



**FELDMAN MALL PROPERTIES, INC.**

Consolidated Financial Statements

December 31, 2008, 2007, and 2006

(With Report of Independent Registered Public Accounting Firm Thereon)

**FELDMAN MALL PROPERTIES, INC.**

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KPMG LLP  
1601 Market Street  
Philadelphia, PA 19103-2499

## Report of Independent Registered Public Accounting Firm

The Board of Directors and Stockholders  
Feldman Mall Properties, Inc.:

We have audited the accompanying consolidated balance sheets of Feldman Mall Properties, Inc. and subsidiaries (the Company) as of December 31, 2008 and 2007, and the related consolidated statements of operations, stockholders' (deficit) equity and comprehensive income (loss), and cash flows for each of the years in the three-year period ended December 31, 2008. These consolidated financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these consolidated financial statements based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of the Company as of December 31, 2008 and 2007, and the results of their operations and their cash flows for each of the years in the three-year period ended December 31, 2008 in conformity with U.S. generally accepted accounting principles.

The accompanying consolidated financial statements have been prepared assuming that the Company will continue as a going concern. As discussed in note 1 to the consolidated financial statements, the Company's 2008 financial results were materially impacted by various business conditions that resulted in declines in property operating income, impairments of its real estate properties and investments, and the inability to repay, extend or refinance certain loan balances as they came due. These conditions also resulted in sales and other transactions related to the Company's properties and investments during and subsequent to the year ended December 31, 2008 and raise substantial doubt about the Company's ability to continue as a going concern. Management's plans in regard to these matters are also described in note 1. The consolidated financial statements do not include any adjustments that might result from the outcome of this uncertainty.

**KPMG LLP**

April 6, 2010

**FELDMAN MALL PROPERTIES, INC. AND SUBSIDIARIES**

Consolidated Balance Sheets

December 31, 2008 and 2007

(Amounts in thousands, except per share data)

Assets	2008	2007
Investments in real estate, net	\$ 119,378	342,897
Investments in unconsolidated real estate partnerships	4,095	43,683
Cash and cash equivalents	2,134	27,976
Restricted cash	13,194	20,395
Rents, deferred rents and other receivables, net	3,065	5,545
Acquired below-market ground lease, net	—	7,538
Acquired lease rights, net	1,741	7,281
Acquired in-place lease values, net	1,731	6,437
Deferred charges, net	2,552	3,394
Other assets, net	946	4,048
	\$ 148,836	469,194
<b>Liabilities and Stockholders' (Deficit) Equity</b>		
Liabilities:		
Mortgage loans payable	\$ 183,819	232,878
Junior subordinated debt obligations	29,380	29,380
Secured line of credit	27,752	17,500
Accounts payable, accrued expenses and other liabilities	25,051	27,211
Dividends and distributions payable	2,581	568
Acquired lease obligations, net	560	5,136
Deferred gain on partial sale of real estate	3,515	3,515
Negative carrying value of investment in unconsolidated partnership	4,450	4,450
	277,108	320,638
Minority interest	—	9,677
Commitments and contingencies (note 14)		
Stockholders' (deficit) equity:		
Series a 6.85% cumulative convertible preferred stock.		
Authorized, 50,000,000 shares; issued and outstanding,		
2,000,000 shares at December 31, 2008 and 2007;		
\$25.00 liquidation preference	49,580	49,580
Common stock, \$0.01 par value. Authorized, 200,000,000 shares;		
issued and outstanding, 12,992,537 and 13,018,831		
at December 31, 2008 and 2007, respectively	130	130
Additional paid-in capital	121,160	120,542
Accumulated deficit	(293,940)	(27,712)
Accumulated other comprehensive loss	(5,202)	(3,661)
	(128,272)	138,879
Total stockholders' (deficit) equity	(128,272)	138,879
Total liabilities and stockholders' (deficit) equity	\$ 148,836	469,194

See accompanying notes to consolidated financial statements.

**FELDMAN MALL PROPERTIES, INC. AND SUBSIDIARIES**

Consolidated Statements of Operations

Years ended December 31, 2008, 2007 and 2006

(Amounts in thousands, except per share data)

	<u>2008</u>	<u>2007</u>	<u>2006</u>
Revenue:			
Rental	\$ 20,960	22,745	31,808
Tenant reimbursements	11,426	12,166	18,000
Management, leasing and development services	2,374	3,734	1,310
Interest and other income	1,781	5,846	2,932
Total revenue	<u>36,541</u>	<u>44,491</u>	<u>54,050</u>
Expenses:			
Rental property operating and maintenance	13,517	14,955	17,340
Real estate taxes	4,972	5,004	6,725
Interest (including amortization of deferred financing costs)	14,365	12,565	14,189
Loss on early extinguishment of debt	—	379	357
Impairment loss on long-lived assets (note 2)	166,298	—	—
Depreciation and amortization	12,473	10,940	13,287
General and administrative	13,560	16,518	8,657
Total expenses	<u>225,185</u>	<u>60,361</u>	<u>60,555</u>
Loss from continuing operations before equity in losses of unconsolidated real estate partnerships, impairment losses in unconsolidated real estate partnership, gains on partial sales of real estate and discontinued operations	(188,644)	(15,870)	(6,505)
Equity in losses of unconsolidated real estate partnerships	(8,389)	(1,900)	(550)
Gain on partial sale of real estate	—	—	29,397
Impairment loss on investment in unconsolidated real estate partnerships – Harrisburg Mall and Colonie Center (note 2)	(47,929)	—	—
Impairment loss on trust preferred securities	(880)	—	—
(Loss) income before minority interest	<u>(245,842)</u>	<u>(17,770)</u>	<u>22,342</u>
Minority interest	8,759	1,639	(2,435)
(Loss) income from continuing operations	<u>(237,083)</u>	<u>(16,131)</u>	<u>19,907</u>
Discontinued operations (note 16):			
(Loss) income from operations	(1,185)	(128)	308
Impairment loss on long-lived assets	(45,655)	—	—
Gain on extinguishment of debt	20,199	—	—
Minority interest	918	12	(34)
(Loss) income from discontinued operations	<u>(25,723)</u>	<u>(116)</u>	<u>274</u>
Net (loss) income	<u>\$ (262,806)</u>	<u>(16,247)</u>	<u>20,181</u>
Basic (loss) earnings per share:			
Continuing operations	\$ (18.63)	(1.32)	1.55
Discontinued operations	(1.99)	(0.01)	0.03
	<u>\$ (20.62)</u>	<u>(1.33)</u>	<u>1.58</u>
Diluted (loss) earnings per share:			
Continuing operations	\$ (18.63)	(1.32)	1.53
Discontinued operations	(1.99)	(0.01)	0.01
	<u>\$ (20.62)</u>	<u>(1.33)</u>	<u>1.54</u>
Weighted average common shares outstanding:			
Basic	12,909	12,863	12,808
Diluted	12,909	12,863	14,666

See accompanying notes to consolidated financial statements.

**FELDMAN MALL PROPERTIES, INC. AND SUBSIDIARIES**  
Consolidated Statements of Stockholders' (Deficit) Equity and Comprehensive Income (Loss)  
Years ended December 31, 2008, 2007 and 2006  
(Amounts in thousands, except per share data)

	Number of preferred shares	Number of common shares	Series A preferred stock	Common stock	Additional paid-in capital	Accumulated deficit	Accumulated other comprehensive income (loss)	Total	Comprehensive income (loss)
Balance at December 31, 2005	—	13,050,370	\$ —	131	119,643	(15,912)	1,099	104,961	—
Net income	—	—	—	—	—	20,181	—	20,181	20,181
Common stock issued to outside directors	—	3,000	—	—	35	—	—	35	—
Repurchase of OP Units in excess of book value	—	—	—	—	(216)	—	—	(216)	—
Unrealized loss on derivative instruments, net of \$11 recorded in interest expense	—	—	—	—	—	—	(212)	(212)	(212)
Deferred compensation plan and stock awards	—	101,692	—	1	—	—	—	1	—
Share-based compensation expense	—	—	—	—	701	—	—	701	—
Dividends on forfeited nonvested stock	—	—	—	—	—	32	—	32	—
Dividends(1)	—	—	—	—	—	(11,938)	—	(11,938)	—
Balance at December 31, 2006	—	13,155,062	—	132	120,163	(7,637)	887	113,545	19,969
Net loss	—	—	—	—	—	(16,247)	—	(16,247)	(16,247)
Proceeds from offering of preferred shares issued	2,000,000	—	50,000	—	—	—	—	50,000	—
Costs associated with offering	—	—	(420)	—	—	—	—	(420)	—
Unrealized loss on derivative instruments, net of \$83 recorded in interest expense	—	—	—	—	—	—	(4,548)	(4,548)	(4,548)
Deferred compensation plan and stock awards	—	5,000	—	—	—	—	—	—	—
Restricted stock forfeited	—	(125,731)	—	(2)	2	—	—	—	—
Repurchase of shares from employee	—	(15,500)	—	—	(194)	—	—	(194)	—
Share-based compensation expense	—	—	—	—	571	—	—	571	—
Dividends on forfeited nonvested stock	—	—	—	—	—	160	—	160	—
Dividends(2)	—	—	—	—	—	(3,988)	—	(3,988)	—
Balance at December 31, 2007	2,000,000	13,018,831	49,580	130	120,542	(27,712)	(3,661)	138,879	(20,795)
Net Loss	—	—	—	—	—	(262,806)	—	(262,806)	(262,806)
Unrealized loss on derivative instruments, net of \$3,217 recorded in interest	—	—	—	—	—	—	(1,541)	(1,541)	(1,541)
Restricted stock forfeited	—	(26,294)	—	—	—	—	—	—	—
Share-based compensation expense	—	—	—	—	618	—	—	618	—
Preferred dividends	—	—	—	—	—	(3,435)	—	(3,435)	—
Dividends on forfeited nonvested stock	—	—	—	—	—	13	—	13	—
Balance at December 31, 2008	2,000,000	12,992,537	\$ 49,580	130	121,160	(293,940)	(5,202)	(128,272)	(264,347)

(1) Represents \$0.9100 per common share, all of which represented a return of capital for federal income tax purposes.

(2) Represents \$0.4550 per common share, all of which represented a return of capital for federal income tax purposes, which aggregate \$2,987 as well as preferred dividends of \$1,001.

See accompanying notes to consolidated financial statements.

**FELDMAN MALL PROPERTIES, INC. AND SUBSIDIARIES**

Consolidated Statements of Cash Flows

Years ended December 31, 2008, 2007 and 2006

(Amounts in thousands, except per share data)

	<u>2008</u>	<u>2007</u>	<u>2006</u>
Cash flows from operating activities:			
Net (loss) income	\$ (262,806)	(16,247)	20,181
Adjustments to reconcile net (loss) income to net cash (used in) provided by operating activities:			
Impairment loss on long-lived assets	166,298	—	—
Gain on partial sale of real estate	—	—	(29,397)
Impairment loss on investment in unconsolidated partnerships	47,929	—	—
Impairment loss on trust preferred securities	880	—	—
Impairment loss on discontinued operations	45,655	—	—
Gain on extinguishment of debt	(20,199)	—	—
Loss on early extinguishment of debt	—	379	357
Depreciation and amortization	14,836	14,498	17,394
Amortization of deferred financing costs	970	1,113	858
Provision for doubtful accounts receivable	2,021	2,016	843
Amortization of ground rent	289	352	358
Noncash stock compensation	618	571	701
Minority interest	(9,677)	(1,651)	2,469
Interest expense (accretion) amortization, net	(2,848)	(3,192)	(3,243)
Equity in losses (earnings) of unconsolidated real estate partnerships	8,389	1,900	550
Deferred tax expense (benefit)	34	109	(190)
Other noncash expense (income)	(113)	(3,579)	(1,375)
Net change in revenue related to acquired lease rights/obligations	539	294	(240)
Changes in operating assets and liabilities:			
Rents, deferred rents and other receivables	(74)	(1,843)	(2,883)
Restricted cash related to operating activities	(555)	173	(335)
Other deferred charges	(752)	(599)	(1,394)
Other assets, net	2,239	(186)	(3,130)
Accounts payable, accrued expenses and other liabilities	(4,009)	(501)	(1,143)
Net cash (used in) provided by operating activities	<u>(10,336)</u>	<u>(6,393)</u>	<u>381</u>
Cash flows from investing activities:			
Proceeds from partial sales of real estate, net	—	—	80,319
Investment in unconsolidated real estate partnerships	(16,730)	(12,750)	(13,894)
Expenditures for real estate improvements	(10,934)	(36,994)	(34,934)
Real estate acquisitions, net of assumed liabilities	—	—	(43,235)
Acquisition of minority interest	—	—	(1,570)
Other	—	—	(880)
Change in restricted cash relating to investing activities	3,916	507	(178)
Net cash used in investing activities	<u>(23,748)</u>	<u>(49,237)</u>	<u>(14,372)</u>
Cash flows from financing activities:			
Proceeds from junior subordinated debt obligations	—	—	29,380
Proceeds from lines of credit	10,252	17,500	28,600
Repayment of lines of credit	—	—	(28,600)
Proceeds from mortgages	—	104,500	10,000
Repayment of mortgages	(1,584)	(79,846)	(11,781)
Change in restricted cash relating to financing activities	—	(12,917)	31
Cash from incremental tax financing	996	—	—
Payment of deferred financing costs	—	(1,162)	(1,571)
Common stock repurchased from former employee	—	(194)	—
Proceeds from sale of 6.85% series a cumulative convertible preferred stock, net of issue cost	—	49,745	—
Distributions and dividends	(1,422)	(7,056)	(13,363)
Net cash provided by financing activities	<u>8,242</u>	<u>70,570</u>	<u>12,696</u>
Net change in cash and cash equivalents	<u>(25,842)</u>	<u>14,940</u>	<u>(1,295)</u>
Cash and cash equivalents, beginning of year	<u>27,976</u>	<u>13,036</u>	<u>14,331</u>
Cash and cash equivalents, end of year	<u>\$ 2,134</u>	<u>27,976</u>	<u>13,036</u>

**FELDMAN MALL PROPERTIES, INC. AND SUBSIDIARIES**

Consolidated Statements of Cash Flows

Years ended December 31, 2008, 2007 and 2006

(Amounts in thousands, except per share data)

	<u>2008</u>	<u>2007</u>	<u>2006</u>
Supplemental disclosures of cash flow information:			
Cash paid during the period for interest, net of amounts capitalized	\$ 18,198	17,320	19,755
Supplemental disclosures of noncash investing and financing activities:			
Accrued renovation costs	\$ —	4,158	7,576
Accrued additional purchase consideration	—	—	2,051
Record minority interest for limited partnership units in the operating partnership by reclassifying from additional paid in capital	—	—	216
Assets acquired in connection with real estate acquisition	—	—	19
Liabilities assumed in connection with real estate acquisition	—	—	3,699
Unrealized (loss) gain on derivative instruments	(1,541)	(4,548)	(212)
Dividends and distributions payable	2,580	568	3,315
Accrued preferred stock issuance cost	—	165	—
Discontinued operations:			
Assets on transfer date, net	\$ 28,857	—	—
Liabilities on transfer date, net	46,618	—	—
Contribution of property to joint ventures:			
Investments in real estate, net	\$ —	—	134,240
Other assets	—	—	13,722
Mortgage loans	—	—	(105,516)
Liabilities	—	—	(4,370)
Net assets	\$ <u>—</u>	<u>—</u>	<u>38,076</u>

See accompanying notes to consolidated financial statements.

