FIRST INDUSTRIAL REALTY TRUST INC
Form 424B5
May 02, 2018

Filed Pursuant to Rule 424(b)(5)
Registration No. 333-216685

CALCULATION OF REGISTRATION FEE

Title of Each Class of Securities to Be Registered	Proposed Maximum Aggregate Offering Price	Amount of Registration Fee
Common Stock (par value $.01 per share) of First Industrial Realty Trust, Inc.	$140,064,000[(1)]	$17,437.97[(2)]

(1) The proposed maximum aggregate offering price is being estimated solely for the purpose of calculating the registration fee pursuant to Rule 457(o) under the Securities Act of 1933, as amended.
(2) Calculated in accordance with Rules 457(c) and 457(r) under the Securities Act of 1933, as amended. The offering price and registration fee are based on the average of the high and low price of our common stock on April 25, 2018, as reported on the New York Stock Exchange. This Calculation of Registration Fee table shall be deemed to update the Calculation of Registration Fee table in the Registrant s Registration Statement on Form S-3 (File No. 333-216685) in accordance with Rules 456(b) and 457(r) under the Securities Act of 1933, as amended.

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PROSPECTUS SUPPLEMENT

(To the prospectus dated March 14, 2017)

4,800,000 Shares

Common Stock

We are offering 4,800,000 shares of our common stock, par value $0.01 per share.

Our common stock is listed on the New York Stock Exchange under the symbol FR. On April 30, 2018, the last reported sale price of our common stock was $31.11 per share. Shares of our common stock are subject to ownership and transfer limitations, including an ownership limit of 9.8% of our capital stock, that must be applied to maintain our status as a real estate investment trust, or REIT.

The underwriter has agreed to purchase the shares of our common stock from us at a price of $30.33 per share, which will result in approximately $145.4 million of net proceeds to us. The underwriter may offer our common stock in transactions on the New York Stock Exchange, in the over-the-counter market or through negotiated transactions at market prices or at negotiated prices. See Underwriting.

Delivery of the shares of common stock will be made on or about May 3, 2018.

Investing in our common stock involves risks that are described in the Risk Factors section beginning on page S-4 of this prospectus supplement, and beginning on page 4 of our Annual Report on Form 10-K for the year ended December 31, 2017.

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

Citigroup

The date of this prospectus supplement is April 30, 2018

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ABOUT THIS PROSPECTUS SUPPLEMENT

This document is in two parts. The first is this prospectus supplement, which describes the specific terms of this offering. The second part, the accompanying prospectus, gives more general information, some of which may not apply to this offering. This prospectus supplement also adds to, updates and changes information contained in the accompanying prospectus. If the description of the offering varies between this prospectus supplement and the accompanying prospectus, you should rely on the information in this prospectus supplement.

This prospectus supplement and the accompanying prospectus are part of a registration statement that First Industrial Realty Trust, Inc. (the Company or First Industrial) and First Industrial, L.P. (the Operating Partnership) filed with the Securities and Exchange Commission (the SEC), utilizing the shelf registration process, relating to the common stock, preferred stock, depositary shares and debt securities described in the accompanying prospectus. Under this shelf registration process, the Company and the Operating Partnership may sell any combination of the securities described in the accompanying prospectus from time to time and in one or more offerings up to a total amount of $1,500,000,000.

You should read both this prospectus supplement and the accompanying prospectus together with the additional information described under the headings Where You Can Find More Information and Documents Incorporated by Reference in the accompanying prospectus.

As used in this prospectus supplement, we, us and our refer to the Company and its subsidiaries, including the Operating Partnership, unless the context otherwise requires.

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PROSPECTUS SUPPLEMENT SUMMARY

The information below is a summary of some of the more detailed information included elsewhere in, or incorporated by reference in, this prospectus supplement and the accompanying prospectus. You should read carefully the following summary in conjunction with the more detailed information contained in this prospectus supplement, the accompanying prospectus and the information incorporated by reference. This summary is not complete and does not contain all of the information you should consider before purchasing shares of the Company s common stock. You should carefully read the Risk Factors section on page S-4 of this prospectus supplement, and beginning on page 7 of the Company s and the Operating Partnership s combined Annual Report on Form 10-K for the year ended December 31, 2017, to determine whether an investment in the Company s common stock is appropriate for you.

First Industrial Realty Trust, Inc.

The Company is a real estate investment trust, or REIT, as defined in the Internal Revenue Code of 1986, as amended (the Code). We are a self-administered and fully integrated real estate company which owns, manages, acquires, sells, develops, and redevelops industrial real estate. As of March 31, 2018, our in-service portfolio consisted of 164 bulk warehouse properties, 95 regional warehouse properties, 179 light industrial properties and 42 R&D/flex properties, containing an aggregate of approximately 59.2 million square feet of gross leasable area (GLA) located in 21 states. Our in-service portfolio includes all properties that have reached stabilized occupancy (generally defined as properties that are 90% leased), developed and redeveloped properties one year from the date construction is completed and acquired properties that are at least 75% occupied at acquisition, unless we anticipate tenant move-outs within two years of ownership would drop occupancy below 75%. Acquired properties with tenants that we anticipate will move out within the first two years of ownership are placed in service upon the earlier of reaching 90% occupancy or twelve months after move out.

