
Section 1: 8-K (8-K)

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 8-K

CURRENT REPORT

Pursuant to Section 13 or 15(d) of the
Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): **March 22, 2019**

KITE REALTY GROUP TRUST

KITE REALTY GROUP, L.P.

(Exact name of registrant as specified in its charter)

Maryland
Delaware
(State or other jurisdiction
of incorporation)

1-32268
333-202666-01
(Commission
File Number)

11-3715772
20-1453863
(IRS Employer
Identification Number)

30 S. Meridian Street
Suite 1100

Indianapolis, IN 46204

(Address of principal executive offices) (Zip Code)

(317) 577-5600

(Registrant's telephone number, including area code)

Not applicable

(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company

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

Item 1.01 Entry into a Material Definitive Agreement.

The Board of Trustees (the “Board”) of Kite Realty Group Trust (the “Company”) approved, and the Company, as general partner of Kite Realty Group, L.P. (the “Operating Partnership”), entered into, Amendment No. 5 to the Amended and Restated Agreement of Limited Partnership of Kite Realty Group, L.P. (the “Operating Partnership Agreement”), dated as of March 24, 2019 (“Amendment No. 5”). Amendment No. 5 supersedes and amends and restates in its entirety Amendment No. 4 to the Operating Partnership Agreement, dated as of February 28, 2019 (“Amendment No. 4”).

Pursuant to Amendment No. 4 and Amendment No. 5, the Operating Partnership is authorized to issue additional partnership units in the form of appreciation-only LTIP Units (“AO LTIP Units”). AO LTIP Units are a special class of limited partnership units in the Operating Partnership that are intended to qualify as “profits interests” for U.S. federal income tax purposes that, subject to certain conditions, including vesting, may be convertible into vested LTIP Units (as defined in the Operating Partnership Agreement) of the Operating Partnership.

Amendment No. 5 contains all of the same provisions that were included in Amendment No. 4, except for the following changes provided by Amendment No. 5: (i) holders of the AO LTIP Units shall not be entitled to receive any current distributions from the Operating Partnership from the grant date to the date such AO LTIP Units have vested and been converted into vested LTIP Units (the “Distribution Participation Date”), (ii) holders of the AO LTIP Units shall not be entitled to receive any accrued distributions from the Operating Partnership relating to the period between the grant date and the Distribution Participation Date, and (iii) for any taxable year or portion of taxable year occurring after the grant date and prior to the Distribution Participation Date (or until an earlier forfeiture of the AO LTIP Units), each AO LTIP Unit shall be allocated 5% (or such other percentage specified in the relevant award agreement or documentation) of the net income and net loss allocated per Class A Unit (as defined in the Operating Partnership Agreement) for the same period. The Company, as general partner, is authorized in its discretion to delay or accelerate the participation of the AO LTIP Units in allocations of net income or net losses or to adjust the allocations made to effectuate the purposes of the economic arrangement contemplated by the parties and to ensure that the AO LTIP Units will be respected as “profits interests” for U.S. federal income tax purposes.

For more information on the AO LTIP Units, please see the Company’s Current Report on Form 8-K filed on March 5, 2019 (the “March 5 Form 8-K”), which is incorporated herein by reference. The foregoing summary of the terms and conditions of Amendment No. 5 is further qualified in its entirety by reference to the full text of Amendment No. 5 to Amended and Restated Agreement of Limited Partnership of Kite Realty Group, L.P., which is attached hereto as Exhibit 10.1 and incorporated herein by reference.

Item 5.02 Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.

The information under Item 1.01 of this Current Report is incorporated into this Item 5.02.

As disclosed in the March 5 Form 8-K, on February 28, 2019, the Compensation Committee of the Board (the “Compensation Committee”) approved awards of AO LTIP Units (the “February 2019 Awards”) to the Company’s executive officers under an amendment and restatement of the Company’s 2013 Equity Incentive Plan as part of the 2019 annual long-term incentive compensation program for the Company’s executive officers. The Compensation Committee approved a target dollar value for each executive officer. The specific number of February 2019 Awards granted to each executive officer was then determined by dividing the target dollar value for such executive by the grant date fair value per AO LTIP Unit, as calculated for accounting purposes. The aggregate target dollar value for the February 2019 Awards was \$3,708,000.

The changes to the terms of the AO LTIP Units as set forth in Amendment No. 5 required a revaluation of the fair value of each AO LTIP Unit. The elimination of the distribution rights as described in Item 1.01 above reduced the fair value of each AO LTIP Unit, and as a result without further action by the Compensation Committee,

the target dollar value for each executive for these awards would have been decreased below what the Compensation Committee intended. As a result, the Compensation Committee took action on March 22, 2019 to replace the February 2019 Awards with new awards in order to provide the same target dollar value as the February 2019 Awards, after giving effect to Amendment No. 5. Subject to and in consideration of each executive officer's consent to forfeiture of his February 2019 Awards, the Compensation Committee terminated the February 2019 Awards and made new grants to each executive officer of the number of AO LTIP Units determined by the same target dollar value that was established in February, as set forth below, divided by the new grant date fair value per AO LTIP Unit for accounting purposes (the "March 2019 Awards"). The grant date fair value per AO LTIP Unit was \$1.61.

