, disposition, development and redevelopment opportunities, and risks related to acquisitions not performing in accordance with our expectations, (vii) the Company's ability to raise capital by selling its assets, (viii) disruptions and increases in operating costs due to inflation and supply chain issues, (ix) risks associated with the development of mixed-use commercial properties, including risks associated with the development, and ownership of non-retail real estate, (x) changes in governmental laws and regulations, including, but not limited to changes in data privacy, environmental (including climate change), safety and health laws, and management's ability to estimate the impact of such changes, (xi) valuation and risks related to the Company's joint venture and preferred equity investments and other investments, (xii) valuation of marketable securities and other investments, including the shares of Albertsons Companies, Inc. common stock held by the Company, (xiii) impairment charges, (xiv) criminal cybersecurity attacks disruption, data loss or other security incidents and breaches, (xv) impact of natural disasters and weather and climate-related events, (xvi) pandemics or other health crises, such as coronavirus disease 2019 ("COVID-19"), (xvii) our ability to attract, retain and motivate key personnel, (xviii) financing risks, such as the inability to obtain equity, debt or other sources of financing or refinancing on favorable terms to the Company, (xix) the level and volatility of interest rates and management's ability to estimate the impact thereof, (xx) changes in the dividend policy for the Company's common and preferred stock and the Company's ability to pay dividends at current levels, (xxi) unanticipated changes in the Company's intention or ability to prepay certain debt prior to maturity and/or hold certain securities until maturity, and (xxii) the Company's ability to continue to maintain its status as a REIT for federal income tax purposes and potential risks and uncertainties in connection with its UPREIT structure, and (xxiii) the other risks and uncertainties identified under Item 1A, "Risk Factors" in our Annual Report on Form 10-K for the year ended December 31, 2022. Accordingly, there is no assurance that the Company's expectations will be realized. The Company disclaims any intention or obligation to update the forward-looking statements, whether as a result of new information, future events or otherwise. You are advised to refer to any further disclosures the Company makes in other filings with the Securities and Exchange Commission ("SEC").

The following discussion should be read in conjunction with the accompanying Condensed Consolidated Financial Statements and Notes thereto. These unaudited financial statements include all adjustments which are, in the opinion of management, necessary to reflect a fair statement of the results for the interim periods presented, and all such adjustments are of a normal recurring nature.

Executive Overview

Kimco Realty Corporation is a REIT, of which substantially all of the Company's assets are held by, and substantially all of the Company's operations are conducted through, Kimco OP, either directly or through its subsidiaries, as the Company's operating company. The Company is the sole managing member and exercises exclusive control over Kimco OP. As of June 30, 2023, the Parent Company owned 100% of the outstanding limited liability company interests (the "OP Units") in Kimco OP.

The Company, a Maryland corporation, is North America's largest publicly traded owner and operator of open-air, grocery-anchored shopping centers and a growing portfolio of mixed-use assets. The terms "Kimco," the "Company," "we," "our" and "us" each refers to Kimco Realty Corporation and our subsidiaries, unless the context indicates otherwise. The Company's mission is to create destinations for everyday living that inspire a sense of community and deliver value to our many stakeholders.

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The Company is a self-administered real estate investment trust ("REIT") and has owned and operated open-air shopping centers for over 60 years. The Company has not engaged, nor does it expect to retain, any REIT advisors in connection with the operation of its properties. As of June 30, 2023, the Company had interests in 528 U.S. shopping center properties, aggregating 90.1 million square feet of gross leasable area ("GLA"), located in 28 states. In addition, the Company had 21 other property interests, primarily through the Company's preferred equity investments and other investments, totaling 5.5 million square feet of GLA. The Company's ownership interests in real estate consist of its consolidated portfolio and portfolios where the Company owns an economic interest, such as properties in the Company's investment real estate management programs, where the Company partners with institutional investors and also retains management.

The Company's primary business objective is to be the premier owner and operator of open-air, grocery-anchored shopping centers, and a growing portfolio of mixed-use assets, in the U.S. The Company believes it can achieve this objective by:

- increasing the value of its existing portfolio of properties and generating higher levels of portfolio growth;
- increasing cash flows for reinvestment and/or for distribution to shareholders while maintaining conservative payout ratios;
- improving debt metrics and upgraded unsecured debt ratings
- continuing growth in desirable demographic areas with successful retailers, primarily focused on grocery anchors; and
- increasing the number of entitlements for residential use.

Economic Conditions

The economy continues to face several issues including inflation risk, liquidity constraints, the lack of qualified employees, tenant bankruptcies and supply chain issues, which could impact the Company and its tenants. In response to the rising rate of inflation the Federal Reserve has steadily increased interest rates, and may continue to increase interest rates, until the rate of inflation begins to decrease. These increases in interest rates could adversely impact the business and financial results of the Company and its tenants. In addition, slower economic growth and the potential for a recession could have an adverse effect on the Company and its tenants. This could negatively affect the overall demand for retail space, including the demand for leasable space in the Company's properties. As a result, the Company could feel pricing pressure on rents that it is able to charge to new or renewing tenants, such that future rents and rent spreads could be negatively impacted.

Any of these events could materially adversely impact the Company's business, financial condition, results of operations or stock price. The Company continues to monitor economic, financial, and social conditions and will assess its asset portfolio for any impairment indicators. If the Company determines that any of its assets are impaired, the Company would be required to take impairment charges, and such amounts could be material.

Effects of Inflation

Many of the Company's long-term leases contain provisions designed to help mitigate the adverse impact of inflation. Such provisions include clauses enabling the Company to receive payment of additional rent calculated as a percentage of tenants' gross sales above pre-determined thresholds, which generally increase as prices rise, and/or as a result of escalation clauses, which generally increase rental rates during the terms of the leases. Such escalation clauses often include increases based upon changes in the consumer price index or similar inflation indices. In addition, many of the Company's leases are for terms of less than 10 years, which permits the Company to seek to increase rents to market rates upon renewal. To assist in partially mitigating the Company's exposure to increases in costs and operating expenses, including common area maintenance costs, real estate taxes and insurance, resulting from inflation the Company's leases include provisions that either (i) require the tenant to pay an allocable share of these operating expenses or (ii) contain fixed contractual amounts, which include escalation clauses, to reimburse these operating expenses.

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[Results of Operations](#)

Comparison of the three and six months ended June 30, 2023 and 2022

The following table presents the comparative results from the Company's Condensed Consolidated Statements of Operations for the three and six months ended June 30, 2023, as compared to the corresponding periods in 2022 (in thousands, except per share data):

	Three Months Ended June 30,			Six Months Ended June 30,		
	2023	2022	Change	2023	2022	Change
Revenues						
Revenues from rental properties, net	\$ 439,008	\$ 423,273	\$ 15,735	\$ 877,346	\$ 845,927	\$ 31,419
Management and other fee income	3,832	3,925	(93)	8,386	8,520	(134)
Operating expenses						
Rent (1)	(4,145)	(4,070)	(75)	(8,158)	(8,151)	(7)
Real estate taxes	(57,621)	(56,075)	(1,546)	(115,127)	(110,389)	(4,738)
Operating and maintenance (2)	(75,073)	(69,784)	(5,289)	(150,315)	(139,009)	(11,306)
General and administrative (3)	(32,734)	(27,981)	(4,753)	(67,483)	(57,929)	(9,554)
Impairment charges	-	(14,419)	14,419	(11,806)	(14,691)	2,885
Depreciation and amortization	(129,245)	(124,611)	(4,634)	(255,546)	(254,905)	(641)
Gain on sale of properties	13,170	2,944	10,226	52,376	7,137	45,239
Other income/(expense)						
Special dividend income	-	-	-	194,116	-	194,116
Other income, net	7,571	6,642	929	10,703	12,625	(1,922)
Gain/(loss) on marketable securities, net	14,561	(261,467)	276,028	4,417	(139,703)	144,120
Interest expense	(60,674)	(56,466)	(4,208)	(121,980)	(113,485)	(8,495)
Early extinguishment of debt charges	-	(57)	57	-	(7,230)	7,230
(Provision)/benefit for income taxes, net	(31,027)	(96)	(30,931)	(61,856)	57	(61,913)
Equity in income of joint ventures, net	17,128	44,130	(27,002)	41,332	67,700	(26,368)
Equity in income of other investments, net	4,519	3,385	1,134	6,641	8,758	(2,117)
Net (income)/loss attributable to noncontrolling interests	(2,644)	11,226	(13,870)	(6,657)	12,569	(19,226)
Preferred dividends, net	(6,200)	(6,250)	50	(12,451)	(12,604)	153
Net income/(loss) available to the Company's common shareholders	\$ 100,426	\$ (125,751)	\$ 226,177	\$ 383,938	\$ 105,197	\$ 278,741
Net income/(loss) available to the Company's common shareholders:						
Diluted per common share	\$ 0.16	\$ (0.21)	\$ 0.37	\$ 0.62	\$ 0.17	\$ 0.45

- (1) Rent expense primarily relates to ground lease payments for which the Company is the lessee.
- (2) Operating and maintenance expense consists of property related costs including repairs and maintenance costs, roof repair, landscaping, parking lot repair, snow removal, utilities, property insurance costs, security and various other property related expenses.
- (3) General and administrative expense includes employee-related expenses (including salaries, bonuses, equity awards, benefits, severance costs and payroll taxes), professional fees, office rent, travel and entertainment costs and other company-specific expenses.

Net income available to the Company's common shareholders was \$100.4 million for the three months ended June 30, 2023, as compared to net loss available to the Company's common shareholders of \$125.8 million for the comparable period in 2022. On a diluted per common share basis, net income/(loss) available to the Company's common shareholders for the three months ended June 30, 2023 was \$0.16 as compared to \$(0.21) for the comparable period in 2022.

Net income/(loss) available to the Company's common shareholders was \$383.9 million for the six months ended June 30, 2023, as compared to \$105.2 million for the comparable period in 2022. On a diluted per common share basis, net income/(loss) available to the Company's common shareholders for the six months ended June 30, 2023 was \$0.62 as compared to \$0.17 for the comparable period in 2022.

The following describes the changes of certain line items included on the Company's Condensed Consolidated Statements of Operations that the Company believes changed significantly and affected Net income available to the Company's common shareholders during the three and six months ended June 30, 2023, as compared to the corresponding periods in 2022.

Revenues from rental properties, net –

The increase in Revenues from rental properties, net of \$15.7 million for the three months ended June 30, 2023, as compared to the corresponding period in 2022, is primarily from (i) a net increase in revenues from tenants of \$18.3 million, primarily due to an increase in leasing activity and net growth in the current portfolio and (ii) an increase in revenues of \$12.7 million due to properties acquired during 2023 and 2022, partially offset by (iii) a decrease in revenues of \$5.7 million due to dispositions during 2023 and 2022, (iv) a decrease in net straight-line rental income of \$5.5 million, primarily due to changes in reserves, (v) a net decrease of \$3.3 million due to changes in credit losses from tenants and (vi) a decrease in lease termination fee income of \$0.8 million.

The increase in Revenues from rental properties, net of \$31.4 million for the six months ended June 30, 2023, as compared to the corresponding period in 2022, is primarily from (i) a net increase in revenues from tenants of \$35.0 million, primarily due to an increase in leasing activity and net growth in the current portfolio, (ii) an increase in revenues of \$24.0 million due to properties acquired during 2023 and 2022 and (iii) an increase in lease termination fee income of \$0.5 million, partially offset by (iv) a net decrease of \$10.3 million due to changes in credit losses from tenants, (v) a decrease in revenues of \$12.0 million due to dispositions during 2023 and 2022 and (vi) a decrease in net straight-line rental income of \$5.8 million, primarily due to changes in reserves.

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Real estate taxes –

The increase in Real estate taxes of \$4.7 million for the six months ended June 30, 2023, as compared to the corresponding period in 2022, is primarily due to properties acquired during 2023 and 2022, partially offset by dispositions during 2023 and 2022.

Operating and maintenance –

The increase in Operating and maintenance expense of \$5.3 million and \$11.3 million for the three and six months ended June 30, 2023, as compared to the corresponding periods in 2022, is primarily due to (i) properties acquired during 2023 and 2022, (ii) an increase in insurance expense and (iii) increases in repairs and maintenance, utilities and other operating costs throughout the Company's operating properties, partially offset by (iv) dispositions during 2023 and 2022.

General and administrative –

The increase in General and administrative expense of \$4.8 million for the three months ended June 30, 2023, as compared to the corresponding period in 2022, is primarily due to (i) an increase in employee-related expenses of \$2.9 million resulting from an increase in the valuation of employee equity awards and additional employees hired, (ii) an increase in professional fees and corporate expenses of \$1.1 million, primarily related to the Reorganization, and (iii) an increase due to the fluctuations in value of various director's deferred stock of \$0.6 million.

The increase in General and administrative expense of \$9.6 million for the six months ended June 30, 2023, as compared to the corresponding period in 2022, is primarily due to (i) an increase in employee-related expenses of \$5.6 million resulting from an increase in the valuation of employee equity awards and additional employees hired, and (ii) an increase in professional fees and corporate expenses of \$3.1 million, primarily related to the Reorganization.

Impairment charges –

During the six months ended June 30, 2023 and 2022, the Company recognized impairment charges related to adjustments to property carrying values of \$11.8 million and \$14.7 million, respectively, for which the Company's estimated fair values were primarily based upon signed contracts or letters of intent from third party offers. These adjustments to property carrying values were recognized in connection with the Company's efforts to market certain properties and management's assessment as to the likelihood and timing of such potential transactions. Certain of the calculations to determine fair values utilized unobservable inputs and, as such, were classified as Level 3 of the FASB's fair value hierarchy.

Depreciation and amortization –

The increase in Depreciation and amortization of \$4.6 million for the three months ended June 30, 2023, as compared to the corresponding period in 2022, is primarily due to (i) an increase of \$7.1 million resulting from properties acquired during 2023 and 2022, and (ii) an increase of \$4.7 million due to depreciation commencing on certain redevelopment projects that were placed into service during 2023 and 2022, partially offset by (iii) a net decrease of \$7.2 million, primarily from fully depreciated assets, write-offs due to tenant vacates and dispositions during 2023 and 2022.

Gain on sale of properties –

During the six months ended June 30, 2023, the Company disposed of four operating properties and eight land parcels, in separate transactions, for an aggregate sales price of \$163.8 million, which resulted in aggregate gains of \$52.4 million. During the six months ended June 30, 2022, the Company disposed of an operating property and eight land parcels, in separate transactions, for an aggregate sales price of \$43.3 million, which resulted in aggregate gains of \$7.1 million.

Special dividend income –

During the six months ended June 30, 2023, the Company received \$194.1 million representing its share of the Albertsons Companies Inc. ("ACI") special dividend payment.

Gain/(loss) on marketable securities, net –

The change in Gain/(loss) on marketable securities, net of \$276.0 million and \$144.1 million for the three and six months ended June 30, 2023, as compared to the corresponding periods in 2022, is primarily the result of mark-to-market fluctuations of the shares of ACI common stock held by the Company and the sale of ACI shares during 2023 and 2022.

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Interest expense –

The increase in Interest expense of \$4.2 million and \$8.5 million for the three and six months ended June 30, 2023, as compared to the corresponding period in 2022, is primarily due to a decrease in fair market value amortization due to the repayment of senior unsecured notes in 2022.

Early extinguishment of debt charges –

During the six months ended June 30, 2022, the Company repaid its \$500.0 million 3.40% senior unsecured notes, which were scheduled to mature in November 2022. As a result, the Company incurred a prepayment charge of \$6.5 million and \$0.7 million in write-off of deferred financing costs during the six months ended June 30, 2022.

(Provision)/benefit for income taxes, net –

The change in (Provision)/benefit for income taxes, net of \$30.9 million and \$61.9 million for the three and six months ended June 30, 2023, as compared to the corresponding periods in 2022, is primarily due to the sale of shares of ACI held by the Company during 2023, which generated a taxable long-term capital gain. The Company plans to elect to retain the proceeds from the sale and, as a result, incurred federal and state income taxes aggregating \$61.0 million on such gain.

Equity in income of joint ventures, net –

The decrease in Equity in income of joint ventures, net of \$27.0 million for the three months ended June 30, 2023, as compared to the corresponding period in 2022, is primarily due to higher gains recognized on sale of properties within various joint venture investments during 2022 as compared to 2023.

The decrease in Equity in income of joint ventures, net of \$26.4 million for the six months ended June 30, 2023, as compared to the corresponding period in 2022, is primarily due to (i) higher gains recognized on sale of properties within various joint venture investments during 2022 as compared to 2023 and (ii) an increase in interest expense \$4.0 million.

Net (income)/loss attributable to noncontrolling interests –

The change in Net (income)/loss attributable to noncontrolling interests of \$13.9 million and \$19.2 million for the three and six months ended June 30, 2023, as compared to the corresponding periods in 2022, is primarily due to (i) impairment charges relating to properties within consolidated joint ventures recognized during 2022, partially offset by (ii) an increase in net gain on sale of properties within consolidated joint ventures during 2023, as compared to the corresponding period in 2022.

Tenant Concentration

The Company seeks to reduce its operating and leasing risks through diversification achieved by the geographic distribution of its properties and a large tenant base. As of June 30, 2023, the Company had interests in 528 U.S. shopping center properties, aggregating 90.1 million square feet of gross leasable area ("GLA"), located in 28 states. At June 30, 2023, the Company's five largest tenants were TJX Companies, The Home Depot, Ross Stores, Amazon/Whole Foods and Albertsons, which represented 3.7%, 2.1%, 1.9%, 1.9% and 1.9%, respectively, of the Company's annualized base rental revenues, including the proportionate share of base rental revenues from properties in which the Company has less than a 100% economic interest.

Liquidity and Capital Resources

The Company's capital resources include accessing the public debt and equity capital markets, unsecured term loans, mortgages and construction loan financing, marketable securities (including 14.2 million shares of ACI common stock held by the Company, which had a value of \$310.1 million at June 30, 2023) and immediate access to an unsecured revolving credit facility (the "Credit Facility") with bank commitments of \$2.0 billion, which can be increased to \$2.75 billion through an accordion feature.

The Company anticipates that cash on hand, net cash flow provided by operating activities, borrowings under its Credit Facility and the issuance of equity, public debt, as well as other debt and equity alternatives, and the sale of marketable equity securities, will provide the necessary capital required by the Company. The Company will continue to evaluate its capital requirements for both its short-term and long-term liquidity needs, which could be affected by various risks and uncertainties, including, but not limited to, the effects of the current inflationary environment, rising interest rates, and other risks detailed in Part I, Item 1A. Risk Factors of our 10-K.

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The Company's cash flow activities are summarized as follows (in thousands):

	Six Months Ended June 30,	
	2023	2022
Cash, cash equivalents and restricted cash, beginning of the period	\$ 149,829	\$ 334,663
Net cash flow provided by operating activities	600,279	442,333
Net cash flow provided by/(used for) investing activities	162,923	(155,136)
Net cash flow used for financing activities	(376,554)	(325,062)
Net change in cash, cash equivalents and restricted cash	386,648	(37,865)
Cash, cash equivalents and restricted cash, end of the period	\$ 536,477	\$ 296,798

Operating Activities

Net cash flow provided by operating activities for the six months ended June 30, 2023 was \$600.3 million, as compared to \$442.3 million for the comparable period in 2022. The increase of \$158.0 million is primarily attributable to:

- special dividend payment from ACI of \$194.1 million during 2023;
- additional operating cash flow generated by operating properties acquired during 2023 and 2022;
- new leasing, expansion and re-tenanting of core portfolio properties; and
- changes in assets and liabilities due to timing of receipts and payments; partially offset by
- a decrease in distributions from the Company's joint ventures programs; and
- the disposition of operating properties in 2023 and 2022.