We began operations on July 1, 1994. The Company s operations are conducted primarily through the Operating Partnership, of which the Company is the sole general partner, with an approximate 97.1% ownership interest at March 31, 2018. The Operating Partnership also conducts operations through eight other limited partnerships, numerous limited liability companies and certain taxable REIT subsidiaries, the operating data of which, together with that of the Operating Partnership, is consolidated with that of the Company. At March 31, 2018, approximately 2.9% of the outstanding limited partnership units in the Operating Partnership were held by outside investors, including a member of the management of the Company. Each limited partnership unit, other than those held by the Company, may be exchanged for cash or, at the Company s option, one share of First Industrial common stock, subject to adjustments. Upon each exchange, the number of limited partnership units held by the Company, and its ownership percentage of the Operating Partnership, increase.

We utilize an operating approach which 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.

The Company, a Maryland corporation organized on August 10, 1993, completed its initial public offering in June 1994. The Operating Partnership is a Delaware limited partnership organized on November 23, 1993. Our principal executive offices are located at 311 S. Wacker Drive, Suite 3900, Chicago, Illinois 60606, telephone number (312) 344-4300. Our website is located at *http://www.firstindustrial.com*. The information on or linked to our website is not a part of, and is not incorporated by reference into, this prospectus supplement.

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The Offering

Issuer	First Industrial Realty Trust, Inc.
Common Stock Offered By Us	4,800,000 shares
Common Stock Outstanding After This Offering(1)	125,360,079 shares
Use of Proceeds	We intend to use the net proceeds estimated at approximately $145.4 million from this offering for general corporate purposes, which may include acquisition and/or development of properties. See Use of Proceeds.
NYSE Listing Symbol	FR
Risk Factors	Investing in the Company s common stock involves risks. See the Risk Factors section beginning on page S-4 of this prospectus supplement, and beginning on page 7 of the Company s and the Operating Partnership s combined Annual Report on Form 10-K for the year ended December 31, 2017, before buying shares of the Company s common stock.

(1) This number is based on 120,560,079 shares of our common stock outstanding at April 30, 2018 and does not include:

An aggregate of 3,564,107 shares of common stock that may be issued in exchange for limited partnership units of the Operating Partnership outstanding on such date (limited partnership units of the Operating Partnership may be exchanged for cash or, at our option, one share of the Company s common stock, subject to adjustment); or

An aggregate of 1,575,949 additional shares of our common stock available for future issuance under our 2014 Stock Incentive Plan, and 597,389 shares issuable in respect of unvested Long-Term Incentive Program (LTIP) awards outstanding as of such date; or

Up to 8,000,000 additional shares of our common stock that may be issued from time to time through Wells Fargo Securities, LLC, Merrill Lynch, Pierce, Fenner & Smith Incorporated, Robert W. Baird & Co. Incorporated, BTIG, LLC, Fifth Third Securities, Inc., Jefferies LLC, Samuel A. Ramirez & Company, Inc., and UBS Securities LLC, as our sales agents, for sale to the public in accordance with the terms of distribution agreements we have entered into with them in connection with our at-the-market equity offering program, subject to a maximum aggregate offering price of approximately $200 million.

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RISK FACTORS

Investing in the Company s common stock involves risks. You should carefully consider the following risk factors and the information under the heading Risk Factors beginning on page 7 of the Company s and the Operating Partnership s combined Annual Report on Form 10-K for the fiscal year ended December 31, 2017, which information has been incorporated by reference into this prospectus supplement, as well as other information included in or incorporated into this prospectus supplement and the attached prospectus before deciding to invest in shares of the Company s common stock.

This offering is expected to be dilutive

Giving effect to the issuance of common stock in this offering, the receipt of the expected net proceeds and the use of those proceeds, we expect that this offering will have a dilutive effect on our earnings per share and funds from operations per share for the year ending December 31, 2018. The actual amount of dilution cannot be determined at this time and will be based on numerous factors.

Future sales or issuances of our common stock may cause the market price of our common stock to decline

The sale of substantial amounts of our common stock, whether directly by us or in the secondary market, the perception that such sales could occur or the availability of future issuances of shares of our common stock, limited partnership units of the Operating Partnership or other securities convertible into or exchangeable or exercisable for our common stock, could materially and adversely affect the market price of our common stock and our ability to raise capital through future offerings of equity or equity-related securities. In addition, we may issue capital stock that is senior to our common stock in the future for a number of reasons, including to finance our operations and business strategy, to adjust our ratio of debt to equity or for other reasons.

The market price of our common stock may fluctuate significantly

The market price of our common stock may fluctuate significantly in response to many factors, including:

- actual or anticipated variations in our operating results, funds from operations, cash flows or liquidity,
- changes in our earnings estimates or those of analysts,
- changes in asset valuations and related impairment charges,
- changes in our dividend policy,
- publication of research reports about us or the real estate industry generally,

the ability of our tenants to pay rent to us and meet their obligations to us under the current lease terms and our ability to re-lease space as leases expire,

increases in market interest rates that lead purchasers of our common stock to demand a higher dividend yield,

changes in market valuations of similar companies,

adverse market reaction to the amount of our debt outstanding at any time, the amount of our debt maturing in the near- and medium-term and our ability to refinance our debt, or our plans to incur additional debt in the future,

our ability to comply with applicable financial covenants under our unsecured line of credit and the indentures under which our senior unsecured indebtedness is, or may be, issued,

additions or departures of key management personnel,

actions by institutional stockholders,

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- speculation in the press or investment community,

- the realization of any of the other risk factors included or incorporated by reference in this prospectus supplement and the accompanying prospectus, and

- general market and economic conditions.

Many of the factors listed above are beyond our control. Those factors may cause the market price of our common stock to decline significantly, regardless of our financial condition, results of operations and prospects. It is impossible to provide any assurance that the market price of our common stock will not fall in the future, and it may be difficult for holders to resell shares of our common stock at prices they find attractive, or at all.

Certain provisions of our charter and bylaws could hinder, delay or prevent a change in control of our company.