Executive	Target Dollar Value	Number of AO LTIP Units (#)	Participation Threshold per AO LTIP Unit
John A. Kite	\$ 2,400,000	1,490,683	\$ 15.79
Thomas A. McGowan	\$ 600,000	372,671	\$ 15.79
Heath R. Fear	\$ 408,000	253,416	\$ 15.79
Scott E. Murray	\$ 300,000	186,335	\$ 15.79

Each executive officer consented to the immediate forfeiture of the February 2019 Awards, effective as of the grant date of the March 2019 Awards. With respect to each March 2019 Award, the Company entered into an Appreciation Only LTIP Unit Agreement (an "award agreement") with each executive officer in substantially the form attached as Exhibit 10.2 to the Company's Current Report on the March 5 Form 8-K, which is incorporated herein by reference. Under the award agreements, the AO LTIP Units have a six-year term from the grant date. The participation threshold per AO LTIP Unit reflects the closing price per common share of the Company as of March 21, 2019, the trading day next preceding the date the Compensation Committee took action.

The March 2019 Awards are subject to terms of vesting, conversion, distribution and other terms described in Item 1.01 of this Current Report and the March 5 Form 8-K, which is incorporated herein by reference.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits.

Exhibit Number	Description
10.1	Amendment No. 5 to the Amended and Restated Agreement of Limited Partnership of Kite Realty Group, L.P.

EXHIBIT INDEX

<u>Exhibit Number</u>	<u>Description</u>
10.1	Amendment No. 5 to the Amended and Restated Agreement of Limited Partnership of Kite Realty Group, L.P.

SIGNATURES

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

Date: March 26, 2019

KITE REALTY GROUP TRUST

By: /s/ Scott E. Murray
Scott E. Murray
Executive Vice President, General Counsel and Corporate Secretary

KITE REALTY GROUP, L.P.

By: Kite Realty Group Trust, its sole general partner

Date: March 26, 2019

By: /s/ Scott E. Murray
Scott E. Murray
Executive Vice President, General Counsel and Corporate Secretary

5

[\(Back To Top\)](#)

Section 2: EX-10.1 (EX-10.1)

Exhibit 10.1

AMENDMENT NO. 5
TO
AMENDED AND RESTATED
AGREEMENT OF LIMITED PARTNERSHIP
OF
KITE REALTY GROUP, L.P.

This Amendment No. 5 to the Amended and Restated Agreement of Limited Partnership of Kite Realty Group, L.P. (this "**Amendment**") is made as of March 24, 2019 by Kite Realty Group Trust, a Maryland real estate investment trust, as sole general partner (the "**Company**") of Kite Realty Group, L.P., a Delaware limited partnership (the "**Partnership**"), pursuant to the authority granted to the Company in the Amended and Restated Agreement of Limited Partnership of Kite Realty Group, L.P., dated as of August 16, 2004, as amended by Amendment No. 1, dated as of December 7, 2010, as further amended by Amendment No. 2, dated as of March 12, 2012, as further amended by Amendment No. 3, dated as of July 28, 2014, and as further amended by Amendment No. 4, dated as of February 28, 2019 (the "**Partnership Agreement**"), for the purpose of deleting in its entirety Amendment No. 4 to the Partnership Agreement and setting forth the terms and conditions applicable to issuing additional Partnership Units in the form of LTIP Units that participate only in appreciation (referred to as "**Class AO LTIP Units**"). Capitalized terms used and not defined herein shall have the meanings set forth in the Partnership Agreement.

WHEREAS, the Company and the Partnership desire to provide for an additional form of equity incentive to certain persons who provide services to or for the benefit of the Partnership in the form of Partnership Units which shall be designated "Class AO LTIP Units"; and

WHEREAS, the Company and the Partnership desire to amend the Partnership Agreement, in accordance with Section 4.2 of the Partnership Agreement, to provide for the Class AO LTIP Units, having the designations, preferences and other rights as described herein.

NOW, THEREFORE, in consideration of the premises and for other good and valuable consideration, the receipt and sufficiency of which hereby are acknowledged, the Partnership Agreement is hereby amended as follows:

1. Amendments to the Partnership Agreement. The Company and the Partnership hereby delete Amendment No. 4 to the Partnership Agreement in its entirety and amend the Partnership Agreement as follows:

A. Article I of the Partnership Agreement is hereby amended to add the following definitions:

"Book-Up Target" for each LTIP Unit means the lesser of (i) the Class A Unit Economic Balance as determined on the date such LTIP Unit was granted and as reduced (not to less than zero) by allocations of Liquidating Gains pursuant to Section 6.1.E and reallocations of Class A Unit Balances to such LTIP Unit as a result of a forfeiture of an LTIP Unit, as determined by the General Partner and (ii) the amount required to be allocated to such LTIP Unit for the Economic Capital Account Balance, to the extent attributable to such LTIP Unit, to be equal to the Class A Unit Economic Balance. Notwithstanding the foregoing, the Book-Up Target shall be equal to zero for any LTIP Unit for which the Economic Capital Account Balance attributable to such LTIP Unit has, at any time, reached an amount equal to the Class A Unit Economic Balance determined as of such time.

“Class AOLTIP Unit” means a Partnership Unit which is designated as a Class AOLTIP Unit and which has the rights, preferences and other privileges designated in **Exhibit J** hereof. The allocation of Class AOLTIP Units among the Partners shall be set forth on **Exhibit A**, as it may be amended or restated from time to time.

“Class AOLTIP Unitholder” means a Partner that holds Class AOLTIP Units.

B. The definitions in Article I of the Partnership Agreement set forth below are amended as set forth below:

“**LTIP Units**” means a Partnership Unit which is designated as an LTIP Unit and which has the rights, preferences and other privileges designated in Sections 4.6 and 4.7 and elsewhere in this Agreement in respect of holders of LTIP Units. The allocation of LTIP Units among the Partners shall be set forth on **Exhibit A**, as it may be amended or restated from time to time. For the avoidance of doubt, a Vested LTIP Unit that has been converted from a Class AO LTIP Unit is an LTIP Unit, and will be treated as an LTIP effective as of the date of such conversion.

