

FIRST INDUSTRIAL REALTY TRUST INC

Form 424B5

January 09, 2006

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This prospectus supplement relates to an effective registration statement under the Securities Act of 1933, but is not complete and may be changed. This prospectus supplement is not an offer to sell these securities and it is not soliciting an offer to buy these securities in any state where the offer or sale is not permitted.

Filed Pursuant to Rule 424(b)(5)  
Registration No. 333-117842

**SUBJECT TO COMPLETION, DATED JANUARY 9, 2006  
PRELIMINARY PROSPECTUS SUPPLEMENT TO PROSPECTUS DATED AUGUST 30, 2004**

**Shares**

**First Industrial Realty Trust, Inc.**

**Depository Shares Each Representing 1/10,000 of a Share of**

**% Series J Cumulative Redeemable Preferred Stock**

**Liquidation Preference Equivalent to \$25.00 Per Depository Share**

Each of the \_\_\_\_\_ depository shares offered hereby represents ownership of 1/10,000 of a share of our \_\_\_\_\_ % Series J Cumulative Redeemable Preferred Stock (sometimes referred to in this prospectus supplement as the Series J Preferred Shares or the preferred shares) deposited with Computershare Trust Company, N.A., as depository, and entitles the holder to all proportional rights, preferences and privileges of the preferred shares represented thereby (including dividend, voting, redemption and liquidation rights and preferences). The proportionate liquidation preference of each depository share is \$25.00.

Dividends on the preferred shares represented by the depository shares will be cumulative from (and including) the date of original issuance and will be payable quarterly in arrears, commencing on March 31, 2006, at the rate of \_\_\_\_\_ % of the liquidation preference per year (equivalent to \$ \_\_\_\_\_ per depository share per year). However, during any period that both (i) the depository shares are not listed on the New York Stock Exchange, or NYSE, or the American Stock Exchange, or AMEX, or quoted on the National Association of Securities Dealers Automatic Quotation System, or NASDAQ, and (ii) we are not subject to the reporting requirements of the Securities and Exchange Act of 1934, or the Exchange Act, but the preferred shares are outstanding, we will increase the cash dividend payable on the preferred shares to a rate of \_\_\_\_\_ % of the liquidation preference per year (equivalent to \$ \_\_\_\_\_ per depository share per year).

If at any time both (i) the depository shares cease to be listed on the NYSE or the AMEX, or quoted on NASDAQ, and (ii) we cease to be subject to the reporting requirements of the Exchange Act, but the preferred shares are outstanding, then the preferred shares will be redeemable in whole but not in part at our option, within 90 days of the date upon which the depository shares cease to be listed and we cease to be subject to such reporting requirements, at a cash redemption price of \$250,000 per preferred share (equivalent to \$25.00 per depository share), plus all accrued and unpaid dividends (whether or not declared) to the date of redemption.

Except as set forth above and in limited circumstances relating to our qualification as a real estate investment trust, or REIT, the preferred shares will not be redeemable prior to January 15, 2011. On and after January 15, 2011, at any time and from time to time the preferred shares (and, therefore the depository shares) will be redeemable in whole or in part at our option, at a cash redemption price of \$250,000 per preferred share (equivalent to \$25.00 per depository share), plus all accrued and unpaid dividends (whether or not declared) to the date of redemption.

In order to maintain our qualification as a REIT for federal income tax purposes, ownership by any person of our depository shares, the preferred shares and other classes of our capital stock is limited, with certain exceptions, to an aggregate of 9.9% in value of our outstanding capital stock.

**Investing in the depository shares involves risks that are described in the Risk Factors sections beginning on page S-6 of this prospectus supplement and page 3 of the accompanying prospectus.**

<b>Price to</b>	<b>Underwriting Discounts and</b>	<b>Proceeds to</b>
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	<b>Public(1)</b>	<b>Commissions</b>	<b>First Industrial</b>
Per Depositary Share	\$ 25.0000	\$ 0.7875	\$ 24.2125
Total	\$	\$	\$

(1) Plus accrued dividends, if any, from the date of original issuance.

The underwriters may also purchase up to an additional                      depositary shares from us at the public offering price, less the underwriting discounts and commissions, within 30 days from the date of this prospectus supplement to cover over-allotments, if any.

We expect that delivery of the depositary shares offered hereby in book-entry form only will be made against payment therefor in New York, New York on or about January     , 2006. We intend to list the depositary shares on the NYSE. Trading of the depositary shares on the NYSE is expected to commence within the 30-day period after the initial delivery of the depositary shares. We have been advised by some of the underwriters that they intend to make a market in our depositary shares prior to the commencement of trading on the NYSE. However, they are not obligated to do so and may discontinue market-making at any time without notice. Therefore, no assurance can be given that a market for the depositary shares will exist prior to commencement of trading on the NYSE.

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

**Wachovia Securities**  
*Joint Bookrunning Manager*

**Merrill Lynch & Co.**  
*Joint Bookrunning  
Manager*

**Credit Suisse First Boston**  
*Joint Lead Manager*

**JPMorgan**

**BB&T Capital Markets**

**Raymond James**

The date of this prospectus supplement is January     , 2006.

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**You should rely only on the information contained or incorporated by reference in this prospectus supplement and the accompanying prospectus. We and the underwriters have not authorized anyone to provide you with information that is different. This prospectus supplement and the accompanying prospectus may only be used where it is legal to sell these securities. The information in this prospectus supplement and the accompanying prospectus may only be accurate as of the date of this prospectus supplement, the accompanying prospectus or the information incorporated by reference herein and therein.**

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**FORWARD-LOOKING STATEMENTS**

This prospectus supplement and the accompanying prospectus, including the documents incorporated by reference herein and therein, contain certain forward-looking statements within the meaning of Section 27A of the Securities Act of 1933 and Section 21E of the Securities Exchange Act of 1934. We intend 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 are including this statement for purposes of complying with those safe harbor provisions. Forward-looking statements, which are based on certain assumptions and describe our future plans, strategies and expectations, are generally identifiable by use of the words believe, expect, intend, anticipate, estimate, project, similar expressions. Our ability to predict results or the actual effect of future plans or strategies is inherently uncertain. Factors which could have a material adverse effect on our operations and future prospects on a consolidated basis include, but are not limited to:

economic conditions generally and the real estate market specifically;

legislative/regulatory changes (including changes to laws governing the taxation of REITs);

availability of financing;

interest rate levels;

competition;

supply and demand for industrial properties in our current and proposed market areas;

potential environmental liabilities;

slippage in development or lease-up schedules;

tenant credit risks;

higher-than-expected costs and changes in general accounting principles; and

policies and guidelines applicable to REITs.