Certain provisions of our charter and our bylaws could have the effect of discouraging, delaying or preventing transactions that involve an actual or threatened change in control of our company. These provisions include the following:

- *Removal of Directors.* Under our charter, subject to the rights of one or more classes or series of preferred stock to elect one or more directors, a director may be removed only for cause and only by the affirmative vote of at least a majority of all votes entitled to be cast by our stockholders generally in the election of directors.

- *Preferred Stock.* Under our charter, our board of directors has the power to issue preferred stock from time to time in one or more series and to establish the terms, preferences and rights of any such series of preferred stock, all without approval of our stockholders.

- *Advance Notice Bylaws.* Our bylaws require advance notice procedures with respect to nominations of directors and shareholder proposals.

- *Ownership Limit.* For the purpose, among others, of preserving our status as a REIT under the Internal Revenue Code of 1986, as amended, our charter generally prohibits any single stockholder, or any group of affiliated stockholders, from beneficially owning more than 9.8% of our outstanding common and preferred stock unless our board of directors waives or modifies this ownership limit.

- *Stockholder Action by Written Consent.* Our bylaws contain a provision that permits our stockholders to take action by written consent in lieu of an annual or special meeting of stockholders only if the unanimous consent of the stockholders is obtained.

Ability of Stockholders to Call Special Meeting. Under our bylaws, we are only required to call a special meeting at the request of the stockholders if the request is made by at least a majority of all votes entitled to be cast by our stockholders generally in the election of directors.

Maryland Control Share Acquisition Act. Our bylaws contain a provision exempting acquisitions of our shares from the Maryland Control Share Acquisition Act. However, our board of directors may amend our bylaws in the future to repeal or modify this exemption, in which case any control shares of our company acquired in a control share acquisition will be subject to the Maryland Control Share Acquisition Act. See Certain Provisions of Maryland Law and the Company s Charter and Bylaws Control Share Acquisitions for more information about the Maryland Control Share Acquisition Act.

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SPECIAL NOTE ABOUT FORWARD-LOOKING STATEMENTS

This prospectus supplement may contain 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 (the Exchange Act). We intend for 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. Forward-looking statements are based on certain assumptions and describe our future plans, strategies and expectations, and are generally identifiable by use of the words believe, expect, plan, intend, anticipate, estimate, project, seek, target, potential, focus, may, will, Although we believe the expectations reflected in forward-looking statements are based upon reasonable assumptions, we can give no assurance that our expectations will be attained or that results will not materially differ. Factors which could have a materially adverse effect on our operations and future prospects include, but are not limited to:

changes in national, international, regional and local economic conditions generally and real estate markets specifically;

changes in legislation/regulation (including changes to laws governing the taxation of real estate investment trusts) and actions of regulatory authorities;

our ability to qualify and maintain our status as a real estate investment trust;

the availability and attractiveness of financing (including both public and private capital) and changes in interest rates;

the availability and attractiveness of terms of additional debt repurchases;

changes in our credit agency ratings;

our ability to comply with applicable financial covenants;

our competitive environment;

changes in supply, demand and valuation of industrial properties and land in our current and potential market areas;

difficulties in identifying and consummating acquisitions and dispositions;

- our ability to manage the integration of properties we acquire;
- potential liability relating to environmental matters;
- defaults on or non-renewal of leases by our tenants;
- decreased rental rates or increased vacancy rates;
- higher-than-expected real estate construction costs and delays in development or lease-up schedules;
- changes in general accounting principles, policies and guidelines applicable to real estate investment trusts; and
- other risks and uncertainties detailed in the section entitled Risk Factors beginning on page 7 of the Company s and the Operating Partnership s combined Annual Report on Form 10-K for the year ended December 31, 2017 and page S-4 of this prospectus supplement.

We caution you not to place undue reliance on forward-looking statements, which reflect our analysis only and speak only as of the date of this prospectus supplement or the dates indicated in the statements that are incorporated by reference herein. We assume no obligation to update or supplement forward-looking statements. Further information concerning us and our business, including additional factors that could materially affect our financial results, is included in the prospectus of which this prospectus supplement is a part and in the documents we incorporate by reference, including the combined Annual Report on Form 10-K of the Company and the Operating Partnership for the year ended December 31, 2017.

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USE OF PROCEEDS

We expect the Company to receive approximately $145.4 million in net proceeds from the sale of the shares of the Company s common stock in this offering after payment of our expenses related to this offering. The Company intends to contribute the net proceeds from this offering to the Operating Partnership in exchange for additional ownership interests in the Operating Partnership. We expect the Operating Partnership will subsequently use those net proceeds for general corporate purposes, which may include acquisition and/or development of properties.

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CERTAIN U.S. FEDERAL INCOME TAX CONSIDERATIONS

The following summary of certain U.S. federal income tax considerations supersedes in its entirety the discussion set forth under the heading Certain U.S. Federal Income Tax Considerations in the accompanying prospectus.

The following is a general summary of certain material U.S. federal income tax consequences relating to the purchase, ownership, and disposition of common stock of the Company, as well as considerations regarding our qualification and taxation as a REIT.

This summary is for general information only and is not tax advice. This discussion is based on the Code, Treasury regulations and administrative and judicial interpretations thereof, all as in effect as of the date hereof, 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 holders 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), persons who receive their stock as compensation for services, expatriates, persons subject to the alternative minimum tax, financial institutions and partnerships or other pass-through entities. This section applies only to holders of securities who hold such securities as capital assets within the meaning of Section 1221 of the Code. This summary does not discuss any state, local or foreign tax consequences associated with the ownership, sale or other disposition of the securities or our election to be taxed as a REIT.