“**Partnership Interest**” means a Limited Partnership Interest, a General Partnership Interest, LTIP Units and Class AO LTIP Units and includes any and all benefits to which the holder of such a Partnership Interest may be entitled as provided in this Agreement, together with all obligations of such Person to comply with the terms and provisions of this Agreement. A Partnership Interest may be expressed as a number of Partnership Units.

C. Article IV of the Partnership Agreement is hereby amended to add the following new Section 4.8:

Section 4.8. Issuance of Class AO LTIP Units. The Partnership shall be authorized to issue Partnership Units of a series designated as “Class AO LTIP Units”. Class AO LTIP Units are intended to qualify as profits interests in the Partnership and, for the avoidance of doubt, shall not be treated as compensation for services, and no Class AO LTIP Unit shall have any Capital Account as of the time of issuance. Class AO LTIP Units shall have the terms set forth in **Exhibit J** attached hereto and made part hereof. Distributions made with respect to Class AO LTIP Units shall be adjusted as necessary to ensure that the amount apportioned to each Class AO LTIP Unit does not exceed the amount attributable to the Class AO LTIP Unit’s share of Partnership net income or gain realized after the date such Class AO LTIP Unit was issued by the Partnership (including in connection with an adjustment to the Carrying Value of Partnership assets under Section 1.D of **Exhibit B** of this Agreement). If distributions are reduced in accordance with the preceding sentence for a taxable year due to insufficient net income or gain for such year, distributions shall be made up in subsequent taxable years when there is sufficient net income or gain. The intent of this Section 4.8 is to ensure that any Class AO LTIP Units qualify as “profits interests” under Revenue Procedure 93-27, 1993-2 C.B. 343 (June 9, 1993) and Revenue Procedure 2001-43, 2001-2 C.B. 191 (August 3, 2001), and this Section 4.8 shall be interpreted and applied consistently therewith. The General Partner at its discretion may amend this Section 4.8 and **Exhibit J** to ensure that any Class AO LTIP Units will qualify as “profits interests” under Revenue Procedure 93-27, 1993-2 C.B. 343 (June 9, 1993) and Revenue Procedure 2001-43, 2001-2 C.B. 191 (August 3, 2001) (and any other similar rulings or regulations that may be in effect at such time).

D. Section 6.1.E of the Partnership Agreement is hereby amended and restated in its entirety as follows:

E. Special Allocations Regarding LTIP Units. Notwithstanding the provisions of Section 6.1.A, Liquidating Gains shall first be allocated to the LTIP Unitholders until their Economic Capital Account Balances, to the extent attributable to their ownership of LTIP Units, are equal to (i) the Class A Unit Economic Balance, multiplied by (ii) the number of their LTIP Units, plus the aggregate net amount of Net Income and Net Loss allocated to such LTIP Units prior to the Distribution Participation Date with respect to such LTIP Units less the amount of any Special LTIP Unit Distributions with respect to such LTIP Units, provided, however, that no such Liquidating Gains will be allocated with respect to any particular LTIP Unit unless and to the extent that such Liquidating Gains, when aggregated with other Liquidating Gains realized since the issuance of such LTIP Unit, exceed Liquidating Losses realized since the issuance of such LTIP Unit. After giving effect to the special allocations set forth in Section 1 of **Exhibit C** hereto, and notwithstanding the provisions of Sections 6.1.A and 6.1.B above, in the event that, due to distributions with respect to Class A Units in which the LTIP Units do not participate or otherwise, the Economic Capital Account Balances of any present or former holder of LTIP Units, to the extent attributable to the holder’s ownership of LTIP Units, exceed the target balance specified above, then Liquidating Losses shall be

allocated to such holder to the extent necessary to reduce or eliminate the disparity. In the event that Liquidating Gains or Liquidating Losses are allocated under this Section 6.1.E, Net Income allocable under Clause 6.1.A(6) and any Net Losses shall be recomputed without regard to the Liquidating Gains or Liquidating Losses so allocated. For this purpose, “**Liquidating Gains**” means net gains that are or would be realized in connection with the actual or hypothetical sale of all or substantially all of the assets of the Partnership, including but not limited to net capital gain realized in connection with an adjustment to the value of Partnership assets under Section 704 (b) of the Code made pursuant to Section 1.D of **Exhibit B** of the Partnership Agreement. “**Liquidating Losses**” means any net capital loss realized in connection with any such event. The “**Economic Capital Account Balances**” of the LTIP Unitholders and Class AO LTIP Unitholders, respectively, will be equal to their Capital Account balances to the extent attributable to their ownership of LTIP Units or Class AO LTIP Units, as the case may be. Similarly, the “**Class A Unit Economic Balance**” shall mean (i) the Capital Account balance of the General Partner, plus the amount of the General Partner’s share of any Partner Minimum Gain or Partnership Minimum Gain, in either case to the extent attributable to the General Partner’s ownership of Class A Units and computed on a hypothetical basis after taking into account all allocations through the date on which any allocation is made under this Section 6.1.E, but prior to the realization of any Liquidating Gains, divided by (ii) the number of the General Partner’s Class A Units. Any such allocations shall be made among the LTIP Unitholders in the following order: (i) first, to Vested LTIP Units that have been converted from Class AO LTIP Units, (ii) second, to Vested LTIP Units held for more than two years, (iii) third, to Vested LTIP Units held for two years or less, (iv) fourth, to Unvested LTIP Units that have remaining vesting conditions that only require continued employment or service to the Partnership, the General Partner, the General Partner Entity or an Affiliate of either for a certain period of time (with such Liquidating Gains being attributed in order of vesting from soonest vesting to latest vesting), and (v) fifth, to other Unvested LTIP Units (with such Liquidating Gains being attributed in order of issuance from earliest issued to latest issued). The parties agree that the intent of this Section 6.1.E is to make the Capital Account balance associated with each LTIP Unit to be economically equivalent to the Capital Account balance associated with the General Partner’s Class A Units (on a per-Unit basis, other than differences resulting from the allocation of Net Income and Net Loss allocated to such LTIP Units prior to the Distribution Participation Date with respect to such LTIP Units in excess of the amount of Special LTIP Unit Distributions paid with respect to such LTIP Units), provided that Liquidating Gains are of a sufficient magnitude to do so upon a sale of all or substantially all of the assets of the Partnership, or upon an adjustment to the Partners’ Capital Accounts pursuant to Section 1.D of **Exhibit B**. To the extent the LTIP Unitholders receive a distribution in excess of their Capital Accounts, such distribution will be a guaranteed payment under Section 707(c) of the Code.

