

Section 1: S-8 (S-8)

As filed with the Securities and Exchange Commission on May 17, 2019

Registration No. 333-

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**
Washington, D.C. 20549

FORM S-8

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

Kite Realty Group Trust

(Exact name of registrant as specified in its charter)

Maryland
(State or other jurisdiction of incorporation or organization)

11-3715772
(IRS Employer Identification No.)

30 S. Meridian Street, Suite 1100
Indianapolis, Indiana
(Address of principal executive offices)

46204
(Zip code)

Kite Realty Group Trust 2013 Equity Incentive Plan
(As Amended and Restated as of February 28, 2019)
(Full title of the Plan)

John A. Kite
Chairman and Chief Executive Officer
Kite Realty Group Trust
30 S. Meridian Street
Suite 1100
Indianapolis, IN 46204

(Name and address of agent for service)

(317) 577-5600
(Telephone number, including area code, of agent for service)

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company," and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer Accelerated filer Non-accelerated filer Smaller reporting company 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 7(a)(2)(B) of the Securities Act.

CALCULATION OF REGISTRATION FEE

Title of securities to be registered	Amount to be Registered (1)	Proposed maximum offering price per share (2)	Proposed maximum aggregate offering price	Amount of registration fee
Common Shares, par value \$0.01 per share	16,050,000	\$ 16.20	\$ 260,010,000	\$ 31,513

- (1) Pursuant to Rule 416, the number of Common Shares registered hereunder includes such indeterminate number of additional Common Shares as may be offered or issued in the future to prevent dilution resulting from share splits, share dividends or similar transactions. In addition, pursuant to Rule 416(c), this registration statement covers an indeterminate amount of interests offered or issued pursuant to the employee benefit plan(s) described herein.
 - (2) Pursuant to Rule 457(c) and (h) computed on the basis of the average of the high and low prices per share of the Common Shares on May 15, 2019.
-
-
-

EXPLANATORY NOTE

Kite Realty Group Trust (the “Company”) is hereby registering 16,050,000 additional common shares, par value \$0.01 per share (the “Common Shares”), for issuance under the Company’s 2013 Equity Incentive Plan, as amended and restated as of February 28, 2019 (the “Amended and Restated 2013 Plan”). The prior registration statements on Form S-8 (Registration Nos. 333-120142, 333-159219 and 333-188436 referred to as the “Prior Equity Plan Registration Statements”), as filed with the U.S. Securities and Exchange Commission (the “SEC” or the “Commission”) on [November 1, 2004](#), [May 13, 2009](#) and [May 8, 2013](#), respectively, are currently effective and, as permitted by General Instruction E to Form S-8, the contents of the Prior Equity Plan Registration Statements are incorporated herein by reference, except to the extent supplemented, amended or superseded by the information set forth herein. The documents containing the information specified in Part I of Form S-8 will be sent or given to the persons participating in the Amended and Restated 2013 Plan, as specified by Rule 428(b)(1) under the Securities Act of 1933, as amended (the “Securities Act”). In accordance with the instructions to Part I of Form S-8, such documents will not be filed with the SEC either as part of this registration statement or as prospectuses or prospectus supplements pursuant to Rule 424 of the Securities Act. These documents and the documents incorporated by reference pursuant to Item 3 of Part II of this registration statement, taken together, constitute the prospectus as required by Section 10(a) of the Securities Act.

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference.

The following documents, which we have previously filed with the SEC, are incorporated by reference in this registration statement:

- [The Company’s Annual Report on Form 10-K for the fiscal year ended December 31, 2018, filed with the SEC on February 27, 2019;](#)
- [The Company’s Quarterly Report on Form 10-Q for the quarterly period ended March 31, 2019, filed with the SEC on May 7, 2019;](#)
- The Company’s Current Reports on Form 8-K filed with the SEC on [February 13, 2019](#), [March 5, 2019](#), [March 26, 2019](#), and [May 17, 2019](#); and
- The description of our Common Shares included in our Registration Statement on [Form 8-A filed with the SEC on August 4, 2004](#) under Section 12(b) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”) and including any additional amendment or report filed for the purpose of updating such description.

The Company also incorporates by reference into this registration statement additional documents that it may file with the SEC under Section 13(a), 13(c), 14 and 15(d) of the Exchange Act from the date of this registration statement until the filing of a post-effective amendment that indicates that all securities offered have been sold or that deregisters all securities then remaining unsold, except that the Company is not incorporating any information furnished under either Item 2.02 or Item 7.01 of any Current Report on Form 8-K.

Item 4. Description of Securities.

