FIVE STAR QUALITY CARE INC
Form 424B5
June 08, 2011

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**Filed Pursuant to Rule 424(b)(5)**
**Registration No. 333-163060**

The information in this preliminary prospectus supplement and the accompanying prospectus is not complete and may be changed. This preliminary prospectus supplement and the accompanying prospectus are not an offer to sell these securities and are not soliciting an offer to buy these securities in any jurisdiction where the offer or sale is not permitted.

Subject to Completion
Preliminary Prospectus Supplement dated June 8, 2011

**PROSPECTUS SUPPLEMENT**
(To Prospectus dated November 27, 2009)

# 10,000,000 Shares

# Common Stock

We are offering 10,000,000 of our common shares.

Our common shares are listed on the New York Stock Exchange under the symbol "FVE." The last reported sale price of our common shares on June 7, 2011, was $7.29 per share.

**Investing in our common shares involves risks that are described in the "Risk Factors" section of our Annual Report on Form 10-K for the year ended December 31, 2010.**

**Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or determined if this prospectus supplement or the accompanying prospectus is truthful or complete. Any representation to the contrary is a criminal offense.**

| | Per Share | Total |
|---|---|---|
| Public offering price | $ | $ |
| Underwriting discounts and commissions[(1)] | $ | $ |
| Proceeds, before expenses, to us | $ | $ |

(1)

Our former parent, Senior Housing Properties Trust, or SNH, has indicated to us its intention to purchase from the underwriters 1,000,000 of the 10,000,000 common shares being sold in this offering at a price equal to the public offering price. The underwriters will not receive any underwriting discounts or commissions for any common shares sold to SNH in this offering. The underwriting discounts and commissions per share for any shares in this offering not sold by the underwriters to SNH is $ .

The underwriters may also purchase from us up to an additional 1,500,000 of our common shares at the public offering price, less underwriting discounts and commissions, to cover over-allotments, if any, within 30 days from the date of this prospectus supplement.

The underwriters are offering our common shares as described in "Underwriting." The shares will be ready for delivery on or about June , 2011.

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*Joint Book-Running Managers*

**Jefferies** **Citi** **UBS Investment Bank**

The date of this prospectus supplement is June , 2011.

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**Prospectus Supplement**



**Prospectus dated November 27, 2009**



*In this prospectus supplement, the terms "FVE," "we," "us," and "our" include Five Star Quality Care, Inc. and its consolidated subsidiaries unless otherwise expressly stated or the context otherwise requires. References in this prospectus supplement to "shares" mean shares of our common stock.*

*Unless otherwise stated, we have assumed throughout this prospectus supplement that the underwriters' over-allotment option is not exercised.*

This prospectus supplement contains the terms of this offering. A description of our common shares is set forth in the accompanying prospectus under the heading "Description of capital stock." This prospectus supplement, or the information incorporated by reference herein, may add, update or change information in the accompanying prospectus (or the information incorporated by reference therein). If information in this prospectus supplement, or the information incorporated by reference herein, is inconsistent with the accompanying prospectus (or the information incorporated by reference therein), this prospectus supplement

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(or the information incorporated by reference herein) will apply and will supersede that information in the accompanying prospectus (or the information incorporated by reference therein).

It is important for you to read and consider all information contained in this prospectus supplement, the accompanying prospectus and the information incorporated by reference herein and therein in making your investment decision. You should also read and consider the information in the documents to which we have referred you in "Where you can find more information" in this prospectus supplement and the accompanying prospectus.

You should rely only on the information contained or incorporated by reference in this prospectus supplement or the accompanying prospectus. We have not, and the underwriters have not, authorized any other person to provide you with different information. If anyone provides you with different or inconsistent information, you should not rely on it. We are not, and the underwriters are not, making an offer to sell these securities in any jurisdiction where the offer or sale is not permitted. You should assume that the information appearing in this prospectus supplement and the accompanying prospectus, as well as information we previously filed with the Securities and Exchange Commission, or the SEC, and incorporated by reference, is accurate only as of their respective dates or such other dates specified therein. Our business, financial condition, results of operations and prospects may have changed since those dates.

**Incorporation of certain information by reference**

The SEC allows us to "incorporate by reference" the information we file with the SEC, which means that we can disclose important information to you by referring you to documents previously filed with the SEC. The information incorporated by reference is considered to be part of this prospectus supplement and the accompanying prospectus, and information that we subsequently file with the SEC will automatically update and supersede this information. We incorporate by reference the documents listed below which were filed with the SEC under the Securities Exchange Act of 1934, as amended, or the Exchange Act:

- Our Annual Report on Form 10-K for the year ended December 31, 2010, or our Annual Report;
- Our Quarterly Report on Form 10-Q for the quarter ended March 31, 2011, or our Quarterly Report;
- The information identified as incorporated by reference under Items 10, 11, 12, 13 and 14 of Part III of our Annual Report from our definitive Proxy Statement for our 2011 Annual Meeting of Shareholders filed February 23, 2011, or our Proxy Statement;
- The descriptions of our common shares and our junior participating preferred stock rights contained in our registration statement on Form 8-A filed on January 31, 2011, including any amendments or reports filed for the purpose of updating those descriptions (File No. 001-16817); and
- Our Current Reports on Form 8-K dated January 31, 2011, May 13, 2011, June 6, 2011 and June 8, 2011.

We also incorporate by reference each of the following documents that we will file with the SEC after the date of this prospectus supplement but before the termination of the offering of the common shares:

- Reports filed under Sections 13(a) and (c) of the Exchange Act;
- Definitive proxy or information statements filed under Section 14 of the Exchange Act in connection with any subsequent shareholders' meeting; and

Any reports filed under Section 15(d) of the Exchange Act.

You may request a copy of any of these filings (excluding exhibits other than those which we specifically incorporate by reference in this prospectus supplement or the accompanying prospectus), at no cost, by writing, emailing or telephoning us at the following address:

Investor Relations
Five Star Quality Care, Inc.
400 Centre Street
Newton, Massachusetts 02458
(617) 796-8387
info@5sqc.com

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**Prospectus supplement summary**

*This summary may not contain all of the information that is important to you. You should carefully read this entire prospectus supplement and the accompanying prospectus. You should also read the documents referred to in "Incorporation of certain information by reference."*

**Our Company**

We primarily operate senior living communities, including independent living communities, assisted living communities and skilled nursing facilities, or SNFs. When we were founded in 2000 we operated 54 SNFs and two assisted living communities. Since then we have focused on reducing our reliance on government reimbursement programs, such as Medicare and Medicaid, by adding independent and assisted living communities where residents' private resources account for a large majority of revenues and selling SNFs dependent upon Medicare and Medicaid reimbursements. As of March 31, 2011, we operated 210 senior living communities, including 172 primarily independent and assisted living communities and 38 SNFs, which contain 22,291 combined living units, including 6,323 independent living apartments, 10,591 assisted living suites and 5,377 skilled nursing units. For the three months ended March 31, 2011, approximately 71% of our senior living revenues were generated from residents' private resources.

SENIOR LIVING UNIT TYPE
(as of March 31, 2011)

SENIOR LIVING REVENUES BY SOURCE
(for the quarter ended March 31, 2011)

Excluded from the preceding data are five SNFs containing 600 combined skilled nursing units and one assisted living community containing 70 living units that we or Senior Housing Properties Trust, or SNH, are in the process of selling or offering for sale and that we have classified as discontinued operations. We also operate two rehabilitation hospitals with 321 combined beds and five institutional pharmacies.

We lease a large number of our properties from SNH, our former parent and largest shareholder, under four long term operating leases, including 185 senior living communities (three of which are classified as discontinued operations) containing 20,331 combined living units and our two rehabilitation hospitals containing 321 combined beds. We lease four assisted living communities with 200 combined living units from HCP, Inc. As of March 31, 2011, we owned 24 primarily independent and assisted living communities with 2,089 combined living units.

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**Our Growth Strategy**

We believe that the aging of the U.S. population will increase demand for existing senior living communities. Our principal growth strategy is to profit from this anticipated demand by operating communities that provide high quality services to residents who pay with private resources.

We seek to improve the profitability of our existing operations by increasing our revenues and improving our operating margins. We attempt to increase revenues by increasing rates and occupancies. We attempt to improve margins by limiting increases in expenses and otherwise improving operating efficiencies. For example, during the last few years, the senior living industry has generally experienced declining occupancies as a result of a slowdown in the U.S. economy. During this same period, we have improved operating margins and profitability by increasing rates and limiting increases in our expenses. To the extent that the U.S. economy improves and the housing market improves, we expect that our occupancies may increase and our profitability may grow.

In addition to managing our existing operations, we intend to continue to grow our business by adding to our operations independent and assisted living communities where residents' private resources account for a large majority of revenues. Since we became a public company in late 2001, we have added 171 primarily independent and assisted living communities to our business; in the first quarter of 2011 these 171 communities realized approximately 84% of their revenues from residents' private resources, rather than from Medicare and Medicaid. Historically, we have principally expanded our operations by entering operating leases. Recently, we have started to expand our operations by acquiring senior living communities for our own account and entering agreements to manage senior living communities which are owned by others (see " Recent Developments"). In the future, we expect to continue to grow our business by adding communities that we either own, lease or manage.

**Recent Developments**

Since March 31, 2011, we have announced expansion plans involving 28 senior living communities which have 3,038 combined living units, including the following:

*Acquisition of Six Independent and Assisted Living Communities in Indiana*

We entered into agreements, or the Purchase Agreements, to acquire six senior living communities located in Indiana. The six communities primarily offer independent and assisted living services which are paid by residents from their private resources. The 738 living units in these communities include 191 independent living apartments, 525 assisted living suites and 22 suites which offer specialized Alzheimer's care. The current occupancy rate at these six communities is approximately 94%. The aggregate purchase price for these six communities, excluding closing costs, is approximately $122.8 million, including approximately $19.5 million of mortgage loans which we expect to assume. On June 1, 2011, we closed on the acquisition of two of these communities for an aggregate purchase price, excluding closing costs, of approximately $40.4 million in cash. We funded the June 1, 2011 closing under the Purchase Agreements with the proceeds of a bridge loan, or the Bridge Loan, from SNH (see " Bridge Loan"). On that date, we borrowed approximately $41.0 million from SNH and have an additional $39.0 million available for borrowing under the Bridge Loan. We expect to acquire the remaining communities starting in July 2011, subject to various conditions to closing, including required regulatory approvals and lender consents for our assumption of the mortgage loans. We expect to fund the cash portion of the purchase price for the remaining communities under the Purchase Agreements, equal to approximately $62.9 million, with the proceeds of this offering and by using cash on hand and drawings under our $35.0 million revolving secured line of credit.

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*Management and Lease of 20 Independent and Assisted Living Communities in Southeast United States*

SNH has agreed to acquire 20 senior living communities located in five states in the Southeast United States. The 20 senior living communities primarily offer independent and assisted living services which are primarily paid by residents from their private resources. The 2,111 living units in these communities include 814 independent living apartments, 939 assisted living suites, 311 suites which offer specialized Alzheimer's care and 47 skilled nursing units. The current occupancy rate at these 20 communities is approximately 87%. We have entered long term contracts to manage 15 of these 20 communities, or the Managed Communities, when SNH acquires them. We expect to lease the remaining five communities from SNH, or the Leased Communities, when SNH acquires them.

Under the management contracts for the Managed Communities, or the Management Contracts, we will be paid a management fee equal to 3% of the gross revenues realized at the Managed Communities, which we expect to be approximately $1.8 to $2.0 million during the first year based on the results of operations of the Managed Communities in 2010, plus an incentive fee equal to 35% of the net operating income after SNH realizes an agreed upon minimum return equal to 8% of its invested capital. The Management Contracts have an initial term of 20 years, and we have options of two consecutive renewal terms of 15 years each to extend all, but not less than all, of the Management Contracts. The terms of the Management Contracts were reviewed and approved by special committees of each of our Board of Directors and SNH's board of trustees composed solely of our Independent Directors and SNH's independent trustees who are not also Directors or trustees of the other party and who were represented by separate counsel. The Leased Communities will be added to the leases currently existing between us and SNH. We expect our aggregate minimum rent under those leases to increase by approximately $6.9 million per year, with percentage rent to commence in 2013 with respect to these communities.

For more information about the Management Contracts and our leases with SNH, please refer to our filings with the SEC, including our Annual Report (including the section captioned "Properties SNH Leases") and our Current Reports on Form 8-K dated May 13, 2011 and June 8, 2011 which are incorporated by reference in this prospectus supplement. For more information about the relationships among us, our Directors and executive officers, Reit Management & Research LLC, or RMR, SNH and other companies to which RMR provides management services, and about the risks which may arise from these relationships, please refer to our Annual Report and our other filings with the SEC, including the sections captioned "Business," "Risk Factors," "Properties SNH Leases" and "Management's Discussion and Analysis of Financial Condition and Results of Operations Related Person Transactions" in our Annual Report, the section captioned "Management's Discussion and Analysis of Financial Condition and Results of Operations Related Person Transactions" in our Quarterly Report and the information regarding our Directors and executive officers and the section captioned "Related Person Transactions and Company Review of Such Transactions" in our Proxy Statement. Our filings with the SEC, including our Annual Report, our Quarterly Report, our Current Reports on Form 8-K and our Proxy Statement, are available at the SEC's website: www.sec.gov.

*Acquisition of One Independent and Assisted Living Community in Prescott, Arizona*

On May 1, 2011, we acquired the Granite Gate senior living community in Prescott, Arizona for $25.6 million, excluding closing costs. This community primarily provides independent and assisted living services and all of the residents pay for their services with private resources. This community has 116 living units and the current occupancy rate is approximately 97%. We funded the purchase price for this community by assuming a Fannie Mae mortgage for $18.7 million and using cash on hand for the balance. This acquisition includes approximately ten acres which we may use for future expansion of this community.

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*Lease of One Assisted Living Community in Rockford, Illinois*

On May 1, 2011, we began to lease Crimson Pointe, a senior living community in Rockford, Illinois. This community primarily provides assisted living services and all of the residents pay for their services with private resources. This community has 73 living units and the current occupancy is approximately 77%. This community was acquired by SNH and our lease requires rent of approximately $600,000 per year plus percentage rent starting in 2013.

*Bridge Loan*

We and SNH are parties to a loan agreement, or the Bridge Loan Agreement, under which SNH has agreed to lend us up to $80 million to fund our purchases under the Purchase Agreements relating to the acquisition of the six independent and assisted living communities in Indiana discussed above. As described above, we funded the cash purchase price for two of the six communities with the proceeds of the Bridge Loan on June 1, 2011. The Bridge Loan is currently secured by mortgages on these two senior living communities and on four of our senior living communities in North Carolina. The Bridge Loan matures on July 1, 2012 and bears interest at a rate equal to the annual rates of interest applicable to SNH's borrowings under its revolving credit facility, plus 1%. The Bridge Loan Agreement contains various covenants, including restrictions on our ability to incur liens upon or dispose of the collateral securing the Bridge Loan. The Bridge Loan Agreement also contains events of default, including non-payment, a change in control of us, and certain events of insolvency. The terms of the Bridge Loan Agreement were reviewed and approved by special committees of each of our Board of Directors and SNH's board of trustees composed solely of our Independent Directors and SNH's independent trustees who are not also Directors or trustees of the other party and who were represented by separate counsel. We expect to use a portion of the net proceeds of this offering to repay outstanding borrowings on the Bridge Loan.

*Proposed Rulemaking Impacting Medicare Rates*

The Federal Centers for Medicare and Medicaid Services, or CMS, has recently issued proposed rules to update Medicare prospective payment rates for SNFs which will affect the 5,377 skilled nursing units we operate. The proposed rules include an increase in the Medicare payment rates for SNFs that CMS estimates to be approximately 1.5% in fiscal year 2012, as the result of an annual increase of approximately 2.7% to account for inflation, reduced by a productivity adjustment of 1.2% pursuant to the Patient Protection and Affordable Care Act, or PPACA. However, the proposed rules also include a recalibration of the case mix indexes to more accurately reflect budget neutrality in expenditures between the RUG IV system implemented in federal fiscal year 2011 and the previous case mix classification system that might result in a net reduction in Medicare rates for SNFs. If CMS implements the recalibration as part of the final rules, it estimates that the rules would result in a net reduction in aggregate Medicare payment rates for SNFs of approximately 11.3% in federal fiscal year 2012. Applying the current proposed rulemaking and CMS's estimates to our SNF Medicare revenues in the year ended December 31, 2010 and the quarter ended March 31, 2011, our revenues would have increased by approximately $2.0 million and $0.6 million, respectively, if the full increase was implemented without the recalibration and would have been reduced by approximately $15.1 million and $4.1 million, respectively, if the full recalibration is implemented as part of the final rules. We are unable to predict the final rule's impact on Medicare payment rates; however, such impact may be adverse and material to our operations and our future financial results of operations.

CMS has also recently issued proposed rules to update Medicare prospective payment rates for inpatient rehabilitation facilities, or IRFs, which will affect the two rehabilitation hospitals we operate. The proposed rules include an increase in the Medicare payment rates for IRFs that CMS estimates to be approximately 1.8% overall in federal fiscal year 2012, as the result of a rebased annual increase of approximately 2.8% to account for inflation, reduced by 0.1% and by a productivity adjustment of 1.2%, both pursuant to PPACA, and increased by 0.3% in estimated outlier payments due to an update in the outlier threshold.

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Medicare revenues realized at our IRFs in the year ended December 31, 2010 and the quarter ended March 31, 2011 were approximately $60.3 million and $16.0 million, respectively. The calculation of Medicare rate adjustments applicable at our IRFs is complex and will depend upon patient case mixes. Accordingly, we cannot predict the final impact of the proposed Medicare rate adjustments to our IRF results at this time.

**Organization and Principal Place of Business**

We are organized as a Maryland corporation. Our principal place of business is 400 Centre Street, Newton, Massachusetts 02458 and our telephone number is (617) 796-8387.

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**The offering**

| | |
|---|---|
| Shares being offered by us | 10,000,000 shares |
| Shares to be outstanding after the offering | 46,057,364 shares |
| Use of proceeds | We estimate that our net proceeds from this offering will be approximately $68.7 million, assuming a public offering price of $7.29 per share. If the underwriters exercise their over-allotment option in full, we estimate that our net proceeds will be approximately $79.0 million. We intend to use our net proceeds from this offering for general business purposes, including repaying outstanding borrowings under the Bridge Loan and funding in part the cash purchase price of the pending acquisitions described in "Recent Developments Acquisition of Six Independent and Assisted Living Communities in Indiana" or other possible future acquisitions. |
| New York Stock Exchange symbol | FVE |

The number of our shares to be outstanding after this offering is based on the number of shares outstanding on June 8, 2011. If the underwriters exercise their over-allotment option, we will sell up to an additional 1,500,000 shares.

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**Summary financial data**

The following table sets forth our historical consolidated financial information for the periods ended on the dates indicated below. The summary consolidated financial information for the years ended December 31, 2009 and December 31, 2010 have been derived from our audited consolidated financial statements incorporated by reference in this document. The summary consolidated financial information for the three months ended March 31, 2010 and March 31, 2011 have been derived from our unaudited consolidated financial statements incorporated by reference in this document. Our unaudited financial statements were prepared on the same basis as the audited financial statements, and, in the opinion of management, include all adjustments, consisting only of normal, recurring adjustments necessary for a fair presentation of the information set forth therein. Interim results are not necessarily indicative of the results to be expected for an entire fiscal year.

You should read the following summary financial information in conjunction with "Management's Discussion and Analysis of Financial Condition and Results of Operations" and our audited and unaudited financial statements and notes thereto appearing in our Annual Report and Quarterly Report, which are incorporated by reference in this prospectus supplement and the accompanying prospectus. The following summary financial information includes certain financial measures that are not determined according to U.S. generally accepted accounting principles, or GAAP. Reconciliations of income from continuing operations determined in accordance with GAAP to these non-GAAP financial measures for the years ended December 31, 2009 and 2010, for the quarters ended March 31, 2010 and 2011 and for the twelve months ended March 31, 2011 appear later in this prospectus supplement under the heading "Reconciliation of non-GAAP financial measures."