E. Section 6.1 of the Partnership Agreement is hereby amended to add the following new Subsection 6.1.F:

F. Special Allocations with Respect to Class AO LTIP Units. The principles of Section 6.1.E shall apply in respect of allocation of Liquidating Gains and Liquidating Losses to unvested Class AO LTIP Units as if they were unvested LTIP Units, until the Economic Capital Account Balance per Class AO LTIP Unit is, as nearly as possible, equal to the product of (x) the number of Class A Units into which such Class AO LTIP Unit is convertible (as if such Class AO LTIP Unit were vested), and (y) the Class A Unit Economic Balance, applying correlative changes to the Book-Up Target for this purpose. The parties agree that the intent of this Section 6.1.F is to make the Capital Account balance associated with each Class AO LTIP Unit economically equivalent to the Class A Unit Economic Balance (on an “as converted” basis), but only if the Partnership has recognized cumulative net gains with respect to its assets since the issuance of the relevant Class AO LTIP Unit, and to achieve the economic result consistent with **Exhibit J**.

F. Section 8.6 of the Partnership Agreement is hereby amended to add the following new Subsection 8.6.G:

G. Class AO LTIP Unit Exception and Redemption of Class A Units Issued Upon Conversion of LTIP Units Into Which Class AO LTIP Units Were Converted. Holders of Class AO LTIP Units shall not be entitled to the Redemption Right provided for in Section 8.6.A of this Agreement, unless and until such Class AO LTIP Units (i) have been converted into LTIP Units and (ii) such LTIP Units have subsequently been converted into Class A Units (or any other class or series of Partnership Units entitled to such Redemption Right), in each case in accordance with their terms. Notwithstanding the foregoing, and except as otherwise permitted by the award, plan or other agreement pursuant to which a Class AO LTIP Unit was issued, the Redemption Right shall not be exercisable with respect to any Class A Unit issued upon conversion of an LTIP Unit into which a Class AO LTIP Unit was previously converted until on or after the date that is two years after the date on which the Class AO LTIP Unit was issued, provided however, that the first sentence of Subsection 8.6.A(i) shall not apply with respect to Class A Units issued upon conversion of LTIP Units into which Class AO LTIP Units were previously converted. For the avoidance of doubt, the foregoing prohibition shall no longer apply upon (i) the termination of employment of the applicable holder of Class AO LTIP Units with the General Partner or its affiliates (a) by the General Partner (or its successor) without “Cause” (as defined in the applicable Class AO LTIP Unit agreement) or (b) the applicable holder of Class AO LTIP Units for “Good Reason” (as defined in the applicable Class AP LTIP Unit agreement) or (ii) the occurrence of a “Corporate Transaction” (as defined in the applicable Class AO LTIP Unit agreement).

G. Clause 1.D.(2) of Exhibit B — Capital Account Maintenance of the Partnership Agreement is hereby amended and restated in its entirety as follows:

(2) Such adjustments shall be made as of the following times: (a) immediately prior to the

acquisition of an additional interest in the Partnership by any new or existing Partner in exchange for more than a de minimis Capital Contribution; (b) immediately prior to the distribution by the Partnership to a Partner of more than a de minimis amount of property as consideration for an interest in the Partnership; (c) immediately prior to the liquidation of the Partnership within the meaning of Regulations Section 1.704-1(b)(2)(ii)(g); (d) immediately prior to the issuance of any LTIP Units; and (e) immediately prior to the issuance of any Class AO LTIP Units, provided, however, that adjustments pursuant to clauses (a), (b), (d) and (e) above shall be made only if the General Partner determines that such adjustments are necessary or appropriate to reflect the relative economic interests of the Partners in the Partnership.

H. New Exhibit J —DESIGNATION OF THE PREFERENCES, CONVERSION AND OTHER RIGHTS, VOTING POWERS, RESTRICTIONS, LIMITATIONS AS TO DISTRIBUTIONS, QUALIFICATIONS AND TERMS AND CONDITIONS OF REDEMPTION OF THE CLASS AO (“APPRECIATION ONLY”) UNITS is added to the Partnership Agreement.

2. Except as modified herein, all terms and conditions of the Partnership Agreement shall remain in full force and effect, which terms and conditions the Company hereby ratifies and confirms.

3. This Amendment shall be construed and enforced in accordance with and governed by the laws of the State of Delaware, without regard to conflicts of law.

4. If any provision of this Amendment is or becomes invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained herein shall not be affected thereby.

IN WITNESS WHEREOF, the undersigned have executed this Amendment as of the date first set forth above.

KITE REALTY GROUP TRUST
As sole general partner of Kite Realty Group, L.P.