## FELDMAN MALL PROPERTIES, INC.

### Notes to Consolidated Financial Statements

December 31, 2008, 2007 and 2006

(Dollar Amounts in thousands, except share and per share data)

#### (1) Organization and Description of Business

Feldman Equities of Arizona, LLC (our predecessor) was organized under the laws of the State of Arizona and commenced operations on April 1, 2002. Feldman Mall Properties, Inc. (FMP, the Company, we, our, or us) closed our initial public offering of common stock on December 16, 2004 (our offering). Through our affiliates and subsidiaries, we were principally engaged in the acquisition and management of retail malls. Tenants include national and regional retail chains as well as local retailers.

We have elected to be taxed as a real estate investment trust, or REIT, and we believe we have qualified and will continue to qualify as a REIT under the applicable regulations. Our wholly owned subsidiaries, Feldman Holdings Business Trust I and Feldman Holdings Business Trust II, are the sole general partner and limited partner, respectively, in, and collectively own 90.2% of, Feldman Equities Operating Partnership, LP (the operating partnership). We consolidate the assets and liabilities of the operating partnership. Until the completion of the offering, FMP, the operating partnership and the service company had no operations.

At December 31, 2008, we owned three real estate properties: the Stratford Square Mall in Bloomingdale, Illinois (Stratford), the Northgate Mall in Cincinnati, Ohio (Northgate), and the Golden Triangle Mall located in Denton, Texas (GTM). In addition, we held partial equity investments in partnerships owning the Harrisburg Mall in Harrisburg, Pennsylvania (Harrisburg), the Foothills Mall in Tucson, Arizona (Foothills) and the Colonie Center Mall in Albany, New York (Colonie).

##### (a) *Going Concern Considerations*

The accompanying consolidated financial statements have been prepared assuming we will continue as a going concern, which assumes the realization of assets and settlement of liabilities in the normal course of business for a reasonable period of time. Our 2008 and subsequent operating results along with certain conditions and transactions, as further described below, raise substantial doubt about our ability to continue as a going concern.

For the year ended December 31, 2008, we had a net loss of \$262,806 and used \$10,336 in cash for operating activities. At December 31, 2008, we had a shareholders' deficit of \$128,272. The nonrecourse debt obligations secured by our wholly owned properties exceed the estimated aggregate fair value of the properties by approximately \$83,000 at December 31, 2008.

Our 2008 financial results were materially impacted by the unfavorable business environment for retailers and other factors which resulted in slower than anticipated lease up activities, vacancies, bankruptcies of certain anchor and other tenants and other unfavorable conditions in real estate financing markets. As a result of these and other conditions, we recorded impairment and other losses totaling approximately \$266,000. These conditions also resulted in sales and other transactions of our properties and investments during and subsequent to the year ended December 31, 2008, which are further described below:

- During 2008, the Company recorded an impairment loss related to Tallahassee Mall of \$45,655 to state the property at its estimated fair value, which resulted in a net investment of \$23,903. During November 2008, we consented to a court appointed receiver for Tallahassee,

## FELDMAN MALL PROPERTIES, INC.

### Notes to Consolidated Financial Statements

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surrendering all benefits and being relieved of all obligations relating to the property. The Company has accounted for this transaction by removing the investment in real estate and other property-related accounts as well as the \$44,102 of indebtedness, which was secured by this property from its records, which resulted in a gain upon the extinguishment of the debt of \$20,199;

- The Company's investment in Harrisburg was written down to \$0 as of December 31, 2008 as a result of an approximately \$7,384 equity in loss and approximately \$9,532 impairment loss recorded during 2008. During 2009, we relinquished the ownership interests in this partnership after all attempts to amend the property's nonrecourse mortgage loan were unsuccessful and the mortgage lender completed foreclosure proceedings;
- During 2008, we recognized impairment charges of \$38,397 on our investment in Colonie. In May 2009, we sold our interests in Colonie to our partner, Heitman Value Partners, for cash proceeds of \$4,100, which approximated our carrying value of this investment at December 31, 2008;
- During 2008, we were delinquent in making interest payments to the holders of our junior subordinated debt obligations. During May 2009, we repurchased the outstanding junior subordinated debt obligations that had an outstanding balance of \$29,380 (as of December 31, 2008 and the date of the transaction) in exchange for cash consideration of \$1,500 and the issuance of 1.2 million shares of our common stock;
- During 2009, we were not in compliance with the terms of the mortgage loan secured by Northgate. As a result, the lender filed foreclosure proceedings to which we consented to the appointment of a receiver who took possession of the property during February 2010. Upon completion of the foreclosure proceedings, the Company will surrender all rights pertaining to this property and will be relieved of the outstanding debt obligation that encumbers the property. During 2010, the Company expects to account for this transaction upon foreclosure by removing the investment in Northgate (recorded at its estimated fair value of approximately \$30,500 at December 31, 2008) from the Company's books along with the extinguishment of the outstanding indebtedness (approximately \$79,000 as of December 31, 2008), which will result in a net gain on the extinguishment of debt. The Company's contractual debt obligation is approximately \$76,000;
- The \$104,500 mortgage loan secured by the Stratford property is due on May 9, 2010. We have an option to extend the loan for one year, which can be exercised provided we are in compliance with the respective loan documents and we are able to obtain an interest rate cap agreement for the extended term of the loan. We believe we are in compliance with the loan documents and we can obtain an interest rate cap agreement and, accordingly, have requested a loan extension. No assurances can be provided that we will receive the extension and, if not extended, we do not have the ability to repay the mortgage loan;
- The \$27,752 line of credit balance outstanding at December 31, 2008 under our line of credit secured by GTM is past due as of April 2009. We have entered into a forbearance agreement with the lender and are working with the lender to amend or refinance this financing. No

**FELDMAN MALL PROPERTIES, INC.**

Notes to Consolidated Financial Statements

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assurance can be provided that the loan will be amended or refinanced and we do not have the ability to repay the loan;

- The Company's investment in Foothills had a negative carrying value of approximately \$4,450 at December 31, 2008. During January 2010, we sold our partnership interest in Foothills for aggregate cash proceeds of \$1,500 and also received \$350 as consideration for the termination of our property management agreement for the property.

Based on our 2008 and recent operating results, the transactions described above, the continuing unfavorable conditions of real estate financing markets, as well as our assessment of the business environment for retailers, management believes that in order for the Company to continue to operate as a going concern, we must stabilize the two remaining properties and assist the receiver in the management of Northgate. Stabilization would include actively managing existing rent rolls to maximize collections of rent and other charges from tenants, re-tenanting malls, and curing co-tenancy obligations where possible, so as to maximize loan refinancing and other options. The Company currently lacks commitments for any transactions, and, if the Company is unable to raise additional capital, negotiate appropriate modifications, or restructure existing debt arrangements, the Company will be unable to fund its on-going operations during 2010, and will be required to pursue other alternatives, which may include bankruptcy filings. The current economic and business environment makes the achievement of any such transactions especially difficult. Any additional tenant bankruptcy filings or further decline in the business environment for retailers will harm our cash position and shorten the period we can fund our operating needs.

**(b) Impairment Charges**

During the year ended December 31, 2008, certain events occurred, which impacted our estimated cash flows and the related estimated fair value of GTM, Northgate, and Stratford, including certain tenant vacancies, the impact of related co-tenancy provisions resulting from these vacancies, and the resulting estimated decrease in cash flow, which is projected to be insufficient to service debt service and operating costs. We are unable to subsidize these cash flow shortfalls and while we continue to negotiate modifications with the current lenders that would result in improved cash flow to the Company, we do not believe that the properties will generate sufficient cash flow to recover our investment.

**FELDMAN MALL PROPERTIES, INC.**

Notes to Consolidated Financial Statements

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(Dollar Amounts in thousands, except share and per share data)

Accordingly, as of December 31, 2008, management performed a review to estimate the fair value of the properties. Management's methodology for estimating the properties' fair value included estimating the respective property's current and projected operating cash flows, performing market research on capitalization rates and discount rates for similar properties, which included discussions with several brokers, and preparing sensitivity analyses on the valuation models prepared. The result of the Company's analysis resulted in impairment charges to long-lived assets of the properties and certain related intangible assets, which was recorded during the year ended December 31, 2008 as follows:

	<b>2008 impairment charges</b>	<b>Adjusted basis December 31, 2008</b>	<b>Secured loan balance</b>
Golden Triangle Mall	\$ 20,976	17,590	24,600
Northgate Mall	88,725	30,500	75,971
Stratford Square Mall	56,597	74,200	104,500
	<u>\$ 166,298</u>	<u>122,290</u>	<u>205,071</u>

In estimating the fair value of the properties in connection with recording the impairment summarized above, the Company utilized the following capitalization and discount rates in its discounted cash flow analysis:

	<b>Capitalization rate</b>	<b>Discount rate</b>
Golden Triangle Mall	10.00%	20.00%
Northgate Mall	10.00	20.00
Stratford Square Mall	10.00	12.50

The adjusted basis of these properties is below the principal debt balance that is outstanding on the nonrecourse first mortgages as of December 31, 2008. The impairment charges were allocated on a pro-rata basis to each property's long-term assets and liabilities as follows:

	<b>Golden Triangle</b>	<b>Northgate</b>	<b>Stratford Square</b>
Investment in real estate, net	\$ 20,380	85,383	55,633
Long-term assets and liabilities subject to SFAS No. 141	596	3,342	964
Total impairment charge	<u>\$ 20,976</u>	<u>88,725</u>	<u>56,597</u>

## FELDMAN MALL PROPERTIES, INC.

### Notes to Consolidated Financial Statements

December 31, 2008, 2007 and 2006

(Dollar Amounts in thousands, except share and per share data)

## (2) Summary of Significant Accounting Policies

### (a) *Principles of Consolidation and Equity Method of Accounting*

The accompanying consolidated financial statements have been prepared on the accrual method of accounting in accordance with U.S. generally accepted accounting principles and include the accounts of our wholly owned subsidiaries and all entities in which we have a controlling interest. All intercompany balances and transactions have been eliminated in consolidation.

We evaluate our investments in partially owned entities in accordance with the Financial Accounting Standards Board (FASB) Interpretation No. 46 (revised December 2003), *Consolidation of Variable Interest Entities*, or FIN 46R. If the partially owned entity is a “variable interest entity,” or a “VIE,” and we are the “primary beneficiary” as defined in FIN 46R, we account for such investments as a consolidated subsidiary. We have determined that Feldman Lubert Adler Harrisburg, L.P., FMP Kimco Foothills Member LLC, and FMP191 Colonie Center LLC are not VIE’s.

We evaluate the consolidation of entities in which we are a general partner in accordance with EITF Issue 04-05, which provides guidance in determining whether a general partner should consolidate a limited partnership or a limited liability company with characteristics of a partnership. EITF 04-05 states that the general partner in a limited partnership is presumed to control that limited partnership. The presumption may be overcome if the limited partners have either (1) the substantive ability to dissolve the limited partnership or otherwise remove the general partner without cause or (2) substantive participating rights, which provide the limited partners with the ability to effectively participate in significant decisions that would be expected to be made in the ordinary course of the limited partnership’s business and thereby preclude the general partner from exercising unilateral control over the partnership. Based on this criterion, we do not consolidate our investments in Feldman Lubert Adler Harrisburg, L.P., FMP Kimco Foothills Member LLC, or FMP191 Colonie Center LLC. We account for these investments under the equity method of accounting. These investments are recorded initially at cost and thereafter the carrying amount is increased by our share of comprehensive income and any additional capital contributions and decreased by our share of comprehensive loss and any capital distributions.

The equity in net income or loss and other comprehensive income or loss from real estate joint ventures recognized by us and the carrying value of our investments in real estate joint ventures are generally based on our share of the cash that would be distributed to us under the hypothetical liquidation of the joint venture, at the then book value, pursuant to the provisions of the respective operating/partnership agreements. In the case of FMP Kimco Foothills Member LLC, the joint venture that owns the Foothills Mall (the Foothills JV), we have suspended the recognition of our share of losses because we have a negative carrying value in our investment in this joint venture. In accordance with AICPA Statement of Position No. 78-9, *Accounting for Investments in Real Estate Ventures* (SOP 78-9) as amended by EITF 04-05, if and when the Foothills JV reports net income, we will resume applying the equity method of accounting after our share of that net income equals the share of net losses not recognized during the period that the equity method was suspended. Our share of the unrecognized losses at the Foothills Mall for the years ended December 31, 2008, 2007 and 2006 were \$3,031, \$2,828, and \$1,694, respectively.

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For a joint venture investment that is not a VIE or in which we are not the general partner, we consider the accounting set forth in SOP 78-9. In accordance with this pronouncement, investments in joint ventures are accounted for under the equity method when the ownership interest is less than 50% and we do not exercise direct or indirect control.

Factors we consider in determining whether or not we exercise control include rights of partners in significant business decisions, including dispositions and acquisitions of assets, financing and operating and capital budgets, board and management representation and authority and other contractual rights of our partners. To the extent that we are deemed to control these entities, these entities are consolidated.

On a periodic basis, we assess whether there are any indicators that the value of our investments in unconsolidated joint ventures may be impaired. An investment's value is impaired only if our estimate of the fair value of the investment is less than the carrying value of the investment. To the extent impairment is deemed other than temporary, the loss shall be measured as the excess of the carrying amount of our investment over the estimated fair value of our investment.

As of December 31, 2008, management's review identified that there were impairments in its investments in the Harrisburg Mall and the Colonie Center as the investments' carrying value exceeded their estimated fair value. Management's methodology for estimating the property's fair value included estimating the expected future cash flow we would receive from these investments based upon the distribution provisions of the joint venture agreements as well as the underlying property's current and projected operating cash flow, and estimated capitalization rates and discount rates. The result of the Company's impairment analysis resulted in an aggregate loss of \$54,907, which we recorded during the year ended December 31, 2008.

