

NATIONWIDE HEALTH PROPERTIES INC

Form 424B3

May 26, 2009

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Filed Pursuant to Rule 424(b)(3)

Registration File No. 333-142643

CALCULATION OF REGISTRATION FEE

Title of Each Class of Securities to be Registered	Amount to be Registered (1)	Proposed	Proposed	Amount of Registration Fee (3)
		Maximum Offering Price Per Unit (2)	Maximum Aggregate Offering Price (2)	
Common Stock, par value \$0.10 per share	400,000	\$25.26	\$10,104,000	\$564

- (1) This prospectus supplement registers up to 400,000 shares of common stock of Nationwide Health Properties, Inc. that may be issued in exchange for up to 230,953 Class A Partnership Units of NHP/PMB L.P. issued on May 29, 2008, which may be tendered for redemption in accordance with the agreement of limited partnership of NHP/PMB L.P. This prospectus supplement also relates to such additional shares of common stock as may be issuable in exchange for such Class A Partnership Units as a result of adjustment provisions included in such agreement that may result in additional shares being issuable upon the occurrence of certain events, including a stock dividend or split.
- (2) Estimated solely for the purpose of computing the amount of the registration fee pursuant to Rule 457(c) under the Securities Act of 1933, as amended, based on the average of the high and low prices on May 21, 2009.
- (3) In accordance with Rule 457(p), a portion of the unutilized registration fee in the amount of \$20,834 that was previously paid with respect to \$403,788,913 of securities that were previously registered pursuant to Registration Statement No. 333-127366, filed by the registrant on August 9, 2005, is applied to the filing fee payable pursuant to this prospectus supplement.

Prospectus supplement*To prospectus dated May 4, 2007***NATIONWIDE HEALTH PROPERTIES, INC.*****400,000 Shares of Common Stock***

This prospectus supplement relates to our possible issuance of up to 400,000 shares of our common stock in exchange for up to 230,953 Class A Partnership Units, or Class A Units, of NHP/PMB L.P. issued on May 29, 2008, if and to the extent that the holders of such Class A Units tender them for redemption and we elect to issue shares of our common stock in exchange therefor, all in accordance with the terms of the agreement of limited partnership of NHP/PMB L.P. We are registering shares of our common stock in accordance with the terms of an agreement with such holders. This prospectus supplement does not necessarily mean that any of the holders of Class A Units will redeem their units, or that upon any such redemption we will elect to exchange some or all of the Class A Units for shares of our common stock rather than cash. We will not receive

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any proceeds from any issuance of the shares of our common stock covered by this prospectus supplement.

Our common stock currently trades on the New York Stock Exchange, or NYSE, under the symbol NHP. On May 21, 2009, the last reported sales price of our common stock on the NYSE was \$25.46 per share.

Investing in our common stock involves risks. Before you invest in our common stock, you should consider the risks described in Risk Factors beginning on page S-1.

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

The date of this prospectus supplement is May 22, 2009.

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Unless otherwise stated or the context otherwise requires, all references in this prospectus supplement to we, us, our and the Company refer to Nationwide Health Properties, Inc., including our consolidated subsidiaries.

This document is in two parts. The first part is this prospectus supplement, which describes the specific terms of this offering and also adds to and updates information contained in the accompanying prospectus and the documents incorporated by reference into the prospectus. The second part is the accompanying prospectus, which gives more general information about us and the securities we may offer, some of which may not apply to this offering. To the extent the information contained in this prospectus supplement differs or varies from the information contained in the accompanying prospectus or any document incorporated by reference herein or therein, the information in this prospectus supplement

shall control.

You should rely only on the information contained in or incorporated by reference in this prospectus supplement and the accompanying prospectus. We have not authorized anyone to provide you with any other information. If anyone provides you with different or inconsistent information, you should not rely on it. 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 and incorporated herein by reference, is accurate only as of their respective dates or on other dates which are specified in those documents, regardless of the time of delivery of this prospectus or of any sale of the common stock. Our business, financial condition, results of operations and prospects may have changed since those dates.

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RISK FACTORS

Generally speaking, the risks facing the company fall into three categories: risks associated with the operations of our tenants, risks related to our operations and risks related to our taxation as a real estate investment trust (REIT). In addition to other information contained in this prospectus, you should carefully consider the risks incorporated by reference in our most recent Annual Report on Form 10-K and subsequent Quarterly Reports on Form 10-Q in evaluating our company, our properties and our business before investing in our common stock. These risks and uncertainties are not the only ones facing us and there may be additional matters that we are unaware of or that we currently consider immaterial. All of these could adversely affect our business, financial condition, results of operations and cash flows and, thus, the value of an investment in shares of our common stock.