By: /s/ Scott E. Murray
Name: Scott E. Murray
Title: Executive Vice President, General Counsel and Corporate
Secretary

*[Signature Page to Amendment No. 5 to the Amended and Restated Agreement
of Limited Partnership of Kite Realty Group, L.P.]*

EXHIBIT J
DESIGNATION OF THE PREFERENCES, CONVERSION
AND OTHER RIGHTS, VOTING POWERS, RESTRICTIONS,
LIMITATIONS AS TO DISTRIBUTIONS, QUALIFICATIONS AND TERMS
AND CONDITIONS OF REDEMPTION
OF THE CLASS AO (“APPRECIATION ONLY”) LTIP UNITS

The following are the terms of the Class AO (“Appreciation Only”) LTIP Units:

1. Vesting.

A. Vesting, Generally. Class AO LTIP Units may, in the sole discretion of the General Partner, be issued subject to vesting, forfeiture and additional restrictions on transfer pursuant to the terms of an award, vesting or other similar agreement (a “**Class AO LTIP Unit Vesting Agreement**”). The terms of any Class AO LTIP Unit Vesting Agreement may be modified by the General Partner from time to time in its sole discretion, subject to any restrictions on amendment imposed by the relevant Class AO LTIP Unit Vesting Agreement or by the terms of any plan pursuant to which the Class AO LTIP Units are issued, if applicable. Class AO LTIP Units that have vested and are no longer subject to forfeiture under the terms of a Class AO LTIP Unit Vesting Agreement are referred to as “**Vested Class AO LTIP Units**”; all other Class AO LTIP Units are referred to as “**Unvested Class AO LTIP Units**”.

B. Forfeiture or Transfer of Unvested Class AO LTIP Units. Unless otherwise specified in the relevant Class AO LTIP Unit Vesting Agreement, upon the occurrence of any event specified in a Class AO LTIP Unit Vesting Agreement as resulting in either the forfeiture of any Class AO LTIP Units, or the right of the Partnership or the General Partner to repurchase Class AO LTIP Units at a specified purchase price, then upon the occurrence of the circumstances resulting in such forfeiture or if the Partnership or the General Partner exercises such right to repurchase, then the relevant Class AO LTIP Units shall immediately, and without any further action, be treated as cancelled or transferred to the General Partner, as applicable, and no longer outstanding for any purpose. Unless otherwise specified in the Class AO LTIP Unit Vesting Agreement, no consideration or other payment shall be due with respect to any Class AO LTIP Units that have been forfeited, other than any distributions declared with a record date prior to the effective date of the forfeiture.

C. Legend. Any certificate evidencing a Class AO LTIP Unit shall bear an appropriate legend indicating that additional terms, conditions and restrictions on transfer, including without limitation provisions set forth in the Class AO LTIP Unit Vesting Agreement, apply to the Class AO LTIP Unit.

2. Distributions.

Class AO LTIP Units shall not be entitled to receive any distributions from the Partnership unless and until such Class AO LTIP Units have vested and been converted into Vested LTIP Units (the “**Class AO LTIP Unit Distribution Participation Date**”). As of the Class AO LTIP Unit Distribution Participation Date, the Vested LTIP Units shall have the right to receive distributions from the Partnership as set forth in the Agreement.

3. Allocations.

Class AO LTIP Units shall be allocated Net Income and Net Loss (but Net Loss only to the extent of prior allocations of Net Income), for any taxable year or portion of a taxable year occurring after such issuance and prior to the Class AO LTIP Unit Distribution Participation Date for such Class AO LTIP Units, in amounts per Class AO LTIP Unit equal to (a) the amounts allocated per Class A Unit for the same period, multiplied by (b) the percentage that is specified as the Class AO LTIP Unit Sharing Percentage in the Class AO LTIP Unit Vesting Agreement or other documentation pursuant to which Class AO LTIP Units are issued, or if no such percentage is specified, 5% (“**Class AO LTIP Unit Sharing Percentage**”). Commencing with the portion of the taxable year of the Partnership that begins on the Class AO LTIP Unit Distribution Participation Date established for any Class AO LTIP Units, the resulting Vested LTIP Units shall be allocated Net Income and Net Loss as set forth in the Agreement. The allocations provided by the preceding sentences shall be subject to Section 6.1.F of the Agreement. The General Partner is authorized in its discretion to delay or accelerate the participation of the Class AO LTIP Units in allocations of Net Income or Net

Loss or to adjust the allocations made under this Section 3 to effectuate the purposes of the economic arrangement contemplated by the parties and to ensure that the Class AO LTIP Units will be respected as “profits interests” for U.S. federal income tax purposes, as contemplated by Section 4.8 of the Agreement.

4. Adjustments.

If an Adjustment Event (as defined below) occurs, then the General Partner shall make a corresponding adjustment to each Class AO LTIP Unit to adjust by the same increment for which a Class A Unit was adjusted, provided that to the extent that the Value of a common Share was less than the applicable Class AO LTIP Unit Participation Threshold as of the date of an Adjustment Event, the adjustment for a Class AO LTIP Unit shall only be for the amount by which the increment of the Class A Unit adjustment would have exceeded such Class AO LTIP Unit Participation Threshold, provided that, notwithstanding the foregoing, if an Adjustment Event occurs, the General Partner may make such adjustments to the Class AO LTIP Units as it determines to be appropriate in order to achieve the intended economics of the Class AO LTIP Units. The following shall be “**Adjustment Events**”: (A) the Partnership makes a distribution on all outstanding Class A Units in Partnership Units, (B) the Partnership subdivides the outstanding Class A Units into a greater number of units or combines the outstanding Class A Units into a smaller number of units, or (C) the Partnership issues any Partnership Units in exchange for its outstanding Class A Units by way of a reclassification or recapitalization of its Class A Units. If more than one Adjustment Event occurs, the adjustment to the Class AO LTIP Units need be made only once using a single formula that takes into account each and every Adjustment Event as if all Adjustment Events occurred simultaneously. For the avoidance of doubt, the following shall not be Adjustment Events: (x) the issuance of Partnership Units in a financing, reorganization, acquisition or other similar business transaction, (y) the issuance of Partnership Units pursuant to any employee benefit or compensation plan or distribution reinvestment plan, or (z) the issuance of any Partnership Units to the General Partner in respect of a capital contribution to the Partnership of proceeds from the sale of securities by the General Partner. If the Partnership takes an action affecting the Class A Units other than actions specifically described above as Adjustment Events and in the opinion of the General Partner such action would require an adjustment to the Class AO LTIP Units to effect the adjustments described above, the General Partner shall have the right to make such adjustment to the Class AO LTIP Units, to the extent permitted by law and by the terms of any plan pursuant to which the Class AO LTIP Units have been issued, in such manner and at such time as the General Partner, in its sole discretion, may determine to be appropriate under the circumstances to effect the adjustments described above. If an adjustment is made to the Class AO LTIP Units as herein provided the Partnership shall promptly file in the books and records of the Partnership an officer’s certificate setting forth such adjustment and a brief statement of the facts requiring such adjustment, which certificate shall be conclusive evidence of the correctness of such adjustment absent manifest error. Promptly after filing of such certificate, the Partnership shall mail a notice to each holder of Class AO LTIP Units setting forth the adjustment to his or her Class AO LTIP Units and the effective date of such adjustment.