Not applicable. The Common Shares are registered under Section 12 of the Exchange Act.

Item 5. Interests of Named Experts and Counsel.

Not applicable.

Item 6. Indemnification of Directors and Officers.

The Maryland REIT Law permits a Maryland real estate investment trust to include in its declaration of trust a provision limiting the liability of its trustees and officers to the trust and its shareholders for money damages except for liability resulting from (a) actual receipt of an improper benefit or profit in money, property or services or (b) active or deliberate dishonesty established in a judgment or other final adjudication to be material to the cause of action. Our declaration of trust contains a provision that limits the liability of our trustees and officers to the maximum extent permitted by Maryland law.

The Maryland REIT Law permits a Maryland real estate investment trust to indemnify and advance expenses to its trustees, officers, employees and agents to the same extent as permitted by the Maryland General Corporation Law (the "MGCL") for directors and officers of Maryland corporations. The MGCL permits a corporation to indemnify its present and former directors and officers, among others, against judgments, penalties, fines, settlements and reasonable expenses actually incurred by them in connection with any proceeding to which they may be a party by reason of their service in those or other capacities unless it is established that (a) the act or omission of the director or officer was material to the matter giving rise to the proceeding and (i) was committed in bad faith or (ii) was a result of active and deliberate dishonesty, (b) the director or officer actually received an improper personal benefit in money, property or services or (c) in the case of any criminal proceeding, the director or officer had reasonable cause to believe that the act or omission was unlawful. However, a Maryland corporation may not indemnify for an adverse judgment in a suit by or in the right of the corporation or if the director or officer was adjudged to be liable to the corporation nor may a director be indemnified in circumstances in which the director is found liable for an improper personal benefit. In accordance with the MGCL and our bylaws, our bylaws require us, as a condition to advancement of expenses, to obtain (a) a written affirmation by the trustee or officer of his good faith belief that he has met the standard of conduct necessary for indemnification and (b) a written undertaking by or on his behalf to repay the amount paid or reimbursed by us if it shall ultimately be determined that the applicable standard of conduct was not met.

Our declaration of trust provides that we (a) shall indemnify, to the maximum extent permitted by Maryland law in effect from time to time, any individual who is a present or former trustee, and (b) may indemnify, to the maximum extent permitted by Maryland law in effect from time to time, any individual who is a present or former officer or any individual who, at our request, serves or has served as an, officer, partner, employee or agent of another corporation, partnership, joint venture, trust, employee benefit plan or any other enterprise from and against any claim or liability to which such person may become subject or which such person may incur by reason of his status as a present or former officer, partner, employee or agent of our company. We have the power, with the approval of our board of trustees, to provide such indemnification and advancement of expenses to a person who served a predecessor of our company in any of the capacities described in (a) or (b) above and to any employee or agent of our company or a predecessor of our company. Maryland law requires us to indemnify a trustee or officer who has been successful, on the merits or otherwise, in the defense of any proceeding to which he is made a party by reason of his service in that capacity.

In addition, we have entered into indemnification agreements with each of our trustees and executive officers to provide for indemnification to the maximum extent permitted by Maryland law.

The partnership agreement of our operating partnership provides that our operating partnership is required to indemnify, to the fullest extent permitted by Delaware law, (1) us, (2) the respective trustees, directors and officers of the operating partnership and the Company, and (3) such other persons (including affiliates of the Company, the operating partnership or a limited partner) as we may designate from time to time (whether before or after the event giving rise to potential liability) in our sole and absolute discretion, unless it is established by a final determination of a court of competent jurisdiction that: (a) the act or omission of the indemnitee was material to the matter giving rise to the proceeding and either was committed in bad faith or was the result of active and deliberate dishonesty, (ii) the indemnitee actually received an improper personal benefit in money, property or services or (c) in the case of any criminal proceeding, the indemnitee had reasonable cause to believe that the act or omission was unlawful.

Item 7. Exemption From Registration Claimed.

Not applicable.

Item 8. Exhibits.