FORWARD-LOOKING STATEMENTS

Certain information contained or incorporated by reference in this prospectus supplement include or will include statements that may be deemed to be forward-looking statements, within the meaning of the Private Securities Litigation Reform Act of 1995. Forward-looking statements include statements regarding our expectations, beliefs, intentions, plans, objectives, goals, strategies, future events or performance and underlying assumptions and other statements which are not statements of historical facts. These statements may be identified, without limitation, by the use of forward-looking terminology such as may, will, anticipates, expects, believes, intends, should or comparable terms or the thereof. All forward-looking statements included or incorporated by reference in this prospectus supplement are based on information available to us on the date of such statements. These statements speak only as of such date and we assume no obligation to update such forward-looking statements. These statements involve risks and uncertainties that could cause actual results to differ materially from those described in the statements. Risks and uncertainties associated with our business include (without limitation) the following:

deterioration in the operating results or financial condition, including bankruptcies, of our tenants;

non-payment or late payment of rent by our tenants;

our reliance on two tenants for a significant percentage of our revenue;

occupancy levels at certain facilities;

our level of indebtedness;

changes in the ratings of our debt securities;

maintaining compliance with our debt covenants;

access to the capital markets and the cost and availability of capital;

government regulations, including changes in the reimbursement levels under the Medicare and Medicaid programs;

the general distress of the healthcare industry, which could impact the ability of our tenants to pay rent;

increasing competition in our business sector;

the effect of economic and market conditions and changes in interest rates;

the amount and yield of any additional investments;

risks associated with acquisitions, including our ability to identify and complete favorable transactions, delays or failures in obtaining third party consents or approvals, the failure to achieve perceived benefits, unexpected costs or liabilities and potential litigation;

the ability of our tenants to repay straight-line rent or loans in future periods;

the ability of our tenants to obtain and maintain adequate liability and other insurance;

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our ability to attract new tenants for certain facilities;

our ability to sell certain facilities for their book value;

our ability to retain key personnel;

potential liability under environmental laws;

the possibility that we could be required to repurchase some of our senior notes;

the rights and influence of holders of our outstanding preferred stock;

changes in or inadvertent violations of tax laws and regulations and other factors that can affect our status as a REIT; and

the risk factors set forth under the caption **Risk Factors** and other factors discussed from time to time in our news releases, public statements and/or filings with the SEC.

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THE COMPANY

We are a Maryland corporation that invests primarily in healthcare related senior housing, long-term care properties and medical office buildings. We qualify and operate as a REIT under the Internal Revenue Code of 1986, as amended (the Code).

We primarily make our investments by acquiring an ownership interest in senior housing and long-term care facilities and leasing them to unaffiliated tenants under triple-net master leases that transfer the obligation for all facility operating costs (including maintenance, repairs, taxes, insurance and capital expenditures) to the tenant. We also invest in medical office buildings which are not generally subject to triple-net leases and generally have several tenants under separate leases in each building, thus requiring active management and responsibility for many of the associated operating expenses (although many of these are, or can effectively be, passed through to the tenants). Some of the medical office buildings are subject to triple-net leases. In addition, but to a much lesser extent because we view the risks of this activity to be greater due to less favorable bankruptcy treatment and other factors, from time to time, we extend mortgage loans and other financing to operators. For the three months ended March 31, 2009, approximately 93% of our revenues were derived from leases, with the remaining 7% from mortgage loans, other financing activities and other miscellaneous income.

As of March 31, 2009, we had investments in 579 healthcare facilities and one land parcel located in 43 states. Additionally, as of December 31, 2008, our directly owned facilities, other than our multi-tenant medical office buildings, most of which are operated by our consolidated joint ventures, were operated by 84 different healthcare providers.

Our leases have fixed initial rent amounts and generally contain annual escalators. Many of our leases contain non-contingent rent escalators for which we recognize income on a straight-line basis over the lease term. Certain leases contain escalators contingent on revenues or other factors, including increases based on changes in the Consumer Price Index. Such revenue increases are recognized over the lease term as the related contingencies occur. We assess the collectibility of our rent receivables and we reserve against the receivable balances for any amounts that we estimate may not be recovered.