You are urged to consult your tax advisors regarding the specific tax consequences to you of:

- **the acquisition, ownership and/or sale or other disposition of the common stock offered under this prospectus supplement, including the federal, state, local, foreign and other tax consequences, including the impact of the recently enacted U.S. tax legislation;**

- **our election to be taxed as a REIT for U.S. federal income tax purposes; and**

- **potential changes in the applicable tax laws.**

Taxation of the Company as a REIT

For purposes of this discussion, references to us, our, or we, and any similar terms, refer to First Industrial Realty Trust, Inc. This section is a summary of the material U.S. federal income tax matters of general application pertaining to REITs under the Code. This discussion is based upon current law (including the provisions recently passed by Congress as part of the 2017 budget reconciliation act commonly referred to as the Tax Cuts and Jobs Act (hereinafter, the TCJA)), which is subject to change, possibly on a retroactive basis. The provisions of the Code pertaining to REITs are highly technical and complex and sometimes involve mixed questions of fact and law.

In the opinion of Barack Ferrazzano Kirschbaum & Nagelberg LLP:

- commencing with our taxable year ended December 31, 1994, we have been organized and operated in conformity with the requirements for qualification and taxation as a REIT under the Code; and our current and proposed method of operation (as represented by us to Barack Ferrazzano Kirschbaum & Nagelberg LLP in a written certificate) will enable us to continue to meet the requirements for qualification and taxation as a REIT under the Code.

Barack Ferrazzano Kirschbaum & Nagelberg LLP s opinion is based on various assumptions and is conditioned upon certain representations made by us as to factual matters with respect to us and certain partnerships, limited liability companies and corporations through which we hold substantially all of our assets. Moreover, our qualification and taxation as a REIT depends upon our ability to meet, as a matter of fact, through actual annual operating results, distribution levels, diversity of stock ownership and various other qualification tests imposed under the Code, as discussed below, the results of which will not be reviewed by Barack Ferrazzano Kirschbaum & Nagelberg LLP. No assurance can be given that the actual results of our operations for any particular taxable year will satisfy those requirements.

So long as we qualify for taxation as a REIT, we generally will not be subject to U.S. federal corporate income tax on our net ordinary taxable income that we distribute currently to our stockholders. This treatment substantially eliminates double taxation (that is, taxation at both the corporate and stockholder levels) that generally results from an investment in a regular corporation. However, we will be subject to U.S. federal income tax as follows:

1. We will be taxed at regular U.S. federal corporate income tax rates on any undistributed REIT taxable income. REIT taxable income is the taxable income of the REIT subject to specified adjustments, including a deduction for dividends paid;

2. Under some circumstances for taxable years prior to January 1, 2018, we may be subject to the alternative minimum tax on our items of tax preference;

3. If we have net income from the sale or other disposition of foreclosure property that is held primarily for sale to customers in the ordinary course of business or other nonqualifying income from foreclosure property, we will be subject to tax at the highest corporate rate on this income (21% for taxable years beginning after December 31, 2017);

4. Our net income from prohibited transactions will be subject to a 100% tax. In general, prohibited transactions are sales or other dispositions of property held primarily for sale to customers in the ordinary course of business other than foreclosure property;

5. If we fail to satisfy either the 75% gross income test or the 95% gross income test discussed below, but nonetheless maintain our qualification as a REIT because other requirements are met, we will be subject to a tax equal to the gross income attributable to the greater of either (1) the amount by which we fail the 75% gross income test for the taxable year or (2) the amount by which we fail the 95% gross income test for the taxable year, multiplied by a fraction intended to reflect our profitability;

6. If we fail to satisfy any of the REIT asset tests, as described below, other than a failure by a de minimis amount of the 5% or 10% asset tests, as described below, but our failure is due to reasonable cause and not due to willful neglect and we nonetheless maintain our REIT qualification because of specified cure provisions, we will be required to pay a tax equal to the greater of $50,000 or the product of (x) the net income generated by the nonqualifying assets during the period in which we failed to satisfy the asset tests and (y) the highest U.S. federal income tax rate then applicable to U.S. corporations (21% for taxable years beginning after December 31, 2017);

7. If we fail to satisfy any provision of the Code that would result in our failure to qualify as a REIT (other than a gross income or asset test requirement) and that violation is due to reasonable cause and not due to willful neglect, we may retain our REIT qualification, but we will be required to pay a penalty of $50,000 for each such failure;

8. We may be required to pay monetary penalties to the IRS in certain circumstances, including if we fail to meet record-keeping requirements intended to monitor our compliance with rules relating to the composition of our stockholders, as described below in Requirements for qualification as a REIT ;

9. We will be subject to a 4% excise tax on the excess of the required distribution over the sum of amounts actually distributed and amounts retained for which U.S. federal income tax was paid, if we fail to distribute

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during each calendar year at least the sum of 85% of our REIT ordinary income for the year, 95% of our REIT capital gain net income for the year, and any undistributed taxable income from prior taxable years;

10. We will be subject to a 100% penalty tax on some payments we receive (or on certain expenses deducted by a taxable REIT subsidiary) if arrangements among us, our tenants, and/or our taxable REIT subsidiaries are not comparable to similar arrangements among unrelated parties;

11. If we should acquire any asset from a C corporation in a carry-over basis transaction and we subsequently recognize gain on the disposition of such asset during the five-year period beginning on the date on which we acquired the asset, then, to the extent of any built-in gain, such gain may be subject to tax at the highest regular corporate tax rate. Built-in gain means the excess of (1) the fair market value of the asset as of the beginning of the applicable recognition period over (2) the adjusted basis in such asset as of the beginning of such recognition period;

12. We may elect to retain and pay income tax on our net long-term capital gain. In that case, a stockholder would: (1) include its proportionate share of our undistributed long-term capital gain (to the extent we make a timely designation of such gain to the stockholder) in its income, (2) be deemed to have paid the tax that we paid on such gain and (3) be allowed a credit for its proportionate share of the tax deemed to have been paid with an adjustment made to increase the stockholders basis in our stock; and

13. We may have subsidiaries or own interests in other lower-tier entities that are C corporations that will jointly elect, with us, to be treated as a taxable REIT subsidiary, the earnings of which would be subject to U.S. federal corporate income tax.