These risks and uncertainties should be considered in evaluating forward-looking statements, and undue reliance should not be placed on such statements. Further information concerning us and our business, including additional factors that could materially affect our financial results, is included or incorporated by reference herein and in the accompanying prospectus.

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**PROSPECTUS SUPPLEMENT SUMMARY**

**The Company**

We are a real estate investment trust, subject to Sections 856 through 860 of the Internal Revenue Code of 1986, as amended. We and our consolidated partnerships, corporations and limited liability companies are a self-administered and fully integrated real estate company which owns, manages, acquires, sells and develops industrial real estate. As of September 30, 2005, our portfolio consisted of 908 properties (inclusive of developments in process) containing approximately 75.9 million square feet of gross leasable area located in 27 states. Our interests in our properties and land parcels are held through partnerships, corporations and limited liability companies controlled by us, including First Industrial, L.P., our operating partnership, of which we are the sole general partner.

We utilize an operating approach that combines the effectiveness of decentralized, locally based property management, acquisition, sales and development functions with the cost efficiencies of centralized acquisition, sales and development support, capital markets expertise, asset management and fiscal control systems.

We have grown and will seek to continue to grow through the acquisition and development of industrial properties.

We are a Maryland corporation organized on August 10, 1993 and completed our initial public offering in June 1994. Our principal executive offices are located at 311 S. Wacker Drive, Suite 4000, Chicago, Illinois 60606, telephone number (312)344-4300. Our web site is [www.firstindustrial.com](http://www.firstindustrial.com). The information on or linked to from our web site is not a part of, and is not incorporated by reference into, this prospectus supplement or the accompanying prospectus.

**Recent Developments**

On December 5, 2005 we offered 1,250,000 shares of our common stock, which offering was consummated on December 9, 2005 with net proceeds of approximately \$48.9 million, and on January 5, 2006 our operating partnership offered \$200,000,000 aggregate principal amount of its 5<sup>3</sup>/<sub>4</sub>% senior notes due 2016, which offering is expected to be consummated on January 10, 2006 with net proceeds of approximately \$197.8 million. The net proceeds from the offering of our common shares have been, and the net proceeds from the offering of the preferred shares and our operating partnership's notes are expected to be, used for the repayment of borrowings under our credit facilities, the acquisition and development of additional properties, the redemption of shares of our Series I Flexible Cumulative Redeemable Preferred Stock, or Series I Preferred Stock, and/or general corporate purposes.

On December 22, 2005, our operating partnership filed an amended annual report on Form 10-K/A for the year ended December 31, 2004 and amended quarterly reports on Form 10-Q/A for the quarters ended March 31, 2005, June 30, 2005 and September 30, 2005 restating certain of the consolidated financial statements contained in the originally filed annual report on Form 10-K for the year ended December 31, 2004 and quarterly reports on Form 10-Qs for the quarters ended March 31, 2005, June 30, 2005, September 30, 2005 (collectively referred to as the original filings). Our operating partnership's management and audit committee had determined on December 19, 2005 that such financial statements contained in the original filings should no longer be relied upon and should be restated because of errors contained therein. As a result of the restatement, our operating partnership's management and independent registered public accounting firm also concluded that, as of the dates of the balance sheets included in such reports, our operating partnership did not maintain effective controls over the accuracy, presentation, monitoring and review of its General Partner Unit and General Partner Preferred Unit account dollar

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balances in such financial statements and that this control deficiency constituted at such times a material weakness in our operating partnership's internal control over financial reporting based on criteria established in *Internal Control Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission. The errors had no impact on our consolidated financial statements and did not constitute a material weakness in our internal control over financial reporting. For further information concerning these matters, reference is made to the amendments to such Form 10-K and Form 10-Qs, as well as to the Form 8-Ks filed by our operating partnership and us on December 22, 2005, all of which reports are incorporated by reference in this prospectus supplement and the accompanying prospectus.

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**The Offering**

*The offering terms are summarized below solely for your convenience. This summary is not a complete description of the preferred shares or the depositary shares. You should read the full text and more specific details contained elsewhere in this prospectus supplement and the accompanying prospectus. For a more detailed description of the preferred shares and the depositary shares, see the discussion under the caption "Description of Series J Preferred Shares and Depositary Shares" beginning on page S-10 of this prospectus supplement.*

Issuer First Industrial Realty Trust, Inc., a Maryland corporation.

Securities Offered depositary shares (exclusive of the over-allotment option), each representing 1/10,000 of a share of our % Series J Cumulative Redeemable Preferred Stock. The underwriters have a one-time option to purchase up to additional depositary shares from us to cover over-allotments, if any. We reserve the right to reopen this series and issue additional preferred shares through either public or private sales at any time.

Price per Depositary Share \$25.00.

Ranking The preferred shares will rank with respect to dividends and upon liquidation, dissolution or winding up:

- senior to our common shares and to any other class or series of our capital stock that by its terms ranks junior to the preferred shares;
- equally with all other classes or series of our capital stock that by their terms rank equally with the preferred shares;
- junior to all other classes or series of our capital stock that by their terms rank senior to the preferred shares; and
- junior to all of our indebtedness.

Dividend Rate and Payment Dates Dividends on the preferred shares will be cumulative from (and including) the date of original issuance and will be payable quarterly in arrears on March 31, June 30, September 30 and December 31 of each year, commencing on March 31, 2006, at the rate of % of the liquidation preference per year (equivalent to \$ per depositary share per year). However, during any period that both (i) the depositary shares are not listed on the NYSE or AMEX, or quoted on NASDAQ, and (ii) we are not subject to the reporting requirements of the Exchange Act, but the preferred shares are outstanding, we will increase the cash dividend payable on the preferred shares to a rate of % of the liquidation preference per year (equivalent to \$ per depositary share per year). Any dividend payable on the preferred shares for any partial dividend period will be pro-rated, computed on the basis of a 360-day year consisting of twelve 30-day months.

Dividends on the preferred shares will accumulate even if:

- any of our agreements prohibit the current payment of dividends;
- we do not have earnings or funds legally available to pay such dividends; or



we do not declare such dividends.