**(b) *Gains on Disposition of Real Estate***

Gains on the disposition of real estate assets are recorded when the recognition criteria have been met, generally at the time title is transferred and we no longer have substantial continuing involvement with the real estate asset sold. Gains on the disposition of real estate assets are deferred if we continue to have substantial continuing involvement with the real estate asset sold.

When we contribute a property to a joint venture in which we have retained an ownership interest, we do not recognize a portion of the proceeds in the computation of the gain resulting from the contribution. The amount of gain not recognized is based on our continuing ownership interest in the contributed property that arises due to our ownership interest in the joint venture acquiring the property.

**(c) *Discontinued Operations***

Properties that are sold, transferred, or classified as held for sale are classified as discontinued operations provided that (1) the operations and cash flows of the property will be eliminated from our ongoing operations and (2) we will not have any significant continuing involvement in the operations of the property after it is sold or transferred. Interest expense is included in discontinued

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operations if the related loan securing the sold property is paid off or assumed in connection with the sale.

**(d) Management's Estimates**

The preparation of the consolidated financial statements in conformity with U.S. generally accepted accounting principles requires management to make estimates and assumptions. Our estimates and assumptions affect the reported amounts of certain assets and liabilities and disclosure of contingent assets and liabilities at the date of the consolidated financial statements. They also affect reported amounts of revenue and expenses during the reporting period. Actual results could differ from these amounts.

We have identified certain significant judgments and estimates used in the preparation of the consolidated financial statements, including those related to revenue recognition, the allowance for doubtful accounts receivable, investments in real estate and asset impairment, and fair value measurements. The estimates are based on information that is currently available to us and on various other assumptions that we believe are reasonable under the circumstances.

We make estimates related to the collectability of accounts receivable related to minimum rent, deferred rent, expense reimbursements, lease termination fees and other income. We specifically analyze accounts receivable and historical bad debts, tenant concentrations, tenant creditworthiness and current economic trends when evaluating the adequacy of the allowance for doubtful accounts receivable. These estimates have a direct impact on net income (loss) because a higher bad debt allowance would result in lower net income.

We are required to make subjective assessments as to the useful lives of the properties for purposes of determining the amount of depreciation to record on an annual basis with respect to investments in real estate. These assessments have a direct impact on net income (loss) because if we were to shorten the expected useful lives of its investments in real estate, we would depreciate such investments over fewer years, resulting in more depreciation expense and lower net income on an annual basis.

We are required to make subjective assessments as to whether there are impairments in the values of our investments in real estate, including real estate held by any unconsolidated real estate entities accounted for using the equity method. These assessments have a direct impact on our net income (loss) because recording an impairment loss results in an immediate negative adjustment to income.

We are required to make subjective assessments as to the fair value of assets and liabilities in connection with purchase accounting related to real estate acquired. These assessments have a direct impact on our net income (loss) subsequent to the acquisitions as a result of depreciation and amortization being recorded on these assets and liabilities over the expected lives of the related assets and liabilities.

Although we believe the assumptions and estimates we made are reasonable and appropriate, as discussed in the applicable sections throughout these Consolidated Financial Statements, different assumptions and estimates could materially impact our reported results. The current economic

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environment has increased the degree of uncertainty inherent in these estimates and assumptions and changes in market conditions could impact our future operating results.

**(e) Cash and Cash Equivalents**

For purposes of the consolidated statements of cash flows, we consider short-term investments with maturities of 90 days or less when purchased to be cash equivalents.

**(f) Restricted Cash**

Restricted cash includes escrowed funds and other restricted deposits in conjunction with our loan agreements and cash restricted for property-level marketing funds.

**(g) Revenue Recognition and Tenant Receivables**

Base rental revenue from rental retail property is recognized on a straight-line basis over the noncancelable terms, including bargain renewal options, if any, of the related leases, which are all accounted for as operating leases. As of December 31, 2008 and 2007, approximately \$1,188 and \$1,465, respectively, has been recognized as straight-line rents receivable (representing the current net cumulative rents recognized prior to the date when billed and collectible as provided by the terms of the lease). These amounts are included in deferred rents receivable in the accompanying consolidated financial statements. "Percentage rent," or rental revenue that is based upon a percentage of the sales recorded by our tenants, is recognized in the period such sales are earned by the respective tenants. Contingent rents for the years ended December 31, 2008, 2007 and 2006 were \$2,049, \$2,272, and \$2,975, respectively.

As part of the leasing process, we may provide the lessee with an allowance for the construction of leasehold improvements. Leasehold improvements are capitalized as part of the building and recorded as tenant improvements and depreciated over the shorter of the useful life of the improvements or the lease term. If the allowance represents a payment for a purpose other than funding leasehold improvements, or in the event we are not considered the owner of the improvements, the allowance is considered to be a lease incentive and is recognized over the lease term as a reduction of rental revenue. Factors considered during this evaluation include, among others, who holds legal title to the improvements and other controlling rights provided by the lease agreement (e.g. unilateral control of the tenant space during the build-out process). Determination of the appropriate accounting for a tenant allowance is made on a case-by-case basis, considering the facts and circumstances of the individual tenant lease. Lease revenue recognition commences when the lessee is given possession of the leased space upon completion of tenant improvements when we are the owner of the leasehold improvements; however, when the leasehold improvements are owned by the tenant, the lease inception date is when the tenant obtains possession of the leased space for purposes of constructing its leasehold improvements.

Reimbursements from tenants related to real estate taxes, insurance and other property-level operating expenses are recognized as revenue, based on a predetermined formula, in the period the applicable costs are incurred. Lease termination fees, net of deferred rent and related intangibles, which are included in interest and other income in the accompanying consolidated statements of

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operations, are recognized when the related leases are canceled, the tenant surrenders the space, and we have no continuing obligation to provide services to such former tenants. We recorded \$117, \$534 and \$390 of lease termination fees during the years ended December 31, 2008, 2007 and 2006, respectively.

Our other sources of revenue come from providing management services to joint ventures, including property management, brokerage, leasing and development. Management fees generally are a percentage of cash receipts from managed properties and are recorded when earned as services are provided. Leasing and brokerage fees are earned and recognized in installments as follows: one-third upon lease execution, one-third upon delivery of the premises and one-third upon the commencement of rent. Development fees are earned and recognized over the time period of the development activity. We defer recognition of our fees to the extent of our ownership interest on the joint ventures. These activities are referred to as "management, leasing and development services" in the consolidated statements of operations.

We provide an allowance for doubtful accounts receivable against the portion of tenant receivables that is estimated to be uncollectible. Management reviews its allowance for doubtful accounts receivable monthly. Past due balances over 90 days and over a specified amount are reviewed individually for collectability. Account balances are charged off against the allowance after all means of collection have been exhausted and the potential for recovery is considered remote. Tenant receivables in the accompanying consolidated balance sheets are shown net of an allowance for doubtful accounts of \$1,460 and \$2,905 at December 31, 2008 and 2007, respectively.

Activity in the allowance for doubtful accounts is as follows:

Balance at December 31, 2005	\$	998
Provision		843
Write-offs		(188)
Recoveries		187
Contributions of properties to joint ventures		<u>(752)</u>
Balance at December 31, 2006		1,088
Provision		2,016
Write-offs		(340)
Recoveries		<u>141</u>
Balance at December 31, 2007		2,905
Provision		2,021
Write-offs		(2,151)
Reduction related to Tallahassee tenants		<u>(1,315)</u>
Balance at December 31, 2008	\$	<u><u>1,460</u></u>

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**(h) *Deferred Charges***

Deferred leasing commissions and other direct costs associated with the acquisition of tenants are capitalized and amortized on a straight-line basis over the terms of the related leases. Loan costs are capitalized and amortized to interest expense over the terms of the related loans using a method that approximates the effective-interest method. Certain of our employees provide leasing services to the properties. It's our policy to capitalize employee compensation directly allocable to these leasing services. A portion of their compensation, approximating \$285, \$472 and \$929 for the years ended December 31, 2008, 2007, 2006, respectively, was capitalized and is being amortized over the corresponding lease terms. The related amortization expense for the years ended December 31, 2008, 2007 and 2006 was \$404, \$223 and \$69, respectively.

The Company wrote off unamortized deferred financing costs totaling \$0, \$379 and \$357 for the years ended December 31, 2008, 2007 and 2006, respectively, in connection with the early extinguishments and refinancing of certain debt (described in note 6).

**(i) *Issuance Costs***

Costs that represent expenditures related to the issuance of preferred or common stock, including underwriting commissions and public offering costs, were charged to equity upon completion of the issuance and are recorded as a reduction to preferred stock and additional paid-in capital, respectively.

**(j) *Investments in Real Estate and Depreciation***

Investments in real estate are stated at historical cost, less accumulated depreciation. The building and improvements thereon are depreciated on the straight-line basis over their estimated useful lives ranging from three to thirty-nine years. Tenant improvements are depreciated on the straight-line basis over the shorter of the lease term or their estimated useful life. Equipment is being depreciated on a straight-line basis over the estimated useful lives of three to seven years.

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For redevelopment of existing operating properties, the net carrying value of the existing property under redevelopment plus the cost for the construction and improvements incurred in connection with the redevelopment, are capitalized to the extent the capitalized costs do not exceed the estimated fair value of the redeveloped property when complete. Real estate taxes and insurance costs incurred during construction periods are capitalized and amortized on the same basis as the related assets. Interest costs are capitalized during periods of active construction for qualified expenditures based upon interest rates in place during the construction period until construction is substantially complete. Capitalized interest costs are amortized over lives consistent with constructed assets. We capitalized the following costs:

	<b>Year ended December 31</b>		
	<b>2008</b>	<b>2007</b>	<b>2006</b>
Interest	\$ 292	754	727
Real estate taxes	—	167	445
Insurance	—	15	46
Total	\$ 292	936	1,218

Certain of our employees provide construction services to the properties. It's our policy to capitalize employee compensation directly allocable to these construction services. A portion of their compensation, approximately \$28, \$106 and \$378 for the years ended December 31, 2008, 2007 and 2006, respectively, has been capitalized to these construction projects and will be amortized over the estimated useful lives of these redevelopment projects.

Predevelopment costs, which generally include legal and professional fees and other third-party costs related directly to the redevelopment of a property, are capitalized as part of the property being developed. In the event a development is no longer deemed to be probable, the costs previously capitalized are written off as a component of operating expenses.

Improvements and replacements are capitalized when they extend the useful life or improve the efficiency of the asset. Repairs and maintenance are charged to expense as incurred.

Accumulated depreciation was \$0 and \$24,868 at December 31, 2008 and 2007, respectively. In connection with our impairment of long-lived assets (see notes 2 and 4), a new cost basis was established for the property and the Company has eliminated the accumulated depreciation on the property as part of the adjustment to record the impairment.

**(k) Due to Affiliates**

At December 31, 2008, we had an obligation to make payments to certain owners of the predecessor in connection with the formation transactions. As part of the formation transactions, certain shareholders have the right to receive additional OP Units for ownership interests contributed as part of the formation transactions upon our achieving a 15% internal rate of return from the Harrisburg joint venture on or prior to December 31, 2009. The right to receive such additional OP Units is a financial instrument that we recorded as an obligation of the offering that is adjusted to fair value

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each reporting period until the thresholds have been achieved and the OP Units have been issued. The more significant assumptions used in determining the fair value of the obligation are (i) refinancing the property mortgage, (ii) probability weighted sale of the property, and (iii) sales proceeds, which are based upon an estimated multiple of future net operating income. During 2008, our investment in the Harrisburg Mall was written-off and no additional OP Units were issued.

**(l) Conditional Asset Retirement Obligations**

We own certain properties that contain environmental conditions that could require us to perform future remediation. Although we may have a legal obligation to remediate environmental conditions contained in any of our investment properties, either in the course of future remodeling, demolition or tenant construction, or as a transferred liability to a buyer, we do not believe that the current estimation of that liability and the related asset and cumulative catch-up of any accretion or depreciation, is material to our consolidated financial statements. There is currently no obligation to perform any amount of such work that is material to the consolidated financial statements in conjunction with any current renovation or construction project. Accordingly, these amounts are not material to our consolidated financial statements.

**(m) Impairment of Long-Lived Assets**

In accordance with Statement of Financial Accounting Standards (SFAS) No. 144, *Accounting for the Impairment of Long-Lived Assets and for Long-Lived Assets to be Disposed Of*, investment properties are reviewed for impairment on a property-by-property basis or whenever events or changes in circumstances indicate that the carrying value of investment properties may not be recoverable. Recoverability of assets to be held and used is measured by a comparison of the carrying amount to the future net cash flows, undiscounted and without interest, expected to be generated by the asset. If such assets are considered to be impaired, the impairment to be recognized is measured by the amount by which the carrying amount of the assets exceeds the fair value of the assets. The Company performs this review on all properties, including those wholly owned and investments in unconsolidated real estate partnerships.

An impairment loss is recognized on investments in unconsolidated real estate partnerships when the impairment is deemed to be other than temporary. The Company considers an impairment as other than a temporary impairment when the carrying value is not considered recoverable based upon the evaluation of the severity and duration of the decline, among other factors. The estimation of fair value is based on the Company's plans for the Property and the Company's views on market and economic conditions using the results of discounted cash flow and other valuation techniques.

The expected cash flows of a property are dependent on estimates and other factors which are subject to change, including (1) changes in the national, regional, and/or local economic climates, (2) competition from other retail centers, (3) increases in operating costs, (4) bankruptcy and/or other changes in the condition of third parties, including anchors and other tenants, and (5) expected holding period. These factors could cause our expected future cash flows to change, and, to the extent impairments have occurred, the excess carrying value of the long lived assets of the property over its estimated fair value is charged against operations.

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**(n) Restructuring Costs**

We have accounted for costs associated with restructuring activities in accordance with SFAS No. 146, *Accounting for Costs Associated with Exit or Disposal Activities*. These costs include employee severance payments and accelerated vesting of restricted stock awards. Costs associated with contract terminations are recognized once notification of contract termination has been delivered, or negotiated with the counterparty. Costs associated with accelerated vesting of restricted stock are amortized ratably over the future service periods. In November 2007, we announced that we planned to close our Phoenix office by March 31, 2008. In connection with the decision, we accrued approximately \$335 for severance and acceleration of restricted stock awards. We have incurred an additional charge during 2008 totaling \$162 related to the closing of our Phoenix office and subsequent termination of the related office lease.

**(o) Derivative Instruments**

In the normal course of business, we use derivative instruments to manage, or hedge, interest rate risk. We require that hedging derivative instruments are effective in reducing the interest rate risk exposure that they are designated to hedge. This effectiveness is essential for qualifying for hedge accounting. Some derivative instruments are associated with forecasted cash flows. In those cases, hedge effectiveness criteria also require that it be probable that the underlying forecasted cash flows will occur. Instruments that meet these hedging criteria are formally designated as hedges at the inception of the derivative contract.