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

Requirements for Qualification as a REIT

To qualify as a REIT, we must have met and continue to meet the requirements, discussed below, relating to our organization, the sources of our gross income, the nature of our assets, and the level of distributions to our stockholders.

The Code requires that a REIT be a corporation, trust, or association:

1. which is managed by one or more trustees or directors;

2. the beneficial ownership of which is evidenced by transferable shares or by transferable certificates of beneficial interest;

3. which would be taxable as a domestic corporation but for compliance with the REIT requirements;

4. which is neither a financial institution nor an insurance company under the Code;

5. the beneficial ownership of which is held by 100 or more persons;

6. at any time during the last half of each taxable year not more than 50% in value of the outstanding stock or shares of beneficial interest of which is owned, directly or indirectly through the application of attribution rules, by or for five or fewer individuals (as defined in the Code to include tax-exempt entities other than, in general, qualified domestic pension funds);

7. which meets other tests, described below, regarding the nature of its income and assets and distribution requirements; and

8. that makes an election to be a REIT for the current taxable year or has made such an election for a previous taxable year that has not been terminated or revoked.

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The Code provides that the first four conditions above must be met during the entire taxable year and that the fifth condition must be met during at least 335 days of a taxable year of 12 months, or during a proportionate part of a taxable year of less than 12 months. A corporation may not elect to become a REIT unless its taxable year is the calendar year.

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

We have issued sufficient shares to enough holders to allow us to satisfy the requirement set forth in the fifth condition above (the 100 holder requirement). For purposes of determining ongoing compliance with the 100 holder requirement, Treasury regulations require us to issue letters to some stockholders demanding information regarding the amount of shares each such stockholder actually or constructively owns. Although any failure by us to comply with the stockholder demand letters requirement should not jeopardize our REIT status, such failure would subject us to financial penalties. A list of those stockholders failing or refusing to comply with this demand must be maintained as part of our records. A stockholder who fails or refuses to comply with the demand must submit a statement with its tax return disclosing the actual ownership of the shares and other information.

As set forth in the sixth condition above, to qualify as a REIT, we must also satisfy the requirement set forth in Section 856(a)(6) of the Code that we not be closely held. We will not be closely held so long as at all times during the last half of any of our taxable years (other than the first taxable year for which the REIT election is made) not more than 50% in value of our outstanding shares of beneficial interest is owned, directly or constructively under the applicable attribution rules of the Code, by five or fewer individuals (as defined in the Code to include tax-exempt entities, other than, in general, qualified domestic pension funds) (the 5/50 Rule).

Our charter contains restrictions on the ownership and transfer of our shares intended to ensure that we will be able to satisfy the 5/50 Rule. However, if we fail to satisfy the 5/50 Rule, our status as a REIT will terminate, and we will not be able to prevent such termination. However, for taxable years beginning after August 5, 1997, if we comply with the procedures prescribed in Treasury regulations for issuing stockholder demand letters and do not know, or with the exercise of reasonable diligence would not have known, that the 5/50 Rule was violated, the requirement that we not be closely held will be deemed to be satisfied for the year. See Failure to qualify as a REIT.

Ownership of partnership interests

A REIT that is a partner in a partnership will be deemed to own its proportionate share of the assets of the partnership and will be deemed to earn its proportionate share of the partnership s income. The assets and gross income of the partnership retain the same character in the hands of the REIT for purposes of the gross income and asset tests applicable to REITs as described below. Thus, our proportionate share of the assets and items of income of the Operating Partnership, including the Operating Partnership s share of the assets and liabilities and items of income with respect to any partnership in which it holds an interest, will be treated as our assets and liabilities and our items of income for purposes of applying the requirements described in this prospectus supplement.

Qualified REIT subsidiary

If a REIT owns a corporate subsidiary that is a qualified REIT subsidiary, within the meaning of section 856(i) of the Code, that subsidiary is disregarded for U.S. federal income tax purposes, and all assets, liabilities, and items of income, deduction, and credit of the subsidiary are treated as assets, liabilities and such items of the REIT itself. A qualified REIT subsidiary is a corporation all of the capital stock of which is owned by the REIT. However, if an existing corporation is acquired by a REIT and becomes a qualified REIT subsidiary of such REIT, all of its pre-acquisition earnings and profits must be distributed before the end of the REIT s taxable year. A qualified REIT subsidiary of ours will not be subject to U.S. federal corporate income taxation, although it may be subject to state and local taxation in some states.

Taxable REIT subsidiary

A taxable REIT subsidiary is any corporation (other than another REIT and corporations involved in certain lodging, health care and franchising activities) owned by a REIT with respect to which the REIT and the corporation jointly elect that the corporation is treated as a taxable REIT subsidiary. A taxable REIT subsidiary will pay income tax at regular U.S. federal corporate income tax rates on any income that it earns. Other than certain activities relating to lodging and health care facilities, a taxable REIT subsidiary may generally engage in any business, including the provision of customary or noncustomary services to tenants of its parent REIT. The Code contains provisions intended to ensure that transactions between a REIT and its taxable REIT subsidiary occur at arm s length and on commercially reasonable terms. In some cases a 100% tax is also imposed on the REIT if its rental, service and/or other agreements with its taxable REIT subsidiary are not on arm s length terms.