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Liquidation Preference	If we liquidate, dissolve or wind up, holders of the depositary shares will have the right to receive \$25.00 per depositary share, plus all accrued and unpaid dividends (whether or not declared) through and including the date of payment, before any payments are made to the holders of our shares of common stock or other junior securities.
Special Optional Redemption	If at any time both (i) the depositary shares cease to be listed on the NYSE or the AMEX, or quoted on NASDAQ, and (ii) we cease to be subject to the reporting requirements of the Exchange Act, but the preferred shares are outstanding, then the preferred shares will be redeemable, in whole but not in part at our option, within 90 days of the date upon which the depositary shares cease to be listed and we cease to be subject to such reporting requirements, at a cash redemption price of \$250,000 per preferred share (equivalent to \$25.00 per depositary share), plus all accrued and unpaid dividends (whether or not declared) to the date of redemption.
Optional Redemption	Except with respect to our special option to redeem the depositary shares and except in limited circumstances relating to the maintenance of our ability to qualify as a REIT, the preferred shares will not be redeemable prior to January 15, 2011. On and after such date, at any time and from time to time the preferred shares (and, therefore, the depositary shares) will be redeemable in whole or in part at our option, at a cash redemption price of \$250,000 per preferred share (equivalent to \$25.00 per depositary share), plus all accrued and unpaid dividends (whether or not declared) to the date of redemption.
Voting Rights	Holders of the preferred shares generally have no voting rights, except as required by law. However, if we do not pay dividends on the preferred shares for six or more quarterly periods (whether or not consecutive), the holders of the preferred shares, voting as a class with any other class or series of our capital stock ranking equal with the preferred shares as to dividends or upon liquidation, will be entitled to vote for the election of two additional directors to serve on our board of directors until we pay or have authorized and set aside for payment in full all dividends that we owe on the preferred shares. In addition, the affirmative vote of the holders of at least two-thirds of all of our outstanding preferred shares and any series of capital stock with similar voting rights is required for us to authorize another class of capital stock ranking senior to the preferred shares as to dividends or upon liquidation or to amend, alter or repeal our articles of amendment and restatement if such action would materially and adversely alter or change the rights, preferences or privileges of the preferred shares. Among other things, we may, without any vote of the holders of the preferred shares, issue additional preferred shares.
Conversion	The preferred shares are not convertible into or exchangeable for any other of our property or securities.
Information Rights	During any period that both (i) the depositary shares are not listed on the NYSE or the AMEX, or quoted on NASDAQ,

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	<p>and (ii) we are not subject to the reporting requirements of the Exchange Act, but the preferred shares are outstanding, we will transmit by mail to all holders of depositary shares copies of the annual reports and quarterly reports that we would have been required to file with the Securities and Exchange Commission, or SEC, pursuant to Rules 13 or 15(d) of the Exchange Act if we were subject to such rules and promptly upon written request supply copies of such reports to any prospective holder of depositary shares. We will mail the reports to the holders of depositary shares within 15 days after the respective dates by which we would have been required to file the reports with the SEC if we were subject to Section 13 or 15(d) of the Exchange Act.</p>
Restrictions on Ownership and Transfer	<p>In order to assist us in maintaining our qualification as a REIT for U.S. federal income tax purposes, subject to limited exceptions our charter prohibits ownership, actually or constructively, by any person of more than 9.9% of the aggregate value of all shares of our capital stock of all classes or series, including preferred shares.</p>
No Maturity	<p>The preferred shares have no stated maturity and are not subject to mandatory redemption or any sinking fund. We are not required to set aside funds to redeem the preferred shares. Accordingly, the preferred shares will remain outstanding indefinitely unless we decide to redeem the shares at our option.</p>
Listing	<p>We intend to file an application with the NYSE to list the depositary shares under the symbol FRPrJ subject to official notice of issuance. We will use commercially reasonable efforts to have our listing application for the preferred shares approved. If approved, trading of the preferred shares on the NYSE is expected to commence within 30 days after the initial delivery of the preferred shares.</p>
Use of Proceeds	<p>We intend to use the net proceeds from the sale of the preferred shares, together with the net proceeds from the recent sale of our common shares and the sale of our operating partnership's notes, for repayment of borrowings under our credit facilities, the acquisition and development of additional properties, redemption of shares of our Series I Preferred Stock and/or general corporate purposes.</p>
Settlement Date	<p>Delivery of the depositary shares will be made against payment therefor on or about January 1, 2006.</p>
Form	<p>The depositary shares will be issued and maintained in book-entry form registered in the name of the nominee of The Depository Trust Company.</p>
Risk Factors	<p>See Risk Factors beginning on page S-6 of this prospectus supplement for other information you should consider before buying the depositary shares.</p> <p>Unless otherwise indicated, information presented in this prospectus supplement assumes no exercise of the underwriters' over-allotment option with respect to the depositary shares.</p>

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**RISK FACTORS**

*An investment in the depositary shares involves various material risks. Prior to making a decision about investing in our securities, and in consultation with your own financial and legal advisors, you should carefully consider, among other matters, the following risk factors, as well as those incorporated by reference in this prospectus supplement and included in the accompanying prospectus or incorporated therein from our most recent annual report on Form 10-K under the heading Management's Discussion and Analysis of Financial Condition and Results of Operations Risk Factors and other filings we may make from time to time with the SEC.*

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

The depositary shares are a new issue of securities with no established trading market. We intend to apply to list the depositary shares on the NYSE. However, an active trading market on the NYSE for the depositary shares may not develop or last, in which case the trading price of the depositary shares could be adversely affected. If an active trading market does develop on the NYSE, the depositary shares may trade at prices higher or lower than their initial offering price. The trading price of our depositary shares would depend on many factors, including:

prevailing interest rates;

the market for similar securities;

general economic conditions; and

our financial condition, results of operations and prospects.

We have been advised by some of the underwriters that they intend to make a market in our depositary shares, but they are not obligated to do so and may discontinue market-making at any time without notice.

**Our ability to pay dividends on the preferred shares may be limited.**

Because we conduct substantially all of our operations through our operating partnership, our ability to pay dividends on the preferred shares will depend almost entirely on payments and dividends received on our interests in our operating partnership. Additionally, the terms of some of the debt to which our operating partnership is a party limit its ability to make some types of payments and other dividends to us. This in turn limits our ability to make some types of payments, including payment of dividends on the preferred shares, unless we meet certain financial tests or such payments or dividends are required to maintain our qualification as a REIT. As a result, if we are unable to meet the applicable financial tests, we may not be able to pay dividends on the preferred shares in one or more periods.