Our triple-net leased facilities are generally leased under triple-net leases that transfer the obligation for all facility operating costs (including maintenance, repairs, taxes, insurance and capital expenditures) to the tenant. At March 31, 2009, approximately 84% of these facilities were leased under master leases. In addition, the majority of these leases contain cross-collateralization and cross-default provisions tied to other leases with the same tenant, as well as grouped lease renewals and grouped purchase options. At March 31, 2009, leases covering 463 facilities were backed by security deposits consisting of irrevocable letters of credit or cash totaling \$71.8 million. Also at March 31, 2009, leases covering 336 facilities contained provisions for property tax impounds, and leases covering 207 facilities contained provisions for capital expenditure impounds. Our multi-tenant facilities generally have several tenants under separate leases in each building, thus requiring active management and responsibility for many of the associated operating expenses (although many of these are, or can effectively be, passed through to the tenants). Some of the medical office buildings are subject to triple-net leases, where the lessees are responsible for the associated operating expenses. No individual property owned by us is material to us as a whole.

We have elected to be taxed as a REIT under the Code. To continue to qualify as a REIT, we must continue to meet certain tests which, among other things, generally require that our assets consist primarily of real estate assets, our income be derived primarily from real estate assets, and that we distribute at least 90% of our REIT taxable income (computed without regard to the dividends paid deduction and our net capital gain) to our stockholders annually. As a qualified REIT, we generally will not be subject to U.S. federal income taxes at the corporate level on our net income to the extent we distribute such net income to our stockholders annually.

Our principal executive offices are located at 610 Newport Center Drive, Suite 1150, Newport Beach, California 92660 and our telephone number is (949) 718-4400.

USE OF PROCEEDS

We will not receive any cash proceeds from the issuance of shares of our common stock in exchange for Class A Units tendered for redemption, or upon the subsequent sale of such shares by the recipients thereof. The exchange of our shares for partnership units will increase our equity ownership in NHP/PMB L.P.

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REDEMPTION OF CLASS A UNITS IN EXCHANGE FOR COMMON STOCK

Terms of the Exchange

Under the agreement of limited partnership of NHP/PMB L.P., commencing on the first anniversary of the issuance of any Class A Units, the holder of those Class A Units has the right to require the partnership to redeem any or all of his or her Class A Units for cash, payable within ten business days following written notice to the general partner of the exercise of the redemption right. At the election of and in the sole and absolute discretion of the general partner of the partnership, the general partner may elect to assume the partnership's obligation with respect to the redemption and satisfy the redemption by paying the redemption price either in cash or by delivering a number of shares of our common stock, or any combination of the foregoing, payable within ten business days following written notice to the general partner of the exercise of the redemption right. Any shares of our common stock that we issue will be duly authorized, validly issued, fully paid and nonassessable shares, free of any pledge, lien, encumbrance or restriction other than those provided in our charter. The terms of redemption are described in more detail herein under Description of Class A Units Redemption Rights. For a discussion of certain U.S. federal income tax consequences of a redemption of Class A Units in exchange for common stock, see United States Federal Income Tax Consequences.

Each holder of Class A Units tendered for redemption will continue to own all Class A Units subject to redemption, and be treated as a limited partner or assignee, as the case may be, with respect to all such Class A Units, until the earlier of (1) the date such holder receives shares of our common stock in exchange for such Class A Units and (2) ten business days following written notice to the general partner of the exercise of the redemption right. Until a holder of Class A Units receives shares of our common stock in exchange for his or her Class A Units, the holder will have no rights as one of our stockholders with respect to the shares issuable under this prospectus supplement.

Conditions to the Exchange

To effect a redemption, a holder of Class A Units must give the general partner written notice of redemption, along with (i) such information or certification as the general partner may reasonably require in connection with the ownership limit and other restrictions in our charter that may apply to such holder's acquisition of common stock and (ii) such written representations, legal opinions, investment letters, or other similar instruments reasonably necessary, in the general partner's opinion, to effect compliance with the Securities Act of 1933, as amended. A redemption may be effected only if each of the following conditions is satisfied or waived:

the exchange is for at least 500 Class A Units or, if less than 500 Class A Units, all of the Class A Units held by the person effecting such redemption;

the person effecting such redemption has not effected any previous redemptions in the same fiscal quarter; and

the expiration or termination of any applicable waiting period under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended.

We will not issue shares of our common stock in exchange for Class A Units if the exchange would cause the person effecting such redemption or any other person to violate the ownership limit set forth in our charter or any other provision of our charter.