A parent REIT is not treated as holding the assets of a taxable REIT subsidiary or as receiving any income that the subsidiary earns. Rather, the stock issued by the taxable REIT subsidiary is an asset in the hands of the parent REIT, and the REIT recognizes as income any dividends that it receives from the subsidiary. This treatment can affect the income and asset test calculations that apply to the REIT, as described below. Because a parent REIT does not include the assets and income of taxable REIT subsidiaries in determining the parent s compliance with the REIT requirements, such entities may be used by the parent REIT to indirectly undertake activities that the REIT rules might otherwise preclude it from doing directly or through pass-through subsidiaries.

For taxable years beginning after December 31, 2017, subject to certain exceptions, a taxpayer s deduction for net business interest expense is generally limited to 30% of its taxable income, adjusted for certain items of income, gain, deduction or loss. See Distribution Requirements. While not clear, this provision may limit the ability of our taxable REIT subsidiaries to deduct interest, which could increase their taxable income.

Subsidiary REIT

Our Operating Partnership owns 100% of the interests in an entity which has elected to be taxed as a REIT (Subsidiary REIT). Provided that Subsidiary REIT qualifies as a REIT, our interest in Subsidiary REIT will be treated as a qualifying real estate asset for purposes of the REIT asset tests and any dividend income or gains derived by us from Subsidiary REIT will generally be treated as income that qualifies for purposes of the REIT gross income tests. To qualify as a REIT, Subsidiary REIT must independently satisfy the various REIT qualification requirements described in this summary. If Subsidiary REIT were to fail to qualify as a REIT, and certain relief provisions did not apply, Subsidiary REIT would be treated as a taxable C corporation and its income would be subject to federal income tax. In addition, a failure of Subsidiary REIT to qualify as a REIT could have an adverse effect on our ability to comply with the REIT income and asset tests, and thus could impair our ability to qualify as a REIT.

Income Tests

To qualify as a REIT, we must satisfy two gross income tests on an annual basis. First, at least 75% of our gross income, excluding gross income from prohibited transactions, for each taxable year must be derived directly or indirectly from investments relating to real property or mortgages on real property, including rents from real property, gains on the disposition of real estate, dividends paid by another REIT, and interest on obligations secured by mortgages on real property or on interests in real property, or from some types of temporary investments. Second, at least 95% of our gross income for each taxable year, excluding gross income from prohibited transactions, must be derived from any combination of income qualifying under the 75% gross income test and dividends, interest, some payments under certain hedging instruments, and gain from the sale or disposition of stock or securities and some hedging instruments.

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Income and gain from certain hedging transactions will not constitute gross income for purposes of both the 75% and 95% gross income tests. See Hedging transactions. In addition, certain foreign currency gains will be excluded from gross income for purposes of one or both of the gross income tests.

Rents we receive will qualify as rents from real property in satisfying the gross income requirements for a REIT described above only if several conditions are met. First, the amount of rent must not be based in whole or in part on the income or profits of any person. However, an amount received or accrued generally will not be excluded from the term rents from real property solely by reason of being based on a fixed percentage or percentages of receipts or sales. Second, rents received from a related party tenant will not qualify as rents from real property in satisfying the gross income tests unless the tenant is a taxable REIT subsidiary and either (i) at least 90% of the property is leased to unrelated tenants and the rent paid by the taxable REIT subsidiary is substantially comparable to the rent paid by the unrelated tenants for comparable space, or (ii) the property leased is a qualified lodging facility, as defined in Section 856(d)(9)(D) of the Code, or a qualified health care property, as defined in Section 856(e)(6)(D)(i), and certain other conditions are satisfied. A tenant is a related party tenant if the REIT, or an actual or constructive owner of 10% or more of the REIT, actually or constructively owns 10% or more of the tenant. Third, if rent attributable to personal property, leased in connection with a lease of real property, is greater than 15% of the total rent received under the lease, then the portion of rent attributable to the personal property will not qualify as rents from real property.

Generally, for rents to qualify as rents from real property for the purpose of satisfying the gross income tests, we may provide directly only an insignificant amount of services, unless those services are usually or customarily rendered in connection with the rental of real property and not otherwise considered rendered to the occupant. Accordingly, we may not provide impermissible services to tenants (except through an independent contractor from whom we derive no revenue and that meets other requirements or through a taxable REIT subsidiary) without giving rise to impermissible tenant service income. Impermissible tenant service income is deemed to be at least 150% of the direct cost to us of providing the service. If the impermissible tenant service income exceeds 1% of our total income from a property, then all of the income from that property will fail to qualify as rents from real property. If the total amount of impermissible tenant service income from a property does not exceed 1% of our total income from the property, the services will not disqualify any other income from the property that qualifies as rents from real property, but the impermissible tenant service income will not qualify as rents from real property.

We have not charged, and do not anticipate charging, significant rent that is based in whole or in part on the income or profits of any person. We have not derived, and do not anticipate deriving, significant rents from related party tenants. We have not derived, and do not anticipate deriving, rent attributable to personal property leased in connection with real property that exceeds 15% of the total rents from that property. We have not derived, and do not anticipate deriving, impermissible tenant service income that exceeds 1% of our total income from any property.