**Our ability to pay dividends is further limited by the requirements of Maryland law.**

Our ability to pay dividends on the preferred shares is further limited by the laws of Maryland. Under Maryland General Corporation Law, a Maryland corporation may not make a distribution if, after giving effect to the distribution, the corporation would not be able to pay its debts as the debts become due in the usual course of business, or the corporation's total assets would be less than the sum of its total liabilities plus the amount that would be needed, if the corporation were dissolved at the time of the distribution, to satisfy the preferential rights upon dissolution of shareholders whose preferential rights are superior to those receiving the distribution. Accordingly, we may not make a distribution on the preferred shares if, after giving effect to the distribution, we would not be able to pay our debts as they become due in the usual course of business or our total assets would be less than the sum of our total liabilities plus the amount that would be needed to satisfy the preferential rights upon dissolution of the holders of any shares of the preferred shares then outstanding, if any, with preferences senior to those of the preferred shares.

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**We may incur additional indebtedness, which may harm our financial position and cash flow and potentially impact our ability to pay dividends on the preferred shares.**

Our governing documents do not limit us from incurring additional indebtedness and other liabilities. As of September 30, 2005, we had approximately \$1,787 million of consolidated indebtedness outstanding. We may incur additional indebtedness and become more highly leveraged, which could harm our financial position and potentially limit our cash available to pay dividends. As a result, we may not have sufficient funds remaining to satisfy our dividend obligations relating to our preferred shares if we incur additional indebtedness.

**We cannot assure you that we will be able to pay dividends regularly.**

Our ability to pay dividends in the future is dependent on our ability to operate profitably and to generate cash from our operations. We cannot guarantee that we will be able to pay dividends on a regular quarterly basis in the future. Furthermore, any new shares of common stock issued will substantially increase the cash required to continue to pay cash dividends at current levels. Any common stock or preferred shares that may in the future be issued to finance acquisitions, upon exercise of stock options or otherwise, would have a similar effect.

**Our ability to issue preferred stock in the future could adversely affect the rights of holders of our preferred shares.**

Our articles of amendment and restatement authorize us to issue up to 10,000,000 shares of preferred stock in one or more series on terms determined by our board of directors. As of November 30, 2005, we had 21,500 shares of preferred stock outstanding. Our future issuance of any series of preferred stock under our articles of amendment and restatement could therefore effectively diminish our ability to pay dividends on, and the liquidation preference of, our preferred shares.

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**RATIO OF EARNINGS TO COMBINED FIXED CHARGES  
AND PREFERRED STOCK DIVIDENDS**

Our ratios of earnings to combined fixed charges and preferred dividend requirements for the nine months ended September 30, 2005 and for the years ended December 31, 2004, 2003, 2002, 2001 and 2000 were 0.81x, 1.10x, 1.07x, 1.02x, 1.36x and 1.41x, respectively. For the nine months ended September 30, 2005, the sum of fixed charges and preferred dividend requirements exceeded our earnings from continuing operations by approximately \$17.5 million. For purposes of computing the ratios of earnings to combined fixed charges and preferred dividend requirements, earnings have been calculated by adding fixed charges (excluding capitalized interest) to income from continuing operations before minority interest allocable to continuing operations as reported in the consolidated statements of operations in our financial statements included in the documents incorporated by reference in this prospectus supplement. Fixed charges consist of interest cost, whether expensed or capitalized, and amortization of deferred financing costs.

The financial statements for the nine months ended September 30, 2005 contained in our quarterly report on Form 10-Q for the quarter then ended reflect discontinued operations relating to property sales occurring between January 1, 2005 and September 30, 2005 and properties classified as held for sale as of September 30, 2005 in accordance with the Financial Accounting Standards Board's Statement of Financial Accounting Standards No. 144, Accounting for the Impairment or Disposal of Long-Lived Assets, as described in Note 7 to the financial statements contained in such quarterly report, and our ratios of earnings to combined fixed charges and preferred dividend requirements for such period are computed based on such financial statements. The financial statements for each of the five years in the period ended December 31, 2004 contained in our annual report on Form 10-K for the year ended December 31, 2004 have not yet been adjusted to reflect discontinued operations relating to property sales occurring between January 1, 2005 and September 30, 2005 and properties classified as held for sale as of September 30, 2005, and our ratios of earnings to combined fixed charges and preferred dividend requirements for the five years in such period have been computed based on such unadjusted financial statements. The financial statements for each of the five years in the period ending December 31, 2005 to be contained in our annual report on Form 10-K for the year then ended will be adjusted to reflect all discontinued operations relating to property sales occurring during 2005 and properties classified as held for sale as of December 31, 2005, and our ratios of earnings to combined fixed charges and preferred dividend requirements for the five years in such period will be computed based on such adjusted financial statements. We believe that, if the financial statements contained in our annual report on Form 10-K for the year ended December 31, 2004 were adjusted to reflect discontinued operations relating to property sales occurring between January 1, 2005 and September 30, 2005 and properties classified as held for sale as of September 30, 2005, then the ratio of earnings to combined fixed charges and preferred dividend requirements for the years ended December 31, 2003 and 2002 would be less than 1.0x but greater than zero.

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**USE OF PROCEEDS**

The net proceeds to us from the sale of the depositary shares offered hereby will be approximately \$        million (\$        million if the underwriters exercise their over-allotment option in full). We intend to contribute the net proceeds of the offering to our operating partnership in exchange for        % Series J Preferred Units, or units, in our operating partnership, the economic terms of which will be substantially identical to the Series J Preferred Shares. Our operating partnership will be required to make all required distributions on the units (which will mirror the payments of distributions, including accrued and unpaid distributions upon redemption, and of the liquidation preference amount on the Series J Preferred Shares represented by the depositary shares) prior to any distribution of cash or assets to the holders of units or to the holders of any other equity interests in our operating partnership, except for any other series of preferred units ranking equally with or senior to the Series J Preferred Units as to distributions and/or liquidation rights and except for distributions required to enable us to maintain our qualification as a REIT.

