

# Report of Organizational Actions Affecting Basis of Securities

OMB No. 1545-0123

► See separate instructions.

## Part I Reporting Issuer

<b>1</b> Issuer's name		<b>2</b> Issuer's employer identification number (EIN)	
Kimco Realty Corporation (as successor to RPT Realty)		13-2744380	
<b>3</b> Name of contact for additional information	<b>4</b> Telephone No. of contact	<b>5</b> Email address of contact	
HARVEY WEINREB	516-869-2653	hweinreb@kimcorealty.com	
<b>6</b> Number and street (or P.O. box if mail is not delivered to street address) of contact		<b>7</b> City, town, or post office, state, and ZIP code of contact	
500 North Broadway, Suite 201		Jericho, NY 11753	
<b>8</b> Date of action		<b>9</b> Classification and description	
January 2, 2024		RPT Common Stock; RPT 7.25% Series D Cumulative Convertible Perpetual Preferred Stock	
<b>10</b> CUSIP number	<b>11</b> Serial number(s)	<b>12</b> Ticker symbol	<b>13</b> Account number(s)
		RPT / RPT.PRD	

## Part II Organizational Action Attach additional statements if needed. See back of form for additional questions.

- 14** Describe the organizational action and, if applicable, the date of the action or the date against which shareholders' ownership is measured for the action ► See attached.

- 15** Describe the quantitative effect of the organizational action on the basis of the security in the hands of a U.S. taxpayer as an adjustment per share or as a percentage of old basis ► See attached.

- 16** Describe the calculation of the change in basis and the data that supports the calculation, such as the market values of securities and the valuation dates ► See attached.

**Part II Organizational Action** (continued)

**17** List the applicable Internal Revenue Code section(s) and subsection(s) upon which the tax treatment is based ► See attached.

**18** Can any resulting loss be recognized? ► See attached.

**19** Provide any other information necessary to implement the adjustment, such as the reportable tax year ► See attached.

**Sign  
Here**

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than officer) is based on all information of which preparer has any knowledge.

Signature ►

Date ►

Print your name ►

Title ►

**Paid  
Preparer  
Use Only**

Print/Type preparer's name

Preparer's signature

Date

Check ☐ if  
self-employed

PTIN

Ryan Bayer

2/14/2024

P00369781

Firm's name ► Deloitte Tax LLP

Firm's EIN ► 86-1065772

Firm's address ► 1001 Woodward, Suite 700, Detroit, MI 48226

Phone no. (313) 396-3000

Send Form 8937 (including accompanying statements) to: Department of the Treasury, Internal Revenue Service, Ogden, UT 84201-0054

**Kimco Realty Corporation**  
**EIN: 13-2744380**  
**Attachment to Form 8937 – Part II**

The information contained herein is being provided pursuant to the requirements of Section 6045B of the Internal Revenue Code of 1986, as amended (the “Code”),<sup>1</sup> and includes a general summary regarding the application of certain U.S. federal income tax laws and regulations related to the effects of the Merger (as defined below) on certain securities. The information contained herein does not constitute tax advice and does not purport to be complete or describe the tax consequences that may apply to particular persons or categories of persons. You are encouraged to consult your own tax advisor regarding the particular consequences of the Merger to you, including the applicability and effect of all United States (“U.S.”) federal, state, local and foreign tax laws. Please read the proxy statement/prospectus, dated November 9, 2023, that was filed with the Securities and Exchange Commission, noting especially the discussion therein under the heading “Material U.S. Federal Income Tax Consequences of the Company Merger,” and the press release issued on January 2, 2024, announcing the completion of the Merger.

**Line 14**

On January 2, 2024 (the “Closing Date”), Kimco Realty Corporation (“Kimco”) completed its acquisition of RPT Realty (“RPT”) pursuant to the Agreement and Plan of Merger (the “Merger Agreement”), dated as of August 28, 2023, by and among, in relevant part, Kimco, Tarpon Acquisition Sub, LLC (“Merger Sub”), a direct wholly owned subsidiary of Kimco, and RPT.<sup>2</sup> Pursuant to and subject to the terms and conditions of the Merger Agreement, RPT merged with and into Merger Sub, with Merger Sub continuing as the surviving entity (the “Merger”).

In the Merger, (i) each share of RPT common stock (the “RPT Common Stock”) outstanding immediately prior to the Merger (other than any such shares held by any wholly owned subsidiary of RPT, Kimco or any subsidiary of Kimco) was automatically cancelled and converted into the right to receive 0.6049 shares of Kimco common stock (the “Kimco Common Stock”), and (ii) each share of RPT 7.25% Series D Cumulative Convertible Perpetual Preferred Shares of Beneficial Interest (the “RPT Preferred Stock”) outstanding immediately prior to the Merger (other than any such shares held by any wholly owned subsidiary of RPT, Kimco or any subsidiary of Kimco) was automatically cancelled and converted into the right to receive one one-thousandth (1/1,000<sup>th</sup>) of a share of Kimco 7.25% Class N Cumulative Convertible Perpetual Preferred Stock (the “Kimco Preferred Stock”), or a depositary share in respect thereof.