If we fail to satisfy one or both of the 75% or 95% gross income tests for any taxable year, we may nevertheless qualify as a REIT for that year if we are entitled to relief under the Code. These relief provisions generally will be available if our failure to meet the tests is due to reasonable cause and not due to willful neglect, we attached a schedule of the sources of our income to our U.S. federal income tax return, and any incorrect information on the schedule is not due to fraud with intent to evade tax. It is not possible, however, to state whether in all circumstances we would be entitled to the benefit of these relief provisions. For example, if we fail to satisfy the gross income tests because nonqualifying income that we intentionally incur unexpectedly exceeds the limits on nonqualifying income, the IRS could conclude that the failure to satisfy the tests was not due to reasonable cause.

If these relief provisions are inapplicable to a particular set of circumstances involving us, we will fail to qualify as a REIT. As discussed under Taxation of the Company as a REIT, even if these relief provisions apply, a tax would be imposed based on the amount of nonqualifying income.

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Asset Tests

At the close of each quarter of our taxable year, we must satisfy the following tests relating to the nature of our assets:

1. At least 75% of the value of our total assets must be represented by cash or cash items (including certain receivables), government securities, real estate assets (including (i) interests in real property (ii) interests in mortgages on real property (iii) shares in other qualifying REITs (iv) unsecured debt instruments of REITs that are required to file annual and periodic reports with the Securities and Exchange Commission under the Exchange Act (Publicly Offered REITs), (v) personal property securing a mortgage secured by both real property and personal property if the fair market value of such personal property does not exceed 15% of the combined fair market value of all such personal and real property and (vi) personal property leased in connection with a lease of real property for which the rent attributable to personal property is not greater than 15% of the total rent received under the lease) or, in cases where we raise new capital through stock or long-term debt offerings (i.e., having a maturity of at least five years), temporary investments in stock or debt instruments during the one-year period following our receipt of such capital (the 75% asset test);

2. not more than 25% of our total assets may be represented by securities other than those in the 75% asset class;

3. except for equity investments in REITs, qualified REIT subsidiaries, other securities that qualify as real estate assets for purposes of the 75% asset test as described above, or securities of our taxable REIT subsidiaries, the value of any one issuer s securities owned by us may not exceed 5% of the value of our total assets; we may not own more than 10% of any one issuer s outstanding voting securities; and we may not own more than 10% of the value of the outstanding securities of any one issuer;

4. no more than 20% for taxable years beginning after December 31, 2017 (25% for taxable years beginning prior to January 1, 2018) of the value of our total assets can be represented by securities of taxable REIT subsidiaries; and

5. the aggregate value of all unsecured debt instruments of Publicly Offered REITs that we hold may not exceed 25% of the value of our total assets.

Securities for purposes of the asset tests may include debt securities. However, the 10% value test does not apply to certain straight debt and other excluded securities, as described in the Code including, but not limited to, any loan to an individual or estate, any obligation to pay rents from real property and any security issued by a REIT. In addition, (a) a REIT s interest as a partner in a partnership is not considered a security for purposes of applying the 10% value test to securities issued by the partnership; (b) any debt instrument issued by a partnership (other than straight debt or another excluded security) will not be considered a security issued by the partnership if at least 75% of the partnership s gross income is derived from sources that would qualify for the 75% gross income test; and (c) any debt instrument issued by a partnership (other than straight debt or another excluded security) will not be considered a security issued by the partnership to the extent of the REIT s interest as a partner in the partnership. In general, straight debt is defined as a written, unconditional promise to pay on demand or at a specific date a fixed principal amount, and the interest rate and payment dates on the debt must not be contingent on profits or the discretion of the debtor. In addition, straight debt may not contain a convertibility feature.

With respect to each issuer in which we currently own an interest that does not qualify as a REIT, a qualified REIT subsidiary, or a taxable REIT subsidiary, we believe that our pro rata share of the value of the securities, including debt, of any such issuer does not exceed 5% of the total value of our assets and that we comply with the 10% voting securities limitation and 10% value limitation with respect to each such issuer. In this regard, however, we cannot provide any assurance that the IRS might not disagree with our determinations. In addition, the securities that we own in our taxable REIT subsidiaries do not, in the aggregate, exceed 20% of the value of our total assets for taxable years beginning after December 31, 2017.

After initially meeting the asset tests at the close of any quarter, we will not lose our status as a REIT if we fail to satisfy the 75%, 25% and 5% asset tests and the 10% value limitation at the end of a later quarter solely by reason of changes in the relative values of our assets (including changes in relative values as a result of fluctuations in foreign currency exchange rates). If the failure to satisfy the 75%, 25% or 5% asset tests or the 10% value limitation results from an acquisition of securities or other property during a quarter, the failure can be cured by disposition of sufficient non-qualifying assets within 30 days after the close of that quarter. We intend to maintain adequate records of the value of our assets to ensure compliance with the asset tests and to take any available actions within 30 days after the close of any quarter as may be required to cure any noncompliance with the 75%, 25%, or 5% asset tests or 10% value limitation. If we fail the 5% asset test or the 10% asset test at the end of any quarter, and such failure is not cured within 30 days thereafter, we may dispose of sufficient assets or otherwise satisfy the requirements of such asset tests within six months after the last day of the quarter in which our identification of the failure to satisfy those asset tests occurred to cure the violation, provided that the non-permitted assets do not exceed the lesser of 1% of the total value of our assets at the end of the relevant quarter or $10,000,000. If we fail any of the other asset tests, or our failure of the 5% and 10% asset tests is in excess of this amount, as long as the failure is due to reasonable cause and not willful neglect and, following our identification of the failure, we file a schedule in accordance with the Treasury regulations describing each asset that caused the failure, we are permitted to avoid disqualification as a REIT, after the thirty-day cure period, by taking steps to satisfy the requirements of the applicable asset test within six months after the last day of the quarter in which our identification of the failure to satisfy the REIT asset test occurred, including the disposition of sufficient assets to meet the asset tests and paying a tax equal to the greater of $50,000 or the product of (x) the net income generated by the nonqualifying assets during the period in which we failed to satisfy the relevant asset test and (y) the highest U.S. federal income tax rate then applicable to U.S. corporations (21% for taxable years beginning after December 31, 2017).