To determine the fair values of derivative instruments, we may use a variety of methods and assumptions that are based on market conditions and risks existing at each balance sheet date. For the majority of financial instruments including most derivatives, long-term investments and long-term debt, standard market conventions and techniques such as discounted cash flow analysis, are used to determine fair value. All methods of assessing fair value result in a general approximation of value and such value may never actually be realized.

Derivatives that are reported at fair value and presented on the balance sheet could be characterized as either cash flow hedges or fair value hedges. Cash flow hedges address the risk associated with future cash flows of debt transactions. All hedges held by us are deemed to be fully effective in meeting the hedging objectives established by our corporate policy governing interest rate risk management, and as such, no net gains or losses are reported in earnings. The changes in fair value of hedge instruments are reflected in accumulated other comprehensive income. For derivative instruments not designated as hedging instruments, the gain or loss, resulting from the change in the estimated fair value of the derivative instruments, is recognized in current earnings during the period of change. Changes in the fair value of our derivative instruments may increase or decrease our reported net income and stockholders' equity prospectively, depending on future levels of LIBOR interest rates and other variables, but will have no effect on cash flows.

On January 1, 2008, we adopted SFAS No. 157, *Fair Value Measurements* (SFAS No. 157), which defines fair value, establishes a framework for measuring fair value, and expands disclosures about fair value measurements. SFAS No. 157 applies to reported balances that are required or permitted to

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be measured at fair value under existing accounting pronouncements; the standard does not require any new fair value measurements of reported balances.

SFAS No. 157 emphasizes that fair value is a market-based measurement, not an entity-specific measurement. Therefore, a fair value measurement should be determined based on the assumptions that market participants would use in pricing the asset or liability. As a basis for considering market participant assumptions in fair value measurements, SFAS No. 157 establishes a fair value hierarchy that distinguishes between market participant assumptions based on market data obtained from sources independent of the reporting entity (observable inputs that are classified within Levels 1 and 2 of the hierarchy) and the reporting entity's own assumptions about market participant assumptions (unobservable inputs classified within Level 3 of the hierarchy).

Level 1 inputs utilize quoted prices (unadjusted) in active markets for identical assets or liabilities that we have the ability to access. Level 2 inputs are inputs other than quoted prices included in Level 1 that are observable for the asset or liability, either directly or indirectly. Level 2 inputs may include quoted prices for similar assets and liabilities in active markets, as well as inputs that are observable for the asset or liability (other than quoted prices), such as interest rates, foreign exchange rates, and yield curves that are observable at commonly quoted intervals. Level 3 inputs are unobservable inputs for the asset or liability, which are typically based on an entity's own assumptions, as there is little, if any, related market activity. In instances where the determination of the fair value measurement is based on inputs from different levels of the fair value hierarchy, the level in the fair value hierarchy within which the entire fair value measurement falls is based on the lowest-level input that is significant to the fair value measurement in its entirety. Our assessment of the significance of a particular input to the fair value measurement in its entirety requires judgment, and considers factors specific to the asset or liability.

Currently, we use interest rate swaps to manage our interest rate risk. The valuation of these instruments is determined using widely accepted valuation techniques, including discounted cash flow analysis on the expected cash flows of each derivative. This analysis reflects the contractual terms of the derivatives, including the period to maturity, and uses observable market-based inputs.

To comply with the provisions of SFAS No. 157, we incorporate credit valuation adjustments to appropriately reflect both our own nonperformance risk and the respective counterparty's nonperformance risk in the fair value measurements. In adjusting the fair value of its derivative contracts for the effect of nonperformance risk, the Company has considered the impact of netting and any applicable credit enhancements.

Although we have determined that the majority of the inputs used to value its derivatives fall within Level 2 of the fair value hierarchy, the credit valuation adjustments associated with its derivatives utilize Level 3 inputs, such as estimates of current credit spreads, to evaluate the likelihood of default by itself and its counterparties. However, as of December 31, 2008, we have assessed the significance of the effect of the credit valuation adjustments on the overall valuation of its derivative positions and have determined that the credit valuation adjustments are not significant to the overall valuation of our derivatives. As a result, we have determined that its derivative valuations in their entirety are classified in Level 2 of the fair value hierarchy.

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**(p) Purchase Accounting for Acquisition of Real Estate**

We allocate the purchase price of properties to tangible and identified intangible assets acquired based on their fair value in accordance with the provisions of SFAS No. 141, *Business Combinations*. The fair value of the tangible assets of an acquired property (which includes land, building and tenant improvements) is determined by valuing the property as if it were vacant and the “as-if-vacant” value is then allocated to land, building and related improvements based on management’s determination of the relative fair values of these assets. We have determined the as-if-vacant fair value of a property using methods similar to those used by independent appraisers. Factors we considered in performing these analyses include an estimate of carrying costs during the expected lease-up periods considering current market conditions and costs to execute similar leases. In estimating carrying costs, management includes real estate taxes, insurance and other operating expenses and estimates of lost rental revenue during the expected lease-up periods based on current market demand. We also estimate costs to execute similar leases including leasing commissions, legal and other related costs. Since June 2005, we determine the as-if-vacant value by using a replacement cost method, adjusted by both physical condition and possible obsolescence of the property acquired. Under this method, we obtain valuations from a qualified third party utilizing relevant third-party property condition and Phase I environmental reports. We believe the replacement cost method closely approximates our previous methodology and is a better determination of the as-if-vacant fair value.

In allocating the fair value of the identified intangible assets and liabilities of an acquired property, above-market, below-market and in-place lease values are recorded based on the present value (using an interest rate which reflects the risks associated with the leases acquired) of the difference between (i) the contractual amounts to be paid pursuant to the in-place leases and (ii) management’s estimate of fair market lease rates for the corresponding in-place leases, measured over a period equal to the remaining noncancelable term of the lease. The capitalized above-market lease values (included in acquired lease rights in the accompanying consolidated balance sheets) are amortized as a reduction of rental income over the remaining noncancelable terms of the respective leases. The capitalized below-market lease values (presented as acquired lease obligations in the accompanying consolidated balance sheets) are amortized as an increase to rental income over the initial term and any fixed rate/bargain renewal periods in the respective leases.

The aggregate value of other acquired intangible assets, consisting of in-place leases and tenant relationships, is measured by the excess of (i) the purchase price paid for a property after adjusting existing in-place leases to market rental rates over (ii) the estimated fair value of the property as-if-vacant, which is determined as set forth above. This aggregate value is allocated between in-place lease values and tenant relationships based on management’s evaluation of the specific characteristics of each tenant’s lease; however, the value of tenant relationships has not been separated from in-place lease value for the additional interests in real estate entities acquired by us because such value and its consequence to amortization expense is immaterial for these particular acquisitions. Should future acquisitions of properties result in allocating material amounts to the value of tenant relationships, an amount would be separately allocated and amortized over the estimated life of the relationship. The value of in-place leases, exclusive of the value of

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above-market and below-market in-place leases, is amortized to expense over the remaining noncancelable terms of the respective leases. If a lease were to be terminated prior to its stated expiration, all unamortized amounts relating to that lease would be written off.

Other acquired intangible assets and liabilities include above-market fixed rate mortgage debt and a below-market ground lease. Above-market debt is measured by adjusting the existing fixed rate mortgage to market fixed rate debt and amortizing the acquired liability over the weighted average term of the acquired mortgage using the interest method. The liability is being amortized as a reduction to our interest expense. The below-market ground lease asset is being amortized over the estimated length of the ground lease as an increase to ground rent expense.

Purchase accounting was applied to the assets and liabilities related to the real estate properties we acquired after our offering. The fair value of the real estate acquired was allocated to the acquired tangible assets, consisting of land, building and improvements and identified intangible assets and liabilities, consisting of above-market and below-market leases, in-place leases and tenant relationships, if any, based in each case on their fair values.

The following are the amounts assigned to each major asset and liability caption at the acquisition date:

	<u>Northgate(1)</u>	<u>Stratford(2)</u>	<u>Golden Triangle(3)</u>
Land	\$ 11,120	11,528	9,198
Building and improvements	98,223	74,547	30,473
Acquired lease rights	7,839	3,380	992
In-place lease values	2,701	7,262	791
Acquired lease obligations	(1,306)	(3,352)	(1,254)
Assumed above-market mortgages	<u>(8,243)</u>	<u>—</u>	<u>—</u>
Total purchase price	\$ <u>110,334</u>	<u>93,365</u>	<u>40,200</u>

- (1) The Northgate Mall acquired lease rights, lease obligations and in-place lease values are being amortized over the remaining lease terms and the remaining weighted average amortization expense periods as of December 31, 2008 are 2.9 years, 1.3 years and 2.3 years, respectively.
- (2) The Stratford Square Mall acquired lease rights, lease obligations and in-place lease values are being amortized over the remaining lease terms and the remaining weighted average amortization expense periods as of December 31, 2008 are 3.2 years, 2.0 years and 2.8 years, respectively.
- (3) The Golden Triangle Mall acquired lease rights, lease obligations and in-place lease values are being amortized over the remaining lease terms and the remaining weighted average amortization expense periods as of December 31, 2008 are 2.5 years, 2.6 years and 2.3 years,

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respectively. In 2007, we paid \$1,000 of additional consideration in accordance with an earn-out provision in the purchase agreement.

**(q) *Income Taxes***

We have elected to be treated and believe that we have operated in a manner that has enabled us to qualify as a Real Estate Investment Trust, or REIT under Sections 856 through 860 of the Internal Revenue Code of 1986, (the Code) as amended. As a REIT, we generally are not required to pay federal corporate income taxes on our taxable income to the extent it is currently distributed to our stockholders. However, qualification and taxation as a REIT depends upon our ability to meet the various qualification tests imposed under the Code, including tests related to annual operating results, asset composition, distribution levels and diversity of stock ownership. Accordingly, no assurance can be given that we will be organized or be able to operate in a manner so as to qualify or remain qualified as a REIT. If we fail to qualify as a REIT in any taxable year, we will be subject to federal income tax (including any applicable alternative minimum tax) on our taxable income at regular corporate tax rates.

We have elected that our management company subsidiary and certain corporations that held small interests in the Foothills Mall be treated as a “taxable REIT subsidiary” or TRS. In general, a TRS may perform noncustomary services for tenants, hold assets that we cannot hold directly and generally may engage in any real estate or nonreal estate related business (except for the operation or management of health care facilities or lodging facilities or the provision to any person, under a franchise, license or otherwise, of rights to any brand name under which any lodging facility or health care facility is operated). Our TRS’ are subject to corporate federal and state income taxes based on their taxable income. These rates are generally those rates that are charged for regular corporate entities. Income taxes are recorded using the asset and liability method. Under the asset and liability method, deferred tax assets and liabilities are recognized for the estimated future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax bases. Deferred tax assets and liabilities are measured using enacted tax rates in effect for the year in which those temporary differences are expected to be recovered or settled. A valuation allowance is recorded against the combined federal and state net deferred taxes reducing the deferred tax asset to a net amount. As of December 31, 2008, we had unused net operating losses of approximately \$1,336, which, based on our projected TRS operations from our third-party service contracts, we do not expect to utilize in future operating periods. Based upon current tax rates, our unused net operating losses have generated a deferred tax asset of approximately \$431 and \$81, at December 31, 2008 and 2007, respectively, which is classified in other assets. Based on our projections, we do not believe the deferred tax assets will be utilized and we have fully reserved our deferred tax assets as of December 31, 2008. The effect on deferred tax assets and liabilities of a change in tax rates is recognized in income in the period that includes the enactment date.

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The net income tax (expense) benefit related to our TRS' is as follows:

	<b>Year ended December 31</b>		
	<b>2008</b>	<b>2007</b>	<b>2006</b>
Income tax (expense) benefit:			
Current – state	\$ (25)	(25)	(25)
Deferred – federal	(81)	(98)	170
Deferred – state	—	(11)	20
Income tax (expense) benefit, net	\$ <u>(106)</u>	<u>(134)</u>	<u>165</u>

The net income tax (expense) benefit is included in general and administrative expenses in our consolidated statements of operations.

As a REIT, we are permitted to deduct dividends paid to our stockholders, eliminating the federal taxation of income represented by such dividends. REITs are subject to a number of organizational and operational requirements. If we fail to qualify as a REIT in any taxable year, we will be subject to federal and state income tax (including any applicable alternative minimum tax) on our taxable income at regular corporate tax rates.

In July 2006, the FASB issued FASB Interpretation No. 48, *Accounting for Uncertainty in Income Taxes, an interpretation of FASB Statement No. 109* (FIN 48). FIN 48 clarifies the accounting and reporting for uncertainties in income tax law. This Interpretation prescribes a comprehensive model for the financial statement recognition, measurement, presentation and disclosure of uncertain tax positions taken or expected to be taken in income tax returns. Under FIN 48, tax positions shall initially be recognized in the financial statements when it is more likely than not the position will be sustained upon examination by the tax authorities. Such tax positions shall initially and subsequently be measured as the largest amount of tax benefit that is greater than 50% likely of being realized upon ultimate settlement with the tax authority assuming full knowledge of the position and relevant facts. Our tax returns for fiscal years 2004, 2005, 2006 and 2007 remain subject to examination by the relevant tax jurisdictions. We adopted this interpretation effective January 1, 2007 and the adoption of FIN 48 did not have any effect on our consolidated financial statements.

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**(r) Earnings (Loss) Per Share**

We present both basic and diluted earnings (loss) per share, or EPS. Basic EPS excludes potentially dilutive securities and is computed by dividing net income (loss) available to common stockholders by the weighted average number of common shares outstanding during the period. Diluted EPS reflects the potential dilution that could occur if securities or other contracts to issue common stock were exercised or converted into common stock, where such exercise or conversion would result in a lower EPS or greater loss per share amount. The following is the computation of our basic and diluted shares for the following periods:

	<b>Years ended December 31</b>		
	<u><b>2008</b></u>	<u><b>2007</b></u>	<u><b>2006</b></u>
(Loss) income from continuing operations	\$ (237,083)	(16,131)	19,907
Less preferred stock dividends, net of minority interest (\$98 in 2007)	<u>(3,435)</u>	<u>(903)</u>	<u>—</u>
(Loss) income available to common stockholders from continuing operations	(240,518)	(17,034)	19,907
(Loss) income from discontinued operations	(25,723)	(116)	274
Net (loss) income – basic	(266,241)	(17,150)	20,181
Add back minority interest	—	—	2,469
Net (loss) income – diluted	<u>\$ (266,241)</u>	<u>(17,150)</u>	<u>22,650</u>
Basic weighted average common shares	12,908,620	12,863,036	12,808,061
Plus:			
Weighted average unvested restricted shares	—	—	293,416
Weighted average OP Units	<u>—</u>	<u>—</u>	<u>1,564,555</u>
Diluted weighted average common shares	<u><u>12,908,620</u></u>	<u><u>12,863,036</u></u>	<u><u>14,666,032</u></u>

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	<b>Years ended December 31</b>		
	<b>2008</b>	<b>2007</b>	<b>2006</b>
Basic (loss) earnings per share:			
Continuing operations	\$ (18.63)	(1.32)	1.55
Discontinued operations	(1.99)	(0.01)	0.03
	<u>\$ (20.62)</u>	<u>(1.33)</u>	<u>1.58</u>
Diluted (loss) earnings per share:			
Continuing operations	\$ (18.63)	(1.32)	1.53
Discontinued operations	(1.99)	(0.01)	0.01
	<u>\$ (20.62)</u>	<u>(1.33)</u>	<u>1.54</u>

Our computation of net loss per share excludes unvested, weighted average restricted stock issued to certain employees totaling 88,248 and 158,743 in 2008 and 2007, and OP Units in the amount of 1,414,618 in 2008 and 2007 and 1,593,464 in 2006 because these securities are antidilutive.