Registration Agreement

We are registering shares of our common stock in accordance with the terms of an agreement with the holders of Class A Units. This registration does not necessarily mean that any of the holders of Class A Units will redeem their units, or that upon any such redemption we will elect to exchange some or all of the Class A Units for shares of our common stock rather than cash. We will not receive any proceeds from any issuance of the shares of our common stock covered by this prospectus supplement.

We have agreed to pay the following expenses of the registration of such shares:

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all registration, filing and listing fees;

fees and disbursements of counsel and independent public accountants;

fees and expenses for complying with federal and state securities or real estate syndication laws;

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fees and expenses associated with any Financial Industry Regulatory Authority filing required to be made in connection with this registration statement;

fees and expenses of other persons reasonably necessary in connection with the registration, including any experts, retained by the company custodians, transfer agent and registrar; and

printing expenses, messenger, telephone, shipping and delivery expenses.

We have no obligation to pay any out-of-pocket expenses of the holders of Class A Units, transfer taxes, underwriting or brokerage commissions or discounts associated with the exchange of partnership units for our common stock.

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DESCRIPTION OF COMMON STOCK

This prospectus supplement describes the general terms of our capital stock. For a more detailed description of these securities, you should read the applicable provisions of the Maryland General Corporation Law, or MGCL, and our charter and bylaws, as amended and supplemented from time to time. Copies of our existing bylaws and charter documents are filed with the Securities and Exchange Commission and are incorporated by reference as exhibits to the registration statement to which this prospectus supplement and the accompanying prospectus relate. See [Where You Can Find More Information](#) and [Incorporation of Certain Documents by Reference](#).

General

Our authorized capital stock consists of 200,000,000 shares of common stock, \$0.10 par value per share, and 5,000,000 shares of preferred stock, \$1.00 par value per share. At May 22, 2009, there were 102,943,014 shares of our common stock outstanding.

All shares of common stock:

participate equally in dividends payable to holders of common stock when and as declared by our board of directors and in net assets available for distribution to holders of common stock on liquidation or dissolution;

have one vote per share on all matters submitted to a vote of the stockholders; and

do not have cumulative voting rights in the election of directors.

Holders of our common stock do not have preference, conversion, exchange or preemptive rights. Our common stock is listed on the New York Stock Exchange under the symbol [NHP](#).

Transfer Agent and Registrar

BNY Mellon Shareowner Services is the transfer agent and registrar for the common stock.

Redemption Rights

If our board of directors is, at any time and in good faith, of the opinion that direct or indirect ownership of at least 9.9% or more of the voting shares of stock has or may become concentrated in the hands of one beneficial owner, our board of directors has the power:

by lot or other means deemed equitable by it to call for the purchase from any stockholder a number of voting shares sufficient, in the opinion of our board of directors, to maintain or bring the direct or indirect ownership of voting shares of stock of the beneficial owner to a level of no more than 9.9% of the outstanding voting shares of our stock; and

to refuse to transfer or issue voting shares of stock to any person or entity whose acquisition of those voting shares would, in the opinion of our board of directors, result in the direct or indirect ownership by that person or entity of more than 9.9% of the outstanding voting shares of our stock.

The purchase price for any voting shares of stock so purchased shall be equal to the fair market value of the shares reflected in the closing sales price for the shares, if then listed on a national securities exchange, or the average of the closing sales prices for the shares if then listed on more than one national securities exchange, or if the shares are not then listed on a national securities exchange, the latest bid quotation for the shares if then traded over-the-counter, on the last business day immediately preceding the day on which notices of the acquisitions are sent, or, if none of these closing sales prices or quotations are available, then the purchase price will be equal to the net asset value of the stock as determined by our board of directors in accordance with the provisions of applicable law. From and after the date fixed for purchase by our board of directors, the holder of any shares so called for purchase shall cease to be entitled to distributions, voting rights and other benefits with respect to those

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shares, except the right to payment of the purchase price for the shares. Further, if a transfer of shares, options, warrants or other securities convertible into voting shares occurs that would create a beneficial owner of more than 9.9% of the outstanding shares of our stock, some or all of the transfer shall be deemed void *ab initio*, and the intended transferee shall acquire no rights in the transferred securities. See Restrictions on Ownership and Transfer for certain additional restrictions that may have the effect of preventing an acquisition of control of us by a third party.

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Restrictions on Ownership and Transfer

For us to qualify as a REIT under the Code:

- (1) not more than 50% in value of our outstanding capital stock may be owned, directly or indirectly (after application of certain attribution rules), by five or fewer individuals at any time during the last half of its taxable year; and
- (2) our stock must be beneficially owned by 100 or more persons during at least 335 days of a taxable year of 12 months or during a proportionate part of a shorter taxable year.