Investing Activities

Net cash flow provided by investing activities was \$162.9 million for the six months ended June 30, 2023, as compared to Net cash flow used for investing activities of \$155.1 million for the comparable period in 2022.

Investing activities during the six months ended June 30, 2023 primarily consisted of:

Cash inflows:

- \$290.3 million in proceeds from sale of marketable securities, primarily due to the sale of 14.1 million shares of ACI;
- \$115.7 million in proceeds from the sale of four operating properties and eight land parcels; and
- \$8.4 million in reimbursements of investments in and advances to real estate joint ventures and other investments.

Cash outflows:

- \$108.3 million for improvements to operating real estate primarily related to re-tenanting, tenant improvements and the Company's active redevelopment pipeline;
- \$98.5 million for the acquisition/consolidation of three operating properties and two parcels;
- \$28.9 million for investments in and advances to real estate joint ventures and investments in other investments, primarily related to redevelopment projects within these portfolios and a partial paydown of debt within one of the Company's joint venture investments.
- \$11.2 million for investment in other financing receivables related to one new mortgage receivable; and
- \$3.0 million for investment in marketable securities.

Investing activities during the six months ended June 30, 2022 primarily consisted of:

Cash inflows:

- \$52.0 million in reimbursements of investments in and advances to real estate joint ventures and other investments; and
- \$41.2 million in proceeds from the sale of an operating property and eight land parcels.

Cash outflows:

- \$82.4 million for investments in and advances to real estate joint ventures, primarily related to partner buyouts and a redevelopment project within the Company's joint venture portfolio, and investments in other investments, primarily related to funding commitments for certain investments;
- \$79.0 million for improvements to operating real estate primarily related to re-tenanting, tenant improvements and the Company's active redevelopment pipeline;
- \$53.1 million for investment in other financing receivables relating to four loans;
- \$29.3 million for the acquisition of four parcels; and
- \$3.0 million for investment in cost method investment.

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Acquisition of Operating Real Estate –

During the six months ended June 30, 2023 and 2022, the Company expended \$98.5 million and \$29.3 million, respectively, towards the acquisition/consolidation of operating real estate properties. The Company anticipates spending approximately \$100.0 million to \$200.0 million towards the acquisition of or the purchase of additional interests in operating properties for the remainder of 2023. The Company intends to fund these acquisitions with cash on hand, net cash flow provided by operating activities, proceeds from property dispositions, and/or availability under its Credit Facility.

Improvements to Operating Real Estate –

During the six months ended June 30, 2023 and 2022, the Company expended \$108.3 million and \$79.0 million, respectively, towards improvements to operating real estate. These amounts consist of the following (in thousands):

	Six Months Ended June 30,	
	2023	2022
Redevelopment and renovations	\$ 62,175	\$ 42,784
Tenant improvements and tenant allowances	46,171	36,174
Total improvements	\$ 108,346	\$ 78,958

The Company has an ongoing program to redevelop and re-tenant its properties to maintain or enhance its competitive position in the marketplace. The Company is actively pursuing redevelopment opportunities within its operating portfolio which it believes will increase the overall value by bringing in new tenants and improving the assets' value. The Company anticipates its capital commitment toward these redevelopment projects and re-tenanting efforts for the remainder of 2023 will be approximately \$125.0 million to \$175.0 million. The funding of these capital requirements will be provided by cash on hand, proceeds from property dispositions, proceeds from net cash flow provided by operating activities, the sale of marketable securities, and/or availability under the Company's Credit Facility.

Financing Activities

Net cash flow used for financing activities was \$376.6 million for the six months ended June 30, 2023, as compared to \$325.1 million for the comparable period in 2022.

Financing activities during the six months ended June 30, 2023 primarily consisted of:

Cash inflows:

- \$3.7 million in proceeds from issuance of stock.

Cash outflows:

- \$297.7 million of dividends paid;
- \$54.8 million in principal payment on debt, including normal amortization of rental property debt;
- \$16.1 million in shares repurchased for employee tax withholding on equity awards;
- \$6.0 million in financing origination costs, in connection with the Company's Credit Facility; and
- \$5.8 million in redemption/distribution of noncontrolling interests.

Financing activities during the six months ended June 30, 2022 primarily consisted of:

Cash inflows:

- \$600.0 million in proceeds from issuance of 3.20% senior unsecured notes due in 2032;
- \$19.0 million in proceeds from mortgage loan financing; and
- \$14.8 million in proceeds from issuance of stock.

Cash outflows:

- \$547.1 million for repayment of unsecured notes; primarily related to the Company's \$500.0 million 3.40% senior unsecured notes;
- \$253.8 million of dividends paid;
- \$120.0 million in principal payment on debt, including normal amortization of rental property debt;
- \$13.5 million in shares repurchased for employee tax withholding on equity awards;
- \$10.3 million in financing origination costs, in connection with the Company's issuance of \$600.0 million 3.20% senior unsecured notes;
- \$7.0 million in redemption/distribution of noncontrolling interests;
- \$6.5 million for payment of early extinguishment of debt charges; and
- \$3.4 million for repurchase of preferred stock.

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The Company continually evaluates its debt maturities, and, based on management's current assessment, believes it has viable financing and refinancing alternatives that will not materially adversely impact its expected financial results. As of June 30, 2023, the Company had consolidated floating rate debt totaling \$18.0 million, excluding deferred financing costs of \$0.1 million. The Company continues to pursue borrowing opportunities with large commercial U.S. and global banks, select life insurance companies and certain regional and local banks.

Debt maturities for 2023 consist of: \$12.9 million of unconsolidated joint venture debt and \$32.0 million of debt included in the Company's preferred equity program, assuming the utilization of extension options where available. The 2023 debt maturities on properties in the Company's unconsolidated joint ventures and preferred equity program are anticipated to be repaid through operating cash flows, debt refinancing, proceeds from sales within the respective entities, and partner capital contributions, as deemed appropriate.

The Company intends to maintain strong debt service coverage and fixed charge coverage ratios as part of its commitment to maintain or improve its unsecured debt ratings. The Company may, from time to time, seek to obtain funds through additional common and preferred equity offerings, unsecured debt financings and/or mortgage/construction loan financings and other capital alternatives.

Since the completion of the Company's IPO in 1991, the Company has utilized the public debt and equity markets as its principal source of capital for its expansion needs. Since the IPO, the Company has completed additional offerings of its public unsecured debt and equity, raising in the aggregate over \$17.4 billion. Proceeds from public capital market activities have been used for the purposes of, among other things, repaying indebtedness, acquiring interests in open-air, grocery anchored shopping centers and mixed-use assets, expanding and improving properties in the portfolio and other investments.

During January 2023, the Company filed a shelf registration statement on Form S-3, which is effective for a term of three years, for future unlimited offerings, from time to time, of debt securities, preferred stock, depositary shares, common stock and common stock warrants. The Company, pursuant to this shelf registration statement may, from time to time, offer for sale its senior unsecured debt securities for any general corporate purposes, including (i) funding specific liquidity requirements in its business, including property acquisitions, development and redevelopment costs and (ii) managing the Company's debt maturities.

During January 2023, the Company filed a registration statement on Form S-8 for its 2020 Equity Participation Plan (the "2020 Plan"), which was previously approved by the Company's stockholders and is a successor to the Restated Kimco Realty Corporation 2010 Equity Participation Plan that expired in March 2020. The 2020 Plan provides for a maximum of 10,000,000 shares of the Company's common stock to be reserved for the issuance of stock options, stock appreciation rights, restricted stock, restricted stock units, performance awards, dividend equivalents, stock payments and deferred stock awards. At June 30, 2023, the Company had 4.9 million shares of common stock available for issuance under the 2020 Plan.

Preferred Stock –

The Company's Board of Director's authorized the repurchase of up to 894,000 depositary shares of Class L preferred stock and 1,048,000 depositary shares of Class M preferred stock representing up to 1,942 shares the Company's preferred stock, par value \$1.00 per share, through December 31, 2023. During the six months ended June 30, 2023, the Company repurchased the following preferred stock:

Class of Preferred Stock	Depositary Shares Repurchased	Purchase Price (in thousands)
Class L	43,777	\$ 973.4
Class M	23,791	\$ 515.9

Common Stock –

The Company has a common share repurchase program, which is scheduled to expire on February 29, 2024. Under this program, the Company may repurchase shares of its common stock, par value \$0.01 per share, with an aggregate gross purchase price of up to \$300.0 million. The Company did not repurchase any shares under the common share repurchase program during the six months ended June 30, 2023. As of June 30, 2023, the Company had \$224.9 million available under this common share repurchase program.

Senior Unsecured Notes –

Kimco OP's indenture governing its senior unsecured notes contains the following covenants, all of which Kimco OP is compliant with:

Covenant	Must Be	As of June 30, 2023
Consolidated Indebtedness to Total Assets	<60%	37%
Consolidated Secured Indebtedness to Total Assets	<40%	2%
Consolidated Income Available for Debt Service to Maximum Annual Service Charge	>1.50x	5.2x
Unencumbered Total Asset Value to Consolidated Unsecured Indebtedness	>1.50x	2.5x

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For a full description of the various indenture covenants refer to the Indenture dated September 1, 1993; the First Supplemental Indenture dated August 4, 1994; the Second Supplemental Indenture dated April 7, 1995; the Third Supplemental Indenture dated June 2, 2006; the Fourth Supplemental Indenture dated April 26, 2007; the Fifth Supplemental Indenture dated as of September 24, 2009; the Sixth Supplemental Indenture dated as of May 23, 2013; Seventh Supplemental Indenture dated as of April 24, 2014; and the Eighth Supplemental Indenture dated as of January 3, 2023, each as filed with the SEC. In connection with the merger with Weingarten, the Company assumed senior unsecured notes which have covenants that are similar to Kimco OP's existing debt covenants for its senior unsecured notes. Please refer to the form Indenture included in Weingarten's Registration Statement on Form S-3, filed with the Securities and Exchange Commission on February 10, 1995, the First Supplemental Indenture, dated as of August 2, 2006 filed with Weingarten's Current Report on Form 8-K dated August 2, 2006, and the Second Supplemental Indenture, dated as of October 9, 2012 filed with Weingarten's Current Report on Form 8-K dated October 9, 2012. See the Exhibits Index to our Annual Report on Form 10-K for the year ended December 31, 2022 for specific filing information.

Credit Facility –

In February 2023, the Company obtained a new \$2.0 billion unsecured revolving credit facility (the "Credit Facility") with a group of banks, which replaced the Company's existing \$2.0 billion unsecured revolving credit facility which was scheduled to mature in March 2024. The Credit Facility is scheduled to expire in March 2027 with two additional six-month options to extend the maturity date, at the Company's discretion, to March 2028. The Credit Facility is guaranteed by the Parent Company. The Credit Facility could be increased to \$2.75 billion through an accordion feature. The Credit Facility is a green credit facility tied to sustainability metric targets, as described in the agreement. The Credit Facility accrues interest at a rate of Adjusted Term SOFR, as defined in the terms of the Credit Facility, plus 77.5 basis points and fluctuates in accordance with the Company's credit ratings. The interest rate can be further adjusted upward or downward by a maximum of four basis points (as of June 30, 2023, a two-basis point reduction was achieved) based on the sustainability metric targets, as defined in the agreement (5.92% as of June 30, 2023). Pursuant to the terms of the Credit Facility, the Company continues to be subject to the same covenants under the Company's prior unsecured revolving credit facility. For a full description of the Credit Facility's covenants refer to the Amended and Restated Credit Agreement dated as of February 23, 2023, filed as Exhibit 10.20 in our Annual Report on Form 10-K for the year ended December 31, 2022. As of June 30, 2023, the Credit Facility had no outstanding balance and no appropriations for letters of credit.

Pursuant to the terms of the Credit Facility, the Company, among other things, is subject to maintenance of various covenants. The Company is currently in compliance with these covenants. The financial covenants for the Credit Facility are as follows:

Covenant	Must Be	As of June 30, 2023
Total Indebtedness to Gross Asset Value ("GAV")	<60%	36%
Total Priority Indebtedness to GAV	<35%	1%
Unencumbered Asset Net Operating Income to Total Unsecured Interest Expense	>1.75x	5.5x
Fixed Charge Total Adjusted EBITDA to Total Debt Service	>1.50x	4.7x

Mortgages Payable –

During the six months ended June 30, 2023, the Company (i) assumed \$37.2 million of individual non-recourse mortgage debt through the acquisition of two operating properties, which the Company subsequently repaid in March 2023 and (ii) repaid \$12.0 million of mortgage debt that encumbered a consolidated joint venture operating property.

In addition to the public equity and debt markets as capital sources, the Company may, from time to time, obtain mortgage financing on selected properties to partially fund the capital needs of its real estate re-development and re-tenanting projects. As of June 30, 2023, the Company had over 485 unencumbered property interests in its portfolio.

Other –

During the six months ended June 30, 2023, the Company sold 14.1 million shares of ACI held by the Company, generating net proceeds of \$282.3 million. For tax purposes, the Company recognized a long-term capital gain of \$241.2 million. The Company anticipates retaining the proceeds from this stock sale for general corporate purposes and will pay federal and state taxes of \$61.0 million on the taxable gain. As of June 30, 2023, the Company held 14.2 million shares of ACI, which had a value of \$310.1 million.

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In addition, during the six months ended June 30, 2023, the Company received \$194.1 million representing its share of an ACI special dividend payment and recognized this as Special dividend income on the Company's Condensed Consolidated Statements of Operations. As a result, the Company anticipates it may need to make a special dividend payment to maintain its compliance with REIT distribution requirements. The payment of this special dividend may be in the form of cash, common stock or some combination thereof. The Company's determination regarding any such special dividend and the form thereof will be announced during the year ending December 31, 2023.

The Parent Company guarantees the debt securities of Kimco OP. These guarantees by the Parent Company are full, irrevocable, unconditional and absolute joint and several guarantees to the holders of each series of such guaranteed debt securities.

The Company has issued letters of credit in connection with completion and repayment guarantees, primarily on certain of the Company's redevelopment projects and guaranty of payment related to the Company's insurance program. At June 30, 2023, these letters of credit aggregated \$39.8 million.

The Company has an investment with a funding commitment of \$64.7 million, of which \$45.5 million has been funded as of June 30, 2023.

In connection with the construction of its development and redevelopment projects and related infrastructure, certain public agencies require posting of performance and surety bonds to guarantee that the Company's obligations are satisfied. These bonds expire upon the completion of the improvements and infrastructure. As of June 30, 2023, there were \$17.4 million in performance and surety bonds outstanding.

The Company provides a guaranty for the payment of any debt service shortfalls on the Sheridan Redevelopment Agency issued Series A bonds which are tax increment revenue bonds issued in connection with a development project in Sheridan, Colorado. These tax increment revenue bonds have a balance of \$45.5 million outstanding at June 30, 2023. The bonds are to be repaid with incremental sales and property taxes and a public improvement fee ("PIF") to be assessed on current and future retail sales and, to the extent necessary, any amounts we may have to provide under a guaranty. The revenue generated from incremental sales, property taxes and PIF have satisfied the debt service requirements to date. The incremental taxes and PIF are to remain intact until the earlier of the payment of the bond liability in full or 2040.

Dividends –

In connection with its intention to continue to qualify as a REIT for U.S. federal income tax purposes, the Company expects to continue paying regular dividends to its stockholders. These dividends will be paid from operating cash flows. The Company's Board of Directors will continue to evaluate the Company's dividend policy on a quarterly basis as it monitors sources of capital and evaluate the impact of the economy and capital markets availability on operating fundamentals. Since cash used to pay dividends reduces amounts available for capital investment, the Company generally intends to maintain a dividend payout ratio that reserves such amounts as it considers necessary for the expansion and renovation of shopping centers in its portfolio, debt reduction, the acquisition of interests in new properties and other investments as suitable opportunities arise and such other factors as the Board of Directors considers appropriate. Cash dividends paid for common and preferred stock for the six months ended June 30, 2023 and 2022 were \$297.7 million and \$253.8 million, respectively.

Although the Company receives substantially all of its rental payments on a monthly basis, it generally intends to continue paying dividends quarterly. Amounts accumulated in advance of each quarterly distribution will be invested by the Company in short-term money market or other suitable instruments with high credit rated institutions. The Company's objective is to establish a dividend level that maintains compliance with the Company's REIT taxable income distribution requirements. On April 25, 2023, the Company's Board of Directors declared a quarterly dividend with respect to the Company's classes of cumulative redeemable preferred shares (Classes L and M) which were paid on July 17, 2023 to shareholders of record on July 3, 2023. In addition, the Company's Board of Directors declared a quarterly cash dividend of \$0.23 per common share, which was paid on June 22, 2023 to shareholders of record on June 8, 2023.

On July 24, 2023, the Company's Board of Directors declared quarterly dividends with respect to the Company's classes of cumulative redeemable preferred shares (Classes L and M), which are scheduled to be paid on October 16, 2023, to shareholders of record on October 2, 2023. Additionally, on July 24, 2023, the Company's Board of Directors declared a quarterly cash dividend of \$0.23 per common share, payable on September 21, 2023 to shareholders of record on September 7, 2023.

Funds From Operations

Funds From Operations ("FFO") is a supplemental non-GAAP financial measure utilized to evaluate the operating performance of real estate companies. NAREIT defines FFO as net income/(loss) available to the Company's common shareholders computed in accordance with generally accepted accounting principles in the United States ("GAAP"), excluding (i) depreciation and amortization related to real estate, (ii) gains or losses from sales of certain real estate assets, (iii) gains and losses from change in control, (iv) impairment write-downs of certain real estate assets and investments in entities when the impairment is directly attributable to decreases in the value of depreciable real estate held by the entity and (v) after adjustments for unconsolidated partnerships and joint ventures calculated to reflect FFO on the same basis. The Company also made an election, in accordance with the NAREIT Funds From Operations White Paper-2018 Restatement, to exclude from its calculation of FFO (i) gains and losses on the sale of assets and impairments of assets incidental to its main business and (ii) mark-to-market changes in the value of its equity securities. As such, the Company does not include gains/impairments on land parcels, mark-to-market gains/losses from marketable securities, allowance for credit losses on mortgage receivables or gains/impairments on other investments in NAREIT defined FFO.

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The Company presents FFO available to the Company's common shareholders as it considers it an important supplemental measure of our operating performance and believes it is frequently used by securities analysts, investors and other interested parties in the evaluation of REITs, many of which present FFO available to the Company's common shareholders when reporting results. Comparison of our presentation of FFO available to the Company's common shareholders to similarly titled measures for other REITs may not necessarily be meaningful due to possible differences in the application of the NAREIT definition used by such REITs.

FFO is a supplemental non-GAAP financial measure of real estate companies' operating performances, which does not represent cash generated from operating activities in accordance with GAAP, and therefore, should not be considered an alternative for net income or cash flows from operations as a measure of liquidity.

The Company's reconciliation of Net income/(loss) available to the Company's common shareholders to FFO available to the Company's common shareholders is reflected in the table below (in thousands, except per share data).