5. No Liquidation Preference.

The Class AO LTIP Units shall have no liquidation preference.

6. Right to Convert Class AO LTIP Units into Class A Units.

A. Class AO LTIP Unit Conversion Right. A holder of Class AO LTIP Units shall have the right (the “**Class AO LTIP Unit Conversion Right**”), at his or her option, at any time to convert all or a portion of his or her Vested Class AO LTIP Units into Vested LTIP Units, in accordance with the provisions of Section 6.B below. Holders of Class AO LTIP Units shall not have the right to convert Unvested Class AO LTIP Units into Vested LTIP Units until they become Vested Class AO LTIP Units; provided, however, that when a holder of Class AO LTIP Units is notified of the expected occurrence of an event that will cause his or her Unvested Class AO LTIP Units to become Vested Class AO LTIP Units, such Person may give the Partnership a Class AO LTIP Unit Conversion Notice conditioned upon and effective as of the time of vesting, and such Class AO LTIP Unit Conversion Notice, unless subsequently revoked by the holder of the Class AO LTIP Units prior to conversion, shall be accepted by the Partnership subject to such condition. The General Partner shall have the right at any time to cause a conversion of Vested Class AO LTIP Units into Vested LTIP Units. In all cases, the conversion of any Class AO LTIP Units into Vested LTIP Units shall be subject to the conditions and procedures set forth in this Section 6.

B. Number of Units Convertible. A holder of Vested Class AO LTIP Units may convert such Vested Class AO LTIP Units into a number (or fraction thereof) of fully paid and non-assessable Vested LTIP Units, giving effect to all adjustments (if any) made pursuant to Section 4 equal to the Class AO LTIP Unit Conversion Factor (as defined below).

“**Class AO LTIP Unit Conversion Factor**” shall mean the quotient of (i) the excess of the Value of a common Share as of the date of conversion over the Class AO LTIP Unit Participation Threshold (as defined below) for such Vested Class AO LTIP Unit, divided by (ii) the Value of a common Share as of the date of conversion.

“**Class AO LTIP Unit Participation Threshold**” shall mean, for each Class AO LTIP Unit, the amount specified as such in the relevant Class AO LTIP Unit Vesting Agreement or other documentation pursuant to which such Class AO LTIP Unit is granted. The Class AO LTIP Unit Participation Threshold of a Class AO LTIP Unit is intended to be the Value of a common Share as of the date of issuance of such Class AO LTIP Unit.

C. Notice. In order to exercise his or her Class AO LTIP Unit Conversion Right, a holder of Class AO LTIP Units shall deliver a notice (a “**Class AO LTIP Unit Conversion Notice**”) in the form attached as Attachment A to this **Exhibit J** to the Partnership not less than 10 nor more than 60 days prior to a date (the “**Conversion Date**”) specified in such Class AO LTIP Unit Conversion Notice. Each holder of Class AO LTIP Units covenants and agrees with the Partnership that all Vested Class AO LTIP Units to be converted pursuant to this Section 6 shall be free and clear of all liens. Notwithstanding anything herein to the contrary or the holding period requirement of Section 8.6A(i) of the Agreement (but subject to the remainder of Section 8.6 of the Agreement), a holder of Class AO LTIP Units may deliver a Redemption Notice pursuant to Section 8.6 of the Agreement relating to those Vested LTIP Units that will be issued to such holder upon conversion of such Class AO LTIP Units into Vested LTIP Units in advance of the Conversion Date; provided, however, that the redemption of such Vested LTIP Units by the Partnership shall in no event take place until the Conversion Date. For clarity, it is noted that the objective of this paragraph is to put a holder of Class AO LTIP Units in a position where, if he or she so wishes, the Vested LTIP Units into which his or her Vested Class AO LTIP Units will be converted can be redeemed by the Partnership simultaneously with such conversion notwithstanding such Vested LTIP Units were not held for one (1) year, with the further consequence that, if the General Partner elects to assume the Partnership’s redemption obligation with respect to such Vested LTIP Units under Section 8.6 of the Agreement by delivering to such holder Shares rather than cash, then such holder can have such Shares issued to him or her simultaneously with the conversion of his or her Vested Class AO LTIP Units into Vested LTIP Units. The General Partner shall cooperate with a holder of Class AO LTIP Units to coordinate the timing of the different events described in the foregoing sentence.