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| | For the years ended December 31, | | For the three months ended March 31, | | For the twelve months ended March 31, |
|---|---|---|---|---|---|
| | 2009 | 2010 | 2010 | 2011 | 2011(1) |
| | (dollars in thousands, except per share data) | | | | |
| Revenues: | | | | | |
| Senior living revenue | $ 970,915 | $ 1,037,016 | $ 255,215 | $ 263,379 | $ 1,045,180 |
| Rehabilitation hospital revenue | 100,460 | 100,041 | 24,052 | 25,625 | 101,615 |
| Institutional pharmacy revenue | 74,447 | 79,285 | 19,577 | 19,337 | 79,044 |
| Total revenues | 1,145,822 | 1,216,342 | 298,844 | 308,341 | 1,225,839 |
| Operating expenses: | | | | | |
| Senior living wages and benefits | 490,101 | 515,710 | 126,079 | 130,337 | 519,967 |
| Other senior living operating expenses | 235,378 | 245,223 | 62,234 | 63,349 | 246,342 |
| Rehabilitation hospital expenses | 90,957 | 92,190 | 22,657 | 24,053 | 93,585 |
| Institutional pharmacy expenses | 73,946 | 77,552 | 19,022 | 18,889 | 77,418 |
| Rent expense | 177,258 | 188,380 | 46,708 | 47,662 | 189,333 |
| General and administrative | 52,590 | 55,486 | 13,147 | 13,670 | 56,009 |
| Depreciation and amortization | 15,588 | 16,052 | 3,886 | 4,311 | 16,477 |
| Total operating expenses | 1,135,818 | 1,190,593 | 293,733 | 302,271 | 1,199,131 |
| Operating income | 10,004 | 25,749 | 5,111 | 6,070 | 26,708 |
| Interest, dividend and other income | 2,986 | 1,816 | 662 | 319 | 1,473 |
| Interest and other expense | (3,931) | (2,596) | (659) | (501) | (2,438) |
| Gain on investments in trading securities | 3,495 | 4,856 | 669 | | 4,187 |
| Loss on UBS put right related to auction rate securities | (2,759) | (4,714) | (670) | | (4,044) |
| Equity in income (losses) of Affiliates Insurance Company | (134) | (1) | (28) | 37 | 64 |
| Gain on early extinguishment of debt | 34,579 | 592 | | | 592 |

| | | | | | |
|---|---|---|---|---|---|
| Gain on sale of available for sale securities | 795 | 933 | | 76 | 1,009 |
| Impairment of investments in available for sale securities | (2,947) | | | | |
| Income from continuing operations before income taxes | 42,088 | 26,635 | 5,085 | 6,001 | 27,551 |
| Provision for income taxes | (2,196) | (1,448) | (493) | (379) | (1,334) |
| Income from continuing operations | $ 39,892 | $ 25,187 | $ 4,592 | $ 5,622 | $ 26,217 |
| Basic income per share from continuing operations | $ 1.19 | $ 0.70 | $ 0.13 | $ 0.16 | $ 0.73 |
| Diluted income per share from continuing operations | $ 1.09 | $ 0.68 | $ 0.13 | $ 0.15 | $ 0.71 |
| Additional data: | | | | | |
| Total occupancy | 86.4% | 86.2% | 86.2% | 85.5% | 86.0% |
| Adjusted EBITDA | $ 25,458 | $ 41,800 | $ 8,969 | $ 10,418 | $ 43,249 |
| Adjusted income from continuing operations | $ 6,729 | $ 23,520 | $ 4,593 | $ 5,546 | $ 24,473 |

(1) The unaudited consolidated financial data for the twelve months ended March 31, 2011 has been derived by aggregating the financial data for the year ended December 31, 2010 with the unaudited financial data for the three months ended March 31, 2011 and subtracting the unaudited financial data for the three months ended March 31, 2010. This unaudited recomputation may differ from the financial data that would have resulted had a twelve month period been audited.

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**Warning regarding forward looking statements**

THIS PROSPECTUS SUPPLEMENT, THE ACCOMPANYING PROSPECTUS, AND THE DOCUMENTS INCORPORATED BY REFERENCE, CONTAIN STATEMENTS AND IMPLICATIONS WHICH CONSTITUTE FORWARD LOOKING STATEMENTS WITHIN THE MEANING OF THE PRIVATE SECURITIES LITIGATION REFORM ACT OF 1995 AND OTHER FEDERAL SECURITIES LAWS. WHENEVER WE USE WORDS SUCH AS "BELIEVE," "EXPECT," "ANTICIPATE," "INTEND," "PLAN," "ESTIMATE," OR SIMILAR EXPRESSIONS, WE ARE MAKING FORWARD LOOKING STATEMENTS. THESE FORWARD LOOKING STATEMENTS AND THEIR IMPLICATIONS ARE BASED UPON OUR PRESENT INTENT, BELIEFS OR EXPECTATIONS, BUT FORWARD LOOKING STATEMENTS AND THEIR IMPLICATIONS ARE NOT GUARANTEED TO OCCUR AND MAY NOT OCCUR. FORWARD LOOKING STATEMENTS IN THIS PROSPECTUS SUPPLEMENT AND THE ACCOMPANYING PROSPECTUS, INCLUDING THE DOCUMENTS THAT ARE INCORPORATED BY REFERENCE, RELATE TO VARIOUS ASPECTS OF OUR BUSINESS, INCLUDING:

- OUR EXPECTATION THAT WE WILL ACQUIRE THE REMAINING FOUR SENIOR LIVING COMMUNITIES LOCATED IN INDIANA STARTING IN JULY 2011 AND THAT WE WILL BEGIN TO LEASE AND MANAGE 20 COMMUNITIES LOCATED IN THE SOUTHEAST STARTING IN JUNE 2011;

- OUR ABILITY TO INCREASE OCCUPANCIES AND TO OPERATE OUR SENIOR LIVING COMMUNITIES AND REHABILITATION HOSPITALS PROFITABLY;

- OUR ABILITY TO MEET OUR DEBT OBLIGATIONS;

- OUR ABILITY TO COMPLY AND TO REMAIN IN COMPLIANCE WITH APPLICABLE MEDICARE, MEDICAID AND OTHER RATE SETTING AND REGULATORY REQUIREMENTS; AND

- OTHER MATTERS.

OUR ACTUAL RESULTS MAY DIFFER MATERIALLY FROM THOSE CONTAINED IN OR IMPLIED BY OUR FORWARD LOOKING STATEMENTS AS A RESULT OF VARIOUS FACTORS. FACTORS THAT COULD HAVE A MATERIAL ADVERSE EFFECT ON OUR FORWARD LOOKING STATEMENTS AND UPON OUR BUSINESS, RESULTS OF OPERATIONS, FINANCIAL CONDITION, CASH FLOWS, LIQUIDITY AND PROSPECTS INCLUDE, BUT ARE NOT LIMITED TO:

- THE IMPACT OF CHANGES IN THE ECONOMY AND THE CAPITAL MARKETS ON US AND OUR RESIDENTS AND OTHER CUSTOMERS;

- COMPETITION WITHIN THE SENIOR LIVING INDUSTRY AND OUR OTHER BUSINESSES;

- INCREASES IN INSURANCE AND TORT LIABILITY COSTS;

- CHANGES IN MEDICARE AND MEDICAID POLICIES WHICH COULD RESULT IN REDUCED RATES OF PAYMENT OR A FAILURE OF THESE RATES TO COVER OUR COST INCREASES;

- ACTUAL AND POTENTIAL CONFLICTS OF INTEREST WITH OUR MANAGING DIRECTORS, SNH, RMR AND ITS RELATED ENTITIES AND CLIENTS; AND

COMPLIANCE WITH, AND CHANGES TO FEDERAL, STATE AND LOCAL LAWS AND REGULATIONS THAT COULD AFFECT OUR SERVICES.

FOR EXAMPLE:

THIS PROSPECTUS SUPPLEMENT STATES THAT SNH INTENDS TO PURCHASE 1,000,000 OF OUR COMMON SHARES IN THIS OFFERING. ALTHOUGH WE BELIEVE THAT SNH WILL PURCHASE THOSE SHARES, IT IS NOT UNDER ANY BINDING OBLIGATION TO DO SO AND MAY IN FACT DETERMINE NOT TO PURCHASE THOSE OR ANY SHARES IN THIS OFFERING.

THE CLOSINGS OF THE REMAINING COMMUNITIES UNDER THE PURCHASE AGREEMENTS ARE SUBJECT TO OUR OBTAINING REGULATORY APPROVALS AND CERTAIN LENDER CONSENTS AND SATISFACTION OF OTHER CLOSING CONDITIONS. WE CURRENTLY EXPECT THAT ALL OF THE REQUIRED APPROVALS AND CONSENTS WILL BE OBTAINED AND OTHER CONDITIONS WILL BE SATISFIED, BUT SUCH APPROVALS, CONSENTS AND SATISFACTION OF CONDITIONS ARE NOT ASSURED AND WE CANNOT CONTROL THE TIMING OF REGULATORY APPROVALS, LENDER

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CONSENTS OR SATISFACTION OF CLOSING CONDITIONS. ACCORDINGLY, IT IS POSSIBLE THAT OUR BEGINNING TO OPERATE SOME OF THESE COMMUNITIES MAY BE DELAYED OR MAY NOT OCCUR;

THE IMPLICATION OF OUR STATEMENTS REGARDING APPROVAL OF THE TERMS OF THE BRIDGE LOAN AGREEMENT AND THE MANAGEMENT CONTRACTS MAY BE THAT THESE TERMS ARE ARMS LENGTH AND FAIR. HOWEVER, BECAUSE OF THE MULTIPLE RELATIONSHIPS AMONG US, SNH AND RMR AND ITS AFFILIATES, THESE TERMS MAY BE EXPOSED TO CLAIMS THAT THEY ARE SOMEHOW UNFAIR, AND DEFENDING SUCH CLAIMS CAN BE EXPENSIVE AND DISTRACTING TO MANAGEMENT;

THE PROPOSED RULES TO UPDATE MEDICARE PROSPECTIVE PAYMENTS RATES FOR SNFS AND IRFS MAY NOT BE ADOPTED, THE FINAL RULES MAY BE VERY DIFFERENT THAN THE PROPOSED RULES AND/OR CMS'S ESTIMATES OF THE IMPACT OF THE PROPOSED RULES MAY BE INCORRECT; WE CANNOT BE CERTAIN OF THE ACTUAL IMPACT ON OUR OPERATIONS RESULTING FROM THE FINAL CMS RULES FOR MEDICARE RATES, AND SUCH IMPACT MAY BE WORSE THAN WE EXPECT;

THE VARIOUS GOVERNMENTS WHICH PAY US FOR THE GOODS AND SERVICES WE PROVIDE TO OUR RESIDENTS AND PATIENTS WHO ARE ELIGIBLE FOR MEDICARE AND MEDICAID ARE CURRENTLY EXPERIENCING SEVERE BUDGET SHORTFALLS AND MAY LOWER THE MEDICAID AND MEDICARE RATES THEY PAY US. BECAUSE WE OFTEN CAN NOT ETHICALLY LOWER THE QUALITY OF THE SERVICES WE PROVIDE TO MATCH THE AVAILABLE MEDICARE AND MEDICAID RATES WE MAY EXPERIENCE LOSSES AND SUCH LOSSES MAY BE MATERIAL;

OUR RESIDENTS AND PATIENTS WHO PAY FOR OUR SERVICES WITH THEIR PRIVATE RESOURCES MAY BECOME UNABLE TO AFFORD OUR SERVICES WHICH COULD RESULT IN DECREASED OCCUPANCY AND REVENUES AT OUR SENIOR LIVING COMMUNITIES AND REHABILITATION HOSPITALS; AND

WE EXPECT TO OPERATE OUR REHABILITATION HOSPITALS AND PHARMACIES PROFITABLY. HOWEVER, WE HAVE HISTORICALLY EXPERIENCED LOSSES FROM THESE OPERATIONS AND WE MAY BE UNABLE TO OPERATE THESE BUSINESSES PROFITABLY.

THESE RESULTS COULD OCCUR DUE TO MANY DIFFERENT CIRCUMSTANCES, SOME OF WHICH ARE BEYOND OUR CONTROL, SUCH AS THE APPLICATION AND INTERPRETATION OF NEW LEGISLATION AFFECTING OUR BUSINESS, CHANGES IN OUR REVENUES OR COSTS, OR CHANGES IN CAPITAL MARKETS OR THE ECONOMY GENERALLY.

THE INFORMATION CONTAINED ELSEWHERE IN THIS PROSPECTUS SUPPLEMENT AND IN OUR OTHER FILINGS WITH THE SEC, INCLUDING UNDER THE CAPTION "RISK FACTORS" IN OUR ANNUAL REPORT, IDENTIFIES OTHER IMPORTANT FACTORS THAT COULD CAUSE DIFFERENCES FROM OUR FORWARD LOOKING STATEMENTS. OUR FILINGS WITH THE SEC ARE AVAILABLE AT THE WEBSITE: WWW.SEC.GOV.

YOU SHOULD NOT PLACE UNDUE RELIANCE UPON FORWARD LOOKING STATEMENTS.

EXCEPT AS REQUIRED BY LAW, WE DO NOT INTEND TO UPDATE OR CHANGE ANY FORWARD LOOKING STATEMENTS AS A RESULT OF NEW INFORMATION, FUTURE EVENTS OR OTHERWISE.

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**Price range of common shares**

Our common shares are listed on the New York Stock Exchange, or the NYSE, under the symbol "FVE", where they began trading on February 4, 2011. The following table shows the high and low sale prices per share of our common shares for the periods indicated as reported on the NYSE Amex, on which our common shares were traded through February 3, 2011 and on the NYSE thereafter:

| | High | Low |
|---|---|---|
| **Fiscal year ended December 31, 2009** | | |
| First quarter | $ 2.43 | $ 1.02 |
| Second quarter | 2.80 | 1.02 |
| Third quarter | 4.12 | 1.80 |
| Fourth quarter | 4.06 | 2.95 |
| **Fiscal year ended December 31, 2010** | | |
| First quarter | $ 3.88 | $ 2.75 |
| Second quarter | 3.80 | 2.81 |
| Third quarter | 5.29 | 2.72 |
| Fourth quarter | 7.43 | 4.95 |
| **Fiscal year ending December 31, 2011** | | |
| First quarter | $ 8.62 | $ 5.95 |
| Second quarter (through June 7, 2011) | 8.95 | 7.25 |

The last reported sale price for our shares on June 7, 2011 was $7.29 per share.

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**Use of proceeds**

Including the proceeds from the 1,000,000 common shares that SNH intends to purchase in this offering from the underwriters at a price equal to the public offering price, we estimate that our net proceeds from this offering, after deducting the underwriting discounts and commissions and other estimated offering expenses, will be approximately $68.7 million, assuming a public offering price of $7.29 per common share. If the underwriters exercise their over-allotment option in full, we estimate that our net proceeds will be approximately $79.0 million. We intend to apply our net proceeds from this offering for general business purposes, including repaying the outstanding Bridge Loan and funding in part the cash purchase price of the pending acquisitions described in "Recent Developments Acquisition of Six Independent and Assisted Living Communities in Indiana" or other possible future acquisitions. We used the Bridge Loan to fund the cash purchase price of the two communities we acquired on June 1, 2011. The Bridge Loan matures on July 1, 2012 and bears interest at a rate equal to the annual rates of interest applicable to SNH's borrowings under its revolving credit facility, plus 1%, currently 1.97% per year.

Depending on market conditions at the time of pricing of this offering and other considerations, we may sell fewer or more shares than the number set forth on the cover page of this prospectus supplement. If that were to occur, SNH intends to acquire 10% of the shares sold, other than shares sold to the underwriters pursuant to their over-allotment option.

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**Capitalization**

The following table sets forth our capitalization as of March 31, 2011:

- on an actual basis; and
- on a pro forma as adjusted basis to give effect to (a) our acquisition of one independent and assisted living community located in Prescott, Arizona and six independent and assisted living communities located in Indiana, each as described in "Prospectus Summary Recent Developments," and (b) the sale of 10.0 million shares in this offering at an assumed public price of $7.29 per share (the last reported sales price of our common shares on the NYSE on June 7, 2011), after deducting the underwriting discounts and commissions and estimated offering expenses payable by us (assuming SNH acquires 1.0 million shares in the offering).

This table should be read in conjunction with the "Management's Discussion and Analysis of Financial Condition and Results of Operations" contained in our Quarterly Report and our consolidated financial statements and related notes incorporated by reference in this document.

| | As of March 31, 2011 | |
|---|---|---|
| | Actual | Pro forma as adjusted |
| | (in thousands, except share data) | |
| Cash and cash equivalents | $ 26,008 | $ 15,000 |
| Acquisition deposits | $ 13,000 | |
| SNH bridge loan[1] | | |
| Revolving line of credit | $ 5,000 | $ 22,678 |
| Convertible senior notes | 37,282 | 37,282 |
| Mortgage notes payable[2] | | 38,201 |
| Total debt | $ 42,282 | $ 98,161 |
| Shareholders' Equity: | | |
| Common shares, par value $0.01; 75,000,000 shares authorized[3]; 36,019,864 shares issued and outstanding, actual; and 46,019,864 shares issued and outstanding, as adjusted[4] | 360 | 460 |
| Additional paid in capital | 297,908 | 370,708 |
| Accumulated deficit | (134,650) | (134,650) |
| Accumulative other comprehensive income | 5,880 | 5,880 |
| Total shareholders' equity | 169,498 | 242,398 |
| Total capitalization | $ 211,780 | $ 340,559 |

(1) On May, 12, 2011, we entered into the Bridge Loan Agreement with SNH. We borrowed approximately $41.0 million on June 1, 2011 to fund the purchase price of our acquisition of two independent and assisted living communities located in Indiana and intend to repay this borrowing with the net proceeds of this offering as described under "Use of proceeds."

(2)

As of March 31, 2011, two of our communities, included in discontinued operations, were encumbered by mortgage notes totaling approximately $7.8 million and are not reflected in the table.

(3)

Our Board of Directors has approved an amendment to our Articles of Amendment and Restatement increasing our authorized common shares from 50.0 million to 75.0 million, and we expect to file the Articles of Amendment before completion of this offering.

(4)

On May 9, 2011, we issued 37,500 of our common shares to our Directors as annual award share grants under our share award plan, which shares were not outstanding as of March 31, 2011, and are not reflected in the table. As of June 8, 2011, we had 1,470,270 of our common shares available for grant under our 2001 Stock Option and Share Plan. Those additional shares are not outstanding and are not reflected in this table.

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**Reconciliation of non-GAAP financial measures**

Adjusted income from continuing operations and adjusted earnings before interest, taxes, depreciation and amortization, or Adjusted EBITDA, are not financial measures determined according to GAAP. We consider Adjusted income from continuing operations and Adjusted EBITDA to be meaningful disclosures because we believe that the inclusion of these non-GAAP financial measures may help investors to gain a better understanding of changes in our core operating results, and can also help investors who wish to make comparisons between us and other companies on both a GAAP and a non-GAAP basis. Adjusted income from continuing operations and Adjusted EBITDA as presented may not, however, always be comparable to amounts calculated by other companies. These non-GAAP financial measures are used by management to evaluate financial performance and resource allocation for our communities and for us as a whole and for comparing such performance to that of prior periods and to the performance of our competitors. This information should not be considered as an alternative to income or any other financial operating or performance measure established by GAAP. The reconciliations of income from continuing operations to Adjusted income from continuing operations and Adjusted EBITDA, for the years ended December 31, 2009 and 2010, for the quarters ended March 31, 2010 and 2011 and for the twelve months ended March 31, 2011 are as follows:

**Income from continuing operations and Adjusted EBITDA**

*(dollars in thousands)*

| | For the years ended December 31, | | For the three months ended March 31, | | For the twelve months ended March 31, |
|---|---|---|---|---|---|
| | 2009 | 2010 | 2010 | 2011 | 2011(2) |
| Income from continuing operations(1) | $ 39,892 | $ 25,187 | $ 4,592 | $ 5,622 | $ 26,217 |
| Add: interest and other expense(1) | 3,931 | 2,596 | 659 | 501 | 2,438 |
| Add: income tax expense | 2,196 | 1,448 | 493 | 379 | 1,334 |
| Add: depreciation and amortization(1) | 15,588 | 16,052 | 3,886 | 4,311 | 16,477 |
| Less: interest, dividend and other income | (2,986) | (1,816) | (662) | (319) | (1,473) |
| Add: impairment of certain investments | 2,947 | | | | |
| Add: loss on UBS put right related to auction rate securities | 2,759 | 4,714 | 670 | | 4,044 |
| Less: gain on investments in trading securities | (3,495) | (4,856) | (669) | | (4,187) |
| Less: gain on sale of investments in available for sale securities | (795) | (933) | | (76) | (1,009) |
| Less: gain on early extinguishment of debt | (34,579) | (592) | | | (592) |
| Adjusted EBITDA | $ 25,458 | $ 41,800 | $ 8,969 | $ 10,418 | $ 43,249 |

(1) Amounts were reclassified from our previously reported amounts to exclude properties reclassified to discontinued operations in future periods.

(2) The unaudited consolidated financial data for the twelve months ended March 31, 2011 has been derived by aggregating the financial data for the year ended December 31, 2010 with the unaudited financial data for the three months ended March 31, 2011 and subtracting the unaudited financial data for the three months ended

March 31, 2010. This unaudited recomputation may differ from the financial data that would have resulted had a twelve month period been audited.

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**Income from continuing operations to Adjusted income from continuing operations**

*(dollars in thousands)*

| | For the years ended December 31, | | For the three months ended March 31, | | For the twelve months ended March 31, |
|---|---|---|---|---|---|
| | 2009 | 2010 | 2010 | 2011 | 2011(2) |
| Income from continuing operations(1) | $ 39,892 | $ 25,187 | $ 4,592 | $ 5,622 | $ 26,217 |
| Add: impairment of certain investments | 2,947 | | | | |
| Add: loss on UBS put right related to auction rate securities | 2,759 | 4,714 | 670 | | 4,044 |
| Less: gain on investments in trading securities | (3,495) | (4,856) | (669) | | (4,187) |
| Less: gain on sale of investments in available for sale securities | (795) | (933) | | (76) | (1,009) |
| Less: gain on early extinguishment of debt | (34,579) | (592) | | | (592) |
| Adjusted income from continuing operations | $ 6,729 | $ 23,520 | $ 4,593 | $ 5,546 | $ 24,473 |

(1) Amounts were reclassified from our previously reported amounts to exclude properties reclassified to discontinued operations in future periods.

(2) The unaudited consolidated financial data for the twelve months ended March 31, 2011 has been derived by aggregating the financial data for the year ended December 31, 2010 with the unaudited financial data for the three months ended March 31, 2011 and subtracting the unaudited financial data for the three months ended March 31, 2010. This unaudited recomputation may differ from the financial data that would have resulted had a twelve month period been audited.