	Three Months Ended June 30,		Six Months Ended June 30,	
	2023	2022	2023	2022
Net income/(loss) available to the Company's common shareholders	\$ 100,426	\$ (125,751)	\$ 383,938	\$ 105,197
Gain on sale of properties	(13,170)	(2,944)	(52,376)	(7,137)
Gain on sale of joint venture properties	(180)	(27,198)	(7,890)	(30,184)
Depreciation and amortization - real estate related	127,725	123,672	253,003	253,133
Depreciation and amortization - real estate joint ventures	15,599	16,616	32,146	33,501
Impairment charges (including real estate joint ventures)	-	17,233	11,803	17,933
Profit participation from other investments, net	(2,792)	(1,988)	(2,761)	(5,651)
Special dividend income	-	-	(194,116)	-
(Gain)/loss on marketable securities, net	(14,561)	261,467	(4,417)	139,703
Provision/(benefit) for income taxes, net (1)	31,259	3	62,132	(8)
Noncontrolling interests (1)	(424)	(14,729)	507	(19,459)
FFO available to the Company's common shareholders (3)	\$ 243,882	\$ 246,381	\$ 481,969	\$ 487,028
Weighted average shares outstanding for FFO calculations:				
Basic	617,077	615,642	616,785	615,207
Units	2,563	2,473	2,551	2,509
Dilutive effect of equity awards	122	1,419	490	1,689
Diluted (2)	<u>619,762</u>	<u>619,534</u>	<u>619,826</u>	<u>619,405</u>
FFO per common share – basic	\$ 0.40	\$ 0.40	\$ 0.78	\$ 0.79
FFO per common share – diluted (2)	\$ 0.39	\$ 0.40	\$ 0.78	\$ 0.79

- (1) Related to gains, impairments, depreciation on properties and gains/(losses) on sales of marketable securities, where applicable.
- (2) Reflects the potential impact if certain units were converted to common stock at the beginning of the period, which would have a dilutive effect on FFO available to the Company's common shareholders. FFO available to the Company's common shareholders would be increased by \$584 and \$483 for the three months ended June 30, 2023 and 2022, respectively. FFO available to the company's common shareholders would be increased by \$1,166 and \$955 for the six months ended June 30, 2023 and 2022, respectively. The effect of other certain convertible units would have an anti-dilutive effect upon the calculation of FFO available to the Company's common shareholders per share. Accordingly, the impact of such conversion has not been included in the determination of diluted FFO per share calculations.
- (3) Includes Early extinguishment of debt charges of \$7.2 million recognized during the six months ended June 30, 2022.

Same Property Net Operating Income ("Same property NOI")

Same property NOI is a supplemental non-GAAP financial measure of real estate companies' operating performance and should not be considered an alternative to net income in accordance with GAAP or cash flows from operations as a measure of liquidity. The Company considers Same property NOI as an important operating performance measure because it is frequently used by securities analysts and investors to measure only the net operating income of properties that have been owned by the Company for the entire current and prior year reporting periods. It excludes properties under redevelopment, development and pending stabilization; properties are deemed stabilized at the earlier of (i) reaching 90% leased or (ii) one year following a project's inclusion in operating real estate. Same property NOI assists in eliminating disparities in net income due to the development, acquisition or disposition of properties during the particular period presented, and thus provides a more consistent performance measure for the comparison of the Company's properties.

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Same property NOI is calculated using revenues from rental properties (excluding straight-line rent adjustments, lease termination fees, TIFs and amortization of above/below market rents) less charges for credit losses, operating and maintenance expense, real estate taxes and rent expense plus the Company's proportionate share of Same property NOI from unconsolidated real estate joint ventures, calculated on the same basis. The Company's method of calculating Same property NOI available to the Company's common shareholders may differ from methods used by other REITs and, accordingly, may not be comparable to such other REITs.

The following is a reconciliation of Net income/(loss) available to the Company's common shareholders to Same property NOI (in thousands):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2023	2022	2023	2022
Net income/(loss) available to the Company's common shareholders	\$ 100,426	\$ (125,751)	\$ 383,938	\$ 105,197
Adjustments:				
Management and other fee income	(3,832)	(3,925)	(8,386)	(8,520)
General and administrative	32,734	27,981	67,483	57,929
Impairment charges	-	14,419	11,806	14,691
Depreciation and amortization	129,245	124,611	255,546	254,905
Gain on sale of properties	(13,170)	(2,944)	(52,376)	(7,137)
Special dividend income	-	-	(194,116)	-
Interest expense and other income, net	53,103	49,881	111,277	108,090
(Gain)/loss on marketable securities, net	(14,561)	261,467	(4,417)	139,703
Provision/(benefit) for income taxes, net	31,027	96	61,856	(57)
Equity in income of other investments, net	(4,519)	(3,385)	(6,641)	(8,758)
Net income/(loss) attributable to noncontrolling interests	2,644	(11,226)	6,657	(12,569)
Preferred dividends, net	6,200	6,250	12,451	12,604
Non same property net operating income	(15,549)	(15,513)	(32,379)	(33,119)
Non-operational expense from joint ventures, net	22,766	(2,858)	38,805	16,826
Same property NOI	\$ 326,514	\$ 319,103	\$ 651,504	\$ 639,785

Same property NOI increased by \$7.4 million or 2.3% for the three months ended June 30, 2023, as compared to the corresponding period in 2022. This increase is primarily the result of (i) a net increase of \$11.1 million primarily related to an increase in rental revenue driven by strong leasing activity, partially offset by (ii) a change in credit losses from tenants of \$3.7 million.

Same property NOI increased by \$11.7 million or 1.8% for the six months ended June 30, 2023, as compared to the corresponding period in 2022. This increase is primarily the result of (i) a net increase of \$24.4 primarily related to an increase in rental revenue driven by strong leasing activity, partially offset by (ii) a change in credit loss from tenants of \$12.7 million.

Leasing Activity

During the six months ended June 30, 2023, the Company executed 872 leases totaling 6.7 million square feet in the Company's consolidated operating portfolio comprised of 242 new leases and 630 renewals and options. The leasing costs associated with these new leases are estimated to aggregate \$55.2 million, or \$41.05 per square foot. These costs include \$43.4 million of tenant improvements and \$11.8 million of external leasing commissions. The average rent per square foot for (i) new leases was \$21.85 and (ii) renewals and options was \$17.90.

Tenant Lease Expirations

At June 30, 2023, the Company has a total of 8,318 leases in its consolidated operating portfolio. The following table sets forth the aggregate lease expirations for each of the next ten years, assuming no renewal options are exercised. For purposes of the table, the Total Annual Base Rent Expiring represents annualized rental revenue, excluding the impact of straight-line rent, for each lease that expires during the respective year. Amounts in thousands, except for number of leases data:

Year Ending December 31,	Number of Leases Expiring	Square Feet Expiring	Total Annual Base Rent Expiring	% of Gross Annual Rent
(1)	151	525	\$ 11,339	0.9%
2023	281	1,125	\$ 26,098	2.1%
2024	1,107	6,725	\$ 134,041	10.6%
2025	1,178	8,084	\$ 155,028	12.2%
2026	1,133	9,686	\$ 162,982	12.9%
2027	1,149	9,543	\$ 174,421	13.8%
2028	1,078	10,022	\$ 182,233	14.4%
2029	519	4,811	\$ 87,715	6.9%
2030	335	2,629	\$ 58,840	4.6%
2031	347	2,376	\$ 54,790	4.3%
2032	377	2,694	\$ 52,877	4.2%
2033	354	2,749	\$ 51,279	4.0%

(1) Leases currently under month-to-month lease or in process of renewal.

[Table of Contents](#)**Item 3. Quantitative and Qualitative Disclosures About Market Risk.**

The Company's primary market risk exposure is interest rate risk. The Company periodically evaluates its exposure to short-term interest rates and will, from time-to-time, enter into interest rate protection agreements which mitigate, but do not eliminate, the effect of changes in interest rates on its floating-rate debt. The Company has not entered, and does not plan to enter, into any derivative financial instruments for trading or speculative purposes.

The following table presents the carrying value of the Company's aggregate fixed rate and variable rate debt obligations outstanding, including fair market value adjustments and unamortized deferred financing costs, as of June 30, 2023, with corresponding weighted-average interest rates sorted by maturity date. In addition, the following table presents the fair value of the Company's debt obligations outstanding, excluding unamortized deferred financing costs. The table does not include extension options where available (amounts in millions).

	2023	2024	2025	2026	2027	Thereafter	Total	Fair Value
Secured Debt								
Fixed Rate	\$ -	\$ 13.7	\$ 52.1	\$ -	\$ 34.0	\$ 241.9	\$ 341.7	\$ 280.9
Average Interest Rate	-	4.70%	3.50%	-	4.01%	4.22%	4.11%	
Variable Rate								
Fixed Rate	\$ -	\$ -	\$ 17.9	\$ -	\$ -	\$ -	\$ 17.9	\$ 17.6
Average Interest Rate	-	-	6.46%	-	-	-	6.46%	
Unsecured Debt								
Fixed Rate	\$ -	\$ 650.6	\$ 750.4	\$ 783.7	\$ 436.4	\$ 4,154.0	\$ 6,775.1	\$ 5,879.7
Average Interest Rate	-	3.37%	3.48%	3.06%	4.03%	3.47%	3.45%	

Based on the Company's variable-rate debt balances, interest expense would have increased by \$0.1 million for the six months ended June 30, 2023 if short-term interest rates were 1.0% higher.

Item 4. Controls and Procedures.***Controls and Procedures (Kimco Realty Corporation)***

The Parent Company's management, with the participation of the Parent Company's Chief Executive Officer and Chief Financial Officer, has evaluated the effectiveness of the Parent Company's disclosure controls and procedures (as such term is defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, as amended (the "Exchange Act")) as of the end of the period covered by this report. Based on such evaluation, the Parent Company's Chief Executive Officer and Chief Financial Officer have concluded that, as of the end of such period, the Parent Company's disclosure controls and procedures are effective.

There have not been any changes in the Parent Company's internal control over financial reporting during the fiscal quarter to which this report relates that have materially affected, or are reasonably likely to materially affect, the Company's internal control over financial reporting.

Controls and Procedures (Kimco Realty OP, LLC)

Kimco OP's management, with the participation of the Kimco OP's Chief Executive Officer and Chief Financial Officer, has evaluated the effectiveness of Kimco OP's disclosure controls and procedures (as such term is defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act) as of the end of the period covered by this report. Based on such evaluation, Kimco OP's Chief Executive Officer and Chief Financial Officer have concluded that, as of the end of such period, Kimco OP's disclosure controls and procedures are effective.

There have not been any changes in Kimco OP's internal control over financial reporting during the fiscal quarter to which this report relates that have materially affected, or are reasonably likely to materially affect, Kimco OP's internal control over financial reporting.

PART II
OTHER INFORMATION

Item 1. Legal Proceedings.

The Company is not presently involved in any litigation nor, to its knowledge, is any litigation threatened against the Company or its subsidiaries that, in management's opinion, would result in any material adverse effect on the Company's ownership, management or operation of its properties taken as a whole, or which is not covered by the Company's insurance.

Item 1A. Risk Factors.

There are no material changes to our risk factors as previously disclosed in Part I, Item 1A of our Annual Report on Form 10-K for the year ended December 31, 2022.

Item 2. Unregistered Sales of Equity Securities and Use of Proceeds.Issuer Purchases of Equity Securities

The Company's Board of Directors authorized the repurchase of up to 894,000 depository shares of Class L preferred stock and 1,048,000 depository shares of Class M preferred stock representing up to an aggregate of 1,942 shares of the Company's preferred stock, par value \$1.00 per share, through December 31, 2023.

During the three months ended June 30, 2023, the Company repurchased the following Class L depository shares:

Period	Total Number of Depository Shares Purchased	Average Price Paid per Depository Share	Total Number of Shares Purchased as Part of Publicly Announced Plans or Programs	Approximate Dollar Value of Shares that May Yet Be Purchased Under the Plans or Programs (in millions)
April 1, 2023 – April 30, 2023	-	\$ -	-	\$ n/a
May 1, 2023 – May 31, 2023	14,476	22.03	-	\$ n/a
June 1, 2023 – June 30, 2023	23,761	22.88	-	\$ n/a
Total	38,237	\$ 22.56	-	\$ -

During the three months ended June 30, 2023, the Company repurchased the following Class M depository shares:

Period	Total Number of Depository Shares Purchased	Average Price Paid per Depository Share	Total Number of Shares Purchased as Part of Publicly Announced Plans or Programs	Approximate Dollar Value of Shares that May Yet Be Purchased Under the Plans or Programs (in millions)
April 1, 2023 – April 30, 2023	-	\$ -	-	\$ n/a
May 1, 2023 – May 31, 2023	14,992	22.36	-	\$ n/a
June 1, 2023 – June 30, 2023	1,058	22.55	-	\$ n/a
Total	16,050	\$ 22.37	-	\$ -

The Company has a common share repurchase program, which is scheduled to expire on February 29, 2024. Under this program, the Company may repurchase shares of its common stock, par value \$0.01 per share, with an aggregate gross purchase price of up to \$300.0 million. The Company did not repurchase any shares under the common share repurchase program during the six months ended June 30, 2023. As of June 30, 2023, the Company had \$224.9 million available under this common share repurchase program.

During the six months ended June 30, 2023, the Company repurchased 752,870 shares of the Company's common stock for an aggregate purchase price of \$16.1 million (weighted average price of \$21.42 per share) in connection with common shares surrendered or deemed surrendered to the Company to satisfy statutory minimum tax withholding obligations in connection with equity-based compensation plans.

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The following table presents information regarding the shares of common stock repurchased by the Company during the three months ended June 30, 2023:

Period	Total Number of Shares Purchased	Average Price Paid per Share	Total Number of Shares Purchased as Part of Publicly Announced Plans or Programs	Approximate Dollar Value of Shares that May Yet Be Purchased Under the Plans or Programs (in millions)
April 1, 2023 – April 30, 2023	-	\$ -	-	\$ 224.9
May 1, 2023 – May 31, 2023	2,153	18.13	-	\$ 224.9
June 1, 2023 – June 30, 2023	-	-	-	\$ 224.9
Total	2,153	\$ 18.13	-	-

Item 3. Defaults Upon Senior Securities.

None.

Item 4. Mine Safety Disclosures.

Not applicable.

Item 5. Other Information.

Rule 10b5-1 Plan Elections.

During the three months ended June 30, 2023, no director or officer of the Company adopted or terminated a "Rule 10b5-1 trading arrangement" or "non-Rule 10b5-1 trading arrangement," as each term is defined in Item 408(a) of Regulation S-K.

Amendments to Bylaws.

On July 27, 2023, the Board of Directors of the Company approved and adopted amendments to the Company's bylaws (as so amended, the "Bylaws").

The amendments address the universal proxy rules adopted by the SEC, by clarifying that, other than as permitted under the Bylaws, no person may solicit proxies in support of a director nominee other than the Board's nominees unless such person has complied with Rule 14a-19 under the Exchange Act, including applicable notice and solicitation requirements. Further, any stockholder directly or indirectly soliciting proxies from other stockholders must use a proxy card color other than white, with the white proxy card being reserved for exclusive use by the Board.

The amendments also revise the advance notice disclosure requirements contained in the Bylaws to require the stockholder proposing business or nominating directors to provide additional representations and information. These amendments include, among others, provisions that (i) prohibit a stockholder from nominating a greater number of director candidates than are to be elected by stockholders at the applicable meeting or substituting or replacing any proposed nominee unless such substitute or replacement is nominated in accordance with the advance notice disclosure requirements contained in the Bylaws and (ii) require, except as otherwise determined by the chair of the meeting, a stockholder giving such notice to appear in person or by proxy at the annual or special meeting to present each director nominee for election or the proposed business, as applicable, or such matter shall not be considered at the meeting.

The amendments provide additional detail on the procedures to be followed by stockholders seeking to request that the Company hold a special meeting of stockholders.

The amendments also include a new Article XIV that contains exclusive forum provisions for certain litigation. Article XIV provides, in part, that, unless the Company consents in writing to the selection of an alternative forum, any Circuit Court in Maryland, or, if those courts do not have jurisdiction, the United States District Court for the District of Maryland, shall be the sole and exclusive forum for: (a) any Internal Corporate Claim, as such term is defined in the Maryland General Corporation Law, or any successor statute (the "MGCL"), or any successor provision thereof, and any action or proceeding asserting any Internal Corporate Claim, including without limitation: (i) any derivative action or proceeding brought on behalf of the Company; (ii) any claim, or any action or proceeding asserting a claim, based on an alleged breach of any duty owed by any director or officer or other employee of the Company to the Company or to the stockholders of the Company; or (iii) any claim, or any action or proceeding asserting a claim, against the Company or any director or officer or other employee of the Company arising under or pursuant to any provision of the MGCL, the Company's charter or the Bylaws; or (b) any action or proceeding asserting a claim against the Company or any director or officer or other employee of the Company that is governed by the internal affairs doctrine. The provisions also provide that the federal district courts of the United States shall be the exclusive forum for any action or proceeding asserting claims arising under the Securities Act, as amended, including all causes of action asserted against any defendant to such action or proceeding.

The amendments also include certain technical, conforming, modernizing and clarifying changes to the Bylaws.

The foregoing summary does not purport to be complete and is qualified in its entirety by reference to the full text of the Bylaws, as amended and restated, a copy of which is attached hereto as Exhibit 3.1 and incorporated herein by reference.

Item 6. Exhibits.

Exhibits –

4.1 Agreement to File Instruments

Kimco Realty Corporation (the "Registrant") hereby agrees to file with the Securities and Exchange Commission, upon request of the Commission, all instruments defining the rights of holders of long-term debt of the Registrant and its consolidated subsidiaries, and for any of its unconsolidated subsidiaries for which financial statements are required to be filed, and for which the total amount of securities authorized thereunder does not exceed 10 percent of the total assets of the Registrant and its subsidiaries on a consolidated basis.

3.1*	Amended and Restate Bylaws of Kimco Realty Corporation
31.1	Certification of the Chief Executive Officer of Kimco Realty Corporation, pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
31.2	Certification of the Chief Financial Officer of Kimco Realty Corporation, pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
31.3	Certification of the Chief Executive Officer of Kimco Realty OP, LLC, pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
31.4	Certification of the Chief Financial Officer of Kimco Realty OP, LLC, pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
32.1*	Certification of the Chief Executive Officer of Kimco Realty Corporation pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
32.2*	Certification of the Chief Financial Officer of Kimco Realty Corporation pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
32.3*	Certification of the Chief Executive Officer of Kimco Realty OP, LLC, pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
32.4*	Certification of the Chief Financial Officer of Kimco Realty OP, LLC, pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
101.INS	Inline XBRL Instance Document - the Instance Document does not appear in the Interactive Data File because its XBRL tags are embedded within the Inline XBRL document.
101.SCH	Inline XBRL Taxonomy Extension Schema Document
101.CAL	Inline XBRL Taxonomy Extension Calculation Linkbase Document
101.DEF	Inline XBRL Taxonomy Extension Definition Linkbase Document
101.LAB	Inline XBRL Taxonomy Extension Label Linkbase Document
101.PRE	Inline XBRL Taxonomy Extension Presentation Linkbase Document
104	Cover Page Interactive Data File (formatted as Inline XBRL and contained in Exhibit 101)

* Furnished herewith.