Distribution Requirements

To qualify as a REIT, we are required to distribute dividends, other than capital gain dividends, to our stockholders each year in an amount at least equal to (1) the sum of (a) 90% of our REIT taxable income, computed without regard to the dividends paid deduction and our net capital gain and (b) 90% of the net income, after tax, from foreclosure property, minus (2) the sum of certain specified items of noncash income. In addition, if we recognize any built-in gain, we will be required, under Treasury regulations, to distribute at least 90% of the built-in gain, after tax, recognized on the disposition of the applicable asset. See Taxation of the Company as a REIT for a discussion of the possible recognition of built-in gain. These distributions must be paid either in the taxable year to which they relate, or in the following taxable year if declared before we timely file our tax return for the prior year and if paid with or before the first regular dividend payment date after the declaration is made. We believe that we have made and intend to continue to make timely distributions sufficient to satisfy the annual distribution requirements.

For taxable years beginning after December 31, 2017, our deduction for net business interest expense will generally be limited to 30% of our taxable income, as adjusted for certain items of income, gain, deduction or loss. Any business interest deduction that is disallowed due to this limitation may be carried forward to future taxable years. If we are subject to this interest expense limitation, our REIT taxable income for a taxable year may be increased. Taxpayers that conduct certain real estate businesses may elect not to have this interest expense limitation apply to them, provided that they use an alternative depreciation system to depreciate certain property. If we are eligible and make this election, although we would not be subject to the interest expense limitation described above, our depreciation deductions may be reduced and, as a result, our REIT taxable income for a taxable year may be increased.

Our REIT taxable income has been and is expected to be less than our cash flow due to the allowance of depreciation and other noncash charges in computing REIT taxable income. Accordingly, we anticipate that we will generally have sufficient cash or liquid assets to enable us to satisfy the 90% distribution requirement. It is possible, however, that we, from time to time, may not have sufficient cash or other liquid assets to meet this distribution requirement or to distribute such greater amount as may be necessary to avoid income and excise taxation, due to timing differences between (a) the actual receipt of income and the actual payment of deductible expenses and (b) the inclusion of such income and the deduction of such expenses in arriving at our taxable income, or as a result of nondeductible expenses such as principal amortization or capital expenditures in excess of noncash deductions. In the event that such timing differences occur, we may find it necessary to arrange for borrowings or, if possible, pay taxable stock dividends in order to meet the dividend requirement.

Under some circumstances, we may be able to rectify a failure to meet the distribution requirement for a year by paying dividends to stockholders in a later year, which may be included in our deduction for dividends paid for the earlier year. We will refer to such dividends as deficiency dividends. Thus, we may be able to avoid being taxed on amounts distributed as deficiency dividends. We will, however, be required to pay interest based upon the amount of any deduction taken for deficiency dividends.

The IRS recently issued Revenue Procedure 2017-45, authorizing elective stock dividends to be made by public REITs. Pursuant to this revenue procedure, effective for distributions declared on or after August 11, 2017, the IRS will treat the distribution of stock pursuant to an elective stock dividend as a distribution of property under Section 301 of the Code (i.e., as a dividend to the extent of our earnings and profits), as long as at least 20% of the total dividend is available in cash and certain other requirements outlined in the revenue procedure are met. In the case of a taxable stock dividend, stockholders would be required to include the dividend as income and would be required to satisfy the tax liability associated with the distribution with cash from other sources including sales of our common stock. Both a taxable stock distribution and sale of common stock resulting from such distribution could adversely affect the price of our common stock.

To the extent that we do not distribute (and are not deemed to have distributed) all of our net capital gain or distribute at least 90%, but less than 100%, of our REIT taxable income, as adjusted, we are subject to tax on these retained amounts at regular corporate tax rates.

We will be subject to a 4% excise tax on the excess of the required distribution over the sum of amounts actually distributed and amounts retained for which U.S. federal income tax was paid, if we fail to distribute during each calendar year at least the sum of:

1. 85% of our REIT ordinary income for the year;

2. 95% of our REIT capital gain net income for the year; and

3. any undistributed taxable income from prior taxable years.

A REIT may elect to retain rather than distribute all or a portion of its net capital gains and pay the tax on the gains. In that case, a REIT may elect to have its stockholders include their proportionate share of the undistributed net capital gains in income as long-term capital gains and receive a credit for their share of the tax paid by the REIT. For purposes of the 4% excise tax described above, any retained amounts would be treated as having been distributed.

Prohibited Transactions

Net income derived from prohibited transactions is subject to 100% tax. The term prohibited transactions generally includes a sale or other disposition of property (other than foreclosure property) that is held primarily for sale to customers in the ordinary course of a trade or business. Whether property is held primarily for sale to customers in the ordinary course of a trade or business depends on the specific facts and circumstances. The Code provides a safe harbor pursuant to which sales of properties held for at least two years and meeting certain additional requirements will not be treated as prohibited transactions, but compliance with the safe harbor may not always be practical. Moreover the character of REIT dividends attributable to gain from assets that comply with the foregoing safe harbor as ordinary income or capital gain must still be determined pursuant to the specific facts and circumstances. We intend to engage in the business of owning and operating properties and to make

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sales of properties that are consistent with our investment o