D. Class AO LTIP Unit Forced Conversion. The Partnership, at any time at the election of the General Partner, may cause any number of Vested Class AO LTIP Units held by a holder of Class AO LTIP Units to be converted (a “**Class AO LTIP Unit Forced Conversion**”) into a number of Vested LTIP Units equal to the Class AO LTIP Unit Conversion Factor, giving effect to all adjustments (if any) made pursuant to Section 4, and may cause any number of such resulting Vested LTIP Units to be converted into a number of Class A Units in accordance with **Exhibit E** of the Agreement; provided that the Partnership may not cause a Class AO LTIP Unit Forced Conversion of any Class AO LTIP Units that would not at the time be eligible for conversion at the option of the holder of such Class AO LTIP Units pursuant to Section 6.B above. In order to exercise its right to cause a Class AO LTIP Unit Forced Conversion, the Partnership shall deliver a notice (a “**Class AO LTIP Unit Forced Conversion Notice**”) in the form attached as Attachment B to this **Exhibit J** to the applicable holder not less than 10 nor more than 60 days prior to the Conversion Date specified in such Class AO LTIP Unit Forced Conversion Notice. A Class AO LTIP Unit Forced Conversion Notice shall be provided in the manner provided in Section 15.1 of the Agreement.

E. Conversion Procedures. A conversion of Vested Class AO LTIP Units for which the holder thereof has given a Class AO LTIP Unit Conversion Notice or the Partnership has given a Class AO LTIP Unit Forced Conversion Notice shall occur automatically after the close of business on the applicable Conversion Date without any action on the part of such holder of Class AO LTIP Units, as of which time such holder of Class AO LTIP Units shall be credited on the books and records of the Partnership with the issuance as of the opening of business on the next day of the number of Class A Units issuable upon such conversion. After the conversion of Class AO LTIP Units as aforesaid, the Partnership shall deliver to such holder of Class AO LTIP Units, upon his or her written request, a certificate of the General Partner certifying the number of Vested LTIP Units and remaining Class AO LTIP Units, if any, held by such Person immediately after such conversion.

E. Treatment of Capital Account. For purposes of making future allocations under the Agreement, the Economic Capital Account Balance of the applicable Class AO LTIP Unitholder shall be reduced, as of the date of conversion, by the amount of such Economic Capital Account Balance attributable to the converted Class AO LTIP Units.

G. Mandatory Conversion in Connection with a Transaction. If the Partnership or the General Partner shall be a party to any transaction (including without limitation a merger, consolidation, unit exchange, self tender offer for all or substantially all Class A Units or other business combination or reorganization, or sale of all or substantially all of the Partnership's assets, but excluding any transaction which constitutes an Adjustment Event), in each case as a result of which Class A Units shall be exchanged for or converted into the right, or the holders of Class A Units shall otherwise be entitled, to receive cash, securities or other property or any combination thereof (each of the foregoing being referred to herein as a "**Transaction**"), then the General Partner shall, immediately prior to the Transaction, exercise its right to cause a Class AO LTIP Unit Forced Conversion with respect to all Class AO LTIP Units then eligible for conversion, taking into account any allocations that occur in connection with the Transaction or that would occur in connection with the Transaction if the assets of the Partnership were sold at the Transaction price or, if applicable, at a value determined by the General Partner in good faith using the value attributed to the Partnership Units in the context of the Transaction (in which case the Conversion Date shall be the effective date of the Transaction and the conversion shall occur immediately prior to the effectiveness of the Transaction).

In anticipation of such Class AO LTIP Unit Forced Conversion and the consummation of the Transaction, the Partnership shall use commercially reasonable efforts to cause each holder of Class AO LTIP Units to be afforded the right to receive in connection with such Transaction in consideration for the Vested LTIP Units and Class A Units into which his or her Class AO LTIP Units will be converted into the same kind and amount of cash, securities and other property (or any combination thereof) receivable upon the consummation of such Transaction by a holder of the same number of Class A Units (after giving effect to the Class AO LTIP Unit Conversion Factor in the case of Class AO LTIP Units), assuming such holder of Class A Units is not a Person with which the Partnership consolidated or into which the Partnership merged or which merged into the Partnership or to which such sale or transfer was made, as the case may be (a "**Constituent Person**"), or an affiliate of a Constituent Person. In the event that holders of Class A Units have the opportunity to elect the form or type of consideration to be received upon consummation of the Transaction, prior to such Transaction the General Partner shall give prompt written notice to each holder of Class AO LTIP Units of such election, and shall use commercially reasonable efforts to afford such holders the right to elect, by written notice to the General Partner, the form or type of consideration to be received upon conversion of each Class AO LTIP Unit held by such holder into Class A Units in connection with such Transaction. If a holder of Class AO LTIP Units fails to make such an election, such holder (and any of its transferees) shall receive upon conversion of each Class AO LTIP Unit held by him or her (or by any of his or her transferees) the same kind and amount of consideration that a holder of a Class A Unit would receive if such holder of Class A Units failed to make such an election.

7. Redemption at the Option of the Partnership.

Class AO LTIP Units will not be redeemable at the option of the Partnership; provided, however, that the foregoing shall not prohibit the Partnership from repurchasing Class AO LTIP Units from the holder thereof if and to the extent such holder agrees to sell such Class AO LTIP Unit.

8. Voting Rights.

A. Voting with Class A Units. Except as provided in Section 8.B, holders of Class AO LTIP Units shall not have the right to vote on any matters submitted to a vote of the Limited Partners.