SIGNATURES

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

KIMCO REALTY CORPORATION

July 28, 2023
(Date)

/s/ Conor C. Flynn
Conor C. Flynn
Chief Executive Officer

July 28, 2023
(Date)

/s/ Glenn G. Cohen
Glenn G. Cohen
Chief Financial Officer

SIGNATURES

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

KIMCO REALTY OP, LLC
BY: KIMCO REALTY CORPORATION, managing member

July 28, 2023
(Date)

/s/ Conor C. Flynn
Conor C. Flynn
Chief Executive Officer

July 28, 2023
(Date)

/s/ Glenn G. Cohen
Glenn G. Cohen
Chief Financial Officer

**KIMCO REALTY CORPORATION
AMENDED AND RESTATED BYLAWS**
(as amended and restated on July 27, 2023)

**ARTICLE I
OFFICES**

Section 1 Principal Office. The principal executive offices of Kimco Realty Corporation (the "Corporation") shall be located at such place or places as the Board of Directors may designate.

Section 2 Additional Offices. The Corporation may also have additional offices at such other places as the Board of Directors may from time to time determine or the business of the Corporation may require.

**ARTICLE II
MEETINGS OF STOCKHOLDERS**

Section 1 Place. Meetings of stockholders shall be held at any place designated by the Board of Directors and stated in the notice of meeting. In the absence of any such designation, stockholders meetings shall be held at the principal executive office of the Corporation. The Board of Directors may determine that a meeting not be held at any place, but instead may be held partially or solely by means of remote communication. In accordance with these Bylaws and subject to any guidelines and procedures adopted by the Board of Directors, stockholders and proxy holders may participate in any meeting of stockholders held by means of remote communication and may vote at such meeting as permitted by Maryland law. Participation in a meeting by these means constitutes presence in person at the meeting.

Section 2 Annual Meeting. The annual meeting of stockholders shall be held each year on the date and at the time designated by the Board of Directors. At each annual meeting, directors shall be elected and any other proper business may be transacted.

Section 3 Special Meetings.

(a) **General.** The Chairman of the Board of Directors, President, Chief Executive Officer or Board of Directors may call a special meeting of the stockholders. Except as provided in subsection (b)(4) of this Section 3, a special meeting of stockholders shall be held on the date and at the time and place set by the Chairman of the Board of Directors, President, Chief Executive Officer or Board of Directors, whoever has called the meeting. Subject to subsection (b) of this Section 3, a special meeting of stockholders shall also be called by the Secretary of the Corporation to act on any matter that may properly be considered at a meeting of stockholders upon the written request of stockholders entitled to cast not less than a majority of all the votes entitled to be cast on such matter at such meeting (the "Special Meeting Percentage").

(b) **Stockholder Requested Special Meetings.** (1) Any stockholder of record seeking to have stockholders request a special meeting shall, by sending written notice to the Secretary (the "Record Date Request Notice") by registered mail, return receipt requested, request the Board of Directors to fix a record date to determine the stockholders entitled to request a special meeting (the "Request Record Date"). The Record Date Request Notice shall set forth the purpose of the meeting and the matters proposed to be acted on at it, shall be signed by one or more stockholders of record as of the date of signature (or their agents duly authorized in a writing accompanying the Record Date Request Notice), shall bear the date of signature of each such stockholder (or such agent) and shall set forth all information relating to each such stockholder and each matter proposed to be acted on at the meeting that would be required to be disclosed in connection with the solicitation of proxies for the election of directors in an election contest (even if an election contest is not involved), or would otherwise be required in connection with such a solicitation, in each case pursuant to Regulation 14A (or any successor provision) under the Securities Exchange Act of 1934, as amended, and the rules and regulation promulgated thereunder (the "Exchange Act"). Upon receiving the Record Date Request Notice, the Board of Directors may fix a Request Record Date. The Request Record Date shall not precede and shall not be more than ten days after the close of business on the date on which the resolution fixing the Request Record Date is adopted by the Board of Directors. If the Board of Directors, within ten days after the date on which a valid Record Date Request Notice is received, fails to adopt a resolution fixing the Request Record Date, the Request Record Date shall be the close of business on the tenth day after the first date on which the Record Date Request Notice is received by the Secretary.

(2) In order for any stockholder to request a special meeting to act on any matter that may properly be considered at a meeting of stockholders, one or more written requests for a special meeting (collectively, the "Special Meeting Request") signed by stockholders of record (or their agents duly authorized in a writing accompanying the request) as of the Request Record Date entitled to cast not less than the Special Meeting Percentage shall be delivered to the Secretary. In addition, the Special Meeting Request (a) shall set forth the purpose of the meeting and the matters proposed to be acted on at it (which shall be limited to those lawful matters set forth in the Record Date Request Notice received by the Secretary), (b) shall bear the date of signature of each such stockholder (or such agent) signing the Special Meeting Request, (c) shall set forth the name and address, as they appear in the Corporation's books, of each stockholder signing such request (or on whose behalf the Special Meeting Request is signed), the class, series and number of all shares of stock of the Corporation which are owned (beneficially or of record) by each such stockholder, and the nominee holder for, and number of, shares owned by such stockholder beneficially but not of record, (d) shall be sent to the Secretary by registered mail, return receipt requested, and (e) shall be received by the Secretary within 60 days after the Request Record Date. Any requesting stockholder (or agent duly authorized in a writing accompanying the revocation or the Special Meeting Request) may revoke his, her or its request for a special meeting at any time by written revocation delivered to the Secretary.

(3) The Secretary shall inform the requesting stockholders of the reasonably estimated cost of preparing and mailing or delivering the notice of the meeting (including the Corporation's proxy materials). The Secretary shall not be required to call a special meeting upon stockholder request and such meeting shall not be held unless, in addition to the documents required by paragraph (2) of this Section 3(b), the Secretary receives payment of such reasonably estimated cost prior to the preparation and mailing or delivery of such notice of the meeting.

(4) Except as provided in the next sentence, any special meeting shall be held at such place, date and time as may be designated by the President, Chief Executive Officer or Board of Directors, whoever has called the meeting. In the case of any special meeting called by the Secretary upon the request of stockholders (a "Stockholder Requested Meeting"), such meeting shall be held at such place, date and time as may be designated by the Board of Directors; provided, however, that the date of any Stockholder Requested Meeting shall be not more than 90 days after the record date for such meeting (the "Meeting Record Date"); and provided further that if the Board of Directors fails to designate, within ten days after the date that a valid Special Meeting Request is actually received by the Secretary (the "Delivery Date"), a date and time for a Stockholder Requested Meeting, then such meeting shall be held at 2:00 p.m. local time on the 90th day after the Meeting Record Date or, if such 90th day is not a Business Day (as defined below), on the first preceding Business Day; and provided further that in the event that the Board of Directors fails to designate a place for a Stockholder Requested Meeting within ten days after the Delivery Date, then such meeting shall be held at the principal executive office of the Corporation. In fixing a date for any special meeting, the President, Chief Executive Officer or Board of Directors may consider such factors as he, she or it deems relevant, including, without limitation, the nature of the matters to be considered, the facts and circumstances surrounding any request for the meeting and any plan of the Board of Directors to call an annual meeting or a special meeting. In the case of any Stockholder Requested Meeting, if the Board of Directors fails to fix a Meeting Record Date that is a date within 30 days after the Delivery Date, then the close of business on the 30th day after the Delivery Date shall be the Meeting Record Date. The Board of Directors may revoke the notice for any Stockholder Requested Meeting in the event that the requesting stockholders fail to comply with the provisions of paragraph (3) of this Section 3(b).

(5) If written revocations of the Special Meeting Request have been delivered to the Secretary and the result is that stockholders of record (or their agents duly authorized in writing), as of the Request Record Date, entitled to cast less than the Special Meeting Percentage have delivered, and not revoked, requests for a special meeting to the Secretary: (i) if the notice of meeting has not already been delivered, the Secretary shall refrain from delivering the notice of the meeting and send to all requesting stockholders who have not revoked such requests written notice of any revocation of a request for the special meeting, or (ii) if the notice of meeting has been delivered and if the Secretary first sends to all requesting stockholders who have not revoked requests for a special meeting on a matter written notice of any revocation of a request for the special meeting and written notice of the Corporation's intention to revoke the notice of the meeting or for the chairman of the meeting to adjourn the meeting without action on the matter, (A) the Secretary may revoke the notice of the meeting at any time before ten days before the commencement of the meeting or (B) the chairman of the meeting may call the meeting to order and adjourn the meeting sine die without acting on the matter. Any request for a special meeting received after a revocation by the Secretary of a notice of a meeting shall be considered a request for a new special meeting.

(6) The Chairman of the Board of Directors, the President or the Board of Directors may appoint one or more regionally or nationally recognized independent inspectors of elections to act as the agent of the Corporation for the purpose of promptly performing a ministerial review of the validity of any purported Special Meeting Request received by the Secretary. For the purpose of permitting the inspectors to perform such review, no such purported Special Meeting Request shall be deemed to have been received by the Secretary until the earlier of (i) five Business Days after receipt by the Secretary of such purported request and (ii) such date as the independent inspectors certify to the Corporation that the valid requests received by the Secretary represent, as of the Request Record Date, stockholders of record entitled to cast not less than the Special Meeting Percentage. Nothing contained in this paragraph (6) shall in any way be construed to suggest or imply that the Corporation or any stockholder shall not be entitled to contest the validity of any request, whether during or after such five Business Day period, or to take any other action (including, without limitation, the commencement, prosecution or defense of any litigation with respect thereto, and the seeking of injunctive relief in such litigation).

(7) For purposes of these Bylaws, "Business Day" shall mean any day other than a Saturday, a Sunday or a day on which banking institutions in the State of New York are authorized or obligated by law or executive order to close.

Section 4 Quorum. A majority of the stock issued and outstanding and entitled to vote at any meeting of stockholders, the holders of which are present in person or represented by proxy, shall constitute a quorum for the transaction of business, except as otherwise provided by law, the charter or these Bylaws. A quorum, once established, shall not be broken by the withdrawal of enough votes to leave less than a quorum and the votes present may continue to transact business until adjournment. If, however, such quorum shall not be present or represented at any meeting of the stockholders, the chairman of the meeting may adjourn the meeting from time to time to a date not more than 120 days after the original record date without notice other than announcement at the meeting. At such adjourned meeting at which a quorum shall be present, any business may be transacted that might have been transacted at the meeting as originally notified.

Section 5 Voting. When a quorum is present at any meeting, the vote of a majority of the votes cast at the meeting shall decide any question brought before such meeting, unless the question is one upon which by express provision of law, the charter or these Bylaws, a different vote is required, in which case such express provision shall govern and control the decision of such question.

Except as otherwise provided in this Section, a nominee for director shall be elected by a majority of the votes cast in person or by proxy at any meeting that includes the election of directors at which a quorum is present. For purposes of this Section, a majority of the votes cast means the affirmative vote of a majority of the total votes cast "for" and "against" such nominee. Notwithstanding the foregoing, a nominee for director shall be elected by a plurality of the votes cast in person or by proxy if the number of nominees exceeds the number of directors to be elected because the Secretary of the Corporation received proper notice that a stockholder nominated a person for election to the Board of Directors in accordance with the advance notice requirements contained in Article II, Section 12 of these Bylaws or the requirements of a proxy access nomination for a director set forth in Article II, Section 14 of these Bylaws, and that nomination has not been withdrawn by the stockholder on or before the tenth day preceding the date the Company first mails its meeting notice to stockholders. For purposes of this Section, if plurality voting is applicable to the election of directors at any meeting, the nominees who receive the highest number of votes cast "for," without regard to votes cast "against," shall be elected as directors up to the total number of directors to be elected at that meeting. Abstentions and broker non-votes will not count as a vote cast with respect to a director's election.

If an incumbent director fails to receive the required vote for re-election, he or she shall offer to resign from the Board and the Nominating and Corporate Governance Committee will consider such offer to resign, will act on an expedited basis to determine whether to accept such director's resignation, and will submit such recommendation for prompt consideration by the Board. The director whose resignation is under consideration may not participate in any deliberation or vote of the Nominating and Corporate Governance Committee or Board regarding that resignation. Notwithstanding the foregoing, in the event that no nominee for director receives the vote required in these Bylaws, the Nominating and Corporate Governance Committee shall make a final determination as to whether the Board shall accept any or all resignations, including those resignations from the members of the committee. The Nominating and Corporate Governance Committee and the Board may consider any factors they deem relevant in deciding whether to accept a director's resignation. Within 90 days after the date of certification of the election results, the Board will promptly disclose its decision and rationale regarding whether to accept the resignation (or the reasons for rejecting the resignation, if applicable) in a press release, filing with the Securities and Exchange Commission or by other public announcement. If such incumbent director's resignation is not accepted by the Board, such director will continue to serve until the next meeting that includes the election of directors and until his or her successor is chosen and qualified, or his or her death, resignation, or retirement or removal, whichever event shall first occur. If a director's resignation is accepted by the Board, or if a nominee for director is not elected and the nominee is not an incumbent director, then the Board, in its sole discretion, may fill any resulting vacancy pursuant to these Bylaws.

Section 6 Proxies. A stockholder may cast the votes entitled to be cast by the holder of the shares of stock owned of record by the stockholder in person or by proxy that is (a) executed by the stockholder or by the stockholder's duly authorized agent in any manner permitted by applicable law, (b) that is compliant with Maryland law and these Bylaws, and (c) that is filed with the procedure established for the meeting. Such proxy or evidence of authorization of such proxy shall be filed with the Secretary of the Corporation before or at the meeting. No proxy shall be valid more than 11 months after its date unless otherwise provided in the proxy. Any stockholder directly or indirectly soliciting proxies from other stockholders must use a proxy card color other than white, which shall be reserved for the exclusive use by the Board of Directors.

Section 7 Notice. Not less than ten nor more than 90 days before each meeting of stockholders, the Secretary shall give to each stockholder entitled to vote at such meeting and to each stockholder not entitled to vote who is entitled to notice of the meeting notice in writing or by electronic transmission stating the time and place of the meeting and, in the case of a special meeting or as otherwise may be required by any statute, the purpose for which the meeting is called, either by mail, by presenting it to such stockholder personally, by leaving it at the stockholder's residence or usual place of business, by electronic transmission or by any other means permitted by Maryland law. If mailed, such notice shall be deemed to be given when deposited in the United States mail addressed to the stockholder at the stockholder's address as it appears on the records of the Corporation, with postage thereon prepaid. If transmitted electronically, such notice shall be deemed to be given when transmitted to the stockholder by an electronic transmission to any address or number of the stockholder at which the stockholder receives electronic transmissions. A single notice to all stockholders who share an address shall be effective as to any stockholder at such address unless such stockholder objects to receiving such single notice or revokes a prior consent to receiving such single notice. Failure to give notice of any meeting to one or more stockholders, or any irregularity in such notice, shall not affect the validity of any meeting fixed in accordance with this Article II, or the validity of any proceedings at any such meeting.

Subject to Section 12(a) of this Article II, any business of the Corporation may be transacted at an annual meeting of stockholders without being specifically designated in the notice, except such business as is required by any statute to be stated in such notice. No business shall be transacted at a special meeting of stockholders except as specifically designated in the notice. The Corporation may postpone or cancel a meeting of stockholders by making a "public announcement" (as defined in Section 12(c)(3)) of such postponement or cancellation prior to the meeting. Notice of the date, time and place to which the meeting is postponed shall be given not less than ten days prior to such date and otherwise in the manner set forth in this section.

Section 8 Organization and Conduct. Every meeting of stockholders shall be conducted by an individual appointed by the Board of Directors to be chairman of the meeting or, in the absence of such appointment or appointed individual, by the Chairman of the Board or, in the case of a vacancy in the office or absence of the Chairman of the Board, by one of the following officers present at the meeting: the Vice Chairman of the Board, if there is one, the President, the Vice Presidents in their order of rank and, within each rank, in their order of seniority, or, in the absence of such officers, a chairman chosen by the stockholders by the vote of a majority of the votes cast by stockholders present in person or by proxy. The Secretary, or, in the Secretary's absence, an Assistant Secretary, or in the absence of both the Secretary and Assistant Secretaries, a person appointed by the Board of Directors or, in the absence of such appointment, a person appointed by the chairman of the meeting shall act as secretary of the meeting. In the event that the Secretary presides at a meeting of the stockholders, an Assistant Secretary, or in the absence of Assistant Secretaries, an individual appointed by the Board of Directors or the chairman of the meeting, shall record the minutes of the meeting. Even if present at the meeting, the person holding the office named herein may delegate to another person the power to act as chairman or secretary of the meeting. The order of business and all other matters of procedure at any meeting of stockholders shall be determined by the chairman of the meeting. The chairman of the meeting may prescribe such rules, regulations and procedures and take such action as, in the discretion of the chairman and without any action by the stockholders, are appropriate for the proper conduct of the meeting, including, without limitation, (a) restricting admission to the time set for the commencement of the meeting; (b) limiting attendance or participation at the meeting to stockholders of record of the Corporation, their duly authorized proxies and other such individuals as the chairman of the meeting may determine; (c) recognizing speakers at the meeting and determining when and for how long speakers and any individual speaker may address the meeting; (d) determining when and for how long the polls should be opened and when the polls should be closed and when announcement of the results should be made; (e) maintaining order and security at the meeting; (f) removing any stockholder or any other individual who refuses to comply with meeting procedures, rules or guidelines as set forth by the chairman of the meeting; (g) concluding a meeting or recessing or adjourning the meeting, whether or not a quorum is present, to a later date and time and at a place either (i) announced at the meeting or (ii) provided at a future time through means announced at the meeting; and (h) complying with any state and local laws and regulations concerning safety and security. Unless otherwise determined by the chairman of the meeting, meetings of stockholders shall not be required to be held in accordance with the rules of parliamentary procedure.

Section 9 Action by Written Consent. Any action required or permitted to be taken at any meeting of stockholders may be taken without a meeting if a unanimous consent setting forth the action is given in writing or by electronic transmission by each stockholder entitled to vote on the matter and filed with the minutes of proceedings of the stockholders.

Section 10 Voting of Stock by Certain Holders. Stock of the Corporation registered in the name of a corporation, limited liability company, partnership, joint venture, trust or other entity, if entitled to be voted, may be voted by the president or a vice president, managing member, manager, general partner or trustee thereof, as the case may be, or a proxy appointed by any of the foregoing individuals, unless some other person who has been appointed to vote such stock pursuant to a bylaw or a resolution of the governing body of such corporation or other entity or agreement of the partners of a partnership presents a certified copy of such bylaw, resolution or agreement, in which case such person may vote such stock. Any trustee or other fiduciary, in such capacity, may vote stock registered in his or her name in his or her capacity as such fiduciary, either in person or by proxy.

Shares of stock of the Corporation directly or indirectly owned by it shall not be voted at any meeting and shall not be counted in determining the total number of outstanding shares entitled to be voted at any given time, unless they are held by it in a fiduciary capacity, in which case they may be voted and shall be counted in determining the total number of outstanding shares at any given time.

The Board of Directors may adopt by resolution a procedure by which a stockholder may certify in writing to the Corporation that any shares of stock registered in the name of the stockholder are held for the account of a specified person other than the stockholder. The resolution shall set forth the class of stockholders who may make the certification, the purpose for which the certification may be made, the form of certification and the information to be contained in it; if the certification is with respect to a record date, the time after the record date within which the certification must be received by the Corporation; and any other provisions with respect to the procedure which the Board of Directors considers necessary or desirable. On receipt by the Secretary of the Corporation of such certification, the person specified in the certification shall be regarded as, for the purposes set forth in the certification, the stockholder of record of the specified stock in place of the stockholder who makes the certification.