The net proceeds from the offering of our common shares have been, and the net proceeds from the offering of the preferred shares and our operating partnership's notes are expected to be, used for the repayment of borrowings under our credit facilities (which primarily were incurred to finance acquisition and development activities), the acquisition and development of additional properties, the redemption of shares of our Series I Preferred Stock and/or general corporate purposes. As of December 31, 2005, our \$500 million credit facility bore interest at a rate of 4.845% and our \$125 million credit facility bore interest at a rate of 4.995%. Outstanding borrowings under our \$500 million credit facility mature on September 28, 2008 and outstanding borrowings under our \$125 million credit facility mature on March 15, 2006. Affiliates of two of the underwriters, Wachovia Capital Markets, LLC and J.P. Morgan Securities Inc., are lenders under our credit facilities. An affiliate of Wachovia Capital Markets, LLC was the sole purchaser of our Series I Preferred Stock in November 2005.

This offering of our preferred stock is not conditioned upon the consummation of the offering of our operating partnership's debt securities. This prospectus supplement is not an offer to sell our operating partnership's debt securities, which offer has been made by a prospectus supplement and accompanying prospectus that specifically relates to such securities.

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**DESCRIPTION OF SERIES J PREFERRED SHARES AND DEPOSITARY SHARES**

**General**

Under our articles of amendment and restatement, as amended, up to 10,000,000 preferred shares, par value \$.01 per share, may be issued from time to time in one or more series, as authorized by our board of directors. Prior to issuance of shares of each series, our board of directors is required by the Maryland General Corporation Law and our articles of amendment and restatement to fix for each series such terms, preferences, conversion or other rights, voting powers, restrictions, limitations as to dividends or other distributions, qualifications and terms or conditions of redemption as are permitted by Maryland law. As of the date hereof, 20,000 shares of our 8.625% Series C Cumulative Preferred Stock, 500 shares of our 6.236% Series F Flexible Cumulative Redeemable Preferred Stock, 250 shares of our 7.236% Series G Flexible Cumulative Redeemable Preferred Stock and 750 shares of our Series I Flexible Cumulative Redeemable Preferred Stock are outstanding.

When issued, the preferred shares will have a liquidation preference of \$250,000 per share, will be fully paid and nonassessable, will not be subject to any sinking fund or other obligation by us to redeem or retire the preferred shares, and will have no preemptive rights. Each of our other outstanding series of preferred stock will rank equally as to payment by us of dividends and amounts upon liquidation with the Series J Preferred Shares. See Description of Preferred Stock in the accompanying prospectus.

Computershare Trust Company, N.A. will act as the transfer agent and dividend disbursing agent for the preferred shares.

Each depositary share represents 1/10,000 of a preferred share. The preferred shares will be deposited with Computershare Trust Company, N.A., as depositary, under a deposit agreement among us, the depositary and the holders from time to time of the depositary receipts issued by the depositary thereunder. The depositary receipts will evidence the depositary shares. Subject to the terms of the deposit agreement, each holder of a depositary receipt evidencing a depositary share will be entitled, proportionately, to all the rights and preferences of, and subject to all of the limitations of, the interest in the preferred shares represented thereby (including dividend, voting, redemption and liquidation rights and preferences). See Description of Depositary Shares in the accompanying prospectus.

Immediately following the issuance of the preferred shares, we will deposit the preferred shares with the depositary, which will then issue and deliver the depositary receipts to us. We will, in turn, deliver the depositary receipts to the underwriters. Depositary receipts will be issued evidencing only whole depositary shares.

We intend to file an application to list the depositary shares on the NYSE under the symbol FRPrJ. If the application is approved, trading of the depositary shares on the NYSE is expected to begin within 30 days after the date of initial delivery of our depositary shares.

The preferred shares initially will be issued and maintained in book-entry form registered in the name of the nominee of The Depository Trust Company, except under limited circumstances.

The following is a brief description of the terms of the preferred shares, which does not purport to be complete and is subject to and qualified in its entirety by reference to the articles supplementary to our articles of amendment and restatement with respect to the preferred shares, the form of which is available from us.

See Restrictions on Transfers of Capital Stock in the accompanying prospectus for a discussion of certain powers given to the board of directors to prohibit the transfer, or effect redemptions, of our capital stock. Such restrictions are designed to implement ownership limitations which apply to beneficial ownership of such capital stock, including through ownership of depositary shares, in order to aid us in maintaining our qualification as a REIT.

**Dividends**

Holders of preferred shares, in preference to the holders of our common stock, and of any of our other capital stock ranking junior to the preferred shares as to payment of dividends, will be entitled to



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receive, when and as declared by the board of directors, out of our assets legally available for payment, cash dividends payable quarterly at the rate of % of the liquidation preference per year (equivalent to \$ per depositary share per year). However, during any period that both (i) the depositary shares are not listed on the NYSE or the AMEX, or quoted on NASDAQ, and (ii) we are not subject to the reporting requirements of the Exchange Act, but the preferred shares are outstanding, we will increase the cash dividend payable on the preferred shares to a rate of % of the liquidation preference per year (equivalent to \$ per depositary share per year). Dividends on the preferred shares will be cumulative from (and including) the date of original issuance and will be payable quarterly in arrears on March 31, June 30, September 30 and December 31 of each year, commencing on March 31, 2006, to holders of record as they appear on our stock register on such record dates, not less than 15 nor more than 45 days preceding the payment dates thereof, as shall be fixed by the board of directors. Dividends payable on the preferred shares for any partial period will be pro-rated, computed on the basis of a 360-day year consisting of twelve 30-day months. After full dividends on the preferred shares have been paid or declared and funds set aside for payment for all past dividend periods and for the then current quarter, the holders of preferred shares will not be entitled to any further dividends with respect to that quarter. Accrued and unpaid dividends on our preferred shares will not bear interest, and holders of our preferred shares are not entitled to any dividends in excess of full cumulative dividends as described above.

When dividends are not paid in full upon the preferred shares and any other shares of our capital stock ranking equally as to dividends with the preferred shares, dividends declared upon the preferred shares and any other shares of our capital stock ranking equally as to dividends with the preferred shares shall be declared pro rata so that the amount of dividends declared per share on such preferred shares and such other capital stock shall in all cases bear to each other the same ratio that the accrued dividends per share on the preferred shares and such other shares of our capital stock bear to each other.