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## Underwriting

We are offering the shares described in this prospectus supplement through the underwriters named below. Jefferies & Company, Inc., Citigroup Global Markets Inc. and UBS Securities LLC are the representatives of the underwriters, and are the joint book-running managers for this offering. We have entered into an underwriting agreement with the underwriters. Subject to the terms and conditions of the underwriting agreement, each of the underwriters has severally agreed to purchase the number of shares listed next to its name in the following table:

| Underwriters | Number of shares |
|---|---|
| Jefferies & Company, Inc. | |
| Citigroup Global Markets Inc. | |
| UBS Securities LLC | |
| Total | 10,000,000 |

The table above includes 1,000,000 of our common shares that SNH intends to purchase of the 10,000,000 common shares being sold in this offering from the underwriters at the public offering price. The underwriters will not receive any underwriting discounts or commissions on any common shares sold to SNH by the underwriters in this offering.

The underwriting agreement provides that the underwriters must buy all of the shares listed above if they buy any of them. However, the underwriters are not required to take or pay for the shares covered by the underwriters' over-allotment option described below.

Our shares are offered subject to a number of conditions, including:

- receipt and acceptance of the shares by the underwriters; and
- the underwriters' right to reject orders in whole or in part.

In connection with this offering, certain of the underwriters and securities dealers may distribute prospectuses electronically.

We have agreed to indemnify the underwriters against certain liabilities, including liabilities under the Securities Act of 1933, as amended. If we are unable to provide this indemnification, we will contribute to payments the underwriters may be required to make in respect of those liabilities.

### Over-Allotment Option

We have granted the underwriters an option to buy up to 1,500,000 additional shares. The underwriters may exercise this option solely for the purpose of covering over-allotments, if any, made in connection with this offering. The underwriters have 30 days from the date of this prospectus supplement to exercise this option. If the underwriters exercise the option, they will each purchase additional shares approximately in proportion to the amounts specified in the table above.

### Commissions and Discounts

Shares sold by the underwriters to the public will initially be offered at the initial offering price set forth on the cover of this prospectus supplement. Any shares sold by the underwriters to securities dealers may be sold at a discount of up to $ per share from the initial public offering price. If all the shares are not sold at the initial public offering price, the representatives may change the offering price and the other selling terms.

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Sales of shares made outside of the United States may be made by affiliates of the underwriters.

Upon execution of the underwriting agreement, the underwriters will be obligated to purchase the shares at the prices and upon the terms stated therein, and, as a result, will thereafter bear any risk associated with changing the offering price to the public or other selling terms.

The following table shows the per share and total underwriting discounts and commissions we will pay to the underwriters assuming both no exercise and full exercise of the underwriters' option to purchase up to an additional 1,500,000 shares from us:

| | No exercise | Full exercise |
|---|---|---|
| Per share | $ | $ |
| Total | $ | $ |

The table above includes 1,000,000 common shares that SNH intends to purchase of the 10,000,000 common shares being sold in this offering from the underwriters at a price equal to the public offering price. The underwriters will not receive any underwriting discounts or commissions for any common shares sold to SNH in this offering. The underwriting discounts and commissions per share for any shares in this offering not sold by the underwriters to SNH is $ .

We estimate that the total expenses of the offering payable by us, not including underwriting discounts and commissions, will be approximately $250,000.

**No Sales of Similar Securities**

We and our Managing Directors and our executive officers and SNH have entered into lock-up agreements with the underwriters. Under these agreements, we and each of these persons may not, without the prior written approval of Jefferies & Company, Inc., subject to certain permitted exceptions, offer, sell, contract to sell or otherwise dispose of or hedge our shares or securities convertible into or exercisable or exchangeable for our shares. The permitted exceptions include issuances of shares under our equity compensation plan and issuances of shares as partial or full payment for properties directly or indirectly acquired or to be acquired by us or our subsidiaries, provided such shares are subject to restrictions on transfer for the remainder of the lock-up period. These restrictions will be in effect for a period of 90 days after the date of this prospectus supplement. At any time and without public notice, Jefferies & Company, Inc. may release all or some of the securities from these lock-up agreements.

The 90-day lock-up period may be extended for up to 37 additional days under certain circumstances where we announce or pre-announce earnings or material news or a material event within approximately 18 days prior to, or approximately 16 days after, the termination of the 90-day period.

**New York Stock Exchange Listing**

Our shares are listed on the NYSE under the symbol "FVE".

**Price Stabilization, Short Positions**

In connection with this offering, the underwriters may engage in activities that stabilize, maintain or otherwise affect the price of our shares including:

stabilizing transactions;

short sales;

purchases to cover positions created by short sales;

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imposition of penalty bids; and

syndicate covering transactions.

Stabilizing transactions consist of bids or purchases made for the purpose of preventing or retarding a decline in the market price of our shares while this offering is in progress. These transactions may also include making short sales of our shares, which involves the sale by the underwriters of a greater number of shares than they are required to purchase in this offering, and purchasing shares on the open market to cover positions created by short sales. Short sales may be "covered" shorts, which are short positions in an amount not greater than the underwriters' over-allotment option referred to above, or may be "naked" shorts, which are short positions in excess of that amount.

The underwriters may close out any covered short position by either exercising their over-allotment option, in whole or in part, or by purchasing shares in the open market. In making this determination, the underwriters will consider, among other things, the price of shares available for purchase in the open market as compared to the price at which they may purchase shares through the over-allotment option.

Naked short sales are sales in excess of the over-allotment option. The underwriters must close out any naked short position by purchasing shares in the open market. A naked short position is more likely to be created if the underwriters are concerned there may be downward pressure on the price of shares in the open market after pricing that could adversely affect investors who purchase in this offering.

The underwriters also may impose a penalty bid. This occurs when a particular underwriter repays to the underwriters a portion of the underwriting discount received by it because the representatives have repurchased shares sold by or for the account of that underwriter in stabilizing or short covering transactions.

As a result of these activities, the price of our shares may be higher than the price that otherwise might exist in the open market. If these activities are commenced, they may be discontinued by the underwriters at any time. The underwriters may carry out these transactions on the NYSE, in the over-the-counter market or otherwise.

From time to time, some of the underwriters and/or their affiliates have engaged in, and may in the future engage in, commercial and/or investment banking transactions with us and our affiliates.

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**Notice to investors**

**Notice to Prospective Investors in the European Economic Area**

In relation to each Member State of the European Economic Area, or EEA, which has implemented the Prospectus Directive, each, a Relevant Member State, with effect from, and including, the date on which the Prospectus Directive is implemented in that Relevant Member State, or the Relevant Implementation Date, an offer to the public of our common shares which are the subject of the offering contemplated by this prospectus may not be made in that Relevant Member State, except that, with effect from, and including, the Relevant Implementation Date, an offer to the public in that Relevant Member State of our common shares may be made at any time under the following exemptions under the Prospectus Directive, if they have been implemented in that Relevant Member State:

a) to legal entities which are authorized or regulated to operate in the financial markets or, if not so authorized or regulated, whose corporate purpose is solely to invest in our common shares;

b) to any legal entity which has two or more of: (1) an average of at least 250 employees during the last (or, in Sweden, the last two) financial year(s); (2) a total balance sheet of more than €43,000,000 and (3) an annual net turnover of more than €50,000,000, as shown in its last (or, in Sweden, its last two) annual or consolidated accounts;

c) to fewer than 100 natural or legal persons (other than qualified investors as defined in the Prospectus Directive), subject to obtaining the prior consent of the representatives for any such offer; or

d) in any other circumstances falling within Article 3(2) of the Prospectus Directive, provided that no such offer of our common shares shall result in a requirement for the publication by us or any underwriter or agent of a prospectus pursuant to Article 3 of the Prospectus Directive.

As used above, the expression "offered to the public" in relation to any of our common shares in any Relevant Member State means the communication in any form and by any means of sufficient information on the terms of the offer and our common shares to be offered so as to enable an investor to decide to purchase or subscribe for our common shares, as the same may be varied in that Relevant Member State by any measure implementing the Prospectus Directive in that Relevant Member State; and the expression "Prospectus Directive" means Directive 2003/71/EC and includes any relevant implementing measure in each Relevant Member State.

The EEA selling restrictions are in addition to any other selling restrictions set forth in this prospectus.

**Notice to Prospective Investors in the United Kingdom**

This prospectus is being distributed only to and is only directed at: (1) persons who are outside the United Kingdom; (2) investment professionals falling within Article 19(5) of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 (the "Order") or (3) high net worth companies, and other persons to whom it may lawfully be communicated, falling within Article 49(2)(a) to (d) of the Order (all such persons falling within (1) through (3) together being referred to as "relevant persons"). The common shares are available only to, and any invitation, offer or agreement to subscribe, purchase or otherwise acquire such common shares will be engaged in only with, relevant persons. Any person who is not a relevant person should not act or rely on this prospectus or any of its contents.

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**Notice to Prospective Investors in Switzerland**

This prospectus does not constitute an issue prospectus pursuant to Article 652a or Article 1156 of the Swiss Code of Obligations, or CO, and the common shares will not be listed on the SIX Swiss Exchange. Therefore, this prospectus may not comply with the disclosure standards of the CO and/or the listing rules (including any prospectus schemes) of the SIX Swiss Exchange. Accordingly, the common shares may not be offered to the public in or from Switzerland, but only to a selected and limited circle of investors, which do not subscribe to the common shares with a view to distribution.

**Notice to Prospective Investors in Australia**

This prospectus is not a formal disclosure document and has not been, nor will be, lodged with the Australian Securities and Investments Commission. It does not purport to contain all information that an investor or his, her or its professional advisers would expect to find in a prospectus or other disclosure document (as defined in the Corporations Act 2001 (Australia)) for the purposes of Part 6D.2 of the Corporations Act 2001 (Australia) or in a product disclosure statement for the purposes of Part 7.9 of the Corporations Act 2001 (Australia), in either case, in relation to the common shares.

The common shares are not being offered in Australia to "retail clients" as defined in sections 761G and 761GA of the Corporations Act 2001 (Australia). This offering is being made in Australia solely to "wholesale clients" for the purposes of section 761G of the Corporations Act 2001 (Australia), and, as such, no prospectus, product disclosure statement or other disclosure document in relation to the common shares has been, or will be, prepared.

This prospectus does not constitute an offer in Australia other than to wholesale clients. By submitting an application for our common shares, you represent and warrant to us that you are a wholesale client for the purposes of section 761G of the Corporations Act 2001 (Australia). If any recipient of this prospectus is not a wholesale client, no offer of, or invitation to apply for, our common shares shall be deemed to be made to such recipient and no applications for our common shares will be accepted from such recipient. Any offer to a recipient in Australia, and any agreement arising from acceptance of such offer, is personal and may only be accepted by the recipient. In addition, by applying for our common shares, you undertake to us that, for a period of 12 months from the date of issue of the common shares, you will not transfer any interest in the common shares to any person in Australia other than to a wholesale client.

**Notice to Prospective Investors in Hong Kong**

Our common shares may not be offered or sold in Hong Kong by means of this prospectus or any document other than (1) to "professional investors" within the meaning of the Securities and Futures Ordinance (Cap.571, Laws of Hong Kong) and any rules made thereunder, (2) in circumstances which do not constitute an offer to the public within the meaning of the Companies Ordinance (Cap.32, Laws of Hong Kong) or (3) in other circumstances which do not result in the document being a "prospectus" within the meaning of the Companies Ordinance (Cap.32, Laws of Hong Kong). No advertisement, invitation or document relating to our common shares may be issued or may be in the possession of any person for the purpose of issue (in each case whether in Hong Kong or elsewhere) which is directed at, or the contents of which are likely to be accessed or read by, the public in Hong Kong (except if permitted to do so under the securities laws of Hong Kong) other than with respect to the common shares which are, or are intended to be, disposed of only to persons outside Hong Kong or only to "professional investors" within the meaning of the Securities and Futures Ordinance (Cap. 571, Laws of Hong Kong) and any rules made thereunder.

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**Notice to Prospective Investors in Japan**

Our common shares have not been and will not be registered under the Financial Instruments and Exchange Law of Japan, or the Financial Instruments and Exchange Law, and our common shares will not be offered or sold, directly or indirectly, in Japan, or to, or for the benefit of, any resident of Japan (which term, as used herein, means any person resident in Japan, including any corporation or other entity organized under the laws of Japan), or to others for re-offering or resale, directly or indirectly, in Japan, or to a resident of Japan, except pursuant to an exemption from the registration requirements of, and otherwise in compliance with, the Financial Instruments and Exchange Law and any other applicable laws, regulations and ministerial guidelines of Japan.

**Notice to Prospective Investors in Singapore**

This document has not been registered as a prospectus with the Monetary Authority of Singapore, and, in Singapore, the offer and sale of our common shares is made pursuant to exemptions provided in sections 274 and 275 of the Securities and Futures Act, Chapter 289 of Singapore, or SFA. Accordingly, this prospectus and any other document or material in connection with the offer or sale, or invitation for subscription or purchase, of our common shares may not be circulated or distributed, nor may our common shares be offered or sold, or be made the subject of an invitation for subscription or purchase, whether directly or indirectly, to persons in Singapore, other than (1) to an institutional investor as defined in Section 4A of the SFA pursuant to Section 274 of the SFA; (2) to a relevant person as defined in section 275(2) of the SFA pursuant to Section 275(1) of the SFA, or any person pursuant to Section 275(1A) of the SFA, and in accordance with the conditions specified in Section 275 of the SFA or (3) otherwise pursuant to, and in accordance with the conditions of, any other applicable provision of the SFA, in each case subject to compliance with the conditions (if any) set forth in the SFA. Moreover, this document is not a prospectus as defined in the SFA. Accordingly, statutory liability under the SFA in relation to the content of prospectuses would not apply. Prospective investors in Singapore should consider carefully whether an investment in our common shares is suitable for them.

Where our common shares are subscribed for or purchased under Section 275 of the SFA by a relevant person, which is:

(a) a corporation (which is not an accredited investor as defined in Section 4A of the SFA) the sole business of which is to hold investments and the entire share capital of which is owned by one or more individuals, each of whom is an accredited investor; or

(b) a trust (where the trustee is not an accredited investor) whose sole purpose is to hold investments and each beneficiary of the trust is an individual who is an accredited investor, shares of that corporation or the beneficiaries' rights and interest (howsoever described) in that trust shall not be transferable for six months after that corporation or that trust has acquired the shares under Section 275 of the SFA, except:

(1) to an institutional investor (for corporations under Section 274 of the SFA) or to a relevant person defined in Section 275(2) of the SFA, or to any person pursuant to an offer that is made on terms that such shares of that corporation or such rights and interest in that trust are acquired at a consideration of not less than 200,000 Singapore dollars (or its equivalent in a foreign currency) for each transaction, whether such amount is to be paid in cash or by exchange of securities or other assets, and further for corporations, in accordance with the conditions, specified in Section 275 of the SFA;

(2) where no consideration is given for the transfer; or

(3) where the transfer is by operation of law.

In addition, investors in Singapore should note that securities acquired by them are subject to resale and transfer restrictions specified under Section 276 of the SFA, and they, therefore, should seek their own legal advice before effecting any resale or transfer of their securities.

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## Legal matters

Venable LLP, Baltimore, Maryland, our Maryland counsel, will issue an opinion about the legality of the common shares. Sullivan & Worcester LLP, Boston, Massachusetts, our lawyers, and Dewey & LeBoeuf LLP, counsel to the underwriters in connection with this offering, will each also issue an opinion to the underwriters as to certain matters. Sullivan & Worcester LLP and Dewey & LeBoeuf LLP will rely, as to certain matters of Maryland law, upon an opinion of Venable LLP. Sullivan & Worcester LLP and Venable LLP represent SNH and certain of its affiliates on various matters. Sullivan & Worcester LLP also represents RMR and certain of its affiliates on various matters.

## Experts

Ernst & Young LLP, independent registered public accounting firm, has audited our consolidated financial statements included in our Annual Report on Form 10-K for the year ended December 31, 2010, and the effectiveness of our internal control over financial reporting as of December 31, 2010, as set forth in their reports, which are incorporated by reference in this prospectus and elsewhere in the registration statement. Our financial statements as of December 31, 2010 are incorporated by reference in reliance on Ernst & Young LLP's reports, given on their authority as experts in accounting and auditing.

## Where you can find more information

You may read and copy any material that we file with the SEC at the SEC's Public Reference Room at 100 F Street, N.E., Washington, D.C. 20549. You may obtain information on the operation of the Public Reference Room by calling the SEC at 1-800-SEC-0330. You may also access our SEC filings over the internet at the SEC's website at http://www.sec.gov.

**PROSPECTUS**

# $1,000,000,000

# Five Star Quality Care, Inc.

## Debt Securities, Common Shares, Preferred Shares, Depositary Shares, Warrants and Stock Purchase Contracts and Equity Units

We or our selling shareholders may offer and sell, from time to time, in one or more offerings:

- debt securities;
- common shares;
- preferred shares;
- depositary shares;
- warrants; and
- stock purchase contracts and equity units.

These securities may be offered and sold separately or together in units with other securities described in this prospectus. Our debt securities may be senior or subordinated.

The securities described in this prospectus offered by us may be issued in one or more series or issuances. The total offering price of these securities, in the aggregate, will not exceed $1,000,000,000. We or our selling shareholders may offer and sell these securities to or through one or more underwriters, dealers and agents or directly to purchasers, on a continuous or delayed basis. We will not receive any of the proceeds from the sale of our shares of common stock, or common shares, by our selling shareholders. We will provide the specific terms of any securities actually offered, the manner in which the securities will be offered and, if necessary, the identity of any selling shareholders in supplements to this prospectus. You should carefully read this prospectus and the prospectus supplements before you decide to invest in any of these securities.

The applicable prospectus supplement will also contain information, where applicable, about United States federal income tax considerations and any listing on a securities exchange. Our common shares are listed on the NYSE Amex, under the symbol "FVE."

**Investment in any securities offered by this prospectus involves risk. See "Risk Factors" on page 1 of this prospectus, in our periodic reports filed from time to time with the Securities and Exchange Commission and in the applicable prospectus supplement.**

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.

The date of this prospectus is November 12, 2009.

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## ABOUT THIS PROSPECTUS

This prospectus is part of a registration statement we filed with the Securities and Exchange Commission, or the SEC, using a "shelf" registration process. Under this shelf process, we or our selling shareholders may sell any combination of the securities described in this prospectus from time to time in one or more offerings up to a total amount of proceeds of $1,000,000,000.

This prospectus provides you only with a general description of the securities we may offer. Each time we or our selling shareholders sell securities, a prospectus supplement will be provided containing specific information about the terms of that offering. The prospectus supplement may also add to, update or change information contained in this prospectus. You should carefully read both this prospectus and the applicable prospectus supplement together with all of the additional information described under the headings "Where You Can Find More Information" and "Documents Incorporated By Reference."

You should rely only on the information incorporated by reference or provided in this prospectus or any relevant prospectus supplement. We have not authorized anyone to provide you with different information. If anyone provides you with different or inconsistent information, you should not rely on it. We will not make an offer of these securities in any jurisdiction where it is unlawful. You should assume that information in this prospectus and the applicable prospectus supplement, as well as the information we have previously filed with the SEC and incorporated by reference in this prospectus or the applicable prospectus supplement, is accurate only as of the date of the documents containing the information.

*References in this prospectus to "we," "us," "our" or "Five Star" mean Five Star Quality Care, Inc. and its subsidiaries, unless otherwise expressly stated or the context otherwise requires.*

**WARNING CONCERNING FORWARD LOOKING STATEMENTS**

THIS PROSPECTUS, INCLUDING THE DOCUMENTS THAT ARE INCORPORATED BY REFERENCE, CONTAINS STATEMENTS AND IMPLICATIONS WHICH CONSTITUTE FORWARD LOOKING STATEMENTS WITHIN THE MEANING OF THE PRIVATE SECURITIES LITIGATION REFORM ACT OF 1995 AND OTHER FEDERAL SECURITIES LAWS. WHENEVER WE USE WORDS SUCH AS "BELIEVE", "EXPECT", "ANTICIPATE", "INTEND", "PLAN", "ESTIMATE", OR SIMILAR EXPRESSIONS, WE ARE MAKING FORWARD LOOKING STATEMENTS. THESE FORWARD LOOKING STATEMENTS ARE BASED UPON OUR PRESENT INTENT, BELIEFS OR EXPECTATIONS, BUT FORWARD LOOKING STATEMENTS ARE NOT GUARANTEED TO OCCUR AND MAY NOT OCCUR. FORWARD LOOKING STATEMENTS RELATE TO VARIOUS ASPECTS OF OUR BUSINESS, INCLUDING:

OUR ABILITY TO OPERATE OUR SENIOR LIVING COMMUNITIES AND REHABILITATION HOSPITALS PROFITABLY;

OUR ABILITY TO MEET OUT DEBT OBLIGATIONS;

OUR ABILITY TO COMPLY AND TO REMAIN IN COMPLIANCE WITH APPLICABLE MEDICARE, MEDICAID, AND OTHER RATE SETTING AND REGULATORY REQUIREMENTS;

OUR ABILITY TO RAISE DEBT OR EQUITY CAPITAL;

THE FUTURE AVAILABILITY OF BORROWINGS UNDER OUR REVOLVING CREDIT FACILITY;

OUR ABILITY TO PAY DIVIDENDS IN THE FUTURE; AND

OTHER MATTERS.