Section 11 Inspectors. The Board of Directors or the chairman of any meeting of stockholders may appoint, before or at the meeting, one or more inspectors for the meeting and any successor thereto. Except as otherwise provided by the chairman of the meeting, the inspectors, if any, shall (i) determine the number of shares of stock represented at the meeting in person or by proxy and the validity and effect of proxies, (ii) receive and tabulate all votes, ballots or consents, (iii) report such tabulation to the chairman of the meeting, (iv) hear and determine all challenges and questions arising in connection with the right to vote, and (v) do such acts as are proper to conduct the election or vote with fairness to all stockholders. Each such report shall be in writing and signed by him or her or by a majority of them if there is more than one inspector acting at such meeting. If there is more than one inspector, the report of a majority shall be the report of the inspectors. The report of the inspector or inspectors on the number of shares represented at the meeting and the results of the voting shall be *prima facie* evidence thereof.

Section 12 Advance Notice of Stockholder Nominees for Director and Other Stockholder Proposals .

(a) **Annual Meetings of Stockholders.** (1) Nominations of individuals for election to the Board of Directors and the proposal of other business to be considered by the stockholders may be made at an annual meeting of stockholders only (i) pursuant to the Corporation's notice of meeting, (ii) by or at the direction of the Board of Directors or (iii) by any stockholder of the Corporation who was a stockholder of record at the record date set by the Board of Directors for the purpose of determining stockholders entitled to vote at the annual meeting, at the time of giving of notice by the stockholder as provided for in this Section 12(a), and at the time of the annual meeting (and any postponement or adjournment thereof), who is entitled to vote at the meeting in the election of each individual so nominated or on any such other business, as the case may be, and who has complied with this Section 12(a).

(2) For any nomination or other business to be properly brought before an annual meeting by a stockholder pursuant to clause (iii) of paragraph (a)(1) of this Section 12, the stockholder must have given timely notice thereof in writing to the Secretary of the Corporation and such other business must otherwise be a proper matter for action by the stockholders. To be timely, a stockholder's notice shall set forth all information and representations required under this Section 12 and shall be delivered to the Secretary at the principal executive office of the Corporation not earlier than the 150th day nor later than 5:00 p.m., Eastern Time, on the 120th day prior to the first anniversary of the date of the proxy statement for the preceding year's annual meeting; provided, however, that in the event that the date of the annual meeting is advanced or delayed by more than 30 days from the first anniversary of the date of the preceding year's annual meeting, in order for notice by the stockholder to be timely, such notice must be so delivered not earlier than the 150th day prior to the date of such annual meeting and not later than 5:00 p.m., Eastern Time, on the later of the 120th day prior to the date of such annual meeting or the tenth day following the day on which public announcement of the date of such meeting is first made. The postponement or adjournment of an annual meeting (or the public announcement thereof) shall not commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above.

(3) Such stockholder's notice shall set forth:

(i) as to each individual whom the stockholder proposes to nominate for election or reelection as a director (each, a "Proposed Nominee"),

(A) the name, age, business address and residence address of the Proposed Nominee,

(B) the class, series and number of any shares of stock of the Corporation that are beneficially owned by the Proposed Nominee,

(C) the date such shares were acquired and the investment intent of such acquisition,

(D) a description of all agreements, arrangements or understandings between such stockholder and any Stockholder Associated Person (as defined below), on the one hand, and such Proposed Nominee and any other person or persons (naming such person or persons), on the other hand, pursuant to which the nomination is to be made by such stockholder,

(E) any material relationship between the Proposed Nominee and the nominating stockholder; and

(F) all other information relating to the Proposed Nominee that is required to be disclosed in solicitations of proxies for election of directors in an election contest (even if an election contest is not involved), or is otherwise required, in each case pursuant to Regulation 14A or Regulation 14C (or any successor provisions) under the Exchange Act and the rules and regulations thereunder (including the Proposed Nominee's written consent to being named in the Corporation's proxy statement and accompanying proxy card as a nominee and to serving as a director for a full term if elected); provided, however, that for purposes of this clause (i) of paragraph (a)(3) of this Section 12, no Proposed Nominee shall be eligible for election or reelection as a director of the Corporation, unless such Proposed Nominee delivers (in accordance with the time periods prescribed for delivery of notice under this Section 12) to the Secretary at the principal executive offices of the Corporation a written questionnaire with respect to the background and qualification of such Proposed Nominee and the background of any other person or entity on whose behalf the nomination is being made (which questionnaire shall be provided by the Secretary upon written request and which response thereto shall include all information relating to the Proposed Nominee that would be required to be disclosed in connection with the solicitation of proxies for the election of the Proposed Nominee as a director in an election contest (even if an election contest is not involved), or would otherwise be required in connection with such solicitation, in each case pursuant to Regulation 14A (or any successor provision) under the Exchange Act, or would be required pursuant to the rules of any national securities exchange on which any securities of the Corporation are listed or over-the-counter market on which any securities of the Corporation are traded), and a written representation and agreement by such Proposed Nominee (in the form provided by the Secretary upon written request) that such Proposed Nominee:

(I) is not and will not become a party to (x) any agreement, arrangement or understanding with, and has not given any commitment or assurance to, any person or entity as to how such Proposed Nominee, if elected as a director of the Corporation, will act or vote on any issue or question (a "Voting Commitment") that has not been disclosed to the Corporation or (y) any Voting Commitment that could limit or interfere with such Proposed Nominee's ability to comply, if elected as a director of the Corporation, with such Proposed Nominee's duties as a director under applicable law;

(II) is not and will not become a party to any agreement, arrangement or understanding with any person or entity other than the Corporation with respect to any direct or indirect compensation, reimbursement or indemnification in connection with service or action as a director that has not been disclosed therein,

(III) in such Proposed Nominee's personal capacity and on behalf of any person or entity on whose behalf the nomination is being made, would be in compliance, if elected as a director of the Corporation, and will comply with all applicable publicly disclosed corporate governance, conflict of interest, confidentiality and stock ownership and trading policies and guidelines of the Corporation; and

(IV) (A) is not, and will not become, a party to any agreement, arrangement or understanding with any person or entity other than the Corporation in connection with service or action as a director that has not been disclosed to the Corporation; (B) will serve as a director of the Corporation for a full term if elected and will notify the Corporation simultaneously with the notification to the stockholder of the Proposed Nominee's actual or potential unwillingness or inability to serve as a director; (C) does not need any permission or consent from any third party to serve as a director of the Corporation, if elected, that has not been obtained, including any employer or any other board or governing body on which such Proposed Nominee serves; (D) has attached copies of any and all requisite permissions or consents; and (E) has attached a completed Proposed Nominee questionnaire.

(ii) as to any other business that the stockholder proposes to bring before the meeting, (A) a brief description of the business desired to be brought before the meeting, the reasons for conducting such business at the meeting and any material interest in such business of each such stockholder and any Stockholder Associated Person, (B) the text of the proposal or business (including the text of any resolutions proposed for consideration and in the event that such business includes a proposal to amend the Bylaws, the language of the proposed amendment), (C) a reasonably detailed description of all agreements, arrangements and understandings (x) between or among any of such stockholders or Stockholder Associated Persons or (y) between or among any such stockholder or any Stockholder Associated Person and any other record or beneficial holder(s) or persons(s) who have a right to acquire beneficial ownership at any time in the future of the shares of any class or series of the Corporation (including their names) in connection with the proposal of such business by such stockholder, and (D) any other information relating to such item of business that would be required to be disclosed in a proxy statement or other filing required to be made in connection with solicitations of proxies in support of the business proposed to be brought before the meeting pursuant to Section 14(a) (or any successor provisions) of the Exchange Act; provided, however, that the disclosures required by this paragraph (ii) shall not include any disclosures with respect to any broker, dealer, commercial bank, trust company or other nominee who is a stockholder or Stockholder Associated Person solely as a result of being the stockholder directed to prepare and submit the notice required by these Bylaws on behalf of a beneficial owner;

(iii) as to the stockholder giving the notice, any Proposed Nominee and any Stockholder Associated Person:

(A) the class, series and number of all shares of stock or other securities of the Corporation (collectively, the "Company Securities") which are owned (beneficially or of record) by such stockholder, Proposed Nominee or Stockholder Associated Person, if any, the date on which each such Company Security was acquired and the investment intent of such acquisition, any pledge with respect to any of such shares, and any short interest (including any opportunity to profit or share in any benefit from any decrease in the price of such stock or other security) in any Company Securities of any such person,

(B) the nominee holder for, and number of, any Company Securities owned beneficially but not of record by such stockholder, Proposed Nominee or Stockholder Associated Person,

(C) to the extent not set forth pursuant to the immediately preceding clauses (i) and (ii) of this paragraph (3) of this Section 12(a), (1) the material terms and conditions of any "derivative security" (as such term is defined in Rule 16a-1(c) under the Exchange Act) that constitutes a "call equivalent position" (as such term is defined in Rule 16a-1(b) under the Exchange Act) or a "put equivalent position" (as such term is defined in Rule 16a-1(h) under the Exchange Act) or other derivative or synthetic arrangement in respect of any class or series of shares of the Corporation ("Synthetic Equity Position") that is, directly or indirectly, held or maintained by, held for the benefit of, or involving such stockholder, Proposed Nominee or Stockholder Associated Person, including, without limitation, (i) any option, warrant, convertible security, stock appreciation right, future or similar right with an exercise or conversion privilege or a settlement payment or mechanism at a price related to any class or series of shares of the Corporation or with a value derived in whole or in part from the value of any class or series of shares of the Corporation, (ii) any derivative or synthetic arrangement having the characteristics of a long position or a short position in any class or series of shares of the Corporation, including, without limitation, a stock loan transaction, a stock borrow transaction, or a share repurchase transaction or (iii) any contract, derivative, swap or other transaction or series of transactions designed to (x) produce economic benefits and risks that correspond substantially to the ownership of any class or series of shares of the Corporation, (y) mitigate any loss relating to, reduce the economic risk (of ownership or otherwise) of, or manage the risk of share price decrease in, any class or series of shares of the Corporation, or (z) increase or decrease the voting power in respect of any class or series of shares of the Corporation of such stockholder, Proposed Nominee or Stockholder Associated Person, including, without limitation, due to the fact that the value of such contract, derivative, swap or other transaction or series of transactions is determined by reference to the price, value or volatility of any class or series of shares of the Corporation, whether or not such instrument,

contract or right shall be subject to settlement in the underlying class or series of shares of the Corporation, through the delivery of cash or other property, or otherwise, and without regard to whether the holder thereof may have entered into transactions that hedge or mitigate the economic effect of such instrument, contract or right, or any other direct or indirect opportunity to profit or share in any profit derived from any increase or decrease in the price or value of any class or series of shares of the Corporation; provided that, for the purposes of the definition of "Synthetic Equity Position," the term "derivative security" shall also include any security or instrument that would not otherwise constitute a "derivative security" as a result of any feature that would make any conversion, exercise or similar right or privilege of such security or instrument becoming determinable only at some future date or upon the happening of a future occurrence, in which case the determination of the amount of securities into which such security or instrument would be convertible or exercisable shall be made assuming that such security or instrument is immediately convertible or exercisable at the time of such determination; and, provided, further, that any stockholder, Proposed Nominee or Stockholder Associated Person satisfying the requirements of Rule 13d-1(b)(1) under the Exchange Act (other than a stockholder, Proposed Nominee or Stockholder Associated Person that so satisfies Rule 13d-1(b)(1) under the Exchange Act solely by reason of Rule 13d-1(b)(1)(ii)(E)) shall not be required to disclose any Synthetic Equity Position that is, directly or indirectly, held or maintained by, held for the benefit of, or involving such stockholder, Proposed Nominee or Stockholder Associated Person as a hedge with respect to a bona fide derivatives trade or position of such stockholder, Proposed Nominee or Stockholder Associated Person arising in the ordinary course of such stockholder, Proposed Nominee or Stockholder Associated Person's business as a derivatives dealer, (2) any rights to dividends on the shares of any class or series of shares of the Corporation owned beneficially by such stockholder, Proposed Nominee or Stockholder Associated Person that are separated or separable from the underlying shares of the Corporation, (3) any material pending or threatened legal proceeding in which such stockholder, Proposed Nominee or Stockholder Associated Person is a party or material participant involving the Corporation or any of its officers or directors, or any affiliate of the Corporation, (4) any other material relationship between such stockholder, Proposed Nominee or Stockholder Associated Person, on the one hand, and the Corporation or any affiliate of the Corporation, on the other hand, (5) any direct or indirect material interest in any material contract or agreement of such stockholder, Proposed Nominee or Stockholder Associated Person with the Corporation or any affiliate of the Corporation (including, in any such case, any employment agreement, collective bargaining agreement or consulting agreement), (6) any proportionate interest in shares of the Corporation or a Synthetic Equity Position held, directly or indirectly, by a general or limited partnership, limited liability company or similar entity in which any such stockholder, Proposed Nominee or Stockholder Associated Person (x) is a general partner or, directly or indirectly, beneficially owns an interest in a general partner of such general or limited partnership or (y) is the manager, managing member or, directly or indirectly, beneficially owns an interest in the manager or managing member of such limited liability company or similar entity;

(iv) as to the stockholder giving the notice, any Stockholder Associated Person with an interest or ownership referred to in clauses (ii) or (iii) of this paragraph (3) of this Section 12(a), and any Proposed Nominee,

(A) the name and address of such stockholder, as they appear on the Corporation's stock ledger, and the current name and business address, if different, of each such Stockholder Associated Person and any Proposed Nominee and

(B) the investment strategy or objective, if any, of such stockholder and each such Stockholder Associated Person who is not an individual and a copy of the prospectus, offering memorandum or similar document, if any, provided to investors or potential investors in such stockholder and each such Stockholder Associated Person;

(v) to the extent known by the stockholder giving the notice, the name and address of any other stockholder supporting the nominee for election or reelection as a director or the proposal of other business on the date of such stockholder's notice;

(vi) as to the stockholder giving the Stockholder Notice and any Stockholder Associated Person a representation that such stockholder intends to appear at the meeting in person or by proxy to make the nomination or propose the other business specified in such Stockholder Notice, as the case may be, and acknowledges that if the stockholder does not so appear in person or by proxy at the meeting to nominate such Proposed Nominee or bring such business before the meeting, as applicable, the Corporation need not bring such Proposed Nominee or such business for a vote at such meeting and any proxies or votes cast in favor of the election of any such Proposed Nominee or of any proposal related to such other business need not be counted or considered;

(vii) as to the stockholder giving the Stockholder Notice and any Stockholder Associated Person, a representation as to whether such stockholder or such Stockholder Associated Person (if any) intends, or is intended to be part of a group (within the meaning ascribed to such term under Section 13(d)(3) of the Exchange Act) that intends, (A) to deliver a proxy statement and/or form of proxy to holders of at least the majority of the voting power of shares entitled to vote to elect the Proposed Nominee or to approve or adopt the other business proposal, as the case may be (unless a greater percentage is required under these Bylaws or applicable law), and/or (B) otherwise to solicit proxies from stockholders in support of such nominee or other business proposal, as the case may be;

(viii) the name and address of any person who contacted or was contacted by the stockholder giving the notice or any Stockholder Associated Person about the Proposed Nominee or other business proposal;

(ix) all other information regarding the stockholder giving the notice and each Stockholder Associated Person that would be required to be disclosed by the stockholder in connection with the solicitation of proxies for the election of directors in an election contest (even if an election contest is not involved), or would otherwise be required in connection with such a solicitation, in each case pursuant to Regulation 14A (or any successor provision) under the Exchange Act; and

(x) if the notice includes one or more Proposed Nominees, contain a representation executed by the stockholder giving the Stockholder Notice certifying that such stockholder (A) will comply with Rule 14a-19 promulgated under the Exchange Act in connection with its solicitation of proxies in support of any Proposed Nominee; (B) intends, or the Proposed Nominee or any Stockholder Associated Person intends, or is part of a group which intends, to solicit the holders of shares representing at least 67% of the voting power of shares entitled to vote on the election of directors in support of such Proposed Nominee in accordance with Rule 14a-19 of the Exchange Act; (C) will notify the Corporation as promptly as practicable of any determination by the stockholder to not solicit proxies for the election of any Proposed Nominee as a director at the annual meeting; and (D) will furnish such other or additional information as the Corporation may request for the purpose of determining whether the requirements of Section 12 have been complied with and of evaluating any nomination described in the Stockholder Notice; and

(4) Notwithstanding anything in this subsection (a) of this Section 12 to the contrary, in the event that the number of directors to be elected to the Board of Directors is increased, and there is no public announcement of such action at least 130 days prior to the first anniversary of the date of the proxy statement for the preceding year's annual meeting, a stockholder's notice required by this Section 12(a) shall also be considered timely, but only with respect to nominees for any new positions created by such increase, if it shall be delivered to the Secretary at the principal executive office of the Corporation not later than 5:00 p.m., Eastern Time, on the tenth day following the day on which such public announcement is first made by the Corporation.

(5) For purposes of this Section 12, "Stockholder Associated Person" of any stockholder means (i) any person acting in concert with such stockholder or another Stockholder Associated Person or who is otherwise a participant (as defined in paragraphs (a)(ii)-(vi) of Instruction 3 to Item 4 of Schedule 14A under the Exchange Act) in the solicitation, (ii) any beneficial owner of shares of stock of the Corporation owned of record or beneficially by such stockholder (other than a stockholder that is a depository) and (iii) any person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such stockholder or such Stockholder Associated Person.

(b) Special Meetings of Stockholders. Only such business shall be conducted at a special meeting of stockholders as shall have been brought

before the meeting pursuant to the Corporation's notice of meeting, and except as contemplated by and in accordance with the next two sentences of this Section 12(b), no stockholder may nominate an individual for election to the Board of Directors or make a proposal of other business to be considered at a special meeting. Nominations of individuals for election to the Board of Directors may be made at a special meeting of stockholders at which directors are to be elected only (i) pursuant to the Corporation's notice of the meeting, (ii) by or at the direction of the Board of Directors or (iii) provided that the Board of Directors has determined that directors shall be elected at such special meeting, by any stockholder of the Corporation who is a stockholder of record at the record date set by the Board of Directors for the purpose of determining stockholders entitled to vote at the special meeting, at the time of giving of notice provided for in this Section 12 and at the time of the special meeting (and any postponement or adjournment thereof), who is entitled to vote at the meeting in the election of and who has complied with the notice and representation procedures set forth in this Section 12. In the event the Corporation calls a special meeting of stockholders for the purpose of electing one or more individuals to the Board of Directors, any such stockholder may nominate a Proposed Nominee or Proposed Nominees (as the case may be) for election as a director as specified in the Corporation's notice of meeting, if the Stockholder's Notice, containing the information required by paragraph (a)(3) of this Section 12 shall be delivered to the Secretary at the principal executive office of the Corporation not earlier than the 120th day prior to such special meeting and not later than 5:00 p.m., Eastern Time, on the later of the 90th day prior to such special meeting or the tenth day following the day on which public announcement is first made of the date of the special meeting and of the nominees proposed by the Board of Directors to be elected at such meeting. The postponement or adjournment of a special meeting (or public announcement thereof) shall not commence a new time period (or extend any time period) for the giving of a Stockholder's Notice as described above.