Except as set forth in the preceding sentence, unless full dividends on the preferred shares have been paid for all past dividend periods and except in certain circumstances relating to the maintenance of our ability to qualify as a REIT as described under Restrictions on Transfer of Capital Stock in the accompanying prospectus, no dividends (other than in common stock or other shares of our capital stock ranking junior to the preferred shares as to dividends and upon liquidation) shall be declared or paid or set aside for payment, nor shall any other distribution be made on the common stock or on any other shares of our capital stock ranking junior to or equally with the preferred shares as to dividends or upon liquidation. Unless full dividends on the preferred shares have been paid for all past dividend periods, no common stock or any of our other shares of capital stock ranking junior to or equally with the preferred shares as to dividends or upon liquidation shall be redeemed, purchased or otherwise acquired for any consideration (or any moneys be paid or made available for a sinking fund for the redemption of any such stock) by us or any of our subsidiaries except by conversion into or exchange for shares of our capital stock ranking junior to the preferred shares as to dividends and upon liquidation.

Our credit facility restricts us from paying distributions on account of any fiscal year, on an aggregate basis, in excess of 95% of our Funds From Operations (as defined in our credit facility) for such fiscal year, except in the case where such distributions are necessary to maintain our tax status as a REIT.

**Conversion Rights**

The preferred shares will not be convertible into shares of any other class or series of our capital stock.

**Liquidation Rights**

In the event of our voluntary or involuntary liquidation, dissolution or winding up, the holders of preferred shares will be entitled to receive out of our assets legally available for distribution to stockholders, before any distribution of assets is made to holders of shares of our common stock or of any other shares of our capital stock ranking as to such distribution junior to the preferred shares, liquidating distributions in the amount of \$250,000 per share (equivalent to \$25.00 per depositary share), plus all accrued and unpaid dividends (whether or not declared) for the then current dividend period and all prior dividend periods. If, upon our voluntary or involuntary liquidation, dissolution or winding up, the amounts

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payable with respect to the preferred shares and any other shares of our capital stock ranking as to any such distribution equally with the preferred shares are not paid in full, the holders of preferred shares and of such other capital stock will share ratably in any such distribution of our assets in proportion to the full respective preferential amounts to which they are entitled, and the holders of the preferred shares will not be entitled to any further participation in any distribution of assets by us.

For purposes of liquidation rights, our consolidation or merger with or into any other corporation or corporations or a sale of all or substantially all of our assets is not a liquidation, dissolution or winding up of us.

### **Redemption**

#### *Special Optional Redemption*

If at any time both (i) the depositary shares cease to be listed on the NYSE or the AMEX, or quoted on NASDAQ, and (ii) we cease to be subject to the reporting requirements of the Exchange Act, but the preferred shares are outstanding, then the preferred shares (and, therefore, the depositary shares) will be redeemable, in whole but not in part at our option, within 90 days of the date upon which the depositary shares cease to be listed and we cease to be subject to such reporting requirements, at a cash redemption price of \$250,000 per preferred share (equivalent to \$25.00 per depositary share), plus all accrued and unpaid dividends (whether or not declared) to the date of redemption.

#### *Optional Redemption*

Except with respect to our special option to redeem the depositary shares described above and except in limited circumstances relating to the maintenance of our ability to qualify as a REIT as described under *Restrictions on Transfers of Capital Stock* in the accompanying prospectus, the preferred shares will not be redeemable prior to January 15, 2011. On and after January 15, 2011, at any time and from time to time, the preferred shares (and, therefore, the depositary shares) will be redeemable in whole or in part at our option at a cash redemption price of \$250,000 per share (equivalent to \$25.00 per depositary share), plus all accrued and unpaid dividends (whether or not declared) to the date of redemption.

#### *General*

The preferred shares are not redeemable at any time at the option of the holders thereof. If fewer than all of the outstanding preferred shares are to be redeemed, the number of shares to be redeemed will be determined by our board of directors, and such shares shall be redeemed pro rata from the holders of record thereof in proportion to the number of such shares held by such holders (with adjustments to avoid redemption of fractional shares) or by lot in a manner determined by our board of directors.

Notwithstanding the foregoing, except in certain circumstances relating to the maintenance of our ability to qualify as a REIT as described under *Restrictions on Transfer of Capital Stock* in the accompanying prospectus, if any dividends on the preferred shares for any dividend period have not been paid, no preferred shares or other shares of our capital stock ranking equal with or junior to the preferred shares shall be redeemed unless all outstanding preferred shares are simultaneously redeemed, and we shall not otherwise purchase or acquire, directly or indirectly, any preferred shares or other shares of our capital stock ranking equal with or junior to the preferred shares; *provided, however*, that this shall not prevent the purchase or acquisition of the preferred shares pursuant to a purchase or exchange offer if such offer is made on the same terms to all holders of the preferred shares.

#### *Redemption Procedures*

Notice of redemption will be given by publication in a newspaper of general circulation in the City of New York, such publication to be made once a week for two successive weeks commencing not less than 30 or more than 60 days prior to the redemption date. A similar notice will be mailed by us, postage prepaid, not more than 60 days prior to the redemption date, addressed to the respective holders of record

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of preferred shares to be redeemed at their respective addresses as they appear on our stock transfer records. Each notice shall state:

the redemption date;

the number of preferred shares to be redeemed;

the redemption price;

the place or places where certificates for the preferred shares are to be surrendered for payment of the redemption price; and

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

If fewer than all the preferred shares held by any holder are to be redeemed, the notice mailed to such holder shall also specify the number of preferred shares to be redeemed from such holder. In order to facilitate the redemption of preferred shares, the board of directors may fix a record date for the determination of preferred shares to be redeemed, such record date to be not less than 30 or more than 60 days prior to the date fixed for such redemption.

Notice having been given as provided above, from and after the date specified therein as the date of redemption, unless we default in providing funds for the payment of the redemption price on such date, all dividends on the preferred shares called for redemption will cease to accrue. From and after the redemption date, unless we so default, all rights of the holders of the preferred shares as our stockholders, except the right to receive the redemption price (but without interest), will cease. Upon surrender in accordance with such notice of the certificates representing any such shares (properly endorsed or assigned for transfer, if our board of directors shall so require and the notice shall so state), the redemption price set forth above shall be paid out of the funds provided by us. If fewer than all the shares represented by any such certificate are redeemed, a new certificate shall be issued representing the unredeemed shares without cost to the holder thereof.