B. Special Approval Rights. Holders of Class AO LTIP Units shall only (a) have those voting rights required from time to time by non-waivable provisions of applicable law, if any, and (b) have the additional voting rights that are expressly set forth in this Section 8.B. The General Partner and/or the Partnership shall not, without the affirmative vote of holders of more than 50% of the then outstanding Class AO LTIP Units affected thereby, given in person or by proxy, either in writing or at a meeting (voting separately as a class), take any action that

would materially and adversely alter, change, modify or amend, whether by merger, consolidation or otherwise, the rights, powers or privileges of such Class AO LTIP Units, subject to the following exceptions:

(i) no separate consent of the holders of Class AO LTIP Units will be required if and to the extent that any such alteration, change, modification or amendment would equally, ratably and proportionately alter, change, modify or amend the rights, powers or privileges of the Class A Units (in which event the holders of Class AO LTIP Units shall only have such voting rights, if any, as provided in Section 14.1 of the Agreement in accordance with Section 8.A above);

(ii) with respect to any merger, consolidation or other business combination or reorganization, so long as the Class AO LTIP Units either (x) are converted into Class A Units immediately prior to the effectiveness of the transaction, (y) remain outstanding with the terms thereof materially unchanged, or (z) if the Partnership is not the surviving entity in such transaction, are exchanged for a security of the surviving entity with terms that are materially the same with respect to rights to allocations, distributions, redemption, conversion and voting as the Class AO LTIP Units and without any income, gain or loss expected to be recognized by the holder upon the exchange for federal income tax purposes (and with the terms of the Class A Units or such other securities into which the Class AO LTIP Units (or the substitute security therefor) are convertible materially the same with respect to rights to allocations, distributions, redemption, conversion and voting), such merger, consolidation or other business combination or reorganization shall not be deemed to materially and adversely alter, change, modify or amend the rights, powers or privileges of the Class AO LTIP Units, provided further, that if some, but not all, of the Class AO LTIP Units are converted into Class A Units immediately prior to the effectiveness of the transaction (and neither clause (y) or (z) above is applicable), then the consent required pursuant to this Section will be the consent of the holders of more than 50% of the Class AO LTIP Units to be outstanding following such conversion, Vested LTIP Units and Class A Units outstanding voting together as a single class pursuant to Section 8.A above;

(iii) any creation or issuance of any Class A Units or of any class of series of Class A Units or Preference Units of the Partnership (whether ranking junior to, on a parity with or senior to the Class AO LTIP Units or with respect to payment of distributions, redemption rights and the distribution of assets upon liquidation, dissolution or winding up), which either (x) does not require the consent of the holders of Class A Units or (y) does require such consent and is authorized by a vote of the holders of Class A Units, Vested LTIP Units and Class AO LTIP Units voting together as a single class pursuant to Section 8.A above, together with any other class or series of units of limited partnership interest in the Partnership upon which like voting rights have been conferred, shall not be deemed to materially and adversely alter, change, modify or amend the rights, powers or privileges of the Class AO LTIP Units;

(iv) any waiver by the Partnership of restrictions or limitations applicable to any outstanding Class AO LTIP Units with respect to any holder or holders thereof shall not be deemed to materially and adversely alter, change, modify or amend the rights, powers or privileges of the Class AO LTIP Units with respect to other holders. The foregoing voting provisions will not apply if, as of or prior to the time when the action with respect to which such vote would otherwise be required will be taken or be effective, all outstanding Class AO LTIP Units shall have been converted and/or redeemed, or provision is made for such redemption and/or conversion to occur as of or prior to such time; and

(v) the General Partner shall have the power, without the consent of holders of Class AO LTIP Units, to amend the Agreement as may be required to reflect any change to the Agreement not otherwise specifically permitted by this Section 8.B that the General Partner deems necessary or appropriate in its sole discretion, provided that such change does not adversely affect or eliminate any right granted to holders of Class AO LTIP Units requiring their approval.

9. Other.

If there is a change in applicable tax law such that the Class AO LTIP Units become taxable to the holder of such Class AO LTIP Units as ordinary income, the Partnership, at any time at the election of the General Partner, may cause the Class AO LTIP Units to be restructured and/or substituted for other awards in a way that permits a tax deduction to the Partnership or the General Partner while preserving substantially similar pre-tax economics to the holder of such Class AO LTIP Units.

* * *



Attachment A to Exhibit J

Notice of Election by Partner to Convert Class AO LTIP Units into Vested LTIP Units

The undersigned holder of Class AO LTIP Units hereby irrevocably elects to convert the number of Vested Class AO LTIP Units in Kite Realty Group, L.P. (the "**Partnership**") set forth below into Vested LTIP Units in accordance with the terms of the Limited Partnership Agreement of the Partnership, as amended. The undersigned hereby represents, warrants, and certifies that the undersigned: (a) has title to such Class AO LTIP Units, free and clear of the rights or interests of any other person or entity other than the Partnership; (b) has the full right, power, and authority to cause the conversion of such Class AO LTIP Units as provided herein; and (c) has obtained the consent or approval of all persons or entities, if any, having the right to consent or approve such conversion.

Name of Holder: _____
(Please Print: Exact Name as Registered with Partnership)

Number of Class AO LTIP Units to be Converted: _____

Conversion Date: _____

(Signature of Holder: Sign Exact Name as Registered with Partnership)

(Street Address)

(City) (State) (Zip Code)

Signature Guaranteed by: _____

Attachment B to Exhibit J

**Notice of Election by Partnership to Force Conversion
of Class AO LTIP Units into Vested LTIP Units**

Kite Realty Group, L.P. (the "Partnership") hereby irrevocably elects to cause the number of Class AO LTIP Units held by the holder of Class AO LTIP Units set forth below to be converted into Vested LTIP Units in accordance with the terms of the Limited Partnership Agreement of the Partnership.

Name of Holder: _____
(Please Print: Exact Name as Registered with Partnership)

Number of Class AO LTIP Units to be Converted: _____

Conversion Date: _____

[\(Back To Top\)](#)