OUR ACTUAL RESULTS MAY DIFFER MATERIALLY FROM THOSE CONTAINED IN OR IMPLIED BY OUR FORWARD LOOKING STATEMENTS AS A RESULT OF VARIOUS FACTORS. FACTORS THAT COULD HAVE A MATERIAL ADVERSE EFFECT ON OUR FORWARD LOOKING STATEMENTS AND UPON OUR BUSINESS, RESULTS OF OPERATIONS, FINANCIAL CONDITION, CASH FLOWS, LIQUIDITY AND PROSPECTS INCLUDE, BUT ARE NOT LIMITED TO:

THE IMPACT OF CHANGES IN THE ECONOMY AND THE CAPITAL MARKETS ON US AND OUR RESIDENTS AND OTHER CUSTOMERS;

COMPETITION WITHIN THE SENIOR LIVING INDUSTRY AND OUR OTHER BUSINESSES;

INCREASES IN INSURANCE AND TORT LIABILITY COSTS;

ACTUAL AND POTENTIAL CONFLICTS OF INTEREST WITH OUR MANAGING DIRECTORS, SENIOR HOUSING PROPERTIES TRUST, OR SENIOR HOUSING, AND REIT MANAGEMENT & RESEARCH, LLC, OR RMR, AND THEIR AFFILIATES;

CHANGES IN MEDICARE AND MEDICAID POLICIES WHICH COULD RESULT IN A REDUCTION OF RATES OR A FAILURE OF THESE RATES TO MATCH OUR COST INCREASE; AND

CHANGES IN FEDERAL, STATE AND LOCAL REGULATIONS WHICH COULD AFFECT OUR SERVICES.

FOR EXAMPLE:

- IF THE AVAILABILITY OF DEBT CAPITAL REMAINS RESTRICTED OR BECOMES MORE RESTRICTED, WE MAY BE UNABLE TO REFINANCE OR REPAY OUR DEBT OBLIGATIONS WHEN THEY BECOME DUE OR ON TERMS WHICH ARE AS FAVORABLE AS WE NOW HAVE;

- WE EXPECT TO OPERATE OUR REHABILITATION HOSPITALS AND PHARMACIES PROFITABLY. HOWEVER, WE HAVE HISTORICALLY EXPERIENCED LOSSES FROM THESE OPERATIONS AND WE MAY BE UNABLE TO OPERATE THESE BUSINESSES PROFITABLY; AND

- OUR RESIDENTS MAY BE UNABLE TO AFFORD OUR SERVICES WHICH COULD RESULT IN DECREASED OCCUPANCY AND REVENUES AT OUR SENIOR LIVING COMMUNITIES AND REHABILITATION HOSPITALS.

THESE RESULTS COULD OCCUR FOR MANY DIFFERENT REASONS, SOME OF WHICH, SUCH AS NATURAL DISASTERS OR CHANGES IN OUR RESIDENTS' ABILITY TO AFFORD OUR SERVICES, OR CHANGES IN CAPITAL MARKETS OR THE ECONOMY GENERALLY, ARE BEYOND OUR CONTROL.

OTHER IMPORTANT FACTORS THAT COULD CAUSE ACTUAL RESULTS TO DIFFER MATERIALLY FROM THOSE IN OUR FORWARD LOOKING STATEMENTS ARE DESCRIBED MORE FULLY IN OUR MOST RECENTLY FILED ANNUAL REPORT ON FORM 10-K AND OUR SUBSEQUENTLY FILED QUARTERLY REPORTS ON FORM 10-Q, INCLUDING THOSE DESCRIBED UNDER THE CAPTION "ITEM 1A. RISK FACTORS," AND OTHER REPORTS WE FILE FROM TIME TO TIME WITH THE SEC AND ANY PROSPECTUS SUPPLEMENT.

THE INFORMATION CONTAINED ELSEWHERE IN THIS PROSPECTUS OR INCORPORATED HEREIN IDENTIFIES OTHER IMPORTANT FACTORS THAT COULD CAUSE DIFFERENCES FROM OUR FORWARD LOOKING STATEMENTS.

YOU SHOULD NOT PLACE UNDUE RELIANCE UPON OUR FORWARD LOOKING STATEMENTS.

EXCEPT AS REQUIRED BY LAW, WE DO NOT INTEND TO UPDATE OR CHANGE ANY FORWARD LOOKING STATEMENTS AS A RESULT OF NEW INFORMATION, FUTURE EVENTS OR OTHERWISE.

## FIVE STAR QUALITY CARE, INC.

We are organized as a Maryland corporation and operate senior living communities, including independent living or congregate care communities, assisted living communities and skilled nursing facilities, or SNFs. As of November 5, 2009, we leased or owned and operated 206 senior living communities containing 21,953 living units, including 159 primarily independent and assisted living communities with 17,675 living units and 47 SNFs with 4,728 units. We also own and operate five institutional pharmacies and we operate two rehabilitation hospitals with 321 beds that we lease from Senior Housing. Our two rehabilitation hospitals provide inpatient services at the two hospitals and three satellite locations. In addition, we operate 13 outpatient clinics affiliated with these rehabilitation hospitals.

Our principal executive office is at 400 Centre Street, Newton, Massachusetts 02458, and our telephone number is (617) 796-8387.

## RISK FACTORS

Investment in any securities offered pursuant to this prospectus involves risks. You should carefully consider the risk factors incorporated by reference to our most recent Annual Report on Form 10-K and our subsequent Quarterly Reports on Form 10-Q and the other information contained in this prospectus, as updated by our subsequent filings under the Securities Exchange Act of 1934, or the Exchange Act, and the risk factors and other information contained in the applicable prospectus supplement before acquiring any of such securities.

## USE OF PROCEEDS

Unless otherwise described in a prospectus supplement, we intend to use the net proceeds from the sale of any securities under this prospectus for general business purposes, which may include acquiring additional senior living communities or other businesses and the repayment of borrowings under our credit facility or other debt. Until the proceeds from a sale of securities by us are applied to their intended purposes, they will be invested in short-term investments, including repurchase agreements, some or all of which may not be investment grade.

We will not receive any of the proceeds of the sale by selling shareholders of the common shares covered by this prospectus.

## RATIO OF EARNINGS TO FIXED CHARGES

The following table sets forth our consolidated ratios of earnings to fixed charges for the periods indicated:

| | Nine months ended September 30, | | Year ended December 31, | | | | |
|---|---|---|---|---|---|---|---|
| | 2009 | 2008 | 2008 | 2007 | 2006(1) | 2005(1) | 2004 |
| Ratio of earnings to fixed charges | 1.4x | 1.1x | 1.0x | 1.3x | | | 1.1x |

(1) Earnings were insufficient to cover fixed charges by approximately $109.8 million and $80.1 million for the years ended December 31, 2006 and 2005, respectively; accordingly, no ratio is presented for such periods.

We did not have any preferred securities outstanding during any of the periods presented above, and therefore our ratios of earnings to combined fixed charges and preferred share distributions are the same as the ratios of earnings to fixed charges presented above.

## DESCRIPTION OF DEBT SECURITIES

The following is a summary of the material terms of the debt securities we may offer under this prospectus. Because it is a summary, it does not contain all of the information that may be important to you. If you want more information, you should read the forms of indentures which we have filed as exhibits to the registration statement of which this prospectus is a part. We will file any final indentures and supplemental indentures if we issue debt securities. See "Where You Can Find More Information." This summary is also subject to and qualified by reference to the descriptions of the terms of the particular securities described in the applicable prospectus supplement.

The debt securities sold under this prospectus will be our direct obligations, which may be secured or unsecured, and which may be senior or subordinated indebtedness. Our debt securities will be issued under one or more indentures between us and a trustee. Any indenture will be subject to and governed by the Trust Indenture Act. The statements made in this prospectus relating to any indentures and the debt securities to be issued under the indentures are summaries of certain anticipated provisions of the indentures and are not complete.

### General

We may issue debt securities that rank "senior," "senior subordinated" or "junior subordinated." The debt securities that we refer to as "senior" will be our direct obligations and will rank equally and ratably in right of payment with our other indebtedness not subordinated. We may issue debt securities that will be subordinated in right of payment to the prior payment in full of our senior debt, as defined in the applicable prospectus supplement, and may rank equally and ratably with the other senior subordinated indebtedness. We refer to these as "senior subordinated" securities. We may also issue debt securities that may be subordinated in right of payment to the senior subordinated securities. We refer to these as "junior subordinated" securities. We have filed with the registration statement of which this prospectus is a part, three separate forms of indenture, one for the senior securities, one for the senior subordinated securities and one for the junior subordinated securities. We refer to senior subordinated and junior subordinated securities as "subordinated."

We may issue debt securities without limit as to aggregate principal amount, in one or more series, in each case as we establish in one or more supplemental indentures. We need not issue all debt securities of one series at the same time. Unless we otherwise provide, we may reopen a series, without the consent of the holders, for issuances of additional securities of that series.

We anticipate that any indenture will provide that we may, but need not, designate more than one trustee under an indenture, each with respect to one or more series of debt securities. Any trustee under any indenture may resign or be removed with respect to one or more series of debt securities, and we may appoint a successor trustee to act with respect to that series.

The applicable prospectus supplement will describe the specific terms relating to the series of debt securities we will offer, including, where applicable, the following:

- the title and series designation and whether they are senior securities, senior subordinated securities or junior subordinated securities;
- the aggregate principal amount of the debt securities;
- the percentage of the principal amount at which we will issue the debt securities and, if other than the principal amount of the debt securities, the portion of the principal amount of the debt securities payable upon maturity of the debt securities;
- if convertible, the initial conversion price, the conversion period and any other terms governing such conversion;

the stated maturity date;

any fixed or variable interest rate or rates per annum;

the place where principal, premium, if any, and interest will be payable and where the debt securities can be surrendered for transfer, exchange or conversion;

the date from which interest may accrue and any interest payment dates;

any sinking fund requirements;

any provisions for redemption, including the redemption price and any remarketing arrangements;

whether the securities are denominated or payable in United States dollars or a foreign currency or units of two or more foreign currencies;

whether the amount of payments of principal of or premium, if any, or interest on the debt securities may be determined with reference to an index, formula or other method and the manner in which such amounts shall be determined;

the events of default and covenants of such debt securities, to the extent different from or in addition to those described in this prospectus;

whether we will issue the debt securities in certificated or book-entry form;

whether the debt securities will be in registered or bearer form and, if in registered form, the denominations if other than in even multiples of $1,000 and, if in bearer form, the denominations and terms and conditions relating thereto;

whether we will issue any of the debt securities in permanent global form and, if so, the terms and conditions, if any, upon which interests in the global security may be exchanged, in whole or in part, for the individual debt securities represented by the global security;

the applicability, if any, of the defeasance and covenant defeasance provisions described in this prospectus or any prospectus supplement;

whether we will pay additional amounts on the debt securities in respect of any tax, assessment or governmental charge and, if so, whether we will have the option to redeem the debt securities instead of making this payment;

the subordination provisions, if any, relating to the debt securities; and

if the debt securities are to be issued upon the exercise of debt warrants, the time, manner and place for them to be authenticated and delivered.

We may issue debt securities at less than the principal amount payable at maturity. We refer to these securities as "original issue discount" securities. If material or applicable, we will describe in the applicable prospectus supplement special U.S. federal income tax, accounting and other considerations applicable to original issue discount securities.

Except as may be described in any prospectus supplement, an indenture will not contain any other provisions that would limit our ability to incur indebtedness or that would afford holders of the debt securities protection in the event of a highly leveraged or similar transaction involving us or in the event of a change of control. You should review carefully the applicable prospectus supplement for information with respect to events of default and covenants applicable to the securities being offered.

**Denominations, Interest, Registration and Transfer**

Unless otherwise described in the applicable prospectus supplement, we will issue the debt securities of any series that are registered securities in denominations that are even multiples of $1,000, other than global securities, which may be of any denomination.

Unless otherwise specified in the applicable prospectus supplement, we will pay the interest, principal and any premium at the corporate trust office of the trustee. At our option, however, we may make payment of interest by check mailed to the address of the person entitled to the payment as it appears in the applicable register or by wire transfer of funds to that person at an account maintained within the United States.

If we do not punctually pay or otherwise provide for interest on any interest payment date, the defaulted interest will be paid either:

to the person in whose name the debt security is registered at the close of business on a special record date the trustee will fix; or

in any other lawful manner, all as the applicable indenture describes.

You may have your debt securities divided into more debt securities of smaller denominations in multiples of $1,000 or combined into fewer debt securities of larger denominations, as long as the total principal amount is not changed. We call this an "exchange."

You may exchange or transfer debt securities at the office of the applicable trustee. The trustee acts as our agent for registering debt securities in the names of holders and transferring debt securities. We may change this appointment to another entity or perform these functions ourselves. The entity performing the role of maintaining the list of registered holders is called the "registrar." The registrar will also perform exchanges and transfers.

You will not be required to pay a service charge to transfer or exchange debt securities, but you may be required to pay for any tax or other governmental charge associated with the exchange or transfer. The registrar will make the transfer or exchange only if it is satisfied with your proof of ownership.

**Merger, Consolidation or Sale of Assets**

Under any indenture, we are generally permitted to consolidate or merge with another entity. We are also permitted to sell substantially all of our assets to another entity, or to buy substantially all of the assets of another entity. However, we may not take any of these actions unless the following conditions are met:

if we merge out of existence or sell all our assets, the other entity must be organized under the laws of a state or the District of Columbia or under federal law and must agree to be legally responsible for our debt securities; and

immediately after a merger, sale of assets or other transaction, we may not be in default on the debt securities. A default for this purpose would include any event that would be an event of default if the requirements for notice of default or existence of default for a specific period of time were disregarded.

**Certain Covenants**

*Existence.* Except as permitted as described above under " Merger, Consolidation or Sale of Assets," we will agree to do all things necessary to preserve and keep our corporate existence, rights and franchises provided that it is in our best interests for the conduct of business.

*Provisions of Financial Information.* Whether or not we remain required to do so under the Exchange Act, to the extent permitted by law, we will agree to file all annual, quarterly and other reports and financial statements with the SEC and an indenture trustee on or before the applicable SEC filing dates as if we were required to do so.

*Additional Covenants.* Any additional or different covenants or modifications to the foregoing covenants with respect to any series of debt securities will be described in the applicable prospectus supplement.

**Events of Default and Related Matters**

*Events of Default.* The term "event of default" for any series of debt securities means any of the following:

- we do not pay the principal or any premium on a debt security of that series within 30 days after its maturity date;
- we do not pay interest on a debt security of that series within 30 days after its due date;
- we do not deposit any sinking fund payment for that series within 30 days after its due date;
- we remain in breach of any other term of the applicable indenture (other than a term added to the indenture solely for the benefit of other series) for 60 days after we receive a notice of default stating we are in breach. Either the trustee or holders of at least a majority in principal amount of debt securities of the affected series may send the notice;
- we default under any of our other indebtedness in an aggregate principal amount exceeding a specified dollar amount after the expiration of any applicable grace period, which default results in the acceleration of the maturity of such indebtedness. Such default is not an event of default if the other indebtedness is discharged, or the acceleration is rescinded or annulled, within a period of 10 days after we receive notice specifying the default and requiring that we discharge the other indebtedness or cause the acceleration to be rescinded or annulled. Either the trustee or the holders of at least a majority in principal amount of debt securities of the affected series may send the notice;
- we or one of our "significant subsidiaries," if any, files for bankruptcy or certain other events in bankruptcy, insolvency or reorganization occur; or
- any other event of default described in the applicable prospectus supplement occurs.

The term "significant subsidiary" means any significant subsidiary, as defined in Regulation S-X under the Securities Act of 1933, as amended, or the Securities Act.

*Remedies if an Event of Default Occurs.* If an event of default has occurred and has not been cured, the trustee or the holders of at least a majority in principal amount of the debt securities of the affected series may declare the entire principal amount of all the debt securities of that series to be due and immediately payable. If an event of default occurs because of certain events in bankruptcy, insolvency or reorganization, the principal amount of all the debt securities of that series will be automatically accelerated, without any action by the trustee or any holder. At any time after the trustee or the holders have accelerated any series of debt securities, but before a judgment or decree for payment of the money due has been obtained, the holders of at least a majority in principal amount of the debt securities of the affected series may, under certain circumstances, rescind and annul such acceleration.

The trustee will be required to give notice to the holders of debt securities within 90 days after a default under the applicable indenture unless the default has been cured or waived. The trustee may withhold notice to the holders of any series of debt securities of any default with respect to that series,

except a default in the payment of the principal of or interest on any debt security of that series, if specified responsible officers of the trustee in good faith determine that withholding the notice is in the interest of the holders.

Except in cases of default where the trustee has some special duties, the trustee is not required to take any action under the applicable indenture at the request of any holders unless the holders offer the trustee reasonable protection from expenses and liability. We refer to this as an "indemnity." If reasonable indemnity is provided, the holders of a majority in principal amount of the outstanding securities of the relevant series may direct the time, method and place of conducting any lawsuit or other formal legal action seeking any remedy available to the trustee. These majority holders may also direct the trustee in performing any other action under the applicable indenture, subject to certain limitations.

Before you bypass the trustee and bring your own lawsuit or other formal legal action or take other steps to enforce your rights or protect your interests relating to the debt securities, the following must occur:

- you must give the trustee written notice that an event of default has occurred and remains uncured;
- the holders of at least a majority in principal amount of all outstanding securities of the relevant series must make a written request that the trustee take action because of the default, and must offer reasonable indemnity to the trustee against the cost and other liabilities of taking that action; and
- the trustee must have not taken action for 60 days after receipt of the notice and offer of indemnity.

However, you are entitled at any time to bring a lawsuit for the payment of money due on your security after its due date.

Every year we will furnish to the trustee a written statement by certain of our officers certifying that to their knowledge we are in compliance with the applicable indenture and the debt securities, or else specifying any default.

**Modification of an Indenture**

There are three types of changes we can make to the applicable indentures and the debt securities:

*Changes Requiring Your Approval.* First, there are changes we cannot make to your debt securities without your specific approval. The following is a list of those types of changes:

- change the stated maturity of the principal or interest on a debt security or the rate or amount of interest;
- reduce the amount of any premium due upon redemption;
- reduce any amounts due on a debt security;
- reduce the amount of principal of an original issue discount security payable upon acceleration of its maturity or adversely affect any right of repayment at the option of the holder;
- change the currency of payment on a debt security;
- change the place of payment;
- impair your right to sue for payment;

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reduce the percentage of holders of debt securities whose consent is needed to modify or amend an indenture;

reduce the percentage of holders of debt securities whose consent is needed to waive compliance with certain provisions of an indenture or certain defaults and their consequences;

modify or waive any provisions relating to default or event of default in the payment of principal of or premium, if any, or interest on the debt securities; or

modify any of the foregoing provisions.

*Changes Requiring a Majority Vote.* The second type of change to an indenture and the debt securities is the kind that requires a vote in favor by holders of debt securities owning a majority of the principal amount of the particular series affected. Most changes fall into this category, except for clarifying changes and certain other changes that would not materially adversely affect holders of that particular series of debt securities. We require the same vote to obtain a waiver of a past default. However, we cannot obtain a waiver of a payment default or any other aspect of an indenture or the debt securities listed in the first category described above under " Changes Requiring Your Approval" unless we obtain your individual consent to the waiver.

*Changes Not Requiring Approval.* The third type of change does not require any vote by holders of debt securities. This type is limited to clarifications and certain other changes that would not materially adversely affect holders of the debt securities.

*Further Details Concerning Voting.* Debt securities are not considered outstanding, and holders of debt securities may not be able to vote, if we have deposited or set aside in trust for you money for their payment or redemption or if we or one of our affiliates own them. The holders of debt securities are also not eligible to vote if the securities have been fully defeased as described immediately below under " Discharge, Defeasance and Covenant Defeasance Full Defeasance." For original issue discount securities, we will use the principal amount that would be due and payable on the voting date if the maturity of the debt securities were accelerated to that date because of a default.

**Discharge, Defeasance and Covenant Defeasance**

*Discharge.* We may discharge some obligations to holders of any series of debt securities that either have become due and payable or will become due and payable within one year, or scheduled for redemption within one year, by irrevocably depositing with the trustee, in trust, funds in the applicable currency in an amount sufficient to pay the debt securities, including any premium and interest.

*Full Defeasance.* We can, under particular circumstances, effect a full defeasance of your series of debt securities. By this we mean we can legally release ourselves from any payment or other obligations on the debt securities if, among other things, we put in place the arrangements described below to repay you and deliver certain certificates and opinions to the trustee:

we must deposit in trust for your benefit and the benefit of all other direct holders of the debt securities a combination of money or U.S. government agency notes or bonds (or, in some circumstances, depositary receipts representing these notes or bonds) that will generate enough cash to make interest, principal and any other payments on the debt securities on their various due dates;

the current federal tax law must be changed or an Internal Revenue Service, or IRS, ruling must be issued permitting the above deposit without causing you to be taxed on the debt securities any differently than if we did not make the deposit and just repaid the debt securities ourselves. Under current federal income tax law, the deposit and our legal release from the debt securities would be treated as though we took back your debt securities and gave you your share of the

cash and notes or bonds deposited in trust. In that event, you could recognize gain or loss on the debt securities you give back to us; and

we must deliver to the trustee a legal opinion confirming the tax law change or IRS ruling described above.

If we did accomplish full defeasance, you would have to rely solely on the trust deposit for repayment on the debt securities. You could not look to us for repayment in the unlikely event of any shortfall. Conversely, the trust deposit would most likely be protected from claims of our lenders and other creditors if we ever became bankrupt or insolvent. Also, your rights to receive payments would no longer be burdened by subordination provisions in the applicable indenture.

Notwithstanding the foregoing, the following rights and obligations will survive full defeasance:

your rights to receive payments from the trust when payments are due;

our obligations relating to registration and transfer of securities and lost or mutilated securities; and

our obligations to maintain a payment office and to hold moneys for payment in trust.

*Covenant Defeasance.* Under current federal income tax law, we can make the same type of deposit described above and be released from some of the restrictive covenants in the debt securities. This is called "covenant defeasance." In that event, you would lose the protection of those restrictive covenants but would gain the protection of having money and securities set aside in trust to repay the securities and your rights to receive payments would no longer be burdened by subordination provisions in the applicable indenture.