To ensure that we satisfy requirement (1) above, our board of directors has the power to refuse to transfer shares of our capital stock to any person or entity whose acquisition of such shares would result in the direct or indirect beneficial or constructive ownership of more than 9.9% in value or number of shares of all classes of our outstanding capital stock or our outstanding voting stock.

If at any time there is a transfer that (a) violates the 9.9% ownership limit, (b) would result in a violation of requirement (1) above (without regard to whether the ownership interest is held during the last half of the taxable year), (c) would otherwise result in our failing to qualify as a REIT, or (d) would cause us to own ten percent or more of any of our tenants (as determined pursuant to certain attribution rules), the excess shares shall be deemed to have been transferred to a trust for the benefit of a designated charitable beneficiary and the trustee will resell such shares to a person or persons whose ownership of the shares will not result in a violation of these ownership restrictions. The intended transferee of such excess shares will receive a price equal to the lesser of the price paid for the excess shares by the intended transferee (or, if the intended transferee did not give value for the shares, the market price of the shares on the date of the event causing the shares to be held in the trust) and the price per share received by the trustee, in either case reduced by the amount of any dividends or other distributions made to the intended transferee. We may purchase excess shares for the lesser of the amount paid for the excess shares by the intended transferee (or, if the intended transferee did not give value for the shares, the market price of the shares on the date of the event causing the shares to be held in the trust) or the market price, in either case, reduced by the amount of any dividends or other distributions made to the intended transferee. The market price for any stock so purchased shall be equal to the fair market value of such shares reflected in:

the closing sales price for the stock, if then listed on a national securities exchange;

the average closing sales price of such stock, if then listed on more than one national securities exchange; or

if the stock is not then listed on a national securities exchange, the latest bid quotation for the stock if then traded over-the-counter. If no such closing sales prices or quotations are available, the purchase price shall equal the net asset value of such stock as determined by our board of directors in accordance with applicable law.

If the transfer to the trust described above would not be effective for any reason to prevent a violation of the ownership restrictions set forth above, then the transfer that would otherwise violate any of those restrictions shall be void *ab initio*, and the intended transferee shall acquire no rights in the transferred shares. In addition, if a transfer would cause the violation of requirement (2) above (without regard to the duration that the 100 shareholder requirement is not met), some or all of the transfer shall be deemed void *ab initio*, and the intended transferee shall acquire no rights in the transferred shares.

The board of directors, in its sole discretion, may exempt a person from the 9.9% ownership limit or increase the ownership limit as to such person if, in general (i) the board obtains such representations, covenants and undertakings from such person as it deems necessary to conclude the granting of the exemption will not cause us to lose our status as a REIT, (ii) such person does not, and represents that it will not, constructively own an interest in any of our tenants that would cause us to constructively own more than 9.9% of any of our tenants, and (iii) such person agrees that any violation or attempted violation of such representations, covenants and undertakings or certain other actions will result in any excess shares being automatically transferred to a trust, as described in detail herein above. The board of directors has increased the ownership limit to 20% with respect to one of our stockholders, Cohen & Steers, Inc. Cohen & Steers, Inc. beneficially owned approximately 5.6 million of our shares, or approximately 5.5% of our common stock, as of December 31, 2008.

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All certificates representing shares of common stock may bear a legend referring to the restrictions described above.

These restrictions may have the effect of preventing an acquisition of control of us by a third party.

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CERTAIN PROVISIONS OF MARYLAND LAW AND OF OUR CHARTER AND BYLAWS

Business Combination Provisions of Our Charter

Our charter requires that, except in certain circumstances, business combinations between us and a beneficial holder of 10% or more of our outstanding voting stock, a related person, be approved by the affirmative vote of at least 90% of our outstanding voting stock or, in advance and unanimously, by our board of directors. A business combination is defined in our charter as:

any merger or consolidation with or into a related person;

any sale, lease, exchange, transfer or other disposition, including without limitation a mortgage or any other security device, of all or any substantial part of our assets, including without limitation any voting securities of a subsidiary, to a related person;

any merger or consolidation of a related person with or into us;

any sale, lease, exchange, transfer or other disposition of all or any substantial part of the assets of a related person to us;

the issuance of any of our securities to a related person, other than by way of pro rata distribution to all stockholders; and

any agreement, contract or other arrangement providing for any of the above.