**(s) Segment Information**

Our Company is a REIT engaged in owning, managing, leasing and repositioning Class B regional malls and has one reportable segment, which is retail mall real estate.

**(t) Recent Accounting Pronouncements**

In September 2006, the FASB issued Statement No. 157, *Fair Value Measurements*, or SFAS No. 157. SFAS No. 157 provides guidance for using fair value to measure assets and liabilities. This statement clarifies the principle that fair value should be based on the assumptions that market participants would use when pricing the asset or liability. SFAS No. 157 establishes a fair value hierarchy, giving the highest priority to quoted prices in active markets and the lowest priority to unobservable data. SFAS No. 157 applies whenever other standards require assets or liabilities to be measured at fair value. This statement is effective in fiscal years beginning after November 15, 2007. The adoption of this standard on January 1, 2008 did not have a material effect on our consolidated financial statements. In February 2008, the FASB delayed the effective date of SFAS No. 157 for nonfinancial assets and nonfinancial liabilities to fiscal years beginning after November 15, 2008.

In February 2007, the FASB Issued Statement No. 159, *The Fair Value Option for Financial Assets and Financial Liabilities*. This Statement permits entities to choose to measure many financial instruments and certain other items at fair value that are not currently required to be measured at fair value. The Statement also establishes presentation and disclosure requirements designed to facilitate comparisons between entities that choose different measurement attributes for similar types of assets and liabilities. Statement No. 159 is effective for financial statements issued for fiscal years beginning after November 15, 2007. We have adopted this standard effective January 1, 2008 and have elected not to measure any of our current eligible financial assets or liabilities at fair value upon adoption. However, we do reserve the right to elect to measure future eligible financial assets or liabilities at fair value.

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In November 2007, the FASB ratified the consensus in EITF Issue 07-06, *Sales of Real Estate with Buy-Sell Clauses*, which addresses whether a buy-sell clause in a sale of a partial interest in real estate would preclude partial sale and profit recognition under SFAS 66. The new consensus holds that a buy-sell clause does not by itself constitute a form of continuing involvement that would preclude partial sale recognition. Such clauses should be evaluated with the agreement's other explicit and implicit terms to determine whether the seller has an obligation to repurchase the property, the terms of the transaction allow the buyer to compel the seller to repurchase the property, or the seller can compel the buyer to sell its interest in the property back to the seller. EITF 07-06 is effective for fiscal years beginning after December 15, 2007 and applies to new assessments made under SFAS 66 after the effective date. As of January 1, 2008, we have adopted EITF 07-06.

In December 2007, the FASB issued SFAS No. 141 (rev. 2007), *Business Combinations (a revision of Statement No. 141)* (SFAS No. 141 R). This statement applies to all transactions or other events in which an entity obtains control of one or more businesses, including those combinations achieved without the transfer of consideration. SFAS No. 141 R retains the fundamental requirement in Statement No. 141 that the acquisition method of accounting be used for all business combinations. SFAS No. 141 R expands the scope to include all business combinations and requires an acquirer to recognize the assets acquired, the liabilities assumed, and any noncontrolling interest in the acquiree at their fair values as of the acquisition date. Additionally, SFAS No. 141 R changes the way entities account for business combinations achieved in stages by requiring the identifiable assets and liabilities to be measured at fair value at the acquisition date. Our adoption of the provisions of this statement beginning on January 1, 2009 will not have any impact on our historical financial statements.

In December 2007, the FASB issued SFAS No. 160, *Noncontrolling Interests in Consolidated Financial Statements* (SFAS No. 160). SFAS No. 160 establishes accounting and reporting standards for the noncontrolling interest in a subsidiary and for the deconsolidation of a subsidiary. SFAS No. 160 will be effective for us beginning on January 1, 2009. Our adoption of the provisions of this statement beginning on January 1, 2009 will not materially impact the Company's accounting for its noncontrolling interest.

In March 2008, the FASB issued SFAS No. 161, *Disclosures about Derivatives Instruments and Hedging Activities, an amendment of FASB Statement No. 133*. SFAS No. 161 requires entities to provide greater transparency about (a) how and why an entity uses derivative instruments, (b) how derivative instruments and related hedge items are accounted for under SFAS No. 133 and its related interpretations, and (c) how derivative instruments and related hedged items affect an entity's financial position, results of operations, and cash flows. SFAS No. 161 is effective on January 1, 2009. We do not expect the adoption of SFAS No. 161 to have a material impact on our consolidated financial statements.

In May 2008, the FASB issued SFAS No. 162, *The Hierarchy of Generally Accepted Accounting Principles*, or SFAS No. 162, which is intended to improve financing reporting by identifying a consistent framework or hierarchy for selecting accounting principles to be used in preparing financial statements of nongovernmental entities that are presented in conformity with generally

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accepted accounting principles, or GAAP in the United States. SFAS No. 162 is effective 60 days following the Securities and Exchange Commission's, or SEC, approval of the Public Company Accounting Oversight Board amendment to AU Section 411, *The Meaning of Present Fairly in Conformity with Generally Accepted Accounting Principles*. We do not expect the adoption of SFAS No. 162 to have a material impact on our consolidated financial statements.

**(u) Share-Based Deferred Compensation**

We have a deferred compensation plan under which we are authorized to issue up to 469,221 shares of common stock to employees. As of December 31, 2008, we had granted 239,767 shares of common stock, net of forfeitures, which vest annually over periods ranging from two to five years.

Stock awards entitle the holder to shares of common stock as the award vests. We measure the fair value of share awards based upon the closing market price of the Company's common stock on the date of grant. Stock awards that vest in accordance with service conditions are amortized over their applicable vesting period using the straight-line method.

The following describes the shares of unvested common stock for the years ended December 31, 2008, 2007 and 2006:

	Number of unvested shares			Weighted average share price		
	2008	2007	2006	2008	2007	2006
Beginning balance	158,744	326,074	285,100	\$ 11.91	11.28	11.23
Shares granted	—	5,000	135,530	—	11.31	11.47
Shares vested	(61,851)	(46,599)	(60,718)	12.11	12.17	11.31
Shares forfeited	(26,294)	(125,731)	(33,838)	11.31	10.15	11.73
Ending balance	<u>70,599</u>	<u>158,744</u>	<u>326,074</u>	11.95	11.91	11.28

Share-based compensation expense included in net (loss) income for the years ended December 31, 2008, 2007 and 2006 was \$559, \$505 and \$484, respectively. Gross share-based compensation was \$598, \$571 and \$701 for the years ended December 31, 2008, 2007 and 2006 respectively. It is our policy to capitalize employee compensation, including share-based compensation, allocated to construction and leasing services, of which \$39, \$172 and \$217 were capitalized for the years ended December 31, 2008, 2007 and 2006, respectively.

As of December 31, 2008, there was \$586 of total unrecognized compensation costs related to nonvested restricted stock awards granted under the plan, which are expected to be recognized over a weighted average period of 0.5 years. The total grant date fair value of shares that vested during 2008 was \$749.

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**(3) Intangible Assets and Liabilities**

At December 31, 2008 and 2007, the cost basis and accumulated amortization of intangible assets and liabilities were as follows:

	<b>December 31, 2008</b>		
	<b>Total cost</b>	<b>Accumulated amortization</b>	<b>Deferred costs, net</b>
Acquired lease rights	\$ 1,741	—	1,741
Acquired in-place lease values	1,731	—	1,731
Total	<u>\$ 3,472</u>	<u>—</u>	<u>3,472</u>
Acquired lease obligations	\$ 560	—	560

  

	<b>December 31, 2007</b>		
	<b>Total cost</b>	<b>Accumulated amortization</b>	<b>Deferred costs, net</b>
Acquired lease rights	\$ 11,743	(4,462)	7,281
Acquired in-place lease values	12,094	(5,657)	6,437
Total	<u>\$ 23,837</u>	<u>(10,119)</u>	<u>13,718</u>
Acquired lease obligations	\$ 8,366	(3,230)	5,136

Amortization expense of acquired in-place lease values is expected to be \$406, \$307, \$155, \$155 and \$87 over each of the next five years through December 31, 2013. Amortization expense of acquired lease rights is expected to be \$476, \$406, \$286, \$248 and \$202 over each of the next five years through December 31, 2013. Amortization expense of acquired lease obligations is expected to be \$181, \$134, \$70, \$56 and \$48 over each of the next five years through December 31, 2013.

**(4) Real Estate**

At December 31, 2008 and 2007, investments in real estate consisted of the following:

	<b>2008</b>	<b>2007</b>
Buildings and improvements	\$ 77,942	267,333
Tenant improvements	21,266	55,934
Construction in progress	4,139	6,436
Land	<u>16,031</u>	<u>38,062</u>
Total investments in real estate	119,378	367,765
Accumulated depreciation	<u>—</u>	<u>(24,868)</u>
Investments in real estate, net	<u>\$ 119,378</u>	<u>342,897</u>

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**(5) Deferred Charges**

At December 31, 2008 and 2007, deferred charges consisted of the following:

	<b>2008</b>	<b>2007</b>
Deferred financing costs	\$ 2,472	3,479
Deferred leasing costs	1,899	1,793
Total	4,371	5,272
Less accumulated amortization	(1,819)	(1,878)
Net	\$ 2,552	3,394

**(6) Mortgage Loans Payable**

At December 31, 2008 and 2007, mortgage loans payable consisted of the following:

	<b>2008</b>	<b>2007</b>
Mortgage loan payable – interest only at 115 basis points over LIBOR (2.35% at December 31, 2008) payable monthly, due May 2010, secured by Stratford Square Mall property	\$ 104,500	104,500
Mortgage loan payable – interest at 8.60% payable monthly, due July 11, 2029, anticipated repayment on July 11, 2009, secured by the Tallahassee Mall property	—	44,540
Mortgage loan payable – interest at 6.60% payable monthly, due October 11, 2032 anticipated prepayment date of November 11, 2012, secured by the Northgate Mall property	75,971	77,117
Total mortgages outstanding	180,471	226,157
Assumed above-market mortgage premiums, net	3,348	6,721
Total mortgage loans payable	\$ 183,819	232,878

On July 12, 2005, we assumed a \$79,605 first mortgage in connection with the acquisition of the Northgate Mall. The stated interest on the mortgage is 6.60% with an anticipated prepayment date of 2012 and a final maturity date of 2032. We determined this rate to be above market and, in applying purchase accounting, determined the fair market value interest rate to be 5.37%. The above-market premium was initially \$8,243 and is being amortized over the remaining term of the acquired loan using the effective interest method. The amortization of the above-market premium totaled \$1,374, \$1,394 and \$1,414 for the years ended December 31, 2008, 2007 and 2006, respectively.

On June 28, 2005, we assumed a \$45,848 first mortgage in connection with the acquisition of the Tallahassee Mall. The stated interest rate on the mortgage is 8.60%. We determined this rate to be above-market and, in applying purchase accounting, determined the fair market value interest rate to be

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5.16%. The above-market premium was initially \$6,533 and is being amortized over the remaining term of the acquired loan using the effective-interest method. The amortization of the above-market premium totaled \$1,474, \$1,795 and \$1,820 for the years ended December 31, 2008, 2007 and 2006, respectively.

In January 2005, we completed a \$75,000, three-year first mortgage financing collateralized by the Stratford Square Mall. On May 8, 2007, we closed on a \$104,500 first mortgage loan secured by the Stratford Square Mall. The loan has an initial term of 36 months and bears interest at a floating rate of 115 basis points over the London Interbank Offered Rate (LIBOR). The loan has two one-year extension options. On the closing date, \$75,000 of the loan proceeds was used to retire Stratford Square's outstanding \$75,000 first mortgage and \$3,040 was used to repay the JCPenney parcel note. The balance of the proceeds was placed into escrow and will be released to us to fund the completion of the mall's redevelopment project. In connection with this transaction, we recorded a \$379 loss on early extinguishment of debt, which represents prepayment penalties and the write-off of deferred financing costs related to the existing mortgage that was repaid. As of December 31, 2008, the balance of funds in escrow was \$6,964.

In connection with the refinancing of the Stratford Square Mall mortgage in May 2007, we entered into an additional \$29,500 swap that matures in May 2010. The effect of this swap is to fix the all-in interest rate on \$29,500 of the mortgage at 6.65% per annum.

During December 2005, we entered into a \$75,000 swap, which commenced in February 2008 and has a final maturity date in January 2011. The effect of the swap is to fix the all-in interest rate of our forecasted cash flows on LIBOR-based loans at 4.91% per annum.

Aggregate principal payments of the Company's mortgage loans as of December 31, 2008 are as follows:

Year ending December 31,		
2009	\$	1,237
2010		105,824
2011		1,415
2012		71,995
		<hr/>
Total principal payments		180,471
Assumed above-market mortgage premiums, net		3,348
		<hr/>
Total	\$	<u>183,819</u>

Violations of certain event of default financial covenants could result in acceleration of the partial or full repayment of the outstanding loan balances. As of and for the year-end December 31, 2008, we were in compliance with event of default debt covenants. Certain of our mortgage loans payable also contain various financial covenants requiring us to maintain certain financial debt coverage ratios, among other requirements. Based on subsequent property-level performance, we are no longer in compliance with certain financial covenant requirements at the Northgate Mall, which do not represent an event of default but provide for the lender to withhold cash flow after debt service (see note 19).