(c) General. (1) If any information or representation submitted pursuant to this Section 12 by any stockholder proposing a nominee for election as a director or any proposal for other business at a meeting of stockholders, including any information or representations from a Proposed Nominee, shall be inaccurate in any material respect, such information or representation may be deemed not to have been provided in accordance with this Section 12. Any such stockholder shall notify the Corporation of any inaccuracy or change (within two Business Days of becoming aware of such inaccuracy or change) in any such information or representation. Upon written request by the Secretary or the Board of Directors or any committee thereof, any Proposed Nominee or stockholder proposing a nominee for election as a Director or any proposal for other business at a meeting of stockholders shall provide, within five Business Days of delivery of such request (or such other period as may be specified in such request), (A) written verification, satisfactory, in the discretion of the Board of Directors or any authorized officer of the Corporation, to demonstrate the accuracy of any information or representation submitted by the stockholder pursuant to this Section 12, (B) a written update of any information (including, if requested by the Corporation, written confirmation by such stockholder that it continues to intend to bring such nomination or other business proposal before the meeting and, if applicable, satisfy the requirements of Rule 14a-19(a)(3) promulgated under the Exchange Act) submitted by the stockholder pursuant to this Section 12 as of an earlier date and (C) an updated representation by each Proposed Nominee that such individual will serve as a director of the Corporation if elected. If a stockholder or Proposed Nominee fails to provide such written verification, update or representation within such period, the information as to which written verification, update or representation was requested may be deemed not to have been provided in accordance with this Section 12.

(2) Only such individuals who are nominated in accordance with this Section 12 shall be eligible for election by stockholders as directors, and only such business shall be conducted at a meeting of stockholders as shall have been brought before the meeting in accordance with this Section 12. For the avoidance of doubt, a stockholder proposing a Proposed Nominee shall have no right to (i) nominate a number of Proposed Nominees that exceed the number of directors to be elected at a meeting or (ii) substitute or replace any Proposed Nominee unless such substitute or replacement is nominated in accordance with this Section 12 of this Article II (including the timely provision of all information and representations with respect to such substitute or replacement Proposed Nominee in accordance with the deadlines set forth in this Section 12). If the Corporation provides notice to a stockholder that the number of Proposed Nominees proposed by such stockholder exceeds the number of directors to be elected at a meeting, the stockholder shall provide written notice to the Corporation within five Business Days stating the names of the Proposed Nominees that have been withdrawn so that the number of Proposed Nominees proposed by such stockholder no longer exceeds the number of directors to be elected at a meeting. If any individual who is nominated in accordance with this Section 12 becomes unwilling or unable to serve on the Board of Directors, then the nomination with respect to such individual shall no longer be valid and no votes may validly be cast for such individual. The chairman of the meeting shall have the power to determine whether a nomination or any other business proposed to be brought before the meeting was made or proposed, as the case may be, in accordance with this Section 12 and, if any proposed nomination or other business is not in compliance with this Section 12, to declare that such defective nomination or proposal be disregarded.

(3) Notwithstanding the foregoing provisions of this Section 12, the Corporation shall disregard any proxy authority granted in favor of, or votes for, director nominees other than the Corporation's nominees if the stockholder or Stockholder Associated Person (each a "Soliciting Stockholder") soliciting proxies in support of such director nominees abandons the solicitation or does not (i) comply with Rule 14a-19 promulgated under the Exchange Act, including any failure by the Soliciting Stockholder to (A) provide the Corporation with any notices required thereunder in a timely manner or (B) comply with the requirements of Rule 14a-19(a)(2) and Rule 14a-19(a)(3) promulgated under the Exchange Act or (ii) timely provide sufficient evidence in the judgment of the Board of Directors sufficient to satisfy the Corporation that such Soliciting Stockholder has met the requirements of Rule 14a-19(a)(3) promulgated under the Exchange Act in accordance with the following sentence. Upon request by the Corporation, if any Soliciting Stockholder provides notice pursuant to Rule 14a-19(b) promulgated under the Exchange Act (or is not required to provide notice because the information required by Rule 14a-19(b) has been provided in a preliminary or definitive proxy statement previously filed by such Soliciting Stockholder), such Soliciting Stockholder shall deliver to the Corporation, no later than five Business Days prior to the applicable meeting, sufficient evidence in the judgment of the Board of Directors that it has met the requirements of Rule 14a-19(a)(3) promulgated under the Exchange Act.

(4) For purposes of this Section 12, "the date of the proxy statement" shall have the same meaning as "the date of the company's proxy statement released to shareholders" as used in Rule 14a-8(e) promulgated under the Exchange Act, as interpreted by the Securities and Exchange Commission from time to time. "Public announcement" shall mean disclosure (i) in a press release reported by the Dow Jones News Service, Associated Press, Business Wire, PR Newswire or other widely circulated or comparable news service or (ii) in a document publicly filed by the Corporation with the United States Securities and Exchange Commission pursuant to the Exchange Act.

(5) Other than to the extent provided for in Section 14 with respect to director nominations, Section 12 shall be the exclusive means for a stockholder to make director nominations or submit business before a meeting of the stockholders. Notwithstanding the foregoing provisions of this Section 12, a stockholder shall also comply with all applicable requirements of state law and of the Exchange Act with respect to the matters set forth in this Section 12; provided, however, that any references in these Bylaws to the Exchange Act or the rules and regulations promulgated thereunder are not intended to and shall not limit the requirements applicable to nominations or proposals as to any other business to be considered pursuant to Sections 12. Nothing in this Section 12 shall be deemed to affect any right of a stockholder to request inclusion of a proposal in, or the right of the Corporation to omit a proposal from, the Corporation's proxy statement filed by the Corporation with the Securities and Exchange Commission pursuant to Rule 14a-8 (or any successor provision) under the Exchange Act. Nothing in this Section 12 shall require disclosure of revocable proxies received by, or routine solicitation contacts made by or on behalf of, the stockholder or Stockholder Associated Person pursuant to a solicitation of proxies after the filing of a definitive proxy statement on Schedule 14A by such stockholder or Stockholder Associated Person under Section 14(a) of the Exchange Act.

(6) Notwithstanding anything in these Bylaws to the contrary, except as otherwise determined by the presiding chair of the meeting, if the stockholder giving notice as provided for in this Section 12 does not appear in person or by proxy at such annual or special meeting to present each nominee for election as a director or the proposed business, as applicable, such matter shall not be considered at the meeting.

(7) Nominations made pursuant to this Section 12 shall have the impact as described in Article II, Section 14(i).

Section 13 Control Share Acquisition Act. Notwithstanding any other provision of the charter of the Corporation or these Bylaws, Title 3, Subtitle 7 of the Maryland General Corporation Law, or any successor statute (the "MGCL"), shall not apply to any acquisition by any person of shares of stock of the Corporation. This section may be repealed, in whole or in part, at any time, whether before or after an acquisition of control shares and, upon such repeal, may, to the extent provided by any successor bylaw, apply to any prior or subsequent control share acquisition.

Section 14 Proxy Access.

(a) Notwithstanding anything to the contrary in these Bylaws, whenever the Board of Directors solicits proxies with respect to the election of directors at an annual meeting of stockholders, subject to the provisions of this Section 14, the Corporation shall include in its proxy statement and related additional soliciting materials relating to the election of directors, if any (the "Company Proxy Materials"), pursuant to Section 14(a) of the Exchange Act, in addition to any individuals nominated for election by or at the direction of the Board of Directors, the name, together with the Required Information (as defined below), of any individual nominated for election to the Board of Directors (each such individual being hereinafter referred to as a "Stockholder Nominee") by a stockholder or group of no more than 20 stockholders that satisfies the requirements of this Section 14 (such individual or group, including as the context requires each member thereof, being hereinafter referred to as the "Eligible Stockholder"). For purposes of this Section 14, the "Required Information" that the Corporation shall include in the Company Proxy Materials is (1) the information provided to the Secretary of the Corporation concerning the Stockholder Nominee and the Eligible Stockholder that is required to be disclosed in the Company Proxy Materials by the rules and regulations promulgated under the Exchange Act and (2) if the Eligible Stockholder so elects, a written statement in support of the Stockholder Nominee's candidacy, not to exceed 500 words, delivered to the Secretary of the Corporation at the time the Notice of Proxy Access Nomination (as defined below) required by this Section 14 is provided (the "Statement"). Notwithstanding anything to the contrary contained in this Section 14, the Corporation may omit from the Company Proxy Materials any information or Statement (or portion thereof) that the Board of Directors determines is materially false or misleading, omits to state any material fact necessary in order to make such information or Statement, in light of the circumstances under which it was provided or made, not misleading, or would violate any applicable law or regulation.

(b) To be eligible to require the Corporation to include a Stockholder Nominee in the Company Proxy Materials pursuant to this Section 14, an Eligible Stockholder must have Owned (as defined below) at least three percent or more of the shares of common stock, par value \$0.01 per share (the "Common Stock"), of the Corporation outstanding from time to time (the "Required Shares") continuously for at least three years (the "Minimum Holding Period") preceding and including the date of submission of the Notice of Proxy Access Nomination in accordance with this Section 14 and must continuously Own the Required Shares through the date of such annual meeting (and any postponement or adjournment thereof). For purposes of this Section 14, an Eligible Stockholder shall be deemed to "Own" only those outstanding shares of Common Stock as to which the Eligible Stockholder possesses both (1) the full voting and investment rights pertaining to such shares and (2) the full economic interest in (including the opportunity for profit from and risk of loss on) such shares; provided that the number of shares calculated in accordance with clauses (1) and (2) shall not include any shares (i) sold by such Eligible Stockholder or any of its Affiliates (as defined below) in any transaction that has not been settled or closed, including short sales, (ii) borrowed by such Eligible Stockholder or any of its Affiliates for any purpose or purchased by such Eligible Stockholder or any of its Affiliates pursuant to an agreement to resell, (iii) that are subject to any option, warrant, forward contract, swap, contract of sale, other derivative or similar instrument, agreement, arrangement or understanding entered into by such stockholder or any of its Affiliates, whether any such instrument, agreement, arrangement or understanding is to be settled with shares or with cash based on the notional amount or value of outstanding shares of Common Stock, in any such case which instrument, agreement, arrangement or understanding has, or is intended to have, the purpose or effect of (A) reducing in any manner, to any extent or at any time in the future, such Eligible Stockholder's or its Affiliate's full right to vote or direct the voting of any such shares and/or (B) hedging, offsetting or altering to any degree any gain or loss arising from the full economic ownership of such shares by such Eligible Stockholder or its Affiliate or (iv) for which the Eligible Stockholder has transferred the right to vote the shares other than by means of a proxy, power of attorney or other instrument or arrangement that is unconditionally revocable at any time by the Eligible Stockholder and that expressly directs the proxy holder to vote at the direction of the stockholder. In addition, an Eligible Stockholder shall be deemed to "Own" shares of Common Stock held in the name of a nominee or other intermediary so long as the stockholder retains the full right to instruct how the shares are voted with respect to the election of directors and possesses the full economic interest in the shares of Common Stock. An Eligible Stockholder's Ownership of shares of Common Stock shall be deemed to continue during any period in which the Eligible Stockholder has loaned such shares provided that the Eligible Stockholder has the power to recall such loaned shares on five Business Days' notice and has in fact recalled such loaned shares as of the date of submission of the Notice of Proxy Access Nomination and through the date of the annual meeting of stockholders. For purposes of this Section 14, the terms "Owned," "Owning" and other variations of the word "Own" shall have correlative meanings. Whether outstanding shares of Common Stock are "Owned" for these purposes shall be determined by the Board of Directors. In addition, the term "Affiliate" or "Affiliates" shall have the meaning ascribed thereto under the Exchange Act.

(c) To be eligible to require the Corporation to include a Stockholder Nominee in the Company Proxy Materials pursuant to this Section 14, an Eligible Stockholder must provide to the Secretary of the Corporation, in proper form and within the times specified below, (1) a written notice expressly electing to have such Stockholder Nominee included in the Company Proxy Materials pursuant to this Section 14 (a "Notice of Proxy Access Nomination") and (2) any updates or supplements to such Notice of Proxy Access Nomination. To be timely, the Notice of Proxy Access Nomination must be delivered or mailed to and received by the Secretary of the Corporation at the principal executive office of the Corporation not earlier than the 150th day nor later than 5:00 p.m., Eastern Time, on the 120th day prior to the first anniversary of the date of the proxy statement (as defined above) for the preceding year's annual meeting; provided, however, that in the event that the date of the annual meeting of stockholders is advanced or delayed by more than 30 days from the first anniversary of the date of the preceding year's annual meeting, to be timely, the Notice of Proxy Access Nomination must be so delivered or mailed to and received by the Secretary not earlier than the 150th day prior to the date of such annual meeting and not later than 5:00 p.m., Eastern Time, on the later of the 120th day prior to the date of such annual meeting, as originally convened, or the tenth day following the day on which public announcement of the date of such annual meeting is first made. The public announcement of a postponement or an adjournment of an annual meeting shall not commence a new time for the giving of a Notice of Proxy Access Nomination as described above.

(d) To be in proper form for purposes of this Section 14, the Notice of Proxy Access Nomination delivered or mailed to and received by the Secretary shall include the following information:

(1) evidence from one or more securities intermediaries that the Eligible Stockholder has continuously Owned, as of the date of submission of the Notice of Proxy Access Nomination to the Secretary of the Corporation, the Required Shares for the Minimum Holding Period in a form that satisfies the requirements as established by the Commission for a stockholder proposal under Rule 14a-8 promulgated under the Exchange Act;

(2) the written agreement of the Eligible Stockholder to provide (i) within five Business Days after the record date for the annual meeting of stockholders (A) evidence from one or more securities intermediaries verifying the Eligible Stockholder's continuous Ownership of the Required Shares through the close of business on the record date in a form that satisfies the requirements as established by the Commission for a stockholder proposal under Rule 14a-8 promulgated under the Exchange Act and (B) a written statement by the Eligible Stockholder that such Eligible Stockholder will continue to Own the Required Shares through the date of such annual meeting (and any postponement or adjournment thereof), and (ii) the updates and supplements to the Notice of Proxy Access Nomination at the times and in the forms required by this Section 14;

(3) a copy of the Schedule 14N (or any successor form) filed or to be filed with the Commission as required by Rule 14a-18 under the Exchange Act;

(4) information that is the same as would be required to be set forth in a stockholder's notice of nomination pursuant to Section 12(a)(3) of this Article II, including the written consent of the Stockholder Nominee to being named in the Company Proxy Materials as a nominee and to serving as a director if elected;

(5) a written undertaking executed by the Stockholder Nominee (i) that such Stockholder Nominee (A) is not, and will not become, a party to any agreement, arrangement or understanding with any person or entity other than the Corporation in connection with service or action as a director that has not been disclosed to the Corporation and (B) will serve as a director of the Corporation, for the full term, if elected and (ii) attaching a completed Stockholder Nominee questionnaire (which questionnaire shall be provided by the Corporation, upon request by the Eligible Stockholder, and shall include all information relating to the Stockholder Nominee that would be required to be disclosed in connection with the solicitation of proxies for the election of the Stockholder Nominee as a director in an election contest (even if an election contest is not involved), or would otherwise be required in connection with such solicitation, in each case pursuant to Regulation 14A (or any successor provision) under the Exchange Act, or would be required pursuant to the rules of any national securities exchange on which any of the Company Securities are listed or

over-the-counter market on which any Company Securities are traded);

(6) the written agreement of the Stockholder Nominee, upon such Stockholder Nominee's election, to make such acknowledgments, enter into such agreements and provide such information as the Board of Directors requires of all directors at such time, including, without limitation, agreeing to comply with all applicable publicly disclosed corporate governance, conflict of interest, confidentiality and stock ownership and trading policies and guidelines of the Corporation;

(7) a representation that the Eligible Stockholder (i) acquired the Required Shares in the ordinary course of business and not with the intent to change or influence control of the Corporation, and that neither the Eligible Stockholder nor any Stockholder Nominee being nominated thereby presently has such intent, (ii) has not nominated and will not nominate for election to the Board of Directors at the annual meeting of stockholders (or any postponement or adjournment thereof) any individual other than the Stockholder Nominee(s) included in the Company Proxy Materials pursuant to this Section 14, (iii) has not engaged and will not engage in, and has not been and will not be a participant in another person's, "solicitation," within the meaning of Rule 14a-1(l) under the Exchange Act, in support of the election of any individual as a director at the annual meeting (or any postponement or adjournment thereof) other than such Stockholder Nominee(s) or a nominee of the Board of Directors, (iv) has complied, and will comply, with all applicable laws and regulations applicable to solicitations and the use, if any, of soliciting material in connection with the annual meeting, including, without limitation, Rule 14a-9 under the Exchange Act, (v) will not distribute to any stockholder any form of proxy for the annual meeting other than the form distributed by the Corporation and (vi) has not provided and will not provide facts, statements or information in its communications with the Corporation and the stockholders that were not or will not be true, correct and complete in all material respects or which omitted or will omit to state a material fact necessary in order to make such facts, statements or information, in light of the circumstances under which they were or will be provided, not misleading;

(8) a written description of any Voting Commitment the Stockholder Nominee is or will be party to if elected as a director of the Corporation, together with a copy of any such Voting Commitment, if written;

(9) a written undertaking that the Eligible Stockholder (i) assumes all liability stemming from any legal or regulatory violation arising out of communications with the stockholders by the Eligible Stockholder, its Affiliates and associates or their respective agents or representatives, either before or after providing a Notice of Proxy Access Nomination pursuant to this Section 14, or out of the facts, statements or information that the Eligible Stockholder or its Stockholder Nominee(s) provided to the Corporation pursuant to this Section 14 or otherwise in connection with the inclusion of such Stockholder Nominee(s) in the Company Proxy Materials pursuant to this Section 14, and (ii) indemnifies and holds harmless the Corporation and each of its directors, officers and employees against any liability, loss or damages in connection with any threatened or pending action, suit or proceeding, whether legal, administrative or investigative, against the Corporation or any of its directors, officers or employees arising out of any nomination of a Stockholder Nominee or inclusion of such Stockholder Nominee in the Company Proxy Materials pursuant to this Section 14;

(10) a written description of any compensatory, payment or other agreement, arrangement or understanding with any person or entity other than the Corporation under which the Stockholder Nominee is receiving or will receive any direct or indirect compensation, reimbursement or indemnification in connection with service or action as a director, together with a copy of any such agreement, arrangement or understanding if written; and

(11) in the case of the nomination by a group, the designation by all group members of one group member that is authorized to act on behalf of all group members with respect to matters relating to the nomination, including withdrawal of the nomination. The Corporation may also require each Stockholder Nominee and the Eligible Stockholder to furnish such other information (i) as may reasonably be required by the Corporation to determine the eligibility of such Stockholder Nominee to serve as an independent director, (ii) that could be material to a stockholder's understanding of the independence or lack of independence of such Stockholder Nominee or (iii) as may reasonably be required by the Corporation to determine that the Eligible Stockholder meets the criteria for qualification as an Eligible Stockholder.

(e) To be eligible to require the Corporation to include a Stockholder Nominee in the Company Proxy Materials pursuant to this Section 14, an Eligible Stockholder must further update and supplement the Notice of Proxy Access Nomination, if necessary, so that the information provided or required to be provided in such Notice of Proxy Access Information pursuant to this Section 14 shall be true and correct as of the record date for the annual meeting of stockholders and as of the date that is ten Business Days prior to such annual meeting or any postponement or adjournment thereof, and such update and supplement (or if no updates or supplements are applicable, a written statement from the Eligible Stockholder that there is no such update or supplement) shall be delivered or mailed to and received by the Secretary at the principal executive office of the Corporation not later than 5:00 p.m., Eastern Time, on the fifth Business Day after the record date for the meeting (in the case of the update and supplement required to be made as of the record date) and not later than 5:00 p.m., Eastern Time, on the eighth Business Day prior to the date of the meeting, if practicable, or, if not practicable, on the first practicable date prior to the meeting or any postponement or adjournment thereof (in the case of the update and supplement required to be made as of ten Business Days prior to the meeting or any postponement or adjournment thereof).