If we accomplish covenant defeasance, the following provisions of an indenture and the debt securities would no longer apply:

any covenants applicable to the series of debt securities and described in the applicable prospectus supplement;

any subordination provisions; and

certain events of default relating to breach of covenants and acceleration of the maturity of other debt set forth in any prospectus supplement.

If we accomplish covenant defeasance, you can still look to us for repayment of the debt securities if a shortfall in the trust deposit occurred. If one of the remaining events of default occurs, for example, our bankruptcy, and the debt securities become immediately due and payable, there may be a shortfall. Depending on the event causing the default, you may not be able to obtain payment of the shortfall.

**Subordination**

We will describe in the applicable prospectus supplement the terms and conditions, if any, upon which any series of senior subordinated securities or junior subordinated securities is subordinated to debt securities of another series or to our other indebtedness. The terms will include a description of:

the indebtedness ranking senior to the offered debt securities;

the restrictions, if any, on payments to the holders of the offered debt securities while a default is continuing with respect to the indebtedness ranking senior to the debt securities offered;

the restrictions, if any, on payments to the holders of the offered debt securities following an event of default with respect to indebtedness ranking senior to the debt securities offered; and

provisions that require holders of the offered debt securities to remit payments to holders of senior indebtedness.

**Global Securities**

We may issue the debt securities of a series in whole or in part in the form of one or more global securities that will be deposited with a depositary identified in the applicable prospectus supplement. We anticipate that any global securities will be deposited with, or on behalf of, The Depository Trust Company, New York, New York, or DTC, and will be registered in the name of DTC's nominee, and that the following provisions will apply to the depositary arrangements with respect to any global securities. We will describe additional or differing terms of the depositary arrangements in the applicable prospectus supplement relating to a particular series of debt securities issued in the form of global securities.

DTC is a limited-purpose trust company organized under the New York Banking Law, a "banking organization" within the meaning of the New York Banking Law, a member of the Federal Reserve System, a "clearing corporation" within the meaning of the New York Uniform Commercial Code and a "clearing agency" registered pursuant to the provisions of Section 17A of the Exchange Act. DTC holds securities that its direct participants deposit with DTC. DTC also facilitates the clearance and settlement among direct participants of securities transactions through electronic computerized book-entry changes in direct participants' accounts. This eliminates the need for physical movement of securities certificates. Direct participants include securities brokers and dealers, banks, trust companies, clearing corporations and certain other organizations, some of whom own DTC. Access to DTC's book-entry system is also available to indirect participants, such as securities brokers and dealers, banks and trust companies that clear through or maintain a custodial relationship with a direct participant. The rules applicable to DTC and its participants are on file with the SEC.

Upon the issuance of a registered global security, DTC will credit, on its book-entry registration and transfer system, the direct participants' accounts with the respective principal or face amounts of the debt securities beneficially owned by the direct participants. Any dealers, underwriters or agents participating in the distribution of the debt securities will designate the accounts to be credited. Ownership of beneficial interests in a registered global security will be shown on, and the transfer of ownership interests will be effected only through, records maintained by DTC, with respect to interests of direct participants, and on the records of direct participants, with respect to interests of persons holding through direct participants.

So long as DTC or its nominee is the registered owner of a global note, DTC or such nominee, as the case may be, will be considered the sole owner or holder of the debt securities evidenced by a global note for all purposes under the indentures. Except as described below, as an owner of a beneficial interest in debt securities evidenced by a global note you will not be entitled to have any of the debt securities evidenced by such global note registered in your name, you will not receive or be entitled to receive physical delivery of any such debt securities in definitive form and you will not be considered the owner or holder thereof under the indentures for any purpose, including with respect to the giving of any direction, instructions or approvals to the trustee thereunder. Accordingly, you must rely on the procedures of DTC and, if you are not a direct participant, on the procedures of the direct participant through which you own your interest to exercise any rights of a "holder" under the indentures. The laws of some states require that certain purchasers of securities take physical delivery of such securities in definitive form. Such limits and laws may impair your ability to own, pledge or transfer beneficial interests in any global note.

To facilitate subsequent transfers, all debt securities deposited by direct participants with DTC are registered in the name of DTC's partnership nominee, Cede & Co., or such other name as may be requested by an authorized representative of DTC. The deposit of debt securities with DTC and their registration in the name of Cede & Co. do not effect any change in beneficial ownership. DTC has no knowledge of the actual beneficial owners of the debt securities; DTC's records reflect only the identity of the direct participants to whose accounts such debt securities are credited, which may or may not be

the beneficial owners. The direct and indirect participants will remain responsible for keeping account of their holdings on behalf of their customers.

Payments of principal and interest or additional amounts, if any, will be made by us to DTC or Cede & Co. (or any other DTC nominee), in immediately available funds. DTC's practice is to credit the accounts of direct participants on the applicable payment date in accordance with their respective beneficial interests in the relevant security as shown on the records of DTC. Payments by direct participants to the beneficial owners of debt securities will be governed by standing instructions and customary practices, as is the case with securities held for the accounts of customers in bearer form or registered in "street name," and will be the responsibility of DTC's direct participants. Payment to Cede & Co. is our responsibility. Disbursement of such payments to direct participants is the responsibility of DTC. Disbursement of such payments to the beneficial owners is the responsibility of direct and indirect participants. Redemption notices with respect to any debt securities will be sent to DTC. If less than all of the debt securities are to be redeemed, DTC's practice is to determine by lot the amount of interest of each direct participant in such issue to be redeemed.

Neither we nor the trustee nor any other agent of ours or any agent of the trustee will have any responsibility or liability for any aspect of the records relating to payments made on account of beneficial ownership interests in the registered global security or for maintaining, supervising or reviewing any records relating to those beneficial ownership interests.

Neither DTC nor Cede & Co. (nor any other DTC nominee) will consent to vote with respect to the debt securities unless authorized by a direct participant in accordance with DTC's procedures. Under its usual procedures, DTC would mail an omnibus proxy to us as soon as possible after the record date. The omnibus proxy assigns Cede & Co.'s consenting or voting rights to those direct participants to whose accounts debt securities are credited on the record date (identified in a listing attached to the omnibus proxy). We understand that, under existing industry practice, if we request any action of holders or if an owner of a beneficial interest in a global note desires to give or take any action which a holder is entitled to give or take under the indentures, DTC would authorize the direct participants holding the relevant beneficial interest to give or take such action, and such direct participants would authorize beneficial owners through such direct participants to give or take such actions or would otherwise act upon the instructions of beneficial owners holding through them.

Debt securities which are evidenced by a global note will be exchangeable for certified debt securities with the same terms in authorized denominations only if:

DTC notifies us that it is unwilling or unable to continue as depositary or if DTC ceases to be a clearing agency registered under applicable law and a successor depositary is not appointed within 90 days;

there shall have occurred and be continuing an event of default; or

we determine not to require all of the debt securities to be evidenced by a global note and notify the trustee of our decision, in which case we will issue individual debt securities in denominations of $1,000 and integral multiples thereof.

The information in this prospectus concerning DTC and DTC's book-entry system has been obtained from sources that we believe to be reliable, but we take no responsibility for its accuracy or completeness. We assume no responsibility for the performance by DTC or its participants of their respective obligations, including obligations that they have under the rules and procedures that govern their operations.

## DESCRIPTION OF CAPITAL STOCK

As of November 5, 2009, our charter authorizes us to issue up to an aggregate of 51,000,000 shares of capital stock, including 50,000,000 common shares, par value $.01 per share, and 1,000,000 shares of preferred stock, par value $.01 per share, or preferred shares, and authorizes our board of directors, or board, to determine, at any time and from time to time, to increase or decrease the number of authorized shares of stock, as described below. As of November 5, 2009, we had 35,436,064 common shares issued and outstanding, and 1,000,000 preferred shares authorized but unissued as described below under "Preferred Shares." In connection with the adoption of our shareholders' rights plan, our board designated an authorized but unissued class of 100,000 preferred shares, par value $.01 per share, which are described more fully below under " Junior Participating Preferred Shares." As of the date of this prospectus no other class or series of preferred shares has been established.

Our charter contains a provision permitting our board, without any action by our shareholders, to amend the charter to increase or decrease the total number of shares of our stock or the number of shares of any class or series that we have authority to issue. Our charter further authorizes our board to reclassify any unissued common or preferred shares into other classes or series. We believe that giving these powers to our board will provide us with increased flexibility in structuring possible future financings and acquisitions and in meeting other business needs which might arise. Although our board has no intention at the present time of doing so, it could authorize us to issue a class or series that could, depending upon the terms of the class or series, delay or prevent a change in control.

### Common Shares

The following is a summary of the material terms of our common shares. Because it is a summary, it does not contain all of the information that may be important to you. If you want more information, you should read our charter and bylaws, copies of which have been filed with the SEC. See "Where You Can Find More Information." This summary is also subject to and qualified by reference to the description of the particular terms of your securities described in the applicable prospectus supplement.

Except as otherwise described in any applicable prospectus supplement, all of our common shares are entitled to the following, subject to the preferential rights of any other class or series of shares which may be issued and to the provisions of our charter regarding the restriction of the ownership and transfer of shares of beneficial interest:

- to receive distributions on our shares if, as and when authorized by our board and declared by us out of assets legally available for distribution; and

- to share ratably in our assets legally available for distribution to our shareholders in the event of our liquidation, dissolution or winding up after payment of or adequate provision for all of our known debts and liabilities.

Subject to the provisions of our charter regarding the restriction on the transfer of shares of beneficial interest, each outstanding common share entitles the holder to one vote on all matters submitted to a vote of shareholders, including the election of directors. Holders of our common shares do not have cumulative voting rights in the election of directors.

Holders of our common shares have no preference, conversion, exchange, sinking fund, redemption or appraisal rights. Shareholders have no preemptive rights to subscribe for any of our securities.

For other information with respect to our common shares, including effects that provisions in our charter and bylaws may have in delaying, deferring or preventing a change in our control, see "Description of Certain Provisions of Maryland Law and of Our Charter and Bylaws" below.

**Preferred Shares**

The following is a summary of the material terms of our currently authorized preferred shares. Because it is a summary, it does not contain all of the information that may be important to you. If you want more information, you should read our charter and bylaws, copies of which have been filed with the SEC. See "Where You Can Find More Information." This summary is also subject to and qualified by reference to the description of the particular terms of our securities described in the applicable prospectus supplement.

*General.* Our charter authorizes our board to determine the preferences, conversion or other rights, voting powers, restrictions, limitations as to dividends or other distributions, qualifications and terms and conditions of redemption of our authorized and unissued preferred shares. These may include:

- the distinctive designation of each series and the number of shares that will constitute the series;
- the voting rights, if any, of shares of the series;
- the distribution rate on the shares of the series, any restriction, limitation or condition upon the payment of the distribution, whether distributions will be cumulative, and the dates on which distributions accumulate and are payable;
- the prices at which, and the terms and conditions on which, the shares of the series may be redeemed, if the shares are redeemable;
- the purchase or sinking fund provisions, if any, for the purchase or redemption of shares of the series;
- any preferential amount payable upon shares of the series upon our liquidation or the distribution of our assets;
- if the shares are convertible, the price or rates of conversion at which, and the terms and conditions on which, the shares of the series may be converted into other securities; and
- whether the series can be exchanged, at our option, into debt securities, and the terms and conditions of any permitted exchange.

The issuance of preferred shares, or the issuance of rights to purchase preferred shares, could discourage an unsolicited acquisition proposal. In addition, the rights of holders of common shares will be subject to, and may be adversely affected by, the rights of holders of any preferred shares that we may issue in the future.

The following describes some general terms and provisions of the preferred shares to which a prospectus supplement may relate. The statements below describing the preferred shares are in all respects subject to and qualified in their entirety by reference to the applicable provisions of our charter, including any applicable articles supplementary, and our bylaws.

The prospectus supplement will describe the specific terms as to each issuance of preferred shares, including:

- the description of the preferred shares;
- the number of the preferred shares offered;
- the voting rights, if any, of the holders of the preferred shares;

the offering price of the preferred shares;

the distribution rate, when distributions will be paid, or the method of determining the distribution rate if it is based on a formula or not otherwise fixed;

the date from which distributions on the preferred shares shall accumulate;

the provisions for any auctioning or remarketing, if any, of the preferred shares;

the provision, if any, for redemption or a sinking fund;

the liquidation preference per share;

any listing of the preferred shares on a securities exchange;

whether the preferred shares will be convertible and, if so, the security into which they are convertible and the terms and conditions of conversion, including the conversion price or the manner of determining it;

whether interests in the preferred shares will be represented by depositary shares as more fully described below under "Description of Depositary Shares";

a discussion of federal income tax considerations;

the relative ranking and preferences of the preferred shares as to distribution and liquidation rights;

any limitations on issuance of any preferred shares ranking senior to or on a parity with the series of preferred shares being offered as to distribution and liquidation rights;

any limitations on direct or beneficial ownership and restrictions on transfer; and

any other specific preferences, conversion or other rights, voting powers, restrictions, limitations as to dividends or other distributions, qualifications and terms and conditions of redemption of the preferred shares.

As described under "Description of Depositary Shares," we may, at our option, elect to offer depositary shares evidenced by depositary receipts. If we elect to do this, each depositary receipt will represent a fractional interest in a share of the particular series of the preferred shares issued and deposited with a depositary. The applicable prospectus supplement will specify that fractional interest.

**Rank**

Unless our board otherwise determines and we so specify in the applicable prospectus supplement, we expect that the preferred shares will, with respect to distribution rights and rights upon liquidation or dissolution, rank senior to all our common shares.

**Distributions**

Holders of preferred shares of each series will be entitled to receive cash and/or share distributions at the rates and on the dates described in the applicable prospectus supplement. Even though the preferred shares may specify a fixed rate of distribution, our board must authorize and we must declare those distributions and they may be paid only out of assets legally available for distribution. We will pay each distribution to holders of record as they appear on our share transfer books on the record dates fixed by our board. In the case of preferred shares represented by depositary receipts, the records of the depositary referred to under "Description of Depositary Shares" will determine the persons to whom distributions are payable.

Distributions on any series of preferred shares may be cumulative or noncumulative, as provided in the applicable prospectus supplement. We refer to each particular series, for ease of reference, as the applicable series. Cumulative distributions will be cumulative from and after the date shown in the applicable prospectus supplement. If our board fails to authorize a distribution on any applicable series that is noncumulative, the holders will have no right to receive, and we will have no obligation to pay, a

distribution in respect of the applicable distribution period, whether or not distributions on that series or any other series are declared payable in the future.

If the applicable series is entitled to a cumulative distribution, we may not declare, or pay or set aside for payment, any full distributions on any other series of preferred shares ranking, as to distributions, on a parity with or junior to the applicable series, unless we declare, and either pay or set aside for payment, full cumulative distributions on the applicable series for all past distribution periods and the then current distribution period. If the applicable series does not have a cumulative distribution, we must declare, and pay or set aside for payment, full distributions for the then current distribution period only. When distributions are not paid, or set aside for payment, in full upon any applicable series and the shares of any other series ranking on a parity as to distributions with the applicable series, we must declare, and pay or set aside for payment, all distributions upon the applicable series and any other parity series proportionately, in accordance with accrued and unpaid distributions of the several series. For these purposes, accrued and unpaid distributions do not include unpaid distribution periods on noncumulative preferred shares. No interest will be payable in respect of any distribution payment that may be in arrears.

Except as provided in the immediately preceding paragraph, unless we declare, and pay or set aside for payment, full cumulative distributions, including for the then current period, on any cumulative applicable series, we may not declare, or pay or set aside for payment, any distributions upon common shares or any other equity securities ranking junior to or on a parity with the applicable series as to distributions or upon liquidation. The foregoing restriction does not apply to distributions paid in common shares or other equity securities ranking junior to the applicable series as to distributions and upon liquidation. If the applicable series is noncumulative, we need only declare, and pay or set aside for payment, the distribution for the then current period, before declaring distributions on common shares or junior or parity securities. In addition, under the circumstances that we could not declare a distribution, we may not redeem, purchase or otherwise acquire for any consideration any common shares or other parity or junior equity securities, except upon conversion into or exchange for common shares or other junior equity securities. We may, however, make purchases and redemptions otherwise prohibited pursuant to certain redemptions or pro rata offers to purchase the outstanding shares of the applicable series and any other parity series of preferred shares.

We will credit any distribution payment made on an applicable series first against accrued but unpaid distributions due with respect to the series in the order specified in the applicable prospectus supplement.

**Redemption**

We may have the right or may be required to redeem one or more series of preferred shares, as a whole or in part, in each case upon the terms, if any, and at the times and at the redemption prices shown in the applicable prospectus supplement.

If a series of preferred shares is subject to mandatory redemption, we will specify in the applicable prospectus supplement the number or percentage of that series of shares we are required to redeem, when those redemptions start, the redemption price, and any other terms and conditions affecting the redemption. The redemption price will include all accrued and unpaid distributions, except in the case of noncumulative preferred shares. The redemption price may be payable in cash or other property, as specified in the applicable prospectus supplement. If the redemption price for the preferred shares of any series is payable only from the net proceeds of our issuance of shares of stock, the terms of the preferred shares may provide that, if no shares of stock shall have been issued or to the extent the net proceeds from any issuance are insufficient to pay in full the aggregate redemption price then due, the preferred shares will automatically and mandatorily be converted into common shares pursuant to conversion provisions specified in the applicable prospectus supplement.

**Liquidation Preference**

The applicable prospectus supplement will show the liquidation preference of the applicable series. Upon our voluntary or involuntary liquidation, before any distribution may be made to the holders of our common shares or any other shares of stock ranking junior in the distribution of assets upon any liquidation to the applicable series, the holders of that series will be entitled to receive, after satisfaction of our debt and otherwise out of our assets legally available for distribution to shareholders, liquidating distributions in the amount of the liquidation preference, plus an amount equal to all distributions accrued and unpaid. In the case of a noncumulative applicable series, accrued and unpaid distributions include only the then current distribution period. After payment of the full amount of the liquidating distributions to which they are entitled, the holders of preferred shares will have no right or claim to any of our remaining assets. If liquidating distributions shall have been made in full to all holders of preferred shares, our remaining assets will be distributed among the holders of any other shares of stock ranking junior to the preferred shares upon liquidation, according to their rights and preferences and in each case according to their number of shares.

If, upon any voluntary or involuntary liquidation, our available assets are insufficient to pay the amount of the liquidating distributions on all outstanding shares of that series and the corresponding amounts payable on all shares of stock ranking on a parity in the distribution of assets with that series, then the holders of that series and all other equally ranking shares of stock shall share ratably in the distribution in proportion to the full liquidating distributions to which they would otherwise be entitled.

For these purposes, our consolidation or merger with or into any other corporation or other entity, or the sale, lease or conveyance of all or substantially all of our property or business, will not be a liquidation.

**Voting Rights**

Holders of our preferred shares will not have any voting rights, except as shown below or as otherwise from time to time specified in the applicable prospectus supplement.

Unless otherwise specified in the applicable prospectus supplement, holders of our preferred shares (voting separately as a class with all other series of preferred shares with similar voting rights) will be entitled to elect two additional directors to our board at our next annual meeting of shareholders and at each subsequent annual meeting if at any time distributions on the applicable series are in arrears for six consecutive quarterly periods. The right to elect additional directors described in the preceding sentence shall remain in effect until we declare and pay or set aside for payment those distributions specified in the applicable prospectus supplement. Unless otherwise specified in the applicable prospectus supplement, in the event the preferred shareholders are so entitled to elect directors, the entire board will be increased by two directors.

Unless otherwise provided in the applicable prospectus supplement, so long as any preferred shares are outstanding, we may not, without the affirmative vote or consent of a majority of the shares of each series of preferred shares outstanding at that time:

authorize, create or increase the authorized or issued amount of any class or series of shares of stock ranking senior to that series of preferred shares with respect to distribution and liquidation rights;

reclassify any authorized shares of stock into a series of shares of stock ranking senior to that series of preferred shares with respect to distribution and liquidation rights;

create, authorize or issue any security or obligation convertible into or evidencing the right to purchase any shares of stock ranking senior to that series of preferred shares with respect to distribution and liquidation rights; and

amend, alter or repeal the provisions of our charter or any articles supplementary relating to that series of preferred shares, whether by merger, consolidation or otherwise, that materially and adversely affects the series of preferred shares.

The authorization, creation or increase of the authorized or issued amount of any class or series of shares of stock ranking on parity or junior to a series of preferred shares with respect to distribution and liquidation rights will not be deemed to materially and adversely affect that series.

The foregoing voting provisions will not apply if all of the outstanding shares of the series of preferred shares with the right to vote have been redeemed or called for redemption and sufficient funds have been deposited in trust for the redemption either at or prior to the act triggering these voting rights.

As more fully described under "Description of Depositary Shares" below, if we elect to issue depositary shares, each representing a fraction of a share of a series, each depositary will in effect be entitled to a fraction of a vote per depositary share.

**Conversion Rights**

We will describe in the applicable prospectus supplement the terms and conditions, if any, upon which holders of our preferred shares may, or we may require holders of our preferred shares to, convert shares of any series of preferred shares into common shares or any other class or series of shares of stock. The terms will include the number of common shares or other securities into which the preferred shares are convertible, the conversion price or the manner of determining such number or price. The terms will also include the conversion period, provisions as to whether conversion will be at the option of the holders of the series or at our option, the events requiring an adjustment of the conversion price, and provisions affecting conversion upon the redemption of shares of the series.