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**(7) Junior Subordinated Debt Obligations**

During March 2006, we completed the issuance and sale in a private placement of \$28,500 in aggregate principal amount of preferred securities issued by our wholly owned subsidiary, FMP Statutory Trust I (the Trust). The Trust simultaneously issued 880 of its common securities to the operating partnership for a purchase price of \$880, which constitutes all of the issued and outstanding common securities of the Trust. The Trust used the proceeds from the sale of the trust preferred securities together with the proceeds from the sale of the common securities to purchase \$29,380 in aggregate principal amount of unsecured fixed/floating rate junior subordinated notes due April 2036, issued by the operating partnership. The junior subordinated notes, the common and the trust preferred securities have substantially identical terms, requiring quarterly interest payments calculated at a fixed interest rate equal to 8.70% per annum through April 2011 and subsequently (after April 2011) at a variable interest rate equal to LIBOR plus 3.45% per annum. The notes mature April 2036 and may be redeemed, in whole or in part, at par, at our option, beginning after April 2011. The preferred securities do not have a stated maturity date; however, the preferred and common securities are subject to mandatory redemption upon the redemption or maturity of the notes.

The principal amount of the junior subordinated notes of \$29,380 is reported as an obligation on our consolidated balance sheet at December 31, 2008. However, because we are not deemed to be the primary beneficiary of the Trust under FIN 46R, we account for our investment under the equity method of accounting and recorded our investment in the Trust's common shares of \$880 as part of other assets on our consolidated balance sheet. As of December 31, 2008, we have recorded an impairment charge totaling \$880 to write down our investment in the trust to \$0 since we will not recover this investment.

We have entered into a parent guarantee agreement for the purpose of guaranteeing the payment, after the expiration of any grace or cure period, of any amounts required to be paid. Our obligations under the parent guarantee agreement constitute unsecured obligations and rank subordinate and junior to all of our senior debt. The parent guarantee agreement will terminate upon the full payment of the redemption price for the trust preferred securities or full payment of the junior subordinated notes upon liquidation of the trust.

As of December 31, 2008, we have not made the scheduled interest payment to the trust totaling \$620 that was due on January 31, 2009, however, we have made the payment within the 30-day cure period. In May 2009, we repurchased the junior subordinated notes with a face of \$29,380 for \$1,500 and the issuance of 1.2 million shares of our common stock (see note 19).

**(8) Lines of Credit**

**(a) \$30,000 Secured Line of Credit**

On April 5, 2006, in connection with the acquisition of the Golden Triangle Mall, we entered into a \$24,600 secured line of credit (the Line). On April 20, 2007, we increased the Line from \$24,600 to \$30,000. The maturity date of the Line is April 2009 and up to \$5,400 of the Line is recourse to the operating partnership. The Line contains customary covenants that require us to, among other things, maintain certain financial coverage ratios. The Line needs to maintain a quarterly debt coverage

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constant of 10.50% and we were not in compliance with this covenant as of December 31, 2008. On December 29, 2009, we negotiated a forbearance agreement with the lender (see note 19).

Loan draws and repayments are at our option. Interest is payable monthly at a rate equal to LIBOR plus a margin ranging from 1.40% to 2.00% or, at our option, the prime rate plus a margin ranging from zero to 0.25%. The applicable margins depend on our debt coverage ratio as specified in the loan agreement. Commitment fees are paid monthly at the rate of 0.125% to 0.25% of the average unused borrowing capacity.

In October 2006, we entered into a modification agreement that provides for the issuance of letters of credit in the aggregate amount of up to \$13,000 for a fee of 0.5% of the face amount. As of December 31, 2007, letters of credit outstanding under this agreement amounted to \$10,250, in order to secure our cost guarantee on the Colonie Center Mall, and are renewable through the maturity date of the line.

The outstanding balance on the line at December 31, 2008 was \$27,752, and we are required to pay interest at 6.25%, which represents the default rate of interest due to the covenant violation noted above. As of December 31, 2008, \$2,250 was unused on the secured line of credit, however, based on the current debt covenant violation of the debt service coverage ratio, we are unable to draw the unused line of the credit balance.

**(b) \$25,000 Credit Facility**

On April 16, 2007, we announced the execution of an unsecured promissory note (the Note) providing for loans aggregating up to \$25,000 from Kimco Realty Corp. (Kimco). As of December 31, 2008 and 2007, there were no outstanding borrowings under the Note and the Note is no longer available to us.

Loans drawn under the Note are optional and will bear interest at the rate of 7.0% per annum, payable monthly. Any outstanding principal amount will be due and payable on April 10, 2008, provided that the maturity of the Note may be extended to April 10, 2009 if we deliver to Kimco, on or before March 17, 2008, a notice of extension and further provided that we comply with certain performance criteria. We did not extend the maturity date of the Note. In addition to the interest on the Note, Kimco will be paid a variable fee equal to (i) \$500, multiplied by (ii) (a) the volume weighted average price of our common stock as of a five-day period chosen by Kimco, minus (b) \$13.00 per common share. If Kimco does not select a date for determination of the fee prior to termination of the Note, we will instead pay to Kimco \$250 in additional interest. We are accounting for the variable fee as an embedded derivative and, accordingly, have recorded the fair value of this instrument as a deferred loan fee and as a derivative liability in the amount of \$312 at inception in April 2007. Changes in the fair value of the derivative liability are recorded in operating income in each reporting period as a component of interest expense. The Kimco note expired during April 2008 and is no longer available to us. In accordance with the Note, we paid Kimco \$250 additional interest at the Note's expiration.

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#### **(9) Related Party Transactions**

We provide certain property management, leasing and development services to our unconsolidated real estate partnerships for an annual management fee, ranging from 2% to 3.5% of gross receipts and construction management fees of 3% to 5% on the amount of capital improvements, as defined by their agreements. In addition, we earn customary brokerage commission fees as a percentage of contractual rents on new leases and lease renewals. Total fees earned from such partnerships aggregated \$2,374, \$3,734 and \$1,310 for the years ended December 31, 2008, 2007 and 2006, respectively. These fees are recorded in management, leasing and development services on the accompanying consolidated statements of operations.

On December 21, 2007, we announced the closing of our Phoenix office and the termination or reassignment of our personnel other than a minimal leasing staff. In addition, James Bourg, our former executive vice president and chief operating officer and director resigned from our company. Mr. Bourg left in the first quarter of 2008. In connection with Mr. Bourg's departure, we incurred a severance charge of approximately \$1,300 that was accrued in the fourth quarter of 2007. On March 28, 2008, we paid the remaining \$677 and we have no further severance liability due to Mr. Bourg.

On April 1, 2008, we entered into an agreement with Brandywine Financial Services Corporation, a Pennsylvania corporation (Brandywine), and a member of the Brandywine Companies. Bruce Moore, one of our directors, is the chairman and chief executive officer of Brandywine. Pursuant to this agreement, effective as of April 1, 2008, Brandywine agreed to provide us various accounting and management services relating to certain of our properties (the Projects), such as supervision of our operations, maintenance and development of certain of our properties, lease administration, bookkeeping, accounting, our compliance with FASB 141 and FASB 13, as amended, financial statement preparation, coordination of our compliance with Sarbanes-Oxley Act of 2002, as amended, and assistance with our financial statement audits (collectively, the Project Services). In addition, Brandywine agreed to provide us certain corporate accounting and administrative services, including, among other things, information technology user support, financial statement preparation and audit assistance, reports to joint venture partners, periodic reports to lenders, payroll preparation and filing coordination, human resources management, cash management, general ledger accounting, accounts payable, accounts receivable, cost allocation, inter-company billing and funding and FASB 109 compliance (collectively, the Corporate Services). As compensation to Brandywine for the Project Services (with certain exceptions) and the Corporate Services, we agreed to pay Brandywine a fee equal to (a) with respect to the Project Services, 1.50% of our gross revenue generated by the Projects, payable monthly, plus (b) with respect to the Corporate Services, \$60 per month, plus (c) travel and other out-of-pocket expenses incurred by Brandywine in connection with such services. This agreement has an initial term through June 30, 2009 and can be renewed on a year-to-year basis but is subject to termination by the parties at any time starting June 30, 2008 upon no less than 90 days prior to written notice. In connection with this agreement, Brandywine was paid a set-up fee of \$35 per entity totaling \$350. For the year ended December 31, 2008, we recorded \$1,854 in fees and expense reimbursements to Brandywine of which \$145 is accrued at December 31, 2008. The fees incurred for the year ended December 31, 2008 included a set-up fee \$350, property-level project service and management fee \$880, corporate service fees \$844 and expense reimbursements, including office supplies,

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postage, reproduction, telephone, all for our sole and exclusive use totaling \$129. In addition, Brandywine performed services totaling \$450 to our joint venture affiliates.

**(10) Rentals under Operating Leases**

We receive rental income from the leasing of retail shopping center space under operating leases. We recognize income from tenant operating leases on a straight-line basis over the respective lease terms and, accordingly, rental income in a given period will vary from actual contractual rental amounts due. Our rental revenue will also be reduced by amortization of capitalized above-market lease values and increased by the amortization of below-market lease values. Amounts included in lease income on the straight-line basis for the years ended December 31, 2008, 2007 and 2006 were \$184, \$601 and \$794, respectively.

The minimum future base rentals under noncancelable operating leases as of December 31, 2008 are as follows:

Year ending December 31,	
2009	16,442
2010	14,863
2011	12,233
2012	10,988
2013	9,577
2014 and thereafter	<u>25,155</u>
Total future minimum base rentals	<u>\$ 89,258</u>

Minimum future rentals do not include amounts that are payable by certain tenants based upon certain reimbursable property-level operating expenses. For the years ended December 31, 2008, 2007 and 2006, no tenant exceeded 10% of rental revenue.

**(11) Due to Affiliates**

Messrs. Feldman, Bourg, and Jensen have the right to receive additional OP Units for ownership interests contributed as part of the formation transactions upon our achieving a 15% internal rate of return from the Harrisburg joint venture on or prior to December 31, 2009. The right to receive such additional OP Units is a financial instrument that we recorded as an obligation of the offering that is adjusted to fair value each reporting period until the thresholds have been achieved and the OP Units have been issued. Based on the expected operating performance of the Harrisburg Mall, the fair value is estimated to be zero at December 31, 2008 and 2007 and is included in due to affiliates. The reduction in the fair value estimate for the years ended December 31, 2008 and 2007 were zero and \$3,907, respectively, and has been reflected in interest and other income in the accompanying consolidated financial statements. The decrease in our anticipated return is due to delays in the timing of certain redevelopment plans, higher than previously expected construction costs and a reduction in the projected future net operating income of the property, which is due to delays in leasing activity. The joint venture returned control of this property to the lender and Feldman was removed as manager in February 2009 and no OP Units were issued through this arrangement.

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On May 30, 2008, Mr. Feldman notified the Company of his decision not to continue as an employee of the Company, effective on such date, and claimed the right to receive severance payments under his employment agreement. The Company informed Mr. Feldman of its view that his employment agreement requires 30 days advance notice of employment termination and therefore Mr. Feldman was not entitled to receive severance payments under his employment agreement. Mr. Feldman disputed this position and, over the next several weeks, the Company and Mr. Feldman attempted to negotiate a mutually acceptable resolution. On June 26, 2008, Mr. Feldman served a Demand for Arbitration on the Company in an effort to resolve this matter through an arbitration proceeding.

On December 8, 2008, we entered into an agreement with Mr. Feldman, relating to his departure as an employee of the Company and certain related matters.

The agreement reached between us and Mr. Feldman covers the following principal matters:

- Mr. Feldman will no longer continue as an employee of the Company, but will remain as a director and Chairman of the Board.
- The severance payment due Mr. Feldman under his employment agreement will be reduced from \$3,000 to \$1,900 and will be payable on the following schedule: \$600 on December 1, 2008 and \$100 on the first of each month thereafter until the \$1,900 is paid in full. Late payments will carry interest at the rate of 12% per annum.
- Mutual releases will be exchanged between the Company and Mr. Feldman.
- The payment due to Mr. Feldman and certain of his affiliates under his tax protection agreement relating to the sale of Foothills Mall will be reduced from an estimated \$3,300 to \$2,100. The tax protection agreement will be amended to provide that the reduced tax protection payment due Mr. Feldman and certain of his affiliates on the sale of Foothills and the tax protection payment due to Mr. Feldman and certain affiliates on the sale of the Harrisburg Mall (\$100) will be payable by the Company not only on any taxable disposition of the Foothills Mall or Harrisburg Mall (which is required under the existing tax protection agreement), but also in any taxable or tax deferred merger or sale of the Company. The payments due Mr. Feldman and certain of his affiliates under his tax protection agreement will be secured by a pledge of the proceeds received by the Company from the sale of the Foothills Malls.
- The time period for the Company to register the resale of shares of common stock received in exchange for OP Units held by Mr. Feldman and certain of his affiliates under his existing registration rights agreement will be extended to November of 2009. However, such registration is currently not required since we are no longer required to file periodic reports under the Securities Exchange Act of 1934, as amended.
- The arbitration proceeding was terminated.

As of December 31, 2008, we have paid Mr. Feldman \$600 and accrued the remaining cash settlement obligation totaling \$1,300, which is classified as due to affiliates. The agreement has been subsequently amended (see note 19).

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**(12) Stockholders' Equity**

Our authorized capital stock consists of 250,000,000 shares, \$0.01 par value, consisting of up to 200,000,000 shares of common stock, \$0.01 par value per share and up to 50,000,000 shares of preferred stock, \$0.01 par value per share. As of December 31, 2008 and December 31, 2007, 12,992,537 and 13,018,831 shares of common stock were issued and outstanding, respectively.

Effective April 10, 2007, we entered into an agreement to issue, at a price of \$25 per share, up to \$50,000 of convertible preferred stock through the private placement of 2,000,000 shares of 6.85% Series A Cumulative Convertible Preferred Stock (the Series A Preferred Stock) to Inland American Real Estate Trust, Inc., a public nonlisted REIT sponsored by an affiliate of the Inland Real Estate Group of Companies (Inland American). As of December 31, 2007, we had issued all 2,000,000 shares for an aggregate purchase price of \$50,000.

Under the terms of this transaction, and in accordance with New York Stock Exchange rules, we obtained shareholder approval to permit conversion of the preferred shares into common stock. Inland American Real Estate Trust has the option after June 30, 2009 to convert some or all of its outstanding preferred shares. Each preferred share was issued at a price of \$25.00 per share and is convertible, in whole or in part, at a conversion ratio of 1.77305 common shares to preferred shares. This conversion ratio is based upon a common share price of \$14.10 per share.