(f) In the event that any facts, statements or information provided by the Eligible Stockholder or a Stockholder Nominee to the Corporation or the stockholders ceases to be true, correct and complete in all material respects or omits a material fact necessary to make such facts, statements or information, in light of the circumstances under which they were provided, not misleading, the Eligible Stockholder or Stockholder Nominee, as the case may be, shall promptly notify the Secretary of the Corporation of any defect in such previously provided facts, statements or information and of the facts, statements or information required to correct any such defect.

(g) Whenever an Eligible Stockholder consists of a group of more than one stockholder, each provision in this Section 14 that requires the Eligible Stockholder to provide any written statements, representations, undertakings, agreements or other instruments or to comply with any other conditions shall be deemed to require each stockholder that is a member of such group to provide such statements, representations, undertakings, agreements or other instruments and to meet such other conditions (which, if applicable, shall apply with respect to the portion of the Required Shares Owned by such stockholder). When an Eligible Stockholder is comprised of a group, a violation of any provision of these Bylaws by any member of the group shall be deemed a violation by the entire group. No person may be a member of more than one group of persons constituting an Eligible Stockholder with respect to any annual meeting of stockholders, and if any person appears as a member of more than one group, it shall be deemed to be a member of the group that owns the greatest aggregate number of shares of the Corporation's common stock as reflected in the Notice of Proxy Access Nomination, and no shares may be attributed as owned by more than one person constituting an Eligible Stockholder under this Section 14. In determining the aggregate number of stockholders in a group, two or more funds that are (1) under common management and investment control, (2) under common management and funded primarily by the same employer (or by a group of related employers that are under common control) or (3) a "group of investment companies," as such term is defined in Section 12(d)(1)(G)(ii) of the Investment Company Act of 1940, as amended (each, a "Qualifying Fund Family"), shall be treated as one stockholder. Not later than the deadline for delivery of the Notice of Proxy Access Nomination pursuant to this Section 14, a Qualifying Fund Family whose stock Ownership is counted for purposes of determining whether a stockholder or group of stockholders qualifies as an Eligible Stockholder shall provide to the Secretary of the Corporation such documentation as is reasonably satisfactory to the Board of Directors, in its sole discretion, that demonstrates that the funds comprising the Qualifying Fund Family satisfy the definition thereof.

(h) The maximum number of Stockholder Nominees nominated by all Eligible Stockholders and entitled to be included in the Company Proxy Materials with respect to an annual meeting of stockholders shall be no more than 20% of the number of directors up for election as of the last day on which a Notice of Proxy Access Nomination may be timely delivered pursuant to and in accordance with this Section 14 (the "Final Proxy Access Nomination Date") or, if such percentage is not a whole number, the closest whole number below such percentage; provided that the maximum number of Stockholder Nominees entitled to be included in the Company Proxy Materials with respect to a forthcoming annual meeting of stockholders shall be reduced by the number of individuals who were elected as directors at the immediately preceding or second preceding annual meeting of stockholders after inclusion in the Company Proxy Materials pursuant to this Section 14 and whom the Board of Directors nominates for re-election at such forthcoming annual meeting of stockholders. In the event that one or more vacancies for any reason occur on the Board of Directors after the Final Proxy Access

Nomination Date but before the date of the annual meeting of stockholders and the Board of Directors elects to reduce the size of the Board of Directors in connection therewith, the maximum number of Stockholder Nominees eligible for inclusion in the Company Proxy Materials pursuant to this Section 14 shall be calculated based on the number of directors serving as so reduced. Any individual nominated by an Eligible Stockholder for inclusion in the Company Proxy Materials pursuant to this Section 14 whose nomination is subsequently withdrawn or whom the Board of Directors decides to nominate for election to the Board of Directors shall be counted as one of the Stockholder Nominees for purposes of determining when the maximum number of Stockholder Nominees eligible for inclusion in the Company Proxy Materials pursuant to this Section 14 has been reached. Any Eligible Stockholder submitting more than one Stockholder Nominee for inclusion in the Company Proxy Materials pursuant to this Section 14 shall rank such Stockholder Nominees based on the order that the Eligible Stockholder desires such Stockholder Nominees be selected for inclusion in the Company Proxy Materials in the event that the total number of Stockholder Nominees submitted by Eligible Stockholders pursuant to this Section 14 exceeds the maximum number of Stockholder Nominees eligible for inclusion in the Company Proxy Materials pursuant to this Section 14(h). In the event the number of Stockholder Nominees submitted by Eligible Stockholders pursuant to this Section 14 exceeds the maximum number of nominees eligible for inclusion in the Company Proxy Materials pursuant to this Section 14(h), the highest-ranking Stockholder Nominee from each Eligible Stockholder pursuant to the preceding sentence shall be selected for inclusion in the Company Proxy Materials until the maximum number is reached, proceeding in order of the number of shares of Common Stock (largest to smallest) disclosed as Owned by each Eligible Stockholder in the applicable Notice of Proxy Access Nomination submitted to the Secretary of the Corporation. If the maximum number is not reached after the highest-ranking Stockholder Nominee from each Eligible Stockholder has been selected, this selection process shall continue as many times as necessary, following the same order each time, until the maximum number is reached. The Stockholder Nominees so selected in accordance with this Section 14(h) shall be the only Stockholder Nominees entitled to be included in the Company Proxy Materials and, following such selection, if the Stockholder Nominees so selected are not included in the Company Proxy Materials or are not submitted for election for any reason (other than the failure of the Corporation to comply with this Section 14), no other Stockholder Nominees shall be included in the Company Proxy Materials pursuant to this Section 14.

(i) The Corporation shall not be required to include, pursuant to this Section 14, a Stockholder Nominee in the Company Proxy Materials for any annual meeting of stockholders (1) for which meeting the Secretary of the Corporation receives a notice that the Eligible Stockholder or any other stockholder has nominated one or more individuals for election to the Board of Directors pursuant to the advance notice requirements for Proposed Nominees set forth in Section 12 of this Article II, (2) if the Eligible Stockholder who has nominated such Stockholder Nominee has engaged in or is currently engaged in, or has been or is a participant in another person's, "solicitation," within the meaning of Rule 14a-1(l) under the Exchange Act, in support of the election of any individual as a director at the annual meeting other than its Stockholder Nominee(s) or a nominee of the Board of Directors, (3) if such Stockholder Nominee would not qualify as an independent director, (4) if the election of such Stockholder Nominee as a director would cause the Corporation to fail to comply with these Bylaws, the charter of the Corporation, the rules and listing standards of any national securities exchange on which any Company Securities are listed or over-the-counter market on which any Company Securities are traded, or any applicable state or federal law, rule or regulation, (5) if such Stockholder Nominee is or has been, within the past three years, an officer or director of a competitor, as defined in Section 8 of the Clayton Antitrust Act of 1914, as amended, (6) if such Stockholder Nominee is a defendant in or named subject of a pending criminal proceeding (excluding traffic violations and other minor offenses) or has been convicted or has pleaded nolo contendere in such a criminal proceeding within the past ten years, (7) if such Stockholder Nominee is subject to any order of the type specified in Rule 506(d) of Regulation D promulgated under the Securities Act of 1933, as amended, (8) if the Eligible Stockholder who has nominated such Stockholder Nominee or such Stockholder Nominee provides any facts, statements or information to the Corporation pursuant to this Section 14 that is not true, correct and complete in all material respects or that omits a material fact necessary to make such facts, statements or information, in light of the circumstances in which they were provided, not misleading, or that otherwise contravenes any of the agreements, representations or undertakings made by such Eligible Stockholder or Stockholder Nominee pursuant to this Section 14 or (9) if the Eligible Stockholder who has nominated such Stockholder Nominee or such Stockholder Nominee fails to comply with any of its obligations pursuant to this Section 14, in each instance as determined by the Board of Directors, in its sole discretion.

(j) Notwithstanding anything to the contrary set forth herein, the Board of Directors or the officer of the Corporation presiding at an annual meeting shall declare a nomination by an Eligible Stockholder to be invalid, and such nomination shall be disregarded notwithstanding that proxies in respect of such vote may have been received by the Corporation, if (1) the Stockholder Nominee(s) and/or the applicable Eligible Stockholder shall have failed to comply with its or their obligations under this Section 14, as determined by the Board of Directors or such officer, or (2) the Eligible Stockholder, or a qualified representative thereof, does not appear at the annual meeting of stockholders to present the nomination of the Stockholder Nominee(s) included in the Company Proxy Materials pursuant to this Section 14. For purposes of this Section 14(j), to be considered a qualified representative of a stockholder, a person must be a duly authorized officer, manager or partner of such stockholder or must be authorized by a writing executed by such stockholder or an electronic transmission delivered by such stockholder to act for such stockholder as its proxy at the annual meeting of stockholders and such person must produce such writing or electronic transmission, or a reliable reproduction thereof, at such annual meeting.

(k) Any Stockholder Nominee who is included in the Company Proxy Materials for an annual meeting of stockholders but either (1) withdraws from or becomes ineligible or unavailable for election to the Board of Directors at such annual meeting or (2) does not receive a number of "for" votes equal to at least 25% of the number of votes cast by stockholders in the election of such Stockholder Nominee at such annual meeting shall be ineligible for inclusion in the Company Proxy Materials as a Stockholder Nominee pursuant to this Section 14 for the next two annual meetings of stockholders. For the avoidance of doubt, this Section 14(k) shall not prevent any stockholder from nominating any individual to the Board of Directors pursuant to and in accordance with Section 12 of this Article II.

(l) This Section 14 provides the exclusive method for a stockholder to require the Corporation to include nominee(s) for election to the Board of Directors in the Company Proxy Materials, except to the extent the Company would be required to include a stockholder's nominees on the Company's proxy card, pursuant to Rule 14a-19 under the Exchange Act.

ARTICLE III DIRECTORS

Section 1 General Powers. The business and affairs of the Corporation shall be managed under the direction of its Board of Directors.

Section 2 Number and Qualifications. The number of directors which shall constitute the whole Board of Directors shall be not less than three (3) nor more than fifteen (15). The number of directors of the Corporation may be changed by majority vote of the entire Board of Directors. The directors need not be stockholders. A director shall be an individual at least 21 years of age who is not under legal disability.

Section 3 Tenure and Removal. The directors shall be elected at the annual meeting of the stockholders, except as provided in Section 4 of this Article III, and each director elected shall hold office for a term of one (1) year and until his successor is elected and qualifies; provided, however, that unless otherwise restricted by the charter or by law, any director or the entire Board of Directors may be removed, either with or without cause, from the Board of Directors at any meeting of stockholders by the affirmative vote of a majority of all the votes entitled to be cast generally for the election of directors.

Section 4 Vacancies. If for any reason any or all of the directors cease to be directors, such event shall not terminate the Corporation or affect these Bylaws or the powers of the remaining directors hereunder. Any vacancy on the Board of Directors by reason of death, resignation, retirement, disqualification, removal from office, or otherwise (other than an increase in the number of directors), shall be filled by a majority of the remaining directors then in office, even if such majority is less than a quorum. Any vacancy in the number of directors created by an increase in the number of directors may be filled by a majority vote of the entire Board of Directors. The directors so chosen shall serve until the next annual meeting of stockholders and until his or her successor is duly elected and qualifies. If there are no directors in office, then an election of directors may be held in the manner provided by statute.

Section 5 Annual and Regular Meetings. An annual meeting of the Board of Directors may be held at such time and place as shall be specified in a notice given as hereinafter provided for special meetings of the Board of Directors. The Board of Directors may provide, by resolution, the time and place for the holding of regular meetings of the Board of Directors without other notice than such resolution.

Section 6 Special Meetings. Special meetings of the Board of Directors may be called by or at the request of the Chairman of the Board, the Chief Executive Officer, the President or by at least two of the directors then in office. The person or persons authorized to call special meetings of the Board of Directors may fix the time and any place for holding any special meeting of the Board of Directors called by them. The Board of Directors may provide, by resolution, the time and place for the holding of special meetings of the Board of Directors without other notice than such resolution.

Section 7 Notice. Notice of any special meeting of the Board of Directors shall be delivered personally or by telephone, electronic mail, facsimile transmission, courier or United States mail to each director at his or her business or residence address. Notice by personal delivery, telephone, electronic mail or facsimile transmission shall be given at least 24 hours prior to the meeting. Notice by United States mail shall be given at least three days prior to the meeting. Notice by courier shall be given at least two days prior to the meeting. Telephone notice shall be deemed to be given when the director or his or her agent is personally given such notice in a telephone call to which the director or his or her agent is a party. Electronic mail notice shall be deemed to be given upon transmission of the message to the electronic mail address given to the Corporation by the director. Facsimile transmission notice shall be deemed to be given upon completion of the transmission of the message to the number given to the Corporation by the director and receipt of a completed answer-back indicating receipt. Notice by United States mail shall be deemed to be given when deposited in the United States mail properly addressed, with postage thereon prepaid. Notice by courier shall be deemed to be given when deposited with or delivered to a courier properly addressed. Neither the business to be transacted at, nor the purpose of, any annual, regular or special meeting of the Board of Directors need be stated in the notice, unless specifically required by statute or these Bylaws.

Section 8 Quorum. A majority of the directors shall constitute a quorum for transaction of business at any meeting of the Board of Directors, provided that, if less than a majority of such directors is present at such meeting, a majority of the directors present may adjourn the meeting from time to time without further notice, and provided further that if, pursuant to applicable law, the charter of the Corporation or these Bylaws, the vote of a majority or other percentage of a particular group of directors is required for action, a quorum must also include a majority or such other percentage of such group.

The directors present at a meeting which has been duly called and at which a quorum has been established may continue to transact business until adjournment, notwithstanding the withdrawal from the meeting of enough directors to leave fewer than required to establish a quorum.

Section 9 Voting. The action of a majority of the directors present at a meeting at which a quorum is present shall be the action of the Board of Directors, unless the concurrence of a greater proportion is required for such action by applicable law, the charter or these Bylaws. If enough directors have withdrawn from a meeting to leave less than a quorum but the meeting is not adjourned, the action of the majority of that number of directors necessary to constitute a quorum at such meeting shall be the action of the Board of Directors, unless the concurrence of a greater proportion is required for such action by applicable law, the charter or these Bylaws.

Section 10 Organization. At each meeting of the Board of Directors, the Chairman of the Board or, in the absence of the Chairman, the Vice Chairman of the Board, if any, shall act as chairman of the meeting. Even if present at the meeting, such director may designate another director to act as chairman of the meeting. In the absence of both the Chairman and Vice Chairman of the Board, the Chief Executive Officer or in the absence of the Chief Executive Officer, the President or in the absence of the President, a director chosen by a majority of the directors present, shall act as chairman of the meeting. The Secretary or, in his or her absence, an Assistant Secretary of the Corporation, or in the absence of the Secretary and all Assistant Secretaries, a person appointed by the chairman of the meeting, shall act as secretary of the meeting.

Section 11 Consent by Directors Without a Meeting. Any action required or permitted to be taken at any meeting of the Board of Directors may be taken without a meeting, if all members of the Board of Directors, as the case may be, consent thereto in writing or by electronic transmission, and such consent is filed with the minutes of proceedings of the Board of Directors.

Section 12 Meetings by Remote Communication. Members of the Board of Directors may participate in a meeting of the Board of Directors by means of a conference telephone or other communications equipment if all persons participating in the meeting can hear each other at the same time. Participation in a meeting by these means shall constitute presence in person at the meeting.

Section 13 Compensation. Unless otherwise restricted by the charter or these Bylaws, the Board of Directors shall have the authority to fix the compensation of directors, provided, however, that no officer of the Corporation shall receive any compensation for serving as a director of the Corporation. The directors who are not officers of the Corporation shall be paid their expenses, if any, and an annual sum for their service on the Board of Directors and its committees. No such payment shall preclude any director from serving the Corporation in any other capacity and receiving compensation therefor.

Section 14 Reliance. Each director and officer of the Corporation shall, in the performance of his or her duties with respect to the Corporation, be entitled to rely on any information, opinion, report or statement, including any financial statement or other financial data, prepared or presented by an officer or employee of the Corporation whom the director or officer reasonably believes to be reliable and competent in the matters presented, by a lawyer, certified public accountant or other person, as to a matter which the director or officer reasonably believes to be within the person's professional or expert competence, or, with respect to a director, by a committee of the Board of Directors on which the director does not serve, as to a matter within its designated authority, if the director reasonably believes the committee to merit confidence.

Section 15 Ratification. The Board of Directors or the stockholders may ratify any act, omission, failure to act or determination made not to act (an "Act") by the Corporation or its officers to the extent that the Board of Directors or the stockholders could have originally authorized the Act and, if so ratified, such Act shall have the same force and effect as if originally duly authorized, and such ratification shall be binding upon the Corporation and its stockholders. Any Act questioned in any proceeding on the ground of lack of authority, defective or irregular execution, adverse interest of a director, officer or stockholder, non-disclosure, miscomputation, the application of improper principles or practices of accounting, or otherwise, may be ratified, before or after judgment, by the Board of Directors or by the stockholders, and such ratification shall constitute a bar to any claim or execution of any judgment in respect of such questioned Act.

Section 16 Emergency Provisions. Notwithstanding any other provision in the charter or these Bylaws, this Section 16 shall apply during the existence of any catastrophe, or other similar emergency condition, as a result of which a quorum of the Board of Directors under Article III of these Bylaws cannot readily be obtained (an "Emergency"). During any Emergency, unless otherwise provided by the Board of Directors, (i) a meeting of the Board of Directors or a committee thereof may be called by any director or officer by any means feasible under the circumstances; (ii) notice of any meeting of the Board of Directors during such an Emergency may be given less than 24 hours prior to the meeting to as many directors and by such means as may be feasible at the time, including publication, television or radio, and (iii) the number of directors necessary to constitute a quorum shall be one-third of the entire Board of Directors.

ARTICLE IV COMMITTEES OF DIRECTORS

Section 1 General Provisions. The Board of Directors may appoint one or more committees, consisting of one or more of the directors of the Corporation, to serve at the pleasure of the Board of Directors. Subject to the provisions hereof, the Board of Directors shall have the power at any time to change the membership of any committee, to fill any vacancy, to designate an alternate member to replace any absent or disqualified member or to dissolve any such committee. The Board of Directors may delegate to committees appointed under this Section 1 of this Article IV any of the powers of the Board of Directors, except as prohibited by law. Except as may be otherwise provided by the Board of Directors, any committee may delegate some or all of its power and authority to one or more subcommittees, composed of one or more directors, as the committee deems appropriate in its sole discretion.

Section 2 Meetings. Notice of committee meetings shall be given in the same manner as notice for special meetings of the Board of Directors. A majority of the members of the committee shall constitute a quorum for the transaction of business at any meeting of the committee. The act of a majority of the committee members present at a meeting shall be the act of such committee; provided, however, in establishing a committee, the Board of Directors may provide for the voting and other rights of the members of the committee. The Board of Directors may, or in the absence of such designation, the

applicable committee, designate a chairman of any committee, and such chairman or, in the absence of a chairman, any two members of any committee (if there are at least two members of the committee) may fix the time and place of its meeting unless the Board shall otherwise provide. In the absence of any member of any such committee, the members thereof present at any meeting, whether or not they constitute a quorum, may appoint another director to act in the place of such absent member. Each committee shall keep minutes of its proceedings.