**Our Exchange Rights**

We will describe in the applicable prospectus supplement the terms and conditions, if any, upon which we can require holders of our preferred shares to exchange shares of any series of preferred shares for debt securities. If an exchange is required, you will receive debt securities with a principal amount equal to the liquidation preference of the applicable series of preferred shares. The other terms and provisions of the debt securities will not be materially less favorable to you than those of the series of preferred shares being exchanged.

**Junior Participating Preferred Shares**

In connection with the adoption of our shareholders' rights plan in March 2004, our board established an authorized but unissued class of 100,000 junior participating preferred shares, par value $.01 per share. See "Description of Certain Provisions of Maryland Law and of Charter and Bylaws  Rights Plan," for a summary of our shareholders' rights plan.

## DESCRIPTION OF DEPOSITARY SHARES

### General

The following is a summary of the material provisions of any deposit agreement and of the depositary shares and depositary receipts representing depositary shares. Because it is a summary, it does not contain all of the information that may be important to you. If you want more information, you should read the form of deposit agreement and depositary receipts which will be filed as exhibits to the registration statement of which this prospectus is a part prior to an offering of depositary shares. See "Where You Can Find More Information." This summary is also subject to and qualified by reference to the descriptions of the particular terms of the securities described in the applicable prospectus supplement.

We may, at our option, elect to offer fractional interests in shares of preferred stock, rather than whole shares of preferred stock. If we exercise this option, we will appoint a depositary to issue depositary receipts representing those fractional interests. Preferred shares of each series represented by depositary shares will be deposited under a separate deposit agreement between us and the depositary. The prospectus supplement relating to a series of depositary shares will show the name and address of the depositary. Subject to the terms of the applicable deposit agreement, each owner of depositary shares will be entitled to that owner's pro rata amount of all of the preferences, conversion or other rights, voting powers, restrictions, limitations as to dividends and other distributions, qualifications and terms and conditions of redemption of the preferred shares represented by those depositary shares.

Depositary receipts issued pursuant to the applicable deposit agreement will evidence ownership of depositary shares. Upon surrender of depositary receipts at the office of the depositary, and upon payment of the charges provided in and subject to the terms of the deposit agreement, a holder of depositary shares will be entitled to receive the preferred shares underlying the surrendered depositary receipts.

### Distributions

A depositary will be required to distribute all cash distributions received in respect of the applicable preferred shares to the record holders of depositary receipts evidencing the related depositary shares in proportion to the number of depositary receipts owned by the holders. Fractions will be rounded down to the nearest whole cent.

If the distribution is other than in cash, a depositary will be required to distribute property received by it to the record holders of depositary receipts entitled thereto, unless the depositary determines that it is not feasible to make the distribution. In that case, the depositary may, with our approval, sell the property and distribute the net proceeds from the sale to the holders.

Depositary shares that represent preferred shares converted or exchanged will not be entitled to distributions. The deposit agreement will also contain provisions relating to the manner in which any subscription or similar rights we offer to holders of the preferred shares will be made available to holders of depositary shares. All distributions will be subject to obligations of holders to file proofs, certificates and other information and to pay certain charges and expenses to the depositary.

### Withdrawal of Preferred Shares

You may elect to receive the number of whole shares of your series of preferred shares and any money or other property represented by those depositary receipts after surrendering the depositary receipts at the corporate trust office of the depositary. Partial shares of preferred stock will not be issued. If the depositary shares that you surrender exceed the number of depositary shares that represent the number of whole preferred shares you wish to withdraw, then the depositary will deliver to you at the same time a new depositary receipt evidencing the excess number of depositary shares.

Once you have withdrawn your preferred shares, you will not be entitled to re-deposit those preferred shares under the deposit agreement in order to receive depositary shares. We do not expect that there will be any public trading market for withdrawn preferred shares.

**Redemption of Depositary Shares**

If we redeem a series of the preferred shares that underlie depositary shares, the depositary will redeem those shares from the proceeds received from us. The depositary will mail notice of redemption not less than 30 and not more than 60 days before the date fixed for redemption to the record holders of the depositary receipts identifying the depositary shares to be redeemed at their addresses appearing in the depositary's books. The redemption price per depositary share will be equal to the applicable fraction of the redemption price per share payable with respect to the series of the preferred shares. The redemption date for depositary shares will be the same as that of the preferred shares. If we redeem less than all of the preferred shares, the depositary will select the depositary shares to be redeemed by lot or pro rata as the depositary may determine.

After the date fixed for redemption, the depositary shares called for redemption will be deemed no longer outstanding. All rights of the holders of the depositary shares and the related depositary receipts will cease at that time, except the right to receive the money or other property to which the holders of depositary shares were entitled upon redemption. Receipt of the money or other property is subject to surrender to the depositary of the depositary receipts evidencing the redeemed depositary shares.

**Voting of the Preferred Shares**

Upon receipt of notice of any meeting at which the holders of the applicable preferred shares are entitled to vote, a depositary will be required to mail the information contained in the notice of meeting to the record holders of the applicable depositary receipts. Each record holder of depositary receipts on the record date will be entitled to instruct the depositary as to the exercise of the voting rights pertaining to the amount of preferred shares represented by the holder's depositary shares. The depositary will try, as practical, to vote the shares as instructed by the holders. We will agree to take all reasonable action that the depositary deems necessary in order to enable it to do so. If you do not instruct the depositary how to vote your shares, the depositary will abstain from voting those shares. The depositary will not be responsible for any failure to carry out an instruction to vote or for the effect of any such vote made so long as the action or inaction of the depositary is in good faith and is not the result of the depositary's gross negligence or willful misconduct.

**Liquidation Preference**

Upon our liquidation, whether voluntary or involuntary, each holder of depositary shares will be entitled to the fraction of the liquidation preference of each preferred share represented by the depositary shares, as shown in the applicable prospectus supplement.

**Conversion or Exchange of Preferred Shares**

The depositary shares will not themselves be convertible into or exchangeable for common shares, preferred shares or any of our other securities or property. Nevertheless, if so specified in the applicable prospectus supplement, the depositary receipts may be surrendered by holders to the applicable depositary with written instructions to it to instruct us to cause conversion of the preferred shares represented by the depositary shares. Similarly, if so specified in the applicable prospectus supplement, we may require you to surrender all of your depositary receipts to the applicable depositary upon our requiring the conversion or exchange of the preferred shares represented by the depositary shares into our debt securities. Upon receipt of the instruction and any amounts payable in connection with the conversion or exchange, we will cause the conversion or exchange using the same procedures as those provided for delivery of preferred shares to effect the conversion or exchange. If

you are converting only a part of the depositary shares, the depositary will issue you a new depositary receipt for any unconverted depositary shares.

**Taxation**

As owner of depositary shares, you will be treated for U.S. federal income tax purposes as if you were an owner of the series of preferred shares represented by the depositary shares. Therefore, you will be required to take into account for U.S. federal income tax purposes income and deductions to which you would be entitled if you were a holder of the underlying series of preferred shares. In addition:

- no gain or loss will be recognized for U.S. federal income tax purposes upon the withdrawal of preferred shares in exchange for depositary shares provided in the deposit agreement;
- the tax basis of each preferred share to you as exchanging owner of depositary shares will, upon exchange, be the same as the aggregate tax basis of the depositary shares exchanged for the preferred shares; and
- if you held the depositary shares as a capital asset at the time of the exchange for preferred shares, the holding period for the preferred shares will include the period during which you owned the depositary shares.

**Amendment and Termination of a Deposit Agreement**

We and the applicable depositary are permitted to amend the provisions of a series of depositary receipts and the related deposit agreement. However, the holders of at least a majority of the applicable depositary shares then outstanding must approve any amendment that adds or increases fees or charges or prejudices an important right of holders. Every holder of an outstanding depositary receipt at the time any amendment becomes effective, by continuing to hold the receipt, and every subsequent holder will be bound by the applicable deposit agreement, as amended.

As described below, any depositary may be replaced by us without approval of holders of depositary shares. Any deposit agreement may otherwise be terminated by us upon not less than 30 days' prior written notice to the applicable depositary if a majority of each series of preferred shares affected by the termination consents to the termination. When a deposit agreement is terminated without replacement, the depositary will be required to deliver or make available to each holder of depositary receipts, upon surrender of the depositary receipts held by the holder, the number of whole or fractional shares of preferred shares as are represented by the depositary shares evidenced by the depositary receipts, together with any other property held by the depositary with respect to the depositary receipts. In addition, a deposit agreement will automatically terminate if:

- all depositary shares have been redeemed;
- there shall have been a final distribution in respect of the related preferred shares in connection with our liquidation and the distribution has been made to the holders of depositary receipts evidencing the depositary shares underlying the preferred shares; or
- each related preferred share shall have been converted or exchanged into securities not represented by depositary shares.

**Charges of a Depositary**

We will pay all transfer and other taxes and governmental charges arising solely from the existence of a deposit agreement. In addition, we will pay the fees and expenses of a depositary in connection with the initial deposit of the preferred shares and any redemption of preferred shares. However, holders of depositary receipts will pay any transfer or other governmental charges and the fees and

expenses of a depositary for any duties the holders request to be performed that are outside of those expressly provided for in the applicable deposit agreement.

**Resignation and Removal of Depositary**

A depositary may resign at any time by delivering to us notice of its election to do so. In addition, we may at any time remove a depositary. Any resignation or removal will take effect when we appoint a successor depositary and it accepts the appointment. We must appoint a successor depositary within 60 days after delivery of the notice of resignation or removal. A depositary must be a bank or trust company having its principal office in the United States that has a combined capital and surplus of at least $50 million.

**Miscellaneous**

A depositary will be required to forward to holders of depositary receipts any reports and communications from us that it receives with respect to the related preferred shares. Holders of depository receipts will be able to inspect the transfer books of the depository and the list of holders of depositary receipts upon reasonable notice.

Neither a depositary nor our company will be liable if it is prevented from or delayed in performing its obligations under a deposit agreement by law or any circumstances beyond its control. Our obligations and those of the depositary under a deposit agreement will be limited to performing duties in good faith and without gross negligence or willful misconduct. Neither we nor any depositary will be obligated to prosecute or defend any legal proceeding in respect of any depositary receipts, depositary shares or related preferred shares unless satisfactory indemnity is furnished. We and each depositary will be permitted to rely on written advice of counsel or accountants, on information provided by persons presenting preferred shares for deposit, by holders of depositary receipts, or by other persons believed in good faith to be competent to give the information, and on documents believed in good faith to be genuine and signed by a proper party.

If a depositary receives conflicting claims, requests or instructions from any holders of depositary receipts, on the one hand, and us, on the other hand, the depositary shall be entitled to act on the claims, requests or instructions received from us.

## DESCRIPTION OF WARRANTS

The following is a summary of the material terms of our warrants and the warrant agreement. Because it is a summary, it does not contain all of the information that may be important to you. If you want more information, you should read the forms of warrants and the warrant agreement which will be filed as exhibits to the registration statement of which this prospectus is a part. See "Where You Can Find More Information." This summary is also subject to and qualified by reference to the descriptions of the particular terms of our securities described in the applicable prospectus supplement.

We may issue, together with any other securities being offered or separately, warrants entitling the holder to purchase from or sell to us, or to receive from us the cash value of the right to purchase or sell, debt securities, preferred shares, depositary shares or common shares. We and a warrant agent will enter into a warrant agreement pursuant to which the warrants will be issued. The warrant agent will act solely as our agent in connection with the warrants and will not assume any obligation or relationship of agency or trust for or with any holders or beneficial owners of warrants. We will file a copy of the forms of warrants and the warrant agreement with the SEC at or before the time of the offering of the applicable series of warrants.

In the case of each series of warrants, the applicable prospectus supplement will describe the terms of the warrants being offered thereby. These include the following, if applicable:

the offering price;

the currencies in which such warrants are being offered;

the number of warrants offered;

the securities underlying the warrants;

the exercise price, the procedures for exercise of the warrants and the circumstances, if any, that will cause the warrants to be automatically exercised;

the date on which the warrants will expire;

federal income tax consequences;

the rights, if any, we have to redeem the warrants;

the name of the warrant agent; and

the other terms of the warrants.

Warrants may be exercised at the appropriate office of the warrant agent or any other office indicated in the applicable prospectus supplement. Before the exercise of warrants, holders will not have any of the rights of holders of the securities purchasable upon exercise and will not be entitled to payments made to holders of those securities.

The warrant agreement may be amended or supplemented without the consent of the holders of the warrants to which the amendment or supplement applies to effect changes that are not inconsistent with the provisions of the warrants and that do not adversely affect the interests of the holders of the warrants. However, any amendment that materially and adversely alters the rights of the holders of warrants will not be effective unless the holders of at least a majority of the applicable warrants then outstanding approve the amendment. Every holder of an outstanding warrant at the time any amendment becomes effective, by continuing to hold the warrant, will be bound by the applicable warrant agreement as amended thereby. The prospectus supplement applicable to a particular series of warrants may provide that certain provisions of the warrants, including the securities for which they may be exercisable, the exercise price, and the expiration date may not be altered without the consent of the holder of each warrant.

## DESCRIPTION OF STOCK PURCHASE CONTRACTS AND EQUITY UNITS

The applicable prospectus supplement will describe the terms of the stock purchase contracts or equity units offered by that prospectus supplement. If we issue any stock purchase contracts or equity units, we will file with the SEC the form of stock purchase contract or equity unit and you should read those documents for provisions that may be important to you. You can obtain copies of any form of stock purchase contract or equity unit by following the directions described under the caption "Where You Can Find More Information" in the applicable prospectus supplement.

We may issue stock purchase contracts, including contracts obligating holders to purchase from us, and obligating us to sell to the holders, a specified number of common shares or other securities at a future date or dates. We may fix the price and number of securities subject to the stock purchase contracts at the time we issue the stock purchase contracts or we may provide that the price and number of securities will be determined pursuant to a formula set forth in the stock purchase contracts. The stock purchase contracts may be issued separately or as part of units consisting of a stock purchase contract and debt securities or debt obligations of third parties, including U.S. treasury securities, securing the obligations of the holders of the units to purchase the securities under the stock purchase contracts. We refer to these units as equity units. The stock purchase contracts will require holders to secure their obligations under the stock purchase contracts. The stock purchase contracts also may require us to make periodic payments to the holders of the equity units or vice versa, and those payments may be unsecured or refunded on some basis.

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## DESCRIPTION OF CERTAIN PROVISIONS OF MARYLAND LAW AND OF OUR CHARTER AND BYLAWS

We are organized as a Maryland corporation. The following is a summary of our charter and bylaws and certain provisions of Maryland law. Because it is a summary, it does not contain all the information that may be important to you. If you want more information, you should read our entire charter and bylaws, copies of which we have previously filed with the SEC, or refer to the provisions of applicable Maryland corporate law summarized below.

**Directors**

Our charter and bylaws provide that our board has the exclusive power to establish the number of directors. However, there may not be less than the minimum number required by Maryland law (which is one) nor more than seven directors. In the event of a vacancy, a majority of the remaining directors will fill the vacancy and the director elected to fill the vacancy will serve for the remainder of the full term of the directorship in which the vacancy occurred.

Our charter divides our board into three classes, each class of directors serving a staggered three-year term. At each annual meeting of our shareholders, the successors to the class of directors whose terms expire at such meeting will be elected to hold office for a term expiring at the annual meeting of shareholders held in the third year following the year of their election. Each director holds office for the term to which he or she is elected and until his or her successor is duly elected and qualifies.

We believe that classification of our board helps to assure the continuity of our business strategies and policies. There is no cumulative voting in the election of directors. Consequently, at each annual meeting of shareholders, a majority of the votes entitled to be cast will be able to elect all of the successors of the class of directors whose term expires at that meeting. The classified board provision could have the effect of making the replacement of our incumbent directors more time consuming and difficult. At least two annual meetings of shareholders are generally required to effect a change in a majority of our board.

Under our bylaws, our directors are qualified as "independent directors" or "managing directors", and our bylaws require that (except for temporary periods due to vacancies), a majority of the directors holding office will at all times be independent directors. For those purposes, an "independent director" is one who is not an employee of ours or an employee of RMR and qualifies as independent under our bylaws and applicable rules of the NYSE Amex and the SEC. A "managing director" is a director who is not an independent director and who has been an employee of ours or an employee of RMR or has been involved in our day to day activities for at least one year prior to his or her election. Our board is currently composed of three independent directors and two managing directors.

Our charter provides that a director may be removed only for cause by the affirmative vote of at least 75% of the votes entitled to be cast generally in the election of directors.

**Advance Notice of Director Nominations and Other Business**

*Shareholder recommendations for nominees.* A responsibility of our Nominating and Governance Committee is to consider candidates for election as directors who are properly recommended by shareholders. To be considered by our Nominating and Governance Committee, a shareholder recommendation for a nominee must be made: (i) by a shareholder who is entitled under our bylaws and applicable state and federal laws to nominate the nominee at the meeting and (ii) by written notice to the Chair of our Nominating and Governance Committee at our principal executive offices within the 30 day period ending on the last date on which shareholders may give a timely notice of nomination for such meeting under our bylaws and applicable state and federal laws, which notice must be accompanied by the information and documents with respect to the recommended nominee which

the recommending shareholder would have been required to provide in order to nominate such nominee for election at the shareholders meeting in accordance with our bylaws, including those described below, and applicable state and federal laws. Any such notice must be accompanied by the same information, copies of share certificates and other documents as described below. Our Nominating and Governance Committee may request additional information about the shareholder nominee or about a recommending shareholder. Shareholder recommendations which meet the requirements set forth above will be considered using the same criteria as other candidates considered by our Nominating and Governance Committee.

The preceding paragraph applies only to shareholder recommendations for nominees. A shareholder nomination must be made in accordance with the provisions of our bylaws, including the procedures discussed below.

*Shareholder nominations and other proposals at annual meetings.* Our bylaws require compliance with certain procedures for a shareholder to properly propose a nomination for election to our board or other business at the annual meeting of shareholders. If a shareholder who is entitled to do so under our bylaws wishes to propose a person for election to our board or other business, that shareholder must provide a written notice to our Secretary. The shareholder giving notice must (i) have continuously held at least $2,000 in market value (as determined under our bylaws), or 1%, of our common shares entitled to vote at the meeting on the election or the proposal of other business, as the case may be, for at least one year from the date the shareholder gives its advance notice (this requirement will not apply until April 1, 2010 with respect to a shareholder who continuously holds from and after April 1, 2009 shares entitled to vote at the meeting on such election or proposal of other business, as the case may be), (ii) be a shareholder of record at the time of giving notice through and including the time of the meeting, (iii) be present at the meeting to answer questions about the nomination or other business and (iv) have complied in all respects with the advance notice provisions for shareholder nominations and proposals of other business set forth in our bylaws.

The notice must set forth detailed specified information about the nominee and the nominee's affiliates and associates, the shareholder making the nomination and affiliates and associates of that shareholder, and provide to the extent known by the shareholder giving the notice, the name and address of any other shareholder supporting the shareholder's nomination or proposal. With respect to nominations, the notice must state whether the nominee is proposed for nomination as an Independent Director or a Managing Director. In addition, at the same time as or prior to the submission of a shareholder nomination or proposal for consideration at a meeting of our shareholders that, if approved and implemented by us, would cause us to be in breach of any covenant in or in default under any debt instrument or agreement or other material agreement of ours or any subsidiary of ours, the shareholder must submit to our Secretary (i) evidence satisfactory to our board of the lender's or contracting party's willingness to waive the breach of covenant or default, or (ii) a detailed plan for repayment of the applicable indebtedness or curing the contractual breach or default and satisfying any resulting damage, specifically identifying the actions to be taken or the source of funds, which plan must be satisfactory to our board in its discretion, and evidence of the availability to us of substitute credit or contractual arrangements similar to the credit or contractual arrangements which are implicated by the shareholder nomination or other proposal that are at least as favorable to us, as determined by our board in its discretion. Additionally, if (i) the submission of a shareholder nomination or proposal of other business to be considered at a shareholders meeting could not be considered or, if approved, implemented by us without our or any subsidiary of ours, or the proponent shareholder, the nominee, the holder of proxies or their respective affiliates or associates filing with or otherwise notifying or obtaining the consent, approval or other action of any governmental or regulatory body, or a governmental action, or (ii) such shareholder's ownership of our shares or any solicitation of proxies or votes or holding or exercising proxies by such shareholder, the nominee or their respective affiliates or associates would require governmental action, then, at the same time as the submission of the shareholder nomination or proposal of other business, the proponent shareholder

shall submit to us (x) evidence satisfactory to our board that any and all governmental action has been given or obtained, including, without limitation, such evidence as our board may require so that any nominee may be determined to satisfy any suitability or other requirements or (y) if such evidence was not obtainable from a governmental or regulatory body by such time despite the shareholder's diligent and best efforts, a detailed plan for making or obtaining the governmental action prior to the election of the nominee or the implementation of the proposal for other business, which plan must be satisfactory to our board in its discretion.

Under our bylaws, in order for a shareholder's notice of nominations for director or other business to be properly brought before an annual meeting of shareholders, the shareholder must deliver the notice to our Secretary at our principal executive offices not later than 5p.m. (Eastern Time) on the 120th day, and not earlier than the 150th day, prior to the first anniversary of the date of the proxy statement for the preceding year's annual meeting. If the date of proxy statement for the annual meeting is more than 30 days earlier than the first anniversary of the date of the proxy statement for the preceding year's annual meeting, other time requirements may be applicable to shareholder notices, as specified in our bylaws. In addition, a shareholder may not give notice to nominate or propose other business unless the shareholder holds a certificate for all our common shares owned by such shareholder during all times described in the first paragraph of this section and a copy of each certificate held by the shareholder accompanies the shareholder's notice. Also, we may request that any shareholder proposing a nominee for election to our board or other business at a meeting of our shareholders provide us, within three business days of such request, with written verification of the information submitted by the shareholder as well as other information.