Under the terms of the Articles Supplementary relating to the Series A Preferred Stock, at all times during which the Series A Preferred Stock is outstanding, the holders of the Series A Preferred Stock have the right to elect one person to serve as a director of our company. In addition, in the event that beginning on March 31, 2008 (upon public release of the unaudited interim financial statements for such date) and each March 31 thereafter, if our fixed charge coverage ratio measured on a trailing 12 month basis shall be less than 1.20 to 1.00 or our capitalization ratio shall be less than 0.75 to 1.00, the holders of the Series A Preferred Stock shall have the right to elect one additional member to our board of directors. We did not meet the fixed charge coverage ratio of 1.20 to 1.00 as of March 31, 2008. Accordingly, effective May 2008 the holders of the Series A Preferred Stock elected Mr. Thomas H. McAuley and Thomas McGuinness to our board of directors. Mr. McAuley resigned as a director on May 20, 2009 and was replaced by Jonathan J. Stein. Since July 10, 2008, our Board has determined not to declare the quarterly dividend payable on the outstanding shares of the Series A Preferred Stock. The undeclared dividends totaling \$2,581 have been accrued as of December 31, 2008.

**(13) Minority Interest**

As of December 31, 2008 and 2007, minority interest relates to the units of limited partner interests in our operating partnership that are not owned by us, which were approximately 9.8% of our fully diluted common equity. In conjunction with our formation, certain persons and entities contributing ownership interests in our predecessor to the operating partnership received units. Limited partners who acquired units in our formation transactions have the right, commencing on or after December 16, 2005, to require our operating partnership to redeem part or all of their units for cash or, at our option, an equivalent number of shares of our common stock at the time of the redemption. Alternatively, we may elect to acquire those units in exchange for shares of our common stock on a one-for-one basis subject to adjustment in the event

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of stock splits, stock dividends, and issuance of stock rights, specified extraordinary distributions or similar events. If we elect to exchange OP Units for shares of common stock, we will initially issue such shares in a transaction that is not required to be registered under the Securities Act of 1933. As a consequence, such shares will be subject to resale restrictions required under such Act. Under the registration rights agreement to which the holders of OP Units are parties, we are obligated, during the period of time that we are eligible to use Form S-3 registration statements, to register the resale of any shares of common stock that may be issued to such holders upon the exchange of their OP Units. At December 31, 2008, there were 1,414,618 operating partnership units outstanding with a fair market value of \$156, based on the price per share of our common shares on such date.

During 2008, the allocation of our losses reduced the minority interest to \$0, and as a result, we discontinued allocating losses to the minority interest holders. The amount of losses not allocated to the minority interest holders totaled \$17,234.

**(14) Commitment and Contingencies**

In the normal course of business, we may become involved in legal actions relating to the ownership and operations of our properties and the properties we manage for third parties. In management's opinion, the resolutions of these legal actions are not expected to have a material adverse effect on our consolidated financial position or results of operations.

All of our malls that have nonowned parcels sharing common areas are subject to reciprocal easement agreements that address use and maintenance of common areas and often address other issues, including use restrictions and operating covenants. These agreements are recorded against the properties and are long-term in nature.

Adjacent to the Stratford Square Mall are five third-party owned anchor tenant spaces. We have entered into operating agreements with these six anchor tenants to share certain operating expenses based on allocated amounts per square foot. The agreements terminate in March 2031.

As of December 31, 2008, we have commitments to make tenant improvements and other capital expenditures in the amount of approximately \$5,273.

In connection with the formation transactions, we entered into agreements with Messrs. Feldman, Bourg and Jensen that indemnify them with respect to certain tax liabilities intended to be deferred in the formation transactions, if those liabilities are triggered either as a result of a taxable disposition of a property by us, or if we fail to offer the opportunity for the contributors to guarantee or otherwise bear the risk of loss, with respect to certain amounts of our debt for tax purposes (the contributor-guaranteed debt). With respect to tax liabilities arising out of property sales, the indemnity will cover 100% of any such liability until December 31, 2009 and will be reduced by 20% of the aggregate liability on each of the five following year ends thereafter. James Bourg, a former officer and director of the Company who resigned in early 2008, made a demand on the Company in a letter dated February 22, 2010 to pay the sum of approximately \$600, which he claimed was due under his Tax Protection Agreement as a result of the Company's sale of its interests in the Foothills Mall in January 2010. The Company is unable at this time

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to evaluate and determine the validity of the claim. Any claim, if determined to be valid, would not be due until 2011.

We also have agreed to maintain approximately \$10,000 of indebtedness and to offer the contributors the option to guarantee \$10,000 of the operating partnership's indebtedness, in order to enable them to continue to defer certain tax liabilities. The obligation to maintain such indebtedness extends to 2013, but will be extended by an additional five years for any contributor that holds (together with his affiliates) at that time at least 25% of the initial ownership interest in the operating partnership issued to them in the formation transactions. As of December 31, 2008, Feldman Partners, LLC, an affiliate of Larry Feldman, guarantees \$8,000 of the loan secured by the Stratford Square Mall.

We have operating lease obligations for office space and equipment related to our corporate offices and property locations. Our rental expense for the three years ended December 31, 2008 were \$973, \$1,073 and \$989, respectively. The future minimum lease payments under these noncancelable leases as of December 31, 2008 are as follows:

Year ending December 31:		
2009	\$	94
2010		48
2011		21
2012		5
2013		—
2014 and thereafter		—
Total minimum lease payments	\$	<u>168</u>

We entered into employment agreements with our executive officers that expire in 2009. These agreements provide for salary, bonuses and other benefits including, potentially, severance benefits upon termination of employment, as well as for grants of restricted common stock, option awards, cash bonuses and tax gross-ups, among other matters.

**(15) Investments in Unconsolidated Partnerships**

**(a) Foothills Mall**

During February 2006, we entered into a contribution agreement with a subsidiary of Kimco Realty Corp. (Kimco) in connection with the Foothills Mall, located in the suburbs of Tucson, Arizona. Under the terms of the contribution agreement, we contributed the Foothills Mall to a limited liability company at an agreed value of \$104,000, plus certain closing costs (the Foothills JV). The transaction closed on June 29, 2006. We accounted for the transaction as a partial sale of real estate, which resulted in us recognizing a gain of \$29,397. Pursuant to the terms of the contribution agreement, we received approximately \$38,900 in net proceeds from the transaction. Because we received cash in excess of our net basis contributed to the Foothills JV, we recorded negative carrying value of our investment in the amount of \$4,450.

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On the closing date, the Foothills JV extinguished the existing first mortgage loan totaling \$54,750 and refinanced the property with an \$81,000 nonrecourse first mortgage loan. The \$81,000 first mortgage loan matures in July 2016 and bears interest at 6.08%. The loan may not be prepaid until the earlier of three years from the first interest payment or two years from date of loan syndication and has no principal payments for the first five years and then loan principal amortizes on a 30-year basis thereafter. The mortgage loan contains financial covenants requiring the Foothills JV to maintain certain financial debt service coverage ratios, among other requirements. The Foothills JV is in compliance with all such covenants as of and for the period ended December 31, 2008. Simultaneous with the refinancing, Kimco contributed cash in the amount of \$14,757 to the Foothills JV. Kimco will receive a preferred return of 8.0% on its capital from the Foothills Mall's cash flow. Kimco may be required to make additional capital contributions to the Foothills JV for additional tenant improvements and leasing commissions, as defined in the limited liability company agreement, which in the aggregate shall not exceed \$2,000. As of December 31, 2008, Kimco has funded \$1,180 in additional capital contributions. Upon the first to occur of a sale of the property or June 2010, Kimco will make an additional capital contribution to the Foothills JV in an amount equal to the unfunded portion of the \$2,000 (if any), which will be distributed to us. Upon a sale or refinancing of the Foothills Mall, Kimco is also entitled to receive a priority return of its capital together with any unpaid accrued preferred return. After certain adjustments, we are next entitled to receive an 8% preferred return on and a return of capital. Thereafter, all surplus proceeds will be split 20% to Kimco and 80% to us. Additionally, we agreed to serve as the managing member of the Foothills JV and will retain primary management, leasing and construction oversight, for which we will receive customary fees. We have determined the Foothills JV is not a VIE and account for our investment in the joint venture under the equity method.

The Foothills JV agreement includes "buy-sell" provisions commencing in June 2008 for us and after May 2010 allowing either Foothills JV partner to acquire the interests of the other. Either partner to the Foothills JV may initiate a "buy-sell" proceeding, which may enable it to acquire the interests of the other partner. However, the partner receiving an offer to be bought out will have the right to buy out such offering partner at the same price offered. The Foothills JV agreement does not limit our ability to enter into real estate ventures or co-investments with other third parties.

As of December 31, 2008, the Foothills JV has commitments for tenant improvements, renovation costs and other capital needs in the amount of approximately \$691 and intends to fund them from operating cash flow and equity contributions to the partnership. See note 19 for events occurring subsequent to December 31, 2008 regarding the Company's investment in The Foothills JV.

**(b) Harrisburg Mall**

We have a 24% limited partnership interest and a 1% general partnership interest in Feldman Lubert Adler Harrisburg, LP (the partnership). The partnership purchased a regional mall in Harrisburg, Pennsylvania on September 29, 2003.

The Harrisburg Mall was purchased with the proceeds of a mortgage loan and cash contributions from the predecessor and its joint venture partner. The mortgage loan is a line of credit with a maximum commitment of \$50,000. The mortgage loan bears interest at a rate of LIBOR plus 1.625%

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per annum. The effective rates on the loan at June 30, 2008 and December 31, 2007 were 4.477% and 6.277%, respectively. The loan matured in March 2008. The mortgage lender has extended the loan through August 15, 2008 and has issued us a term sheet that, among other provisions, would allow for the loan to be extended until October 2010, increase the floating interest rate to 250 basis points over LIBOR. The partnership has not repaid the loan. During November 2008, the lender notified the joint venture's tenants that the joint venture was in violation of the loan agreement and directed the tenants to begin depositing rental payments into a controlled lock box account. The mortgage loan presently has a limited recourse of \$5,000 of which our joint venture partner is liable for \$3,150 or 63% and we are liable for \$1,850 or 37%. In addition, the partners would contribute equity equal to the amount of their \$5,000 recourse to the partnership for current capital requirements and the lender would waive further recourse. The balance outstanding under the loan was \$49,750 as of December 31, 2008 and 2007.

Under the terms of the joint venture, we are generally responsible for funding 25% of the capital contributions required for the venture. As of December 31, 2008, we had funded \$13,300 and our joint venture partner \$17,100 of the capital contributions made to the joint venture.

We are in a dispute with our joint venture partner relating to the scope of the redevelopment plan for this project. Our joint venture partner has notified us that it believes that certain aspects of the last phase of the development plan were not approved in accordance with the joint venture agreement and as a result has claimed that we are responsible for 100% of the funding required for this part of the project. We continue to seek to develop a mutually acceptable solution for this issue. Through December 31, 2008, we have funded \$5,700 above our 25% capital contribution requirement for these redevelopment projects.

One of the partnership's tenants at this property, Panera Bread, which has executed a new lease to cover approximately 4,200 square feet of newly developed restaurant space at the this property, has notified us that it is considering sub-letting this space to another retailer. Under its lease, Panera Bread has the right to sublet this space, subject to our reasonable approval. The subletting of this space could delay the opening of the restaurant that will ultimately occupy this space. Under the lease with Barnes & Noble at this property, a delay in the opening of a suitable restaurant in the Panera Bread location could result in Barnes & Noble exercising its right under its lease to convert its fixed rate rent into a percentage rent formula and ultimately could give Barnes & Noble the right to terminate its lease at this property. As of December 31, 2008, Panera Bread and Barnes & Noble were not occupying their leased space or paying rent.

One of the partnership's anchor tenants totaling approximately 188,000 square feet, Boscov's, has filed for Chapter 11 bankruptcy protection. The joint venture received notification from the bankruptcy court that the store would begin liquidating merchandise in August 2008. The store closed in October 2008 and Boscov's has rejected the lease.

One of our tenants, Sega Game Works (Sega), has notified the partnership that they are terminating their lease with the partnership and seeking damages, including the costs they have incurred for the building, legal costs and lost profits. The lease was terminated in July 2008 since the partnership was

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unable to provide financial assurances that were satisfactory to Sega to fund the balance of their tenant allowance which totals \$1,400.

As of December 31, 2008, management's review identified that an impairment of the Harrisburg Mall property existed. The result of the Company's analysis resulted in a \$27,916 property-level impairment, which the Partnership recorded on this property during the year ended December 31, 2008. The Company recorded its pro-rata share of this impairment of \$6,978 as a component of equity in loss during the year ended December 31, 2008. Thereafter, the Company reviewed its remaining carrying value of its investment in the Partnership. Based on management's estimate of projected cash flows that the Company would receive from this investment, the Company determined that their investment in the Partnership was not recoverable. Therefore, the Company recorded an additional impairment charge of \$8,932 during the year ended December 31, 2008 to state its investment in this venture at estimated fair value of \$0. In addition, the Company had a limited guaranty on the Partnership's debt for which the Company will have to fund up to \$1,850 in the event that the Partnership does not have sufficient capital to repay the full outstanding balance due to the lender. The Company has determined that the funding of this guaranty in the amount of \$600 is probable as of December 31, 2008 and therefore the Company has accrued for this contingent payment as a component of the impairment loss recognized on this investment.

**(c) *Colonie Center Mall***

On August 9, 2006, we announced that we entered into a joint venture agreement with a subsidiary of Heitman LLC (Heitman) in connection with the Colonie Center Mall. On September 29, 2006, we completed the joint venture with Heitman. Under the terms of the Contribution Agreement, we contributed the property to FMP Colonie LLC, a new Delaware limited liability company (the Colonie joint venture). Heitman's contribution of \$47,000 to the venture represents approximately 75% of the equity in the Mall. The Company's contribution to the venture was valued at approximately \$15,667, representing approximately 25% of the equity in the property. In addition, we have made preferred capital contributions of approximately \$10,291 as of December 31, 2008 and 2007, respectively. We have also agreed to a cost guarantee related to certain redevelopment costs of the property's redevelopment project totaling approximately \$56,000. To the extent these costs exceed \$56,000, our preferred equity contributions will be recharacterized as subordinated capital contributions. These subordinated equity contributions may not be distributed to us until Heitman receives a 15% return on and a return of its invested equity capital. We estimate that this project will experience approximately \$12,000 of hard cost overruns. We have secured the balances of these cost overruns with a \$10,250 letter of credit from our \$30,000 secured line of credit. As of December 31, 2008, in connection with completing the redevelopment project, the \$10,250 under the letter of credit was drawn.

We accounted for our contribution to the Colonie joint venture as a partial sale of the real estate and, due to our continuing involvement in the property, deferred the \$3,515 gain. This deferred gain is recorded as a liability in our consolidated balance sheet.

The LLC Agreement between us and Heitman allows a buy-sell process to be initiated by us at any time on or after January 30, 2010 or by Heitman at any time on or after November 1, 2010. There are

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additional provisions regarding disputes, defaults and change in management that allow Heitman to initiate a buy-sell process. The member initiating the buy-sell must specify a total purchase price for the property and the amount of the purchase price that would be distributed to each of the two members, with the allocation of the total purchase price being subject to arbitration if the parties disagree. The member receiving the buy-sell notice must elect within 60 days to either allow the initiating member to purchase the recipient's interest in the Colonie joint venture or to purchase the initiating member's interest in the joint venture for the corresponding value stated in the notice.