In connection with the Merger Agreement, on December 21, 2023, RPT paid a special distribution of \$0.05444 per share to shareholders of record of RPT Common Stock on December 7, 2023 (the “RPT Special Distribution”). For U.S. federal income tax purposes,

<sup>1</sup> Unless otherwise specified herein, “section” references are to the Code.

<sup>2</sup> Unless otherwise defined herein, capitalized terms used in this attachment have the meaning ascribed to them in the Merger Agreement.

Kimco and RPT intend to treat the RPT Special Distribution as additional consideration for RPT Common Stock in the Merger.

No fractional share of Kimco Common Stock was issued in the Merger and a shareholder who would otherwise have been entitled to receive a fraction of a share of Kimco Common Stock received, in lieu thereof, cash, without interest, in an amount equal to the product of (i) such fraction of a share of Kimco Common Stock and (ii) the volume weighted average of the closing sale prices per share of Kimco Common Stock on the NYSE, as reported in the New York City edition of The Wall Street Journal (or, if not reported thereby, as reported in another authoritative source mutually agreed by the Parties), on each of the ten (10) full consecutive trading days ending on and including the third (3rd) Business Day prior to the Closing Date.

**Line 15**

The Merger is intended to qualify as a “reorganization” within the meaning of section 368(a).

**Former shareholders of RPT Common Stock**

Pursuant to section 356(a), generally gain (but not loss) is recognized in respect of RPT Common Stock in an amount equal to the lesser of: (1) the excess, if any, of the sum of the amount of cash received in the RPT Special Distribution in respect of RPT Common Stock and the fair market value of the shares of Kimco Common Stock received (including any fractional share deemed received and exchanged for cash), over the adjusted tax basis in the RPT Common Stock surrendered, and (2) the amount of cash received in the RPT Special Distribution in respect of RPT Common Stock. *See Line 16 for additional information.*

Pursuant to section 358(a), the aggregate tax basis in the shares of Kimco Common Stock (including any fractional share deemed received and exchanged for cash) is equal to the aggregate tax basis in the shares of RPT Common Stock surrendered, reduced by the amount of cash received in the RPT Special Distribution, and increased by the amount of gain, if any, recognized pursuant to the Merger in respect of RPT Common Stock.

You are urged to consult your own tax advisor regarding the tax consequences of the RPT Special Distribution, including potential treatment as a dividend rather than consideration in the Merger, the potential application of section 302 to treat the RPT Special Distribution as having the effect of a dividend, and the tax year in which the income resulting from the RPT Special Distribution should be included.

If a former RPT shareholder acquired different blocks of RPT Common Stock at different times or different prices, such holder’s gain recognized under section 356(a) and the tax basis (and holding period) in the Kimco Common Stock should be determined by reference to such blocks of shares of RPT Common Stock.

**Former shareholders of RPT Preferred Stock**

Pursuant to section 354(a), no gain or loss is recognized on the exchange of RPT Preferred Stock for Kimco Preferred Stock or depositary shares representing shares Kimco Preferred Stock.

Pursuant to section 358(a), the aggregate tax basis of the Kimco Preferred Stock received in the Merger will equal the aggregate tax basis of the shares of RPT Preferred Stock surrendered. If a former RPT shareholder acquired different blocks of RPT Preferred Stock at different times or different prices, such holder's basis and holding period in the Kimco Preferred Stock should be determined by reference to such blocks of shares of RPT Preferred Stock.

Cash in Lieu of a Fractional Share

A former RPT shareholder who received cash in lieu of a fractional share of Kimco Common Stock will generally be treated as having received such fractional share and then as having received such cash in redemption of the fractional share. Gain or loss generally will be recognized based on the difference between the amount of cash in lieu of the fractional share and the tax basis allocated to such fractional share. *See Line 16 for additional information.*

**Line 16**

Fair market value generally is the price at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of the facts. U.S. federal income tax law does not specifically prescribe how you should determine the fair market value of Kimco Common Stock received for purposes of calculating any gain recognized under section 356(a). One reasonable approach is to use the mean of the highest and lowest trading prices on the NYSE of Kimco Common Stock on January 2, 2024. Other approaches to determine the fair market value of Kimco Common Stock may be appropriate. You should consult your tax advisor to determine what measure of fair market value is appropriate.

**Line 17**

Former shareholders of RPT Common Stock: Sections 368(a), 356(a), and 358(a)

Former shareholders of RPT Preferred Stock: Sections 368(a), 354(a), and 358(a)

Cash in lieu of fractional shares of Kimco Common Stock: Sections 302(a) and 1001

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**Line 18**

No loss may be recognized in the Merger except with respect to fractional shares of Kimco Common Stock.

**Line 19**

The Merger was effective on January 2, 2024. In general, taxpayers should take into account the tax basis adjustments (including any tax basis adjustments related to the RPT Special Distribution) in the tax year that includes such date (i.e., 2024 for calendar year taxpayers).

*The information contained herein does not constitute tax advice and is intended to provide only a general summary and is not intended to be a complete analysis or description of all potential U.S. federal income tax consequences of the transactions described herein. Moreover, the discussion set forth above does not address tax consequences that may vary with, or are dependent on, individual circumstances. Shareholders should consult with their own tax advisors with respect to the tax consequences of the transactions described herein as applicable to their particular circumstances.*