Exhibit No.	Description
4.1	<u>Articles of Amendment and Restatement of Declaration of Trust of the Company, as supplemented and amended (incorporated by reference to Exhibit 3.1 to the Annual Report on Form 10-K of Kite Realty Group Trust filed with the SEC on February 27, 2015)</u>
4.2	<u>Articles of Amendment to the Articles of Amendment and Restatement of Declaration of Trust of Kite Realty Group Trust, as supplemented and amended (incorporated by reference to Exhibit 3.1 to the Current Report on Form 8-K of Kite Realty Group Trust filed with the SEC on May 28, 2015)</u>
4.3	<u>Second Amended and Restated Bylaws of the Company, as amended (incorporated by reference to Exhibit 3.2 to the Annual Report on Form 10-K of Kite Realty Group Trust filed with the SEC on February 27, 2015)</u>
4.4	<u>First Amendment to the Second Amended and Restated Bylaws of Kite Realty Group Trust, as amended (incorporated by reference to Exhibit 3.2 to the Current Report on Form 8-K of Kite Realty Group Trust filed with the SEC on May 28, 2015)</u>
5.1	<u>Opinion of Hogan Lovells US LLP regarding the validity of the Common Shares registered hereby</u>
10.1	<u>Kite Realty Group Trust 2013 Equity Incentive Plan, as amended and restated as of February 28, 2019 (incorporated by reference to Exhibit 10.1 to the Current Report on Form 8-K of Kite Realty Group Trust filed with the SEC on May 17, 2019)</u>
23.1	<u>Consent of Ernst & Young LLP</u>
23.2	<u>Consent of Hogan Lovells US LLP (included in Exhibit 5.1)</u>
24.1	<u>Power of Attorney (included on signature page hereto)</u>

Item 9. Undertakings.

(a) The undersigned Registrant hereby undertakes:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement:

(i) To include any prospectus required by Section 10(a)(3) of the Securities Act;

(ii) To reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than 20 percent change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective registration statement;

(iii) To include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement;

provided, however, that paragraphs (a)(1)(i) and (a)(1)(ii) do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed with or furnished to the Commission by the Registrant pursuant to Section 13 or Section 15 (d) of the Exchange Act that are incorporated by reference in this registration statement.

(2) That, for the purpose of determining any liability under the Securities Act, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

(b) The Registrant hereby undertakes that, for purposes of determining any liability under the Securities Act, each filing of the Registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Exchange Act (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Exchange Act) that is incorporated by reference in this registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

(h) Insofar as indemnification for liabilities arising under the Securities Act may be permitted to trustees, directors, officers and controlling persons of the Registrant pursuant to the foregoing provisions, or otherwise, the Registrant has been advised that, in the opinion of the Commission, such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than for the payment by the Registrant of expenses incurred or paid by a trustee, director, officer or controlling person of the Registrant in the successful defense of any action, suit or proceeding) is asserted by such trustee, director, officer or controlling person in connection with the securities being registered, the Registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Indianapolis, State of Indiana on this 17th day of May, 2019.

KITE REALTY GROUP TRUST

By: /s/ John A. Kite

John A. Kite

Chairman of the Board of Trustees and Chief

Executive Officer

POWER OF ATTORNEY

Each person whose signature appears below constitutes and appoints John A. Kite and Heath R. Fear, and each of them, such person's true and lawful attorneys-in-fact and agents, with full power of substitution and resubstitution, from such person and in each person's name, place and stead, in any and all capacities, to sign any and all pre- and post-effective amendments to this registration statement, any subsequent registration statement for the same offering which may be filed pursuant to Rule 462(b) under the Securities Act, and any and all pre- or post-effective amendments thereto and to file the same, with all exhibits thereto, and all other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorney-in-facts and agents full power and authority to do and perform each and every act and thing requisite and necessary to be done in and about the premises, as fully to all intents and purposes as that person might or could do in person, hereby ratifying and confirming all that said attorney-in-fact and agent or any substitute therefore may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act, this registration statement has been signed by the following persons in the capacities indicated on this 17th day of May, 2019:

<u>Signature</u>	<u>Title</u>
<u>/s/ John A. Kite</u> John A. Kite	Chairman of the Board of Trustees and Chief Executive Officer (Principal Executive Officer)
<u>/s/ Heath R. Fear</u> Heath R. Fear	Executive Vice President and Chief Financial Officer (Principal Financial Officer)
<u>/s/ David E. Buell</u> David E. Buell	Senior Vice President, Chief Accounting Officer (Principal Accounting Officer)
<u>/s/ William E. Bindley</u> William E. Bindley	Trustee
<u>/s/ Victor J. Coleman</u> Victor J. Coleman	Trustee
<u>/s/ Lee A. Daniels</u> Lee A. Daniels	Trustee

<u>/s/ Christie B. Kelly</u> Christie B. Kelly	Trustee
<u>/s/ David R. O'Reilly</u> David R. O'Reilly	Trustee
<u>/s/ Barton R. Peterson</u> Barton R. Peterson	Trustee
<u>/s/ Charles H. Wurtz bach</u> Charles H. Wurtz bach	Trustee