In connection with the recapitalization of the property, the Colonie joint venture refinanced the property with a new construction facility (the Loan) with a maximum loan commitment of \$109,800 and repaid an existing \$50,766 mortgage loan on the property. On February 13, 2007, the Colonie joint venture borrowed an additional \$50,055 under the Loan and on February 27, 2007, the Loan was increased by \$6,500 to \$116,300. The Loan bears interest at 180 basis points over LIBOR and matured in October 2008. In connection with the Loan, the Colonie joint venture entered into a two-year interest rate protection agreement fixing the initial \$50,766 of the Loan at all-in interest rate of 6.84%. The Colonie joint venture has entered into a LIBOR-based interest rate cap agreement on notional amounts ranging from \$21,233 in October 2006 to \$59,054 through October 2008 for anticipated borrowings related to capital expenditures. The LIBOR caps range from 5.75% to 6.25%. The Loan is an interest only loan with no lockout period. The Loan contains certain financial covenants requiring the joint venture to maintain certain financial debt service coverage ratios, among other requirements. The Loan requires that the joint venture to maintain a minimum debt service coverage ratio during the initial term of the Loan and, if the joint venture fails to meet the required ratio, cash flow to us is restricted. As of June 30, 2008, we did not meet the debt service coverage ratio and cash flow from this property was unavailable to the Colonie joint venture; however, the cash flow will be released to us. The loan had extension options beyond October 2008, subject to satisfaction of certain financial covenants and other customary requirements for up to two additional years. Based upon the mall's performance, we did not meet these financial covenants and, therefore, we did not satisfy the conditions to extend the loan at the current available balance. Based on the historical performance of the property, the lender informed us that the joint venture would be required to repay approximately \$50,000 of the loan balance in order to obtain the extension. As of December 31, 2008, we were unable to successfully negotiate a modification or waiver of the covenants and loan extension with the current lender prior to the maturity date and the mortgage was in default. We managed the property and received customary management and construction fees in accordance with our joint venture agreement with Heitman, however, during July 2008, the partnership has engaged Jones Lang LaSalle to lease the property and we do not receive additional leasing commissions for new tenant activity.

The Colonie joint venture has commitments for tenant improvements, renovation costs and other capital expenditures in the amount of approximately \$1,366 to be incurred during 2009. The Colonie joint venture intends to fund these commitments from operating cash flow.

Management's review identified that an impairment of its investment in Colonie existed as the investments carrying value was estimated to be unrecoverable. In May 2009, we sold our interests in the Colonie joint venture to our partner for \$4.1 million (see note 19). The result of the Company's

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subsequent sale resulted in a \$38,397 impairment, which we recorded on this investment for the year ended December 31, 2008.

Condensed combined balance sheets for our unconsolidated joint ventures at December 31, 2008 and 2007 are as follows:

	<b>2008</b>	<b>2007</b>
Investment in real estate, net	\$ 234,709	333,463
Receivables including deferred rents	3,883	4,308
Other assets	18,849	31,853
Total assets	\$ 257,441	369,624
Mortgage loans payable	\$ 239,137	233,225
Other liabilities	24,232	52,608
Owners' (deficit) equity	(5,928)	83,791
Total liabilities and owners' (deficit) equity	\$ 257,441	369,624
The Company's share of owners' (deficit) equity	\$ (1,075)	21,283

The difference between our investments in unconsolidated joint ventures and our share of the owners' equity is due primarily to the suspension of losses recognized related to the Foothills JV and impairments that we have recorded based on our ability to recover our investments (note 2) and net amounts receivable from the joint ventures that are included in investments in unconsolidated real estate partnerships in the consolidated balance sheets.

The composition of our investment in unconsolidated real estate partnerships is as follows:

	<b>Year ended December 31</b>		
	<b>2008</b>	<b>2007</b>	<b>2006</b>
Revenue	\$ 41,972	37,399	21,540
Operating and other expenses	(24,832)	(21,170)	(11,454)
Interest expense (including the amortization of deferred financing costs)	(15,022)	(13,302)	(6,965)
Depreciation and amortization	(15,760)	(11,984)	(6,467)
Impairment of long-lived assets	(109,298)	—	—
Other	—	—	50
Net loss	\$ (122,940)	(9,057)	(3,296)
The Company's share of net loss	\$ (30,328)	(1,900)	(550)

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**(16) Property Disposition**

During 2008, certain events occurred that negatively impacted the Tallahassee Mall, including (i) tenant vacancies, which included Dillard's (an anchor tenant that occupied approximately 200,000 square feet) and Goody's (a junior anchor that occupied approximately 66,000 square feet), (ii) the impact of related co-tenancy provisions that will result from these vacancies will lower the mall's occupancy and rental revenue, and (iii) the related decrease in the property's cash flow, which is not projected to be sufficient to service current debt service and operating costs. Since we were unable to subsidize these cash shortfalls, we began to negotiate modifications with the current lender that would result in improved cash flow to the Company.

Our subsequent negotiations with the first mortgage lender for the Tallahassee Mall were unsuccessful and, on November 11, 2008, we consented to a Court appointed receiver to operate the property on behalf of lender. In exchange for the release of the Company by the mortgage lender from further obligations arising out of our ownership for this property, we surrendered our rights to all economic benefits therefrom. Since we have no further economic interest in the property, we have recorded a disposal related to the first mortgage, and leasehold obligation. Based on these conditions, we recognized an impairment totaling \$45,655 as of June 30, 2008. The transfer of the Tallahassee Mall to the mortgage lender resulted in a gain on the early extinguishment of debt totaling \$20,199. The book value of the Tallahassee Mall transferred in this transaction was as follows:

Investment in real estate, net	\$	20,287
Other assets		4,703
Intangible assets and liabilities, net		1,429
Mortgage loans payable		(44,102)
Other liabilities		(2,516)

In November 2008, a receiver was appointed to operate the Tallahassee Mall on behalf of the lender and to release the company from further obligations and benefits arising out of the Company's ownership of the property. Accordingly, we have classified all operating results of the Tallahassee Mall as discontinued operations for all periods presented.

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The following table summarizes discontinued operations for the years ended December 31, 2008, 2007 and 2006:

	<b>Period January 1, 2008 through November 1, 2008</b>	<b>Year ended December 31</b>	
		<b>2007</b>	<b>2006</b>
Revenue:			
Rental revenue	\$ 6,116	9,070	9,296
Tenant reimbursements	1,405	1,574	1,867
Interest and other income	38	203	92
Total revenue	<u>7,559</u>	<u>10,847</u>	<u>11,255</u>
Expenses:			
Rental property operating expenses	4,012	4,306	3,674
Real estate taxes	927	914	920
Interest (including amortization of deferred financing costs)	1,442	2,197	2,247
Depreciation and amortization	2,363	3,558	4,106
Total expenses	<u>8,744</u>	<u>10,975</u>	<u>10,947</u>
(Loss) income from discontinued operations	(1,185)	(128)	308
Impairment loss on long-lived assets	(45,655)	—	—
Gain on extinguishment of debt	20,199	—	—
Minority interest	918	12	(34)
(Loss) income from discontinued operations	<u>\$ (25,723)</u>	<u>(116)</u>	<u>274</u>

**(17) Fair Value of Financial Instruments**

As of December 31, 2008 and 2007, the fair values of our mortgage and other loans payable are approximately the carrying values, as the terms are similar to those currently available to us for debt with similar risk and the same remaining maturities. The carrying amounts for cash and cash equivalents, restricted cash, rents and other receivables and accounts payable and other liabilities, approximate fair value because of the short-term nature of these instruments.

We have recorded impairment valuations that have reduced the value of our properties below the current value of the related mortgage obligations. As a result of these impairments, we believe that fair value of our debt is equal to the impaired value of the related collateral. Therefore, as of December 31, 2008, we believe the fair value of the mortgages encumbering the Northgate Mall and the Stratford Square Mall are

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\$30,500 and \$74,200, respectively. In addition, as of December 31, 2008, we believe the fair market value of our Line is approximately \$17,590 based on the impairment we recorded on the Golden Triangle Mall.

**(18) Financial Instruments: Derivatives and Hedging**

The following summarizes the notional and fair value of our derivative financial instruments at December 31, 2008. The notional value is an indication of the extent of our involvement in this instrument at that time, but does not represent exposure to credit, interest rate or market risks:

	<u>Notional value</u>	<u>Strike rate</u>	<u>Effective date</u>	<u>Expiration date</u>	<u>Fair value</u>
Interest rate swap	\$ 75,000	4.91%	1/2008	1/2011	\$ (5,178)
Interest rate swap	29,500	5.50	6/2007	5/2010	(1,386)

On December 31, 2008, the fair values of the derivative instruments were recorded in other assets and accounts payable, accrued expenses and other liabilities. Over time, the unrealized loss of \$6,564 in accumulated other comprehensive loss will be reclassified into operations as interest expense in the same periods in which the hedged interest payments affect earnings. We estimate that approximately \$4,315 will be reclassified between accumulated other comprehensive income and earnings within the next 12 months.

We hedge our exposure to variability in anticipated future interest payments on existing variable rate debt.

**(19) Subsequent Events**

**(a) *Colonie Center***

On May 28, 2009, we sold our joint venture interest in Colonie Center to our partner, Heitman Value Partners, for approximately \$4,100. In connection with that transaction, we obtained a release from the mortgage lender from further obligations regarding the Property. The transaction allows the Company to receive proceeds that will be used to continue recapitalizing its obligations. Our impairment charge totaling \$38,397 for the year ended December 31, 2008 has taken this transaction into account.

**(b) *Trust Preferred Securities***

On May 29, 2009, we completed a transaction with Kodiak CDO I, Ltd. and Kodiak CDO II, Ltd. (collectively, the Sellers) to purchase from the Sellers 1,140 shares of preferred securities of FMP Statutory Trust I, a Delaware statutory trust and an indirect subsidiary of the Company, having an aggregate liquidation amount of \$28,500 million (the TruPS). The purchase price for the TruPS comprised of \$1,500 and 1.2 million shares of the Company's common stock. The TruPS and the common securities of the Trust will be canceled and the Trust liquidated and dissolved, also resulting in the cancellation of the \$29,380 in aggregate principal amount of the unsecured fixed/floating rate junior subordinated notes issued by the Company's operating partnership subsidiary due April 2036 (the Junior Notes), which are held by FMP Statutory Trust. The Company used a portion of the Colonie sales proceeds to fund the transaction. As a result of this transaction, the Company

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anticipates that it will recognize a gain totaling approximately \$28,706 on the retirement of these preferred securities during 2009.

**(c) Northgate Mall**

One of the mall's nonowned anchor tenants totaling approximately 203,000 square feet, Dillard Department Stores, Inc., closed its store effective December 31, 2009 and is seeking to sell its premises. Although the Company does not own the anchor store, if the anchor space is not successfully retained or replaced, certain co-tenancy provisions in leases with other tenants could be triggered, which would allow such other tenants to reduce or abate their current rent and possibly vacate the property.

As of June 30, 2009, we were no longer in compliance with the mortgage since we have violated the fixed charge ratio. We made a request to the lender's special servicer for a forbearance on the fixed charge ratio, to suspend the funding of certain escrow accounts, and to discontinue further principal payments. On February 5, 2010, the holder of the indebtedness encumbering the Northgate Mall located in Cincinnati, Ohio, filed a complaint in foreclosure against the Company's subsidiary, FMP Northgate LLC, and requested the appointment of a receiver to operate the property. FMP Northgate LLC has agreed to consent to the receiver's appointment. A receiver was appointed on February 16, 2010.

**(d) Golden Triangle Mall**

As of December 31, 2008, we had an outstanding line of credit with a balance of \$27,752, which is partially secured by the Golden Triangle Mall. Prior to the stated maturity date of April 4, 2009, the Company was unable to repay the outstanding balance. As a result, the Company and the lender entered into forbearance agreements, which currently have extended the forbearance period to April 15, 2010, during which the Company has attempted to renegotiate a reinstatement of the line of credit. As of December 31, 2009, the outstanding balance on this indebtedness is \$26,600, of which \$24,600 is secured by the Golden Triangle Mall and \$2,000 is secured by the Company's guarantee.

**(e) Harrisburg Mall**

As previously disclosed, we had an indirect 25% interest in a joint venture limited partnership owning the Harrisburg Mall. In addition, a direct subsidiary of the Company had a limited guarantee to fund a \$1,850 portion of the partnership's mortgage indebtedness in the event the partnership was unable to repay the loan. The Lender has agreed to accept payments totaling \$600 in order to satisfy the Company's guarantee. The lender has instituted foreclosure proceedings, which the partnership is not contesting, and the Company's subsidiary has a remaining obligation under its guarantee totaling approximately \$150,000. In consideration of the Company's agreement to not contest foreclosure, the lender released the Company from all obligations respecting the Property.

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**(f) Great Neck Corporate Office**

During July 2009, we closed our corporate office in Great Neck, New York. In connection with the closing, we incurred a lease termination totaling \$13 that will be recognized in the 2009 financial statements.

**(g) Larry Feldman**

On December 4, 2009, we amended our agreement with Larry Feldman (see note 11) covering the following principal matters:

- Mr. Feldman will no longer be on our board or serves as Chairman.
- We paid the remaining \$300 in severance payments due Mr. Feldman.
- We purchased Mr. Feldman's OP Units for approximately \$98.
- We will make a final settlement payment totaling approximately \$717.5 payable \$100 per month commencing February 1, 2010, unless the Company shall sell any of its presently owned Malls, or ownership interest therein, and the gross cash proceeds exceeds \$1,000, in which event the unpaid balance shall be accelerated and due and payable at the time of such sale.

**(h) Foothills Mall**

On December 24, 2009, we entered into an agreement to sell our joint venture interest in Foothills Mall to our partner for approximately \$1,500 and receive \$350 as consideration for the termination of our property management for the mall. The transaction closed January 29, 2010.

**(i) Office of the President**

Effective December 11, 2009, the Company's Board of Directors created the Office of the President and named incumbent directors Bruce E. Moore, James W. Sight and Ralph E. Lewis, II as members, each serving at the will and pleasure of the Board on an interim basis and until the Board shall elect a new president of the Company. The members of the Office of the President shall each have the authority to execute and deliver documents and instruments on behalf of and binding on the Company in the name of the President and take all actions necessary, in connection therewith. Mr. Sight and Mr. Lewis shall each receive a fee in the amount of \$10 per month, and each member of the Officer of the President shall be entitled to reimbursement for out of pocket costs and expenses in connection with their performance of services.