Subject to applicable law and the limitation on purchases when dividends on the preferred shares are in arrears, we may, at any time and from time to time, purchase preferred shares in the open market, by tender or by private agreement.

### **Voting Rights**

Except as indicated below, and except as expressly required by applicable law, the holders of preferred shares will not be entitled to vote.

If the equivalent of six quarterly dividends (whether or not consecutive) payable on the Series J Preferred Shares or any other series of our preferred stock ranking equally with the Series J Preferred Shares as to dividends or upon liquidation (any such series referred to as parity preferred shares) is in arrears, the holders of all outstanding preferred shares and shares of any series of parity preferred shares, voting as a single class without regard to series, will be entitled to elect two additional directors until all dividends in arrears have been paid or declared and funds therefor set apart for payment.

At any time when such right to elect directors separately shall have so vested, we may, and upon the written request of the holders of record of not less than 20% of the total number of preferred shares and shares of any series of parity preferred shares then outstanding shall, call a special meeting of stockholders for the election of such directors. Such special meeting shall be held, in the case of such a written request, within 90 days after the delivery of such request and, in either case, at the place and upon the notice provided by law and in our bylaws, *provided* that we shall not be required to call such a special meeting if such request is received less than 120 days before the date fixed for our next annual meeting of stockholders and the holders of all classes of outstanding preferred stock are offered the opportunity to elect such directors (or fill any vacancy) at such annual meeting of stockholders. Directors so elected shall serve until our next annual meeting of stockholders or until their respective successors are elected and qualify, or, if sooner, until all dividends in arrears have been paid or declared and funds therefor set apart for payment. If, prior to the end of the term of any director so elected, a vacancy in the office of such director shall occur, during the

continuance of a default in dividends on our preferred stock, by reason of  
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death, resignation or disability, such vacancy shall be filled for the unexpired term of such former director by the appointment of a new director by the remaining director or directors so elected.

The affirmative vote or consent of the holders of at least 66<sup>2</sup>/<sub>3</sub>% of the outstanding preferred shares and of any series of parity preferred shares, voting as a single class, will be required to authorize another class of capital stock senior to the preferred shares with respect to the payment of dividends or the distribution of assets on liquidation. The affirmative vote or consent of the holders of at least 66<sup>2</sup>/<sub>3</sub>% of the outstanding preferred shares will be required to amend or repeal any provision of, or add any provision to, the articles of amendment and restatement, including the articles supplementary that will define the terms of the preferred shares, if such action would materially and adversely alter or change the rights, preferences or privileges of the outstanding preferred shares.

No consent or approval of the holders of preferred shares will be required for the issuance from our authorized but unissued preferred stock of other shares of any series of preferred stock ranking equally with or junior to the preferred shares as to payment of dividends and distribution of assets.

**Information Rights**

During any period that both (i) the depositary shares are not listed on the NYSE or the AMEX, or quoted on NASDAQ, and (ii) we are not subject to the reporting requirements of Exchange Act, but the preferred shares are outstanding, we will transmit by mail to all holders of depositary shares, as their names and addresses appear in our record books and without cost to such holders, copies of the annual reports and quarterly reports that we would have been required to file with the SEC pursuant to Rules 13 or 15(d) of the Exchange Act if we were subject to such rules (other than any exhibits that would have been required) and promptly upon written request supply copies of such reports to any prospective holder of depositary shares. We will mail the reports to the holders of depositary shares within 15 days after the respective dates by which we would have been required to file the reports with the SEC if we were subject to Section 13 or 15(d) of the Exchange Act.

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**CERTAIN U.S. FEDERAL INCOME TAX CONSIDERATIONS**

**Considerations Relating to REITs**

A summary of the material U.S. federal income tax matters of general application pertaining to REITs under the U.S. Internal Revenue Code of 1986, as amended, referred to as the Code, is provided in the accompanying prospectus under the heading Certain U.S. Federal Income Tax Considerations. To reflect changes in the REIT tax rules that were enacted in October 2004 and December 2005, the following paragraph hereby replaces the final paragraph of the discussion contained in that section:

In the event that we fail to meet certain gross income tests applicable to REITs, we may retain our qualification as a REIT if we pay a penalty tax equal to the amount by which 95% (or 90% for taxable years prior to 2005) or 75% of our gross income exceeds our gross income qualifying under the 95% or 75% gross income test, respectively (whichever amount is greater), multiplied by a fraction intended to reflect our profitability, so long as such failure was considered to be due to reasonable cause and not willful neglect and certain other conditions are satisfied. For taxable years after 2004, if we fail to meet the 5% or 10% asset tests applicable to REITs at the end of any quarter and did not cure such failure within 30 days thereafter, we may nonetheless retain our qualification as a REIT provided that the failure was due to assets the value of which did not exceed a specific statutory *de minimis* amount and certain other conditions are satisfied. For violations of any of the REIT asset tests not described in the preceding sentences, we may nonetheless retain our qualification as a REIT if we pay a tax equal to the greater of \$50,000 or 35% of the net income generated by the non-qualifying assets, so long as any such failure was considered to be due to reasonable cause and not willful neglect and certain other conditions are satisfied. In addition, if we fail to satisfy certain requirements of the REIT provisions (other than the failures described above in the preceding sentences), we may nonetheless retain our qualification as a REIT if we pay a penalty of \$50,000 for each such failure, so long as each such failure was considered to be due to reasonable cause and not willful neglect. Any such taxes or penalty amounts would adversely affect our ability to pay dividends and distributions to our stockholders and interest and principal to the holders of our debt securities.

**Considerations Relating to Our Depositary Shares**

The following is a general discussion of certain material U.S. federal income tax consequences of the ownership and disposition of depositary shares by a beneficial owner that is a U.S. stockholder (as defined below). This discussion is based on the Code, Treasury Regulations and administrative and judicial interpretations thereof, all as in effect as of the date of this prospectus supplement, and all of which are subject to change, possibly with retroactive effect. This discussion does not purport to deal with all aspects of U.S. federal income taxation that may be relevant to investors subject to special treatment under the U.S. federal income tax laws, such as dealers in securities, insurance companies, tax-exempt entities (except as described herein), expatriates, financial institutions, non-U.S. stockholders (except as described herein) and partnerships or other pass-through entities. This section applies only to purchasers of depositary shares who purchase such shares pursuant to this offering and hold such U.S. shares as capital assets within the meaning of Section 1221 of the Code.