Section 3 Meetings by Remote Communication. Members of a committee of the Board of Directors may participate in a meeting by means of a conference telephone or other communications equipment if all persons participating in the meeting can hear each other at the same time. Participation in a meeting by these means shall constitute presence in person at the meeting.

Section 4 Consent by Committees Without a Meeting. Any action required or permitted to be taken at any meeting of a committee of the Board of Directors may be taken without a meeting, if a consent in writing or by electronic transmission to such action is given by each member of the committee and is filed with the minutes of proceedings of such committee.

ARTICLE V INDEMNIFICATION

To the maximum extent permitted by Maryland law in effect from time to time, the Corporation, without requiring a preliminary determination of the ultimate entitlement to indemnification, shall indemnify and shall pay or reimburse reasonable expenses in advance of final disposition of a proceeding to (a) any individual who is a present or former director or officer of the Corporation and who is made or threatened to be made a party to, or witness in, the proceeding by reason of his or her service in that capacity or (b) any individual who, while a director or officer of the Corporation and at the request of the Corporation, serves or has served as a director, officer, partner, member, manager or trustee of another corporation, real estate investment trust, limited liability company, partnership, joint venture, trust, employee benefit plan or any other enterprise and who is made or threatened to be made a party to, or witness in, the proceeding by reason of his or her service in that capacity. The rights to indemnification and advance of expenses provided by the charter of the Corporation and these Bylaws shall vest immediately upon election of a director or officer. The Corporation may, with the approval of its Board of Directors, provide such indemnification and advance of expenses to an individual who served a predecessor of the Corporation in any of the capacities described in (a) or (b) above and to any employee or agent of the Corporation or a predecessor of the Corporation. The indemnification and payment or reimbursement of expenses provided in these Bylaws shall not be deemed exclusive of or limit in any way other rights to which any person seeking indemnification or payment or reimbursement of expenses may be or may become entitled under any bylaw, resolution, insurance, agreement or otherwise.

Neither the amendment nor repeal of this Article V, nor the adoption or amendment of any other provision of the Bylaws or charter of the Corporation inconsistent with this Article, shall apply to or affect in any respect the applicability of the preceding paragraph with respect to any act or failure to act which occurred prior to such amendment, repeal or adoption regardless of whether a claim with respect to such action or inaction is raised prior or subsequent to such amendment.

ARTICLE VI TRANSACTIONS WITH INTERESTED DIRECTORS

No transaction between the Corporation and one or more of its directors, or between the Corporation and any other corporation, firm, association or other entity in which one or more of its directors are directors or officers of this Corporation or are financially interested, shall be either void or voidable for this reason alone, provided that such transaction shall be approved in a manner consistent with Section 2-419 of the MGCL.

ARTICLE VII OFFICERS

Section 1 General Provisions. The officers of the Corporation shall be chosen by the Board of Directors and shall include a President, a Secretary and a Treasurer. The Corporation may also have at the discretion of the Board of Directors such other officers as are desired, including a Chairman of the Board of Directors, a Vice Chairman of the Board of Directors, a Chief Executive Officer, one or more Vice Presidents, a Chief Operating Officer, a Chief Financial Officer, one or more Assistant Secretaries and Assistant Treasurers, and such other officers as may be appointed in accordance with the provisions of Section 3 of this Article VII. In the event there are two or more Vice Presidents, then one or more may be designated as Executive Vice President, Senior Vice President, or other similar or dissimilar title. At the time of the election of officers, the directors may by resolution determine the order of their rank. Any number of offices may be held by the same person, unless the charter or these Bylaws otherwise provide. Election of an officer or agent shall not of itself create contract rights between the Corporation and such officer or agent.

Section 2 The Board of Directors, at its first meeting after each annual meeting of stockholders, shall choose the officers of the Corporation.

Section 3 The Board of Directors may appoint such other officers and agents as it shall deem necessary who shall hold their offices for such terms and shall exercise such powers and perform such duties as shall be determined from time to time by the Board.

Section 4 Compensation. The compensation of the officers shall be fixed from time to time by or under the authority of the Board of Directors and no officer shall be prevented from receiving such compensation by reason of the fact that he is also a director.

Section 5 Removal and Resignation. Any officer or agent of the Corporation may be removed, with or without cause, by the Board of Directors, but such removal shall be without prejudice to the contract rights, if any, of the person so removed. Any officer of the Corporation may resign at any time by delivering his or her resignation to the Board of Directors, the Chairman of the Board, the President or the Secretary. Any resignation shall take effect immediately upon its receipt or at such later time specified in the resignation. The acceptance of a resignation shall not be necessary to make it effective unless otherwise stated in the resignation. Such resignation shall be without prejudice to the contract rights, if any, of the Corporation.

Section 6 Chairman of the Board. The Chairman of the Board of Directors, if such an officer be elected, shall, if present, preside at all meetings of the Board of Directors and of the stockholders. The Chairman of the Board shall exercise and perform such other powers and duties as may be from time to time assigned to him by the Board of Directors or prescribed by these Bylaws.

Section 7 President. In the absence of a Chief Executive Officer, the President shall be the Chief Executive Officer of the Corporation and shall, subject to the control of the Board of Directors, have general supervision, direction and control of the business and officers of the Corporation. He shall have the general powers and duties of management usually vested in the office of president and chief executive officer of corporations, and shall have such other powers and duties as may be prescribed by the Board of Directors or these Bylaws.

Section 8 Vice Presidents. In the absence or disability of the President, the Vice Presidents in order of their rank as fixed by the Board of Directors, or if not ranked, the Vice President designated by the Board of Directors, shall perform all the duties of the President, and when so acting shall have all the powers of and be subject to all the restrictions upon the President. The Vice Presidents shall have such other duties as from time to time may be prescribed for them, respectively, by the Board of Directors.

Section 9 Secretary. The Secretary shall attend all sessions of the Board of Directors and all meetings of the stockholders and record all votes and the minutes of all proceedings in a book to be kept for that purpose; and shall perform like duties for the standing committees when required by the Board of Directors. The Secretary shall give, or cause to be given, notice of all meetings of the stockholders and of the Board of Directors, and shall perform such other duties as may be prescribed by the Board of Directors or these Bylaws. He shall keep in safe custody the seal of the Corporation, and when authorized by the Board, affix the same to any instrument requiring it, and when so affixed it shall be attested by his signature or by the signature of an Assistant Secretary. The Board of Directors may give general authority to any other officer to affix the seal of the Corporation and to attest to the affixing

by his signature.

Section 10 Assistant Secretary. The Assistant Secretary, or if there be more than one, the Assistant Secretaries in the order determined by the Board of Directors, or if there be no such determination, the Assistant Secretary designated by the Board of Directors, shall, in the absence or disability of the Secretary, perform the duties and exercise the powers of the Secretary and shall, perform such other duties and have such other powers as the Board of Directors may from time to time prescribe.

Section 11 Treasurer. The Treasurer shall have the custody of the corporate funds and securities and shall keep full and accurate accounts of receipts and disbursements in books belonging to the Corporation and shall deposit all moneys, and other valuable effects in the name and to the credit of the Corporation, in such depositories as may be designated by the Board of Directors. He shall disburse the funds of the Corporation as may be ordered by the Board of Directors, taking proper vouchers for such disbursements, and shall render to the Board of Directors, at its regular meetings, or when the Board of Directors so requires, an account of all his transactions as Treasurer and of the financial condition of the Corporation.

Section 12 Assistant Treasurer. The Assistant Treasurer, or if there shall be more than one, the Assistant Treasurers in the order determined by the Board of Directors, or if there be no such determination, the Assistant Treasurer designated by the Board of Directors, shall, in the absence or disability of the Treasurer, perform the duties and exercise the powers of the Treasurer and shall perform such other duties and have such other powers as the Board of Directors may from time to time prescribe.

ARTICLE VIII STOCK

Section 1 Certificates. Except as may be otherwise provided by the Board of Directors or any officer of the Corporation, stockholders of the Corporation are not entitled to certificates representing the shares of stock held by them. In the event that the Corporation issues shares of stock represented by certificates, such certificates shall be in such form as prescribed by the Board of Directors or a duly authorized officer, shall contain the statements and information required by the MGCL and shall be signed by the officers of the Corporation in any manner permitted by the MGCL. In the event that the Corporation issues shares of stock without certificates, to the extent then required by the MGCL, the Corporation shall provide to the record holders of such shares of stock a written statement of the information required by the MGCL to be included on stock certificates. There shall be no differences in the rights and obligations of stockholders based on whether or not their shares of stock are represented by certificates. If a class or series of stock is authorized by the Board of Directors to be issued without certificates, no stockholder shall be entitled to a certificate or certificates representing any shares of such class or series of stock held by such stockholder unless otherwise determined by the Board of Directors or an officer of the Corporation and then only upon written request by such stockholder to the Secretary of the Corporation.

Section 2 Transfers. All transfers of shares of stock shall be made on the books of the Corporation in such manner as the Board of Directors or any officer of the Corporation may prescribe and, if such shares of stock are certificated, upon surrender of certificates duly endorsed. The issuance of a new certificate upon the transfer of certificated shares is subject to the determination of the Board of Directors or an officer of the Corporation that such shares of stock shall no longer be represented by certificates. Upon the transfer of uncertificated shares of stock, to the extent then required by the MGCL, the Corporation shall provide to record holders of such shares of stock a written statement of the information required by the MGCL to be included on stock certificates.

The Corporation shall be entitled to treat the holder of record of any share of stock as the holder in fact thereof and, accordingly, shall not be bound to recognize any equitable or other claim to or interest in such share or on the part of any other person, whether or not it shall have express or other notice thereof, except as otherwise expressly provided by the laws of the State of Maryland.

Notwithstanding the foregoing, transfers of shares of any class or series of stock will be subject in all respects to the charter of the Corporation and all of the terms and conditions contained therein.

Section 3 Replacement Certificate. Any officer of the Corporation may direct a new certificate or certificates to be issued in place of any certificate or certificates theretofore issued by the Corporation alleged to have been lost, destroyed, stolen or mutilated, upon the making of an affidavit of that fact by the person claiming the certificate to be lost, destroyed, stolen or mutilated; provided, however, if such shares of stock have ceased to be certificated, no new certificate shall be issued unless requested in writing by such stockholder and the Board of Directors or an officer of the Corporation has determined that such certificates may be issued. Unless otherwise determined by an officer of the Corporation, the owner of such lost, destroyed, stolen or mutilated certificate or certificates, or his or her legal representative, shall be required, as a condition precedent to the issuance of a new certificate or certificates, to give the Corporation a bond in such sums as it may direct as indemnity against any claim that may be made against the Corporation.

Section 4 Fixing of Record Date. The Board of Directors may set, in advance, a record date for the purpose of determining stockholders entitled to notice of or to vote at any meeting of stockholders or determining stockholders entitled to receive payment of any dividend or the allotment of any other rights, or in order to make a determination of stockholders for any other proper purpose. Such date, in any case, shall not be prior to the close of business on the day the record date is fixed and shall be not more than 90 days and, in the case of a meeting of stockholders, not less than ten days, before the date on which the meeting or particular action requiring such determination of stockholders of record is to be held or taken.

When a record date for the determination of stockholders entitled to notice of and to vote at any meeting of stockholders has been set as provided in this section, such record date shall continue to apply to the meeting if adjourned or postponed, except if the meeting is adjourned to a date more than 120 days or postponed to a date more than 90 days after the record date originally fixed for the meeting, in which case a new record date for such meeting may be determined as set forth herein.

Section 5 Stock Ledger. The Corporation shall maintain at its principal office or at the office of its counsel, accountants or transfer agent, an original or duplicate stock ledger containing the name and address of each stockholder and the number of shares of each class held by such stockholder.

Section 6 Fractional Stock: Issuance of Units. The Board of Directors may authorize the Corporation to issue fractional shares of stock or authorize the issuance of scrip, all on such terms and under such conditions as they may determine. Notwithstanding any other provision of the charter or these Bylaws, the Board of Directors may authorize the issuance of units consisting of different securities of the Corporation. Any security issued in a unit shall have the same characteristics as any identical securities issued by the Corporation, except that the Board of Directors may provide that for a specified period securities of the Corporation issued in such unit may be transferred on the books of the Corporation only in such unit.

ARTICLE IX DISTRIBUTIONS

Section 1 Authorization. Dividends and other distributions upon the stock of the Corporation may be authorized by the Board of Directors, subject to the provisions of law and the charter of the Corporation. Dividends and other distributions may be paid in cash, property or stock of the Corporation, subject to the provisions of law and the charter.

Section 2 Contingencies. Before payment of any dividends or other distributions, there may be set aside out of any assets of the Corporation available for dividends or other distributions such sum or sums as the Board of Directors may from time to time, in its sole discretion, think proper as a reserve fund for contingencies, for equalizing dividends, for repairing or maintaining any property of the Corporation or for such other purpose as the Board of Directors shall determine, and the Board of Directors may modify or abolish any such reserve.

ARTICLE X

CONTRACTS, LOANS, CHECKS AND DEPOSITS

Section 1 Contracts. The Board of Directors may authorize any officer or agent to enter into any contract or to execute and deliver any instrument in the name of and on behalf of the Corporation and such authority may be general or confined to specific instances. Any agreement, deed, mortgage, lease or other document shall be valid and binding upon the Corporation when duly authorized or ratified by action of the Board of Directors and executed by an authorized person.

Section 2 Checks and Drafts. All checks, drafts or other orders for the payment of money, notes or other evidences of indebtedness issued in the name of the Corporation shall be signed by such officer or agent of the Corporation in such manner as shall from time to time be determined by the Board of Directors.

Section 3 Deposits. All funds of the Corporation not otherwise employed shall be deposited or invested from time to time to the credit of the Corporation as the Board of Directors, the Chief Executive Officer, the Chief Financial Officer, or any other officer designated by the Board of Directors may determine.

ARTICLE XI FISCAL YEAR

The fiscal year of the Corporation shall be fixed by resolution of the Board of Directors.

ARTICLE XII SEAL

Section 1 Seal. The corporate seal shall have inscribed thereon the name of the Corporation, the year of its incorporation and the words "Incorporated Maryland." The Board of Directors may authorize one or more duplicate seals and provide for the custody thereof.

Section 2 Affixing Seal. Whenever the Corporation is permitted or required to affix its seal to a document, it shall be sufficient to meet the requirements of any law, rule or regulation relating to a seal to place the word "(SEAL)" adjacent to the signature of the person authorized to execute the document on behalf of the Corporation.

ARTICLE XIII WAIVER OF NOTICE

Whenever any notice of a meeting is required to be given under the provisions of the law, the charter or these Bylaws, a waiver thereof in writing or by electronic transmission given, signed by the person or persons entitled to said notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice. Neither the business to be transacted at nor the purpose of any meeting need be set forth in the waiver of notice of such meeting, unless specifically required by statute. The attendance of any person at any meeting shall constitute a waiver of notice of such meeting, except where such person attends a meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting has not been lawfully called or convened.

ARTICLE XIV EXCLUSIVE FORUM FOR CERTAIN LITIGATION

Unless the Corporation consents in writing to the selection of an alternative forum, any Circuit Court in Maryland, or, if those courts do not have jurisdiction, the United States District Court for the District of Maryland, shall be the sole and exclusive forum for: (a) any Internal Corporate Claim, as such term is defined in the MGCL, or any successor provision thereof, and any action or proceeding asserting any Internal Corporate Claim, including without limitation: (i) any derivative action or proceeding brought on behalf of the Corporation; (ii) any claim, or any action or proceeding asserting a claim, based on an alleged breach of any duty owed by any director or officer or other employee of the Corporation to the Corporation or to the stockholders of the Corporation; or (iii) any claim, or any action or proceeding asserting a claim, against the Corporation or any director or officer or other employee of the Corporation arising under or pursuant to any provision of the MGCL, the Charter or these bylaws; or (b) any action or proceeding asserting a claim against the Corporation or any director or officer or other employee of the Corporation that is governed by the internal affairs doctrine. The federal district courts of the United States shall be the exclusive forum for any action or proceeding asserting claims arising under the Securities Act of 1933, as amended (the "Securities Act"), including all causes of action asserted against any defendant to such action or proceeding.

This provision is intended to benefit and may be enforced by the Corporation, its officers and directors, the underwriters to any offering giving rise to such complaint, and any other professional or entity whose profession gives authority to a statement made by that professional or entity and who has prepared or certified any part of the documents underlying the offering.

ARTICLE XV AMENDMENTS

Section 1 By Directors. The board of directors shall have the power to adopt, alter or repeal any bylaws of the Corporation and to make new bylaws, except that the board of directors shall not alter or repeal this Section or any bylaws made by the stockholders.

Section 2 By Stockholders. The stockholders shall have the power to adopt, alter or repeal any bylaws of the Corporation and to make new bylaws.

**CERTIFICATION PURSUANT TO
SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Conor C. Flynn, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Kimco Realty Corporation;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: July 28, 2023

/s/ Conor C. Flynn
Conor C. Flynn
Chief Executive Officer

**CERTIFICATION PURSUANT TO
SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Glenn G. Cohen, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Kimco Realty Corporation;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: July 28, 2023

/s/ Glenn G. Cohen
Glenn G. Cohen
Chief Financial Officer

**CERTIFICATION PURSUANT TO
SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Conor C. Flynn, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Kimco Realty OP, LLC;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: July 28, 2023

/s/ Conor C. Flynn
Conor C. Flynn
Chief Executive Officer

**CERTIFICATION PURSUANT TO
SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Glenn G. Cohen, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Kimco Realty OP, LLC;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: July 28, 2023

/s/ Glenn G. Cohen
Glenn G. Cohen
Chief Financial Officer

Section 1350 Certification

Pursuant to 18 U.S.C. § 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, the undersigned officer of Kimco Realty Corporation (the "Company") hereby certifies, to such officer's knowledge, that:

- (i) the accompanying Quarterly Report on Form 10-Q of the Company for the quarterly period ended June 30, 2023 (the "Report") fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (ii) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: July 28, 2023

/s/ Conor C. Flynn
Conor C. Flynn
Chief Executive Officer

Section 1350 Certification

Pursuant to 18 U.S.C. § 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, the undersigned officer of Kimco Realty Corporation (the "Company") hereby certifies, to such officer's knowledge, that:

- (i) the accompanying Quarterly Report on Form 10-Q of the Company for the quarterly period ended June 30, 2023 (the "Report") fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (ii) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: July 28, 2023

/s/ Glenn G. Cohen
Glenn G. Cohen
Chief Financial Officer

Section 1350 Certification

Pursuant to 18 U.S.C. § 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, the undersigned officer of Kimco Realty OP, LLC ("Kimco OP") hereby certifies, to such officer's knowledge, that:

- (i) the accompanying Quarterly Report on Form 10-Q of Kimco OP for the quarterly period ended June 30, 2023 (the "Report") fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (ii) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of Kimco OP.

Date: July 28, 2023

/s/ Conor C. Flynn
Conor C. Flynn
Chief Executive Officer

Section 1350 Certification

Pursuant to 18 U.S.C. § 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, the undersigned officer of Kimco Realty OP, LLC ("Kimco OP") hereby certifies, to such officer's knowledge, that:

- (i) the accompanying Quarterly Report on Form 10-Q of Kimco OP for the quarterly period ended June 30, 2023 (the "Report") fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (ii) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of Kimco OP.

Date: July 28, 2023

/s/ Glenn G. Cohen
Glenn G. Cohen
Chief Financial Officer