The foregoing description of the procedures for a shareholder to propose a nomination for election to our board or other business for consideration at an annual meeting is only a summary and is not complete. Our bylaws, including the provisions which concern the requirements for shareholder nominations and other proposals, will be filed as an exhibit to the registration statement of which this prospectus is a part.

**Meetings of Shareholders**

The board determines the date and time of the annual meeting of shareholders. Special meetings of shareholders may only be called by the majority of the board or the president, or, subject to the satisfaction of certain procedural and informational requirements in our bylaws, upon the written request of shareholders entitled to cast not less than a majority of all the votes entitled to be cast at that meeting (or such greater proportion we are permitted to specify under Maryland law).

**Limitation of Liability and Indemnification of Directors and Officers**

To the maximum extent permitted by Maryland law, our charter includes provisions limiting the liability of our present and former directors and officers to us and our shareholders for money damages except for liability resulting from (i) actual receipt of an improper benefit or profit in money, property or services or (ii) active and deliberate dishonesty established by a final judgment as being material to the cause of action.

Additionally, our charter authorizes us to the maximum extent permitted by Maryland law to indemnify any present or former director or officer or any individual who, while our director and at our request, serves or has served another corporation, real estate investment trust, partnership, joint venture, trust, employee benefit plan or other enterprise as a director, officer, partner or trustee and who is made a party to the proceeding by reason of his or her status as our present or former director or officer from and against any claim or liability to which that person may become subject or which that person may incur by reason of his or her status as our present or former director or officer and pay or reimburse their reasonable expenses in advance of final disposition of a proceeding.

The Maryland General Corporation Law, or the MGCL, requires a corporation (unless its charter provides otherwise, which our charter does not) to indemnify a director or officer who has been successful in the defense of any proceeding to which he or she is made, or threatened to be made, a party by reason of his or her service in that capacity.

The MGCL permits a corporation to indemnify its present and former directors and officers, among others, against judgments, penalties, fines, settlements and reasonable expenses incurred by them in connection with any proceeding to which they may be made, or are threatened to be made, a party by reason of their service in those or other capacities. However, a Maryland corporation is not permitted to provide this type of indemnification if the following is established:

- the act or omission of the director or officer was material to the matter giving rise to the proceeding and was committed in bad faith or was the result of active and deliberate dishonesty;
- the director or officer actually received an improper personal benefit in money, property or services; or
- in the case of any criminal proceeding, the director or officer had reasonable cause to believe that the act or omission was unlawful.

Additionally, a Maryland corporation may not indemnify a director or officer for an adverse judgment in a suit by or in the right of the corporation or for a judgment of liability on the basis that personal benefit was improperly received, unless in either case a court orders indemnification and then only for expenses. The MGCL permits a corporation to advance reasonable expenses to a director or officer upon the corporation's receipt of the following:

- a written affirmation by the director or officer of his or her good faith belief that he or she has met the standard of conduct necessary for indemnification by the corporation; and
- a written undertaking by him or her or on his or her behalf to repay the amount paid or reimbursed by the corporation if it is ultimately determined that this standard of conduct was not met.

We have also entered into indemnification agreements with our directors and certain of our officers providing for procedures for indemnification by us to the fullest extent permitted by law and advancements by us of certain expenses and costs relating to claims, suits or proceedings arising from their service to us.

The SEC has expressed the opinion that indemnification of directors, officers or persons otherwise controlling a company for liabilities arising under the Securities Act is against public policy and is therefore unenforceable.

**Shareholder Liability**

Our bylaws provide that any shareholder who breaches or fails to fully comply with any covenant, condition or provision of our charter or bylaws, including the advance notice provisions pertaining to shareholder nominations and other proposals, will indemnify us and hold us harmless from and against all costs, expenses, penalties, fees and other amounts, including attorneys' and other professional fees, arising from the shareholder's breach or failure to comply or any action by or against us (including actions by or against us in which the shareholder is not the prevailing party), together with interest on such amounts.

Our community leases with Senior Housing and our shared services agreement are terminable by Senior Housing and RMR, the investment manager for Senior Housing (from whom we purchase various services pursuant to a shared services agreement), respectively, in the event that any shareholder or group of shareholders acting in concert becomes the owner of more than 9.8% of our voting stock without Senior Housing's consent. If a breach of the ownership limitations results in a

lease default, the shareholders causing the default may become liable to us or to our other shareholders for damages. These damages may be in addition to the loss of beneficial ownership and voting rights, the transfer to a trust and the forced sale of excess shares described below. These damages may be for material amounts.

**Actions by Shareholders**

Our bylaws provide that actions brought against us or any director, officer, manager (including RMR or its successor), agent or employee of us, by a shareholder, including derivative and class actions, will, on the demand of any party to such dispute, be resolved through binding arbitration in accordance with the procedures set forth in our bylaws.

**Restrictions on Share Ownership and Transfer**

Our charter and bylaws restrict the amount of shares that shareholders may own or transfer under certain circumstances. These restrictions are intended to assist Senior Housing, a publicly owned real estate investment trust, or REIT, with REIT compliance under the Internal Revenue Code of 1986, as amended, or IRC, and otherwise to promote our orderly governance. All certificates representing our common shares and preferred shares will bear a legend referring to these restrictions.

Our charter provides that no person or group of persons acting in concert may own, or be deemed to own by virtue of the attribution provisions of the IRC, more than 9.8% of the number or value, whichever is more restrictive, of any class or series of our outstanding shares of capital stock. Any person who acquires, or attempts or intends to acquire, actual or constructive ownership of shares of our capital stock that will or may violate this 9.8% ownership limitation must give notice to us and provide us with other information that we may request.

The ownership limitations in our charter are effective against all of our shareholders. However, with the written consent of Senior Housing, our board may grant an exemption from the ownership limitation if it is satisfied that: (1) the shareholder's ownership will not cause us or any of our subsidiaries that are tenants of Senior Housing to be deemed a "related party tenant" under the IRC rules applicable to REITs; (2) the shareholder's ownership will not cause a default under any lease we have outstanding; and (3) the shareholder's ownership is otherwise in our best interests as determined by our board in the exercise of its business judgment.

If a person attempts a transfer of our shares in violation of the ownership limitations described above, then that number of shares which would cause the violation will be automatically transferred to a trust for the exclusive benefit of one or more charitable beneficiaries designated by us. The prohibited owner will not acquire any rights in the shares held in trust, will not benefit economically from ownership of the shares held in trust, will have no rights to distributions and will not possess any rights to vote the shares held in trust. This automatic transfer will be deemed to be effective as of the close of business on the business day prior to the date of the violative transfer.

Within 20 days after receiving notice from us that shares have been transferred to the trust, the trustee will sell the shares held in the trust to a person selected by the trustee whose ownership of the shares will not violate the ownership limitations. Upon this sale, the interest of the charitable beneficiary in the shares sold will terminate and the trustee will distribute the net proceeds of the sale to the prohibited owner and to the charitable beneficiary as follows:

The prohibited owner will receive the lesser of:

- the net price paid by the prohibited owner for the shares or, if the prohibited owner did not give value for the shares in connection with the event causing the shares to be held in the trust (e.g., a gift, devise or other similar transaction), the market price of the shares on the day of the event causing the shares to be transferred to the trust; and

the net sales proceeds received by the trustee from the sale or other disposition of the shares held in the trust.

Any net sale proceeds in excess of the amount payable to the prohibited owner shall be paid to the charitable beneficiary.

If, prior to our discovery that shares of our capital stock have been transferred to the trust, a prohibited owner sells those shares, then:

those shares will be deemed to have been sold on behalf of the trust; and

to the extent that the prohibited owner received an amount for those shares that exceeds the amount that the prohibited owner was entitled to receive from a sale by the trustee, the prohibited owner must pay the excess to the trustee upon demand.

Also, shares of capital stock held in the trust will be offered for sale to us, or our designee, at a price per share equal to the lesser of:

the price per share in the transaction that resulted in the transfer to the trust or, in the case of a devise or gift, or other similar transaction, the market price at the time of the devise or gift; and

the market price on the date we or our designee accepts the offer.

We will have the right to accept the offer until the trustee has sold the shares held in the trust. The net proceeds of the sale to us will be distributed in the same manner as any other sale by the trustee.

Every owner of more than 5% of any outstanding class or series of our shares may be required to give written notice to us within 30 days after the end of each taxable year stating the name and address of the owner, the number of shares of each class and series of our shares which the owner owns, and a description of the manner in which those shares are held. In addition, each shareholder is required to provide us upon demand with any additional information that we may request in order to assist us and Senior Housing in its determination of its status as a REIT and to determine and ensure compliance with the foregoing share ownership limitations.

In addition, subject to various exceptions, our bylaws provide that attempted transfers of our shares to a person, entity or group which is, or would become as a result, an owner of 5% or more of our outstanding shares would be void for transferees already owning 5% or more of our shares and, for transferees that would otherwise become owners of 5% or more of our shares, to the extent the transfer would result in such level of ownership. Shares relating to attempted transfers in violation of these bylaw provisions may be subject to transfer to a charitable trust in accordance with the provisions of our charter, described above. However, shareholders owning 5% or more of our outstanding shares as of November 10, 2009, will not be deemed to have their shares owned at and above the 5% ownership threshold transferred to a charitable trust. Such shareholders will not be permitted to acquire additional shares while owning 5% or more of our outstanding shares or thereafter to the extent any such subsequent acquisition would result in them owning 5% or more of our outstanding shares. Our board or an authorized committee may approve transfers otherwise prohibited by these bylaw provisions.

The restrictions in our charter and bylaws will not preclude the settlement of any transaction entered into through the facilities of the NYSE Amex or any other national securities exchange or automated inter-dealer quotation system. Our charter and bylaws provide, however, that the fact that the settlement of any transaction occurs will not negate the effect of any of the restrictions and any transferee in this kind of transaction will be subject to all of the provisions and limitations described above.

These ownership limitations could have the effect of delaying, deferring or preventing a takeover or other transaction in which holders of some, or a majority, of our common shares might receive a

premium for their shares over the then prevailing market price or which such holders might believe to be otherwise in their best interest.

**Regulatory Compliance and Disclosure**

Our bylaws provide that any shareholder who, by virtue of such shareholder's ownership of our shares of capital stock or actions taken by the shareholder affecting us, triggers the application of any requirement or regulation of any federal, state, municipal or other governmental or regulatory body on us or any of our subsidiaries shall promptly take all actions necessary and fully cooperate with us to ensure that such requirements or regulations are satisfied without restricting, imposing additional obligations on or in any way limiting our business, assets, operations or prospects or any of our subsidiaries. If the shareholder fails or is otherwise unable to promptly take such actions so to cause satisfaction of such requirements or regulations, such shareholder shall promptly divest a sufficient number of our shares necessary to cause the application of such requirement or regulation to not apply to us or any of our subsidiaries. If the shareholder fails to cause such satisfaction or divest itself of such sufficient number of our shares by not later than the 10th day after triggering such requirement or regulation referred to in the bylaws, then any of our shares owned by such shareholder at and in excess of the level triggering the application of such requirement or regulation shall, to the fullest extent permitted by law, be deemed to constitute shares held in violation of the ownership limitations set forth in the bylaws. Also, our bylaws provide that if the shareholder who triggers the application of any regulation or requirement fails to satisfy the requirements or regulations or to take curative actions within such 10 day period, we may take all other actions which the board deems appropriate to require compliance or to preserve the value of our assets; and we may charge the offending shareholder for our costs and expenses as well as any damages which may result.

Our bylaws also provide that if a shareholder, by virtue of such shareholder's ownership of our shares or its receipt or exercise of proxies to vote shares owned by other shareholders, would not be permitted to vote such shareholder's shares or proxies for such shares in excess of a certain amount pursuant to applicable law but the board determines that the excess shares or shares represented by the excess proxies are necessary to obtain a quorum, then such shareholder shall not be entitled to vote any such excess shares or proxies, and instead such excess shares or proxies may, to the fullest extent permitted by law, be voted by the board or another person designated by the board, in proportion to the total shares otherwise voted on such matter.

**Business Combinations**

The MGCL contains a provision which limits business combinations with interested shareholders. Under the MGCL, business combinations such as mergers, consolidations, share exchanges and other specified transactions between a Maryland corporation and an interested shareholder or an affiliate of the interested shareholder are prohibited for five years after the most recent date on which the shareholder becomes an interested shareholder. Under the MGCL, the following persons are deemed to be interested shareholders:

any person who beneficially owns 10% or more of the voting power of the corporation's shares of capital stock; or

an affiliate or associate of the corporation who, at any time within the two-year period prior to the date in question, was the beneficial owner of 10% or more of the voting power of the then outstanding voting shares of the corporation.

A person is not an interested shareholder under the statute if the board of directors approved in advance the transaction by which the person otherwise would have become an interested shareholder. The board of directors may provide that its approval is subject to compliance, at or after the time of approval, with any terms and conditions determined by the board of directors.

After the five-year prohibition period has ended, a business combination between a corporation and an interested shareholder or an affiliate of the interested shareholder must be recommended by the board of directors of the corporation and must receive the following shareholder approvals:

- the affirmative vote of at least 80% of the votes entitled to be cast by the corporation's outstanding voting shares; and
- the affirmative vote of at least two-thirds of the votes entitled to be cast by holders of voting shares other than voting shares held by the interested shareholder with whom or with whose affiliate the business combination is to be effected or by an affiliate or associate of the interested shareholder.

The shareholder approvals discussed above are not required if the corporation's shareholders receive the minimum price set forth in the MGCL for their shares of capital stock and the consideration is received in cash or in the same form as previously paid by the interested shareholder for its shares of capital stock.

The foregoing provisions of the MGCL do not apply, however, to business combinations that are approved or exempted by the board of directors of the corporation prior to the time that the interested shareholder becomes an interested shareholder. Our board has adopted a resolution that any business combination between us and any other person is exempted from the provisions of the MGCL described in the preceding paragraph, provided that the business combination is first approved by our board, including the approval of a majority of the members of our board who are not affiliates or associates of such person. This resolution, however, may be altered or repealed in whole or in part at any time.

**Control Share Acquisitions**

The MGCL provides that control shares of a Maryland corporation acquired in a control share acquisition have no voting rights except to the extent that the acquisition is approved by a vote of two-thirds of the votes entitled to be cast on the matter, excluding shares of capital stock owned by the acquiror, by employees who are also directors of the corporation or by officers of the corporation. Control shares are voting shares of capital stock which, if aggregated with all other shares of capital stock owned by the acquiror, or in respect of which the acquiror is able to exercise or direct the exercise of voting power (except solely by virtue of a revocable proxy), would entitle the acquiror to exercise voting power in electing directors within one of the following ranges of voting power:

- one-tenth or more but less than one-third;
- one-third or more but less than a majority; or
- a majority or more of all voting power.

Control shares do not include shares which the acquiring person is entitled to vote as a result of having previously obtained shareholder approval. A control share acquisition means the acquisition of control shares.

A person who has made or proposes to make a control share acquisition, may compel our board to call a special meeting of shareholders to be held within 50 days of demand to consider the voting rights of the shares. The right to compel the calling of a special meeting is subject to the satisfaction of certain conditions, including an undertaking to pay the expenses of the meeting. If no request for a meeting is made, the corporation may itself present the question at a shareholders meeting.

If voting rights are not approved at the meeting or if the acquiring person does not deliver an acquiring person statement as required by the MGCL, then the corporation may redeem for fair value any or all of the control shares, except those for which voting rights have previously been approved. The right of the corporation to redeem control shares is subject to conditions and limitations. Fair value is determined, without regard to the absence of voting rights for the control shares, as of the date

of the last control share acquisition by the acquiror or of any meeting of shareholders at which the voting rights of those shares are considered and not approved. If voting rights for control shares are approved at a shareholders meeting and the acquiror becomes entitled to vote a majority of the shares entitled to vote, all other shareholders may exercise appraisal rights. The fair value of the shares as determined for purposes of appraisal rights may not be less than the highest price per share paid by the acquiror in the control share acquisition.

The control share acquisition statute of the MGCL does not apply to the following:

- shares acquired in a merger, consolidation or share exchange if the corporation is a party to the transaction; or
- acquisitions approved or exempted by a provision in the charter or bylaws of the corporation adopted before the acquisition of shares.

Our bylaws contain a provision exempting any and all acquisitions by any person of our shares of capital stock from the control share acquisition statute. However, this provision may be amended or eliminated at any time in the future.

**Rights Plan**

On March 10, 2004, our board adopted a shareholders' rights plan which provides for the distribution of one junior participating preferred share purchase right for each common share. Each right entitles the holder to purchase 1/1000$^{th}$ of a junior participating preferred share (or in certain circumstances, to receive cash, property, common shares or our other securities) at an exercise price of $25 per 1/1000th of a junior participating preferred share.

The rights are initially attached to all certificates representing common shares. Subject to certain exceptions specified in the plan, the rights will separate from the common shares upon a rights distribution date which is the earlier of (1) 10 business days following a public announcement by us that a person or group of affiliated or associated persons has acquired, or has obtained the right to acquire, beneficial ownership of 10% or more of the outstanding common shares (such person or group of affiliated or associated persons being referred to as an acquiring person) or (2) 10 business days following the commencement of a tender offer or exchange offer that, if consummated, would result in a person or group becoming an acquiring person. In each instance, our board may determine that the distribution date will be a date later than 10 days following the applicable announcement or commencement date.

Until they separate from the common shares, the rights will be evidenced by the certificates for common shares, if any, and will be transferred with and only with such common shares. The surrender for transfer of any certificates for common shares outstanding will also constitute the transfer of the rights associated with the common shares evidenced by such certificates.

The rights are not exercisable until a rights distribution date and will expire at the close of business on April 10, 2014, unless earlier redeemed or exchanged by us as described below. Until a right is exercised, the holder thereof, as such, has no rights as a shareholder of us, including the right to vote or to receive dividends.

Upon the occurrence of a "flip-in event", each holder of a right will have the ability to exercise it and receive common shares (or, in certain circumstances, receive cash, property or other securities) having a value equal to two times the exercise price of the right. Notwithstanding the foregoing, following the occurrence of a "flip-in event", all rights that are or were held by an acquiring person (or by certain related parties of the acquiring person or by certain transferees of the acquiring person or certain related parties) will be void in several circumstances described in the rights agreement. Rights will not be exercisable following the occurrence of any "flip-in event" until the rights are no longer redeemable by us as set forth below. A "flip-in event" occurs when a person or group of affiliated or

associated persons has acquired, or has obtained the right to acquire, beneficial ownership of 10% or more of the outstanding common shares pursuant to any transaction other than a tender or exchange offer for all outstanding common shares on terms which a majority of our outside directors determine to be fair to our shareholders and otherwise in the best interests of us and our shareholders.

A "flip-over event" occurs when, at any time on or after the announcement of a share acquisition which will result in a person or group becoming an acquiring person, we take part in a merger or other business combination transaction (other than certain mergers that follow a fair offer) in which we are not the surviving entity or the common shares are changed or exchanged (with certain exceptions described in the plan) or 50% or more of our assets or earning power is sold or transferred. Upon the occurrence of a "flip-over event" each holder of a right (except rights which previously have been voided, as set forth above) will have the option to exchange their right for a number of common shares of the acquiring company having a value equal to two times the exercise price of the right.

The purchase price and the number of common shares (or the amount of cash, property or other securities) issuable upon exercise of the rights are subject to adjustment from time to time to prevent dilution. With certain exceptions, no adjustment in the purchase price will be required until cumulative adjustments amount to at least 1% of the purchase price. We will make cash payment in lieu of any fractional shares resulting from the exercise of any right.

We have 10 business days from the date of an announcement of a share acquisition which will result in a person or group becoming an acquiring person to redeem the rights in whole, but not in part, at a price of $.01 per right, payable, at our option in cash, common shares or other consideration as our board may determine. Immediately upon the effectiveness of the action of our board ordering redemption of the rights, the rights will terminate and the only right of the holders of rights will be to receive the redemption price.

The provisions of the plan may be amended by our board prior to the rights distribution date. After the distribution date, the provisions of the plan may be amended by our board only in order to:

cure ambiguities, defects or inconsistencies;

make changes which do not adversely affect the interests of holders of rights (excluding the interests of acquiring persons and certain other related parties); or

to shorten or lengthen any time period under the plan.

However, no amendment, other than to cure ambiguities, defects or inconsistencies, is permitted to be made by our board at such time as the rights are not redeemable.

**Charter Amendments and Extraordinary Transactions**

Under the MGCL, a Maryland corporation generally cannot dissolve, amend its charter, merge, sell all or substantially all of its assets, engage in a share exchange or engage in similar transactions outside the ordinary course of business unless the transaction or amendment is declared advisable by the board of directors and then approved by the affirmative vote of stockholders entitled to cast at least two-thirds of the votes entitled to be cast on the matter unless a lesser percentage (but not less than a majority of all of the votes entitled to be cast on the matter) is set forth in the corporation's charter. Our charter provides for approval of such matters when they are first declared advisable by our board and then approved by the affirmative vote of stockholders entitled to cast a majority of the votes entitled to be cast on the matter (or such lesser proportion, as is permitted by the MGCL).

**Bylaw Amendments**

As permitted under the MGCL, our bylaws provide that our board has the exclusive power to amend the bylaws.