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

Section 2: EX-5.1 (EX-5.1)

Exhibit 5.1



Hogan Lovells US LLP
Columbia Square
555 Thirteenth Street, NW
Washington, DC 20004
T +1 202 637 5600
F +1 202 637 5910
www.hoganlovells.com

May 17, 2019

Board of Trustees
Kite Realty Group Trust
30 S. Meridian Street
Suite 1100
Indianapolis, IN 46204

Ladies and Gentlemen:

We are acting as counsel to Kite Realty Group Trust, a Maryland real estate investment trust (the “**Company**”), in connection with its registration statement on Form S-8 (the “**Registration Statement**”), filed with the U.S. Securities and Exchange Commission under the Securities Act of 1933, as amended (the “**Act**”), relating to the proposed offering of up to 16,050,000 newly issued common shares of beneficial interest, par value \$0.01 per share, of the Company (the “**Shares**”), all of which Shares are issuable pursuant to the Company’s 2013 Equity Incentive Plan, as amended and restated as of February 28, 2019 (the “**Plan**”). This opinion letter is furnished to you at your request to enable you to fulfill the requirements of Item 601(b)(5) of Regulation S-K, 17 C.F.R. § 229.601(b)(5), in connection with the Registration Statement.

For purposes of this opinion letter, we have examined copies of such agreements, instruments and documents as we have deemed an appropriate basis on which to render the opinions hereinafter expressed. In our examination of the aforesaid documents, we have assumed the genuineness of all signatures, the legal capacity of all natural persons, the accuracy and completeness of all documents submitted to us, the authenticity of all original documents, and the conformity to authentic original documents of all documents submitted to us as copies (including pdfs). We also have assumed that the Shares will not be issued in violation of the ownership limit contained in the Company’s Amended and Restated Declaration of Trust. As to all matters of fact, we have relied on the representations and statements of fact made in the documents so reviewed, and we have not independently established the facts so relied on. This opinion letter is given, and all statements herein are made, in the context of the foregoing.

This opinion letter is based as to matters of law solely on the applicable provisions of Title 8 of the Corporations and Associations Article of the Annotated Code of Maryland, as amended. We express no opinion herein as to any other laws, statutes, ordinances, rules, or regulations.

Based upon, subject to and limited by the foregoing, we are of the opinion that following (i) effectiveness of the Registration Statement, (ii) issuance of the Shares pursuant to the terms of the Plan, and (iii) receipt by the Company of the consideration for the Shares specified in the applicable resolutions of the Board of Trustees and in the Plan, the Shares will be validly issued, fully paid, and nonassessable.

includes Hogan Lovells US LLP and Hogan Lovells International LLP, with offices in: Alicante Amsterdam Baltimore Beijing Birmingham Boston Brussels Colorado Springs Denver Dubai Dusseldorf Frankfurt Hamburg Hanoi Ho Chi Minh City Hong Kong Houston Johannesburg London Los Angeles Luxembourg Madrid Mexico City Miami Milan Minneapolis Monterrey Moscow Munich New York Northern Virginia Paris Perth Philadelphia Rio de Janeiro Rome San Francisco São Paulo Shanghai Silicon Valley Singapore Sydney Tokyo Warsaw Washington DC Associated offices: Budapest Jakarta Shanghai FTZ Ulaanbaatar Zagreb. Business Service Centers: Johannesburg Louisville. For more information see www.hoganlovells.com

This opinion letter has been prepared for use in connection with the Registration Statement. We assume no obligation to advise of any changes in the foregoing subsequent to the effective date of the Registration Statement.

We hereby consent to the filing of this opinion letter as Exhibit 5.1 to the Registration Statement. In giving this consent, we do not thereby admit that we are an “expert” within the meaning of the Act.

Very truly yours,

/s/ Hogan Lovells US LLP

HOGAN LOVELLS US LLP

2

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

Section 3: EX-23.1 (EX-23.1)

Exhibit 23.1

Consent of Independent Registered Public Accounting Firm

We consent to the incorporation by reference in the Registration Statement (Form S-8) pertaining to the 2013 Equity Incentive Plan (As Amended and Restated as of February 28, 2019) of Kite Realty Group Trust of our reports dated February 27, 2019, with respect to the consolidated financial statements and schedule of Kite Realty Group Trust and the effectiveness of internal control over financial reporting of Kite Realty Group Trust included in its Annual Report (Form 10-K) for the year ended December 31, 2018, filed with the Securities and Exchange Commission.

/s/ Ernst & Young LLP

Indianapolis, Indiana
May 17, 2019

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