Prospective holders should consult their tax advisors with respect to the federal income tax consequences of holding and disposing of the depositary shares in light of their particular situations and any consequences to them arising under other federal tax laws and the laws of any state, local or non-U.S. jurisdiction.

As used herein, the term U.S. stockholder means a holder of depositary shares that for U.S. federal income tax purposes is:

an individual citizen or resident of the United States,

a corporation (or other entity treated as a corporation for U.S. federal income tax purposes) created or organized in or under the laws of the United States or any political subdivision thereof,

an estate the income of which is subject to U.S. federal income taxation regardless of its source, or

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a trust if

a U.S. court is able to exercise primary supervision over the administration of that trust and one or more U.S. persons have the authority to control all substantial decisions of the trust, or

it has a valid election in place to be treated as a U.S. person.

As used herein, the term non-U.S. stockholder means a holder of our depositary shares that for U.S. federal income tax purposes is either a nonresident individual alien or a corporation, estate or trust that is not a U.S. stockholder.

The U.S. federal income tax treatment of a partner in a partnership holding depositary shares will depend on the activities of the partnership and the status of the partner. A partner in such partnership should consult its own tax advisor regarding the U.S. federal income tax treatment to the partner of such partnership holding the depositary shares.

Owners of depositary shares will be treated for U.S. federal income tax purposes as if they were direct owners of the preferred shares represented by those depositary shares and, accordingly, the following discussion of tax consequences pertaining to the depositary shares pertains equally to the preferred shares. Exchanges of preferred shares for depositary shares and depositary shares for preferred shares generally will not be subject to U.S. federal income tax.

Except as set forth above, this prospectus supplement does not address our taxation or the impact on us of our election to be taxed as a REIT. Prospective investors are urged to consult the information above under the heading

Considerations Relating to REITs and our accompanying prospectus under the heading Certain U.S. Federal Income Tax Considerations for information relating to our taxation as a REIT. The discussion set forth below assumes that we qualify and remain qualified as a REIT under the Code.

***Taxable U.S. Stockholders***

*Distributions.* Except as discussed below, distributions with respect to our depositary shares made out of current or accumulated earnings and profits (and not designated as capital gain dividends) will be includible by a U.S. stockholder as ordinary income for U.S. federal income tax purposes. None of these distributions will be eligible for the dividends received deduction for a corporate stockholder. For purposes of determining whether distributions on our depositary shares are made out of current or accumulated earnings or profits, our earnings and profits will be allocated first to distributions on our preferred stock, including depositary shares, based on distribution priority, and then to distributions on our common stock. Distributions in excess of current and accumulated earnings and profits will not be taxable to a U.S. stockholder to the extent that they do not exceed the adjusted tax basis of the holder's depositary shares, but rather will be treated as a return of capital and reduce the adjusted basis of such depositary shares. To the extent that such distributions exceed the adjusted basis of a U.S. stockholder's depositary shares, they will be included in income as long-term capital gain if the stockholder has held its shares for more than one year and otherwise as short-term capital gain. Any dividend declared by us in October, November or December of any year payable to a stockholder of record on a specified date in any such month shall be treated as both paid by us and received by the stockholder on December 31 of such year, *provided* that the dividend is actually paid by us during January of the following calendar year.

Dividends paid to a noncorporate U.S. stockholder generally will not qualify for the 15% tax rate applicable to qualified dividend income. The Jobs and Growth Tax Relief Reconciliation Act of 2003 reduced the maximum tax rate for qualified dividend income to 15% for tax years through 2008. Qualified dividend income generally includes dividends paid by domestic C corporations and certain qualified foreign corporations to most noncorporate U.S. stockholders. Because we are not generally subject to federal income tax on the portion of our REIT taxable income that we distribute to our stockholders, our dividends generally will not be eligible for the 15% tax rate on qualified dividend income. As a result, our ordinary REIT dividends will continue to be taxed at the higher tax rate applicable to ordinary income. Currently, the highest marginal individual income tax rate on ordinary income is 35%. However, the 15% tax rate for qualified dividend income will apply to our ordinary REIT dividends, if any, that are (i) attributable to dividends received by us from non-REIT corporations, such as our taxable REIT subsidiaries, or (ii) attributable to income upon which we have paid corporate income tax (*e.g.*, to the





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extent that we distribute less than 100% of our taxable income). In general, to qualify for the reduced tax rate on qualified dividend income, a U.S. stockholder must hold our stock (with risk of loss) for more than 60 days during the 121-day period beginning on the date that is 60 days before the date on which our stock becomes ex-dividend and must satisfy certain other conditions.

Distributions that are designated as capital gain dividends will generally be taxed as long-term capital gains (to the extent they do not exceed our actual net capital gain for the taxable year) without regard to the period for which the holder has held our preferred stock. However, corporate holders may be required to treat up to 20% of certain capital gain dividends as ordinary income.

We may elect to retain and pay income tax on our net capital gain received during the taxable year. If we so elect for a taxable year, our U.S. stockholders would include in income as long-term capital gains their proportionate share of such portion of our undistributed net capital gains for the taxable year as we may designate. A U.S. stockholder would be deemed to have paid its share of the tax paid by us on such undistributed net capital gain, which would be credited or refunded to the stockholder. The U.S. stockholder's basis in the depository shares would be increased by the amount of undistributed net capital gain included in such U.S. stockholder's income, less the capital gains tax paid by us.

A taxpayer generally must hold a capital asset for more than one year for gain or loss derived from its sale or exchange to be treated as long-term capital gain or loss. The maximum tax rate on long-term capital gain applicable to noncorporate taxpayers is 15% for sales and exchanges of assets held for more than one year occurring through December 31, 2008. The maximum tax rate on long-term capital gain from the sale or exchange of section 1250 property, or depreciable real property, is 25% to the extent that such gain would have been treated as ordinary income if the property were section 1245 property (*i.e.*, to the extent of depreciation recapture). With respect to distributions that we designate as capital gain dividends and any retained capital gain that we are deemed to distribute, we generally may designate whether such a distribution is taxable to our noncorporate U.S. stockholders at a 15% or 25% tax rate. Thus, the tax rate differential between capital gain and ordinary income for noncorporate taxpayers may be significant. In addition, the characterization of income as capital gain or ordinary income may affect the deductibility of capital losses. A noncorporate taxpayer m