**Anti-Takeover Effect of Maryland Law and of our Charter and Bylaws**

The following provisions in our charter and bylaws and in the MGCL could delay or prevent a change in our control:

- the limitation on ownership and acquisition of more than 9.8% of our shares of capital stock in our charter;
- the limitation on ownership and acquisition of more than 5% of our shares of capital stock in our bylaws;
- the power of our board to, without a shareholders' vote, amend our charter to increase or decrease the aggregate number of authorized shares or the number of shares of any class or series and to issue additional shares, including additional classes of shares with rights defined at the time of issuance;
- the classification of our board into classes and the election of each class for three year staggered terms;
- the requirement of cause and a 75% vote of shareholders for removal of our directors;
- the provision that the number of our directors may be fixed only by vote of our board and that a vacancy on our board may be filled by a majority of our remaining directors for the remainder of the full term of the directorship in which the vacancy occurred;
- the advance notice requirements for shareholder nominations for directors and other proposals;
- the shareholder-requested special meeting requirements and procedures;
- the business combination provisions of the MGCL, if the applicable resolution of our board is rescinded or if our board's approval of a combination is not obtained; and
- the provisions of the control share acquisition statute if the applicable bylaw provision is amended.

## SELLING SHAREHOLDERS

There are two categories of selling shareholders who may offer and sell common shares pursuant to this prospectus. The first are our directors and officers. The common shares they may offer and sell were acquired directly from us as share grants pursuant to our stock option and stock incentive plan. The second is Senior Housing, which acquired 3,200,000 common shares on August 4, 2009 pursuant to a lease realignment agreement, or the Realignment Agreement. Senior Housing also owns an additional 35,000 common shares, 25,000 of which were retained in connection with our spin off from Senior Housing in 2001 and 10,000 of which were received in the spin off. The Realignment Agreement was entered into to assist Senior Housing in obtaining mortgage financing, or the Loan, from Federal National Mortgage Association, or FNMA, which is secured by 28 properties owned by Senior Housing and leased to us, or the Properties. In connection with the lease realignment and the FNMA financing, we reached an accommodation with Senior Housing whereby we sold certain of our personal property at the Properties, we encumbered certain of our assets (e.g. accounts receivable) arising from our operation of the Properties, we sold 3,200,000 of our common shares and we agreed to certain reporting and other obligations required by FNMA and we were compensated by Senior Housing by receiving a $2.0 million annual rent reduction for the term of one of our leases with Senior Housing, a cash payment of $18.6 million and Senior Housing agreed to reimburse us for out of pocket expenses incurred in connection with the negotiation and closing of the Loan. For more information about the Realignment Agreement, please see Part II, Item 5 of our Quarterly Report on Form 10-Q for the quarter ended June 30, 2009, which is incorporated by reference herein. The common shares offered hereunder by Senior Housing and the other selling shareholders were issued pursuant to an exemption from registration contained in Section 4(2) of the Securities Act.

Senior Housing is our former parent company and we have numerous continuing relationships with Senior Housing. We lease senior living communities and rehabilitation hospitals from Senior Housing and pay both minimum rent and percentage rent. Upon our request, Senior Housing may purchase our capital improvements made at the properties we lease from Senior Housing and increase our rent pursuant to contractual formulas. Since we became a separate public company from Senior Housing, we have had a management and shared services agreement with RMR. We also lease our headquarters locations from affiliated entities of RMR. RMR is owned by Barry Portnoy, one of our managing directors, and his son Adam Portnoy. Our other managing director, Gerard Martin, is a former owner and current director of RMR. Our president and our treasurer are also officers of RMR. RMR provides services to other companies, including Senior Housing. For more details of these and other relationships we have with Senior Housing and RMR please see our Annual Report on Form 10-K for the year ended December 31, 2008, which is incorporated by reference herein, our Quarterly Reports on Form 10-Q for the quarters ended March 31, 2009, June 30, 2009, and September 30, 2009, which are incorporated by reference herein, and our Proxy Statement dated March 30, 2009 relating to our 2009 Annual Shareholders Meeting, portions of which are incorporated herein. In addition, our directors and officers receive share grants from us, and our officers are employed by us. For more information about the compensation of our directors and officers, please see our Proxy Statement dated March 30, 2009 relating to our 2009 Annual Shareholders Meeting, portions of which are incorporated by reference herein.

The registration of the common shares pursuant to the registration statement of which this prospectus forms a part does not necessarily mean that the selling shareholders will sell all or any of the common shares they own. From time to time, depending upon the selling shareholders' continuing review of their respective investments and various other facts, the selling shareholders may, subject to any applicable securities laws, sell all or any part of the common shares offered by this prospectus. More information about the possible distribution of the offered shares is given in "Plan of Distribution" below.

The following table contains, with regard to Senior Housing, the number of our common shares beneficially owned by Senior Housing immediately prior to the date of this prospectus, the maximum number of common shares that may be offered and sold pursuant to this prospectus and information regarding the beneficial ownership of our common shares by Senior Housing, and reflects the assumed sale of all of the shares offered by this prospectus. None of our directors or officers currently beneficially owns more than 1% of our common shares, provided, however, that Barry Portnoy may be deemed to beneficially own the shares owned by Senior Housing, as described in footnote (1) below. Because the selling shareholders may sell all, some or no common shares they beneficially owns, we cannot estimate either the number or percentage of common shares that will be beneficially owned by any of the selling shareholders after completion of the offering to which this prospectus relates. The following table has been prepared assuming that Senior Housing will sell all of our common shares it beneficially owns that have been registered by us and does not acquire any additional common shares. In addition, the selling shareholders may sell, transfer or otherwise dispose of at any time and from time to time, our common shares in transactions exempt from the registration requirements of the Securities Act after the date on which it provided the information set forth in the table below. Under the provisions in our bylaws described above regarding restrictions on share ownership and transfer,

Senior Housing may be prohibited from acquiring or transferring additional common shares while owning 5% or more of our outstanding common shares.

| Name | Number of Common Shares Beneficially Owned Prior to the Offering | Number of Common Shares Being Offered Hereby | Percentage of Common Shares Outstanding | Number of Common Shares to be Owned After Completion of the Offering |
|---|---|---|---|---|
| Senior Housing Properties Trust(1)<br>400 Centre St.<br>Newton, MA 02458 | 3,235,000 | 3,235,000 | 9.1% | (2) |

(1) Barry Portnoy and Adam Portnoy are the beneficial owners and officers of RMR, the manager of Senior Housing. They are also Managing Trustees of Senior Housing. Under applicable regulatory definitions, Barry Portnoy and Adam Portnoy may be deemed to have beneficial ownership of Senior Housing's 3,235,000 common shares; however, each disclaims beneficial ownership of such common shares.

(2) Assumes the sale of all shares registered for the account of the selling shareholder. The selling shareholder may sell all, some or no portion of the common shares registered hereunder.

## PLAN OF DISTRIBUTION

**Sales by Us**

We may sell the offered securities (a) through underwriters or dealers, (b) directly to purchasers, including our affiliates, (c) through agents or (d) through a combination of any of these methods. The prospectus supplement will include the following information:

- the terms of the offering;
- the names of any underwriters or agents;
- the name or names of any managing underwriter or underwriters;
- the purchase price of the securities;
- the net proceeds from the sale of the securities;
- any delayed delivery arrangements;
- any underwriting discounts, commissions and other items constituting underwriters' compensation;

any initial public offering price;

any discounts or concessions allowed or reallowed or paid to dealers; and

any commissions paid to agents.

The distribution of offered securities may be effected from time to time in one or more transactions at a fixed price or prices, which may be changed, at market prices prevailing at the time of sale, at prices related to the market prices, or at negotiated prices.

In compliance with Financial Regulatory Authority, or FINRA, guidelines, the maximum commission or discount to be received by any FINRA member or independent broker dealer may not exceed 8% of the aggregate amount of the securities offered pursuant to this prospectus or any applicable prospectus supplement.

If underwriters are used in the sale, the underwriters will acquire the securities for their own account. The underwriters may resell the securities from time to time in one or more transactions, including negotiated transactions, at a fixed public offering price or at varying prices determined at the

time of sale. Underwriters may offer securities to the public either through underwriting syndicates represented by one or more managing underwriters or directly by one or more firms acting as underwriters. Unless we inform you otherwise in the prospectus supplement, the obligations of the underwriters to purchase the securities will be subject to certain conditions, and the underwriters will be obligated to purchase all the offered securities if they purchase any of them. The underwriters may change from time to time any initial public offering price and any discounts or concessions allowed or reallowed or paid to dealers.

In order to facilitate the offering of securities, the underwriters may engage in transactions that stabilize, maintain or otherwise affect the price of the securities. Specifically, the underwriters may over-allot in connection with the offering, creating a short position in the securities for their account. In addition, to cover over-allotments or to stabilize the price of the shares, the underwriters may bid for, and purchase, shares in the open market. Finally, an underwriting syndicate may reclaim selling concessions allowed to an underwriter or a dealer for distributing the securities in the offering if the syndicate repurchases previously distributed shares in transactions to cover syndicate short positions, in stabilization transactions, or otherwise. Any of these activities may stabilize or maintain the market price of the offered securities above independent market levels. The underwriters are not required to engage in these activities, and may end any of these activities at any time.

Some or all of the securities that we offer through this prospectus may be new issues of securities with no established trading market. Any underwriters to whom we sell securities for public offering and sale may make a market in those securities, but they will not be obligated to and they may discontinue any market making at any time without notice. Accordingly, we cannot assure you of the liquidity of, or continued trading markets for, any securities offered pursuant to this prospectus.

If dealers are used in the sale of securities, we will sell the securities to them as principals. They may then resell those securities to the public at varying prices determined by the dealers at the time of resale. We will include in the prospectus supplement the names of the dealers and the terms of the transaction.

We may sell the securities directly. In this case, no underwriters or agents would be involved. We may also sell the securities through agents designated from time to time. In the prospectus supplement, we will name any agent involved in the offer or sale of the offered securities, and we will describe any commissions payable to the agent. Unless we inform you otherwise in the prospectus supplement, any agent will agree to use its reasonable best efforts to solicit purchases for the period of its appointment.

We may sell the securities directly to institutional investors or others who may be deemed to be underwriters within the meaning of the Securities Act with respect to any sale of those securities. We will describe the terms of any such sales in the prospectus supplement.

If, we so indicate in the prospectus supplement, we may authorize agents, underwriters or dealers to solicit offers from certain types of institutions to purchase securities at the public offering price under delayed delivery contracts. These contracts would provide for payment and delivery on a specified date in the future. The contracts would be subject only to those conditions described in the prospectus supplement. The prospectus supplement will describe the commission payable for solicitation of those contracts.

We may have agreements with the agents, dealers and underwriters to indemnify them against specified liabilities, including liabilities under the federal securities laws or to contribute to the payments that the agents, dealers or underwriters may be required to make in respect of those liabilities. Indemnification may include each person who is an affiliate of or controls one of these specified indemnified persons within the meaning of the federal securities laws or is required to contribute to payments that the agents, dealers or underwriters may be required to make in respect of those liabilities. Agents, dealers and underwriters may be customers of, engage in transactions with or perform services for us in the ordinary course of their businesses.

Each underwriter, dealer and agent participating in the distribution of any of the securities that are issuable in bearer form will agree that it will not offer, sell or deliver, directly or indirectly, securities in bearer form in the United States or to United States persons, other than qualifying financial institutions, during the restricted period, as defined in United States Treasury Regulations Section 1.163-5(c)(2)(i)(D)(7).

**Sales by Selling Shareholders**

The selling shareholders may resell or redistribute the common shares from time to time on the NYSE Amex or any other stock exchange or automated interdealer quotation system on which our common shares are listed, in the over-the-counter market, in privately negotiated transactions, or in any other legal manner, at fixed prices that may be changed, at market prices prevailing at the time of sale, at prices related to prevailing market prices or at negotiated prices. Persons who are pledgees, donees, transferees, or other successors in interest of any of the selling shareholders (including but not limited to persons who receive common shares from a selling shareholder as a gift or other non-sale-related transfer after the date of this prospectus) may also use this prospectus and are included when we refer to "selling shareholders" in this prospectus. The selling shareholders may sell the common shares by one or more of the following methods, without limitation:

block trades (which may include cross trades) in which the broker or dealer so engaged will attempt to sell the common shares as agent but may position and resell a portion of the block as principal to facilitate the transaction;

purchases by a broker or dealer as principal and resale by the broker or dealer for its own account;

an exchange distribution or secondary distribution in accordance with the rules of any stock exchange on which the common shares may be listed;

ordinary brokerage transactions and transactions in which the broker solicits purchases;

an offering at other than a fixed price on or through the facilities of any stock exchange on which the common shares are listed or to or through a market maker other than on that stock exchange;

privately negotiated transactions, directly or through agents;

short sales;

through the writing of options on the common shares, whether or not the options are listed on an options exchange;

through the distribution of the common shares by any shareholders to its shareholders;

one or more underwritten offerings;

agreements between a broker or dealer and any shareholder to sell a specified number of the common shares at a stipulated price per share; and

any combination of any of these methods of sale or distribution, or any other method permitted by applicable law.

The selling shareholders may also transfer the common shares by gift.

The selling shareholders may engage brokers and dealers, and any brokers or dealers may arrange for other brokers or dealers to participate in effecting sales of the common shares. These brokers, dealers or underwriters may act as principals, or as an agent of a selling shareholder. Broker-dealers may agree with a selling shareholder to sell a specified number of the common shares at a stipulated price per share. If the

broker-dealer is unable to sell common shares acting as agent for a selling shareholder, it may purchase as principal any unsold common shares at the stipulated price. Broker-

dealers who acquire common shares as principals may thereafter resell the common shares from time to time in transactions in any stock exchange or automated interdealer quotation system on which the common shares are then listed, at prices and on terms then prevailing at the time of sale, at prices related to the then-current market price or in negotiated transactions. Broker-dealers may use block transactions and sales to and through broker-dealers, including transactions of the nature described above.

From time to time, one or more of the selling shareholders may pledge, hypothecate or grant a security interest in some or all of the common shares owned by them. The pledgees, secured parties or persons to whom the common shares have been hypothecated will, upon foreclosure in the event of default, be deemed to be selling shareholders. The number of a selling shareholder's common shares offered under this prospectus will decrease as and when it takes such actions. The plan of distribution for that selling shareholder's common shares will otherwise remain unchanged. In addition, a selling shareholder may, from time to time, sell the common shares short, and, in those instances, this prospectus may be delivered in connection with the short sales and the common shares offered under this prospectus may be used to cover short sales.

The selling shareholders and any underwriters, brokers, dealers or agents that participate in the distribution of the common shares may be deemed to be "underwriters" within the meaning of the Securities Act, and any discounts, concessions, commissions or fees received by them and any profit on the resale of the common shares sold by them may be deemed to be underwriting discounts and commissions.

A selling shareholder may enter into hedging transactions with broker-dealers, and the broker-dealers may engage in short sales of the common shares in the course of hedging the positions they assume with that selling shareholder, including, without limitation, in connection with distributions of the common shares by those broker-dealers. A selling shareholder may enter into option or other transactions with broker-dealers that involve the delivery of the common shares offered hereby to the broker-dealers, who may then resell or otherwise transfer those common shares. A selling shareholder may also loan or pledge the common shares offered hereby to a broker-dealer and the broker-dealer may sell the common shares offered hereby so loaned or upon a default may sell or otherwise transfer the pledged common shares offered hereby.

The selling shareholders and other persons participating in the sale or distribution of the common shares will be subject to applicable provisions of the Exchange Act and the related rules and regulations adopted by the SEC, including Regulation M. This regulation may limit the timing of purchases and sales of any of the common shares by the selling shareholders and any other person. The anti-manipulation rules under the Exchange Act may apply to sales of common shares in the market and to the activities of the selling shareholders and their affiliates. Furthermore, Regulation M may restrict the ability of any person engaged in the distribution of the common shares to engage in market-making activities with respect to the particular common shares being distributed for a period of up to five business days before the distribution. These restrictions may affect the marketability of the common shares and the ability of any person or entity to engage in market-making activities with respect to the common shares.

We may agree to indemnify the selling shareholders and their respective officers, directors, employees and agents, and any underwriter or other person who participates in the offering of the common shares, against specified liabilities, including liabilities under the federal securities laws or to contribute to payments the underwriters may be required to make in respect of those liabilities. The selling shareholders may agree to indemnify us, the other selling shareholders and any underwriter or other person who participates in the offering of the common shares, against specified liabilities arising from information provided by the selling shareholders for use in this prospectus or any accompanying prospectus supplement, including liabilities under the federal securities laws. In each case, indemnification may include each person who is an affiliate of or controls one of these specified

indemnified persons within the meaning of the federal securities laws or is required to contribute to payments the underwriters may be required to make in respect of those liabilities. The selling shareholders may agree to indemnify any brokers, dealers or agents who participate in transactions involving sales of the common shares against specified liabilities arising under the federal securities laws in connection with the offering and sale of the common shares.

We will not receive any proceeds from sales of any common shares by the selling shareholders.

We cannot assure you that the selling shareholders will sell all or any portion of the common shares offered hereby.

To the extent required by Rule 424 under the Securities Act in connection with any resale or redistribution by a selling shareholder, we will file a prospectus supplement setting forth:

- the aggregate number of common shares to be sold;
- the purchase price;
- the public offering price;
- if applicable, the names of any underwriter, agent or broker-dealer; and
- any applicable commissions, discounts, concessions, fees or other items constituting compensation to underwriters, agents or broker-dealers with respect to the particular transaction (which may exceed customary commissions or compensation).

If a selling shareholder notifies us that a material arrangement has been entered into with a broker-dealer for the sale of common shares through a block trade, special offering, exchange, distribution or secondary distribution or a purchase by a broker or dealer, the prospectus supplement will include any other facts that are material to the transaction. If applicable, this may include a statement to the effect that the participating broker-dealers did not conduct any investigation to verify the information set out or incorporated by reference in this prospectus.

## VALIDITY OF THE OFFERED SECURITIES

Sullivan & Worcester LLP, as to certain matters of New York law, and Venable LLP, as to certain matters of Maryland law, will pass upon the validity of the offered securities for us. Sullivan & Worcester LLP and Venable LLP represent Senior Housing and certain of its affiliates on various matters. Sullivan & Worcester LLP also represents RMR and certain of its affiliates on various matters.

## EXPERTS

Ernst & Young LLP, independent registered public accounting firm, has audited our consolidated financial statements included in our Annual Report on Form 10-K for the year ended December 31, 2008, and the effectiveness of our internal control over financial reporting as of December 31, 2008, as set forth in their reports, which are incorporated by reference in this prospectus and elsewhere in the registration statement. Our financial statements are incorporated by reference in reliance on Ernst & Young LLP's reports, given on their authority as experts in accounting and auditing.

## WHERE YOU CAN FIND MORE INFORMATION

We file annual, quarterly and current reports, proxy statements and other information with the SEC. You may read and copy any reports, statements or other information on file at the SEC's public reference room at 100 F Street, N.E., Washington, D.C. 20549. You can request copies of those documents upon payment of a duplicating fee to the SEC. This prospectus is part of a registration statement and does not contain all of the information set forth in the registration statement. You may call the SEC at 1-800-SEC-0330 for further information on the operation

of the public reference rooms. You can review our SEC filings and the registration statement by accessing the SEC's Internet

site at *www.sec.gov* or by accessing our internet site at *www.fivestarseniorliving.com/investor-relations.asp*. Website addresses are included in this prospectus as textual references only and the information in such websites is not incorporated by reference into this prospectus or related registration statement.

Our common shares are traded on the NYSE Amex under the symbol "FVE," and you can review similar information concerning us at the office of the NYSE Amex at 11 Wall Street, New York, New York, 10005.

## DOCUMENTS INCORPORATED BY REFERENCE

The SEC allows us to "incorporate by reference" the information we file with them, which means that we can disclose important information to you by referring you to those documents. The information incorporated by reference is considered to be part of this prospectus. Statements in this prospectus regarding the contents of any contract or other document may not be complete. You should refer to the copy of the contract or other document filed as an exhibit to the registration statement. Later information filed with the SEC will update and supersede information we have included or incorporated by reference in this prospectus.

We incorporate by reference the documents listed below and any filings made after the date of the initial filing of the registration statement, including filings made prior to the effectiveness of the registration statement, of which this prospectus is a part, made with the SEC under Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act, until the offering of the securities made by this prospectus is completed or terminated:

- our Annual Report on Form 10-K for the fiscal year ended December 31, 2008 (filed on March 2, 2009);
- our Quarterly Reports on Form 10-Q for the quarters ended March 31, 2009 (filed on May 6, 2009), June 30, 2009 (filed on August 10, 2009) and September 30, 2009 (filed on November 4, 2009);
- our Current Reports on Form 8-K filed on May 15, 2009 and November 12, 2009;
- the information identified as incorporated by reference under Items 10, 11, 12, 13 and 14 of Part III of our Annual Report on Form 10-K for the fiscal year ended December 31, 2008 from our definitive Proxy Statement for our 2009 Annual Meeting of Shareholders filed on March 30, 2009;
- the description of our common shares contained in our registration statement on Form 8-A filed on December 7, 2001, including any amendments or reports filed for the purpose of updating that description (File No. 001-16817); and
- the description of our junior participating preferred stock rights contained in our registration statement on Form 8-A filed on March 19, 2004, including any amendments or reports filed for the purpose of updating that description (File No. 001-16817).

We will provide you with a copy of the information we have incorporated by reference, excluding exhibits other than those which we specifically incorporate by reference in this prospectus. You may obtain this information at no cost by writing or telephoning us at: 400 Centre Street, Newton, Massachusetts, 02458, (617) 796-8387, Attention: Investor Relations.

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**10,000,000 Shares**

**Common Stock**

**Prospectus Supplement**

*Joint Book-Running Managers*

**Jefferies**

**Citi**

**UBS Investment Bank**

The date of this prospectus supplement is June , 2011.