The foregoing provisions may have the effect of discouraging unilateral tender offers or other takeover proposals which certain stockholders might deem in their interests or in which they might receive a substantial premium. The provisions could also have the effect of insulating current management against the possibility of removal and could, by possibly reducing temporary fluctuations in market price caused by accumulations of shares, deprive stockholders of opportunities to sell at a temporarily higher market price. However, our board of directors believes that inclusion of the business combination provisions in our charter may help assure fair treatment of stockholders and preserve our assets.

Our Board of Directors

Our charter and bylaws provide that our board of directors may establish the number of directors of the company as long as the number is not less than five. The number of directors (currently 10) shall be fixed by the board of directors from time to time. A majority of our remaining board of directors may fill any vacancy, other than a vacancy caused by removal, even if the remaining directors do not constitute a quorum. The stockholders entitled to vote for the election of directors at an annual or special meeting of our stockholders may fill a vacancy resulting from the removal of a director.

Our charter divides our board of directors into three classes. Each class serves a staggered three-year term. As the term of each class expires, stockholders elect directors in that class for a term of three years and until their successors are duly elected and qualified. The directors in the other two classes continue in office, serving the remaining portion of their respective three-year term.

The classified board of directors makes removing incumbent directors more time consuming and difficult and may discourage a third party from making a tender offer for our capital stock or otherwise attempting to obtain control of us, even if it might benefit us and our stockholders. The classified board increases the likelihood that incumbent directors will retain their positions by requiring at least two annual meetings of stockholders, rather than one, to elect a new majority of the board of directors. Holders of shares of our common stock will have no right to cumulative voting in the election of directors. A plurality of the votes cast at a meeting at which a quorum is present is sufficient to elect a director.

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Our charter and Maryland law provide that our stockholders may remove a director only for cause and by the affirmative vote of at least two-thirds of the shares entitled to vote in the election of directors.

Maryland Business Combination Act

The Maryland Business Combination Act prohibits business combinations between us and an interested stockholder or an affiliate of an interested stockholder for five years after the most recent date on which the interested stockholder becomes an interested stockholder. These business combinations include a merger, consolidation, share exchange or, in certain circumstances specified in the statute, an asset transfer or issuance or reclassification of equity securities, liquidation or dissolution plans, and receipt of certain benefits by the interested stockholder. Maryland law defines an interested stockholder as:

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any person who beneficially owns, directly or indirectly, 10% or more of the voting power of our shares; or

an affiliate of ours 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 stock of the company.

A person is not an interested stockholder under the business combination provisions of the MGCL if the board of directors approved in advance the transaction by which such person would otherwise have become an interested stockholder.

At the conclusion of the five-year prohibition, any business combination between us and an interested stockholder generally must be recommended by our board of directors and approved by the affirmative vote of at least:

80% of the votes entitled to be cast by holders of outstanding shares of our voting stock; and

two-thirds of the votes entitled to be cast by holders of our voting stock other than shares held by the interested stockholder with whom or with whose affiliate the business combination is to be effected or by an affiliate or associate of the interested stockholder.

These super-majority vote requirements do not apply if our common stockholders receive a minimum price, as defined under Maryland law, for their shares in the form of cash or other consideration in the same form as previously paid by the interested stockholder for its shares. None of these provisions of Maryland law will apply, however, to business combinations that are approved or exempted by our board of directors prior to the time that the interested stockholder becomes an interested stockholder.

The foregoing provisions may have the effect of discouraging unilateral tender offers or other takeover proposals which certain stockholders might deem in their interests or in which they might receive a substantial premium.

Maryland Control Share Acquisition Act

Maryland law provides that control shares of a company acquired in a control share acquisition have no voting rights except to the extent approved by a vote of two-thirds of the votes entitled to vote, excluding shares owned by the acquiror or by officers or directors who are employees of the company. Control shares are voting shares of stock which, if aggregated with all other voting shares of stock previously acquired by the acquiror, or over which the acquiror is able to directly or indirectly exercise voting power, except solely by 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 of stock the acquiring person is entitled to vote having obtained prior stockholder approval. Generally, control share acquisition means the acquisition of control shares.

A person who has made or proposes to make a control share acquisition may compel the board of directors to call a special meeting of stockholders to consider voting rights for the shares. The meeting must be held within 50 days of demand. If no request for a meeting is made, we may present the question at any stockholders 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 statute, then, subject to conditions and limitations, we may redeem any or all of the control shares, except those for which voting rights previously have been approved, for fair value. Fair value is determined without regard to the absence of voting rights for control shares, as of the date of the last control share acquisition or of any meeting of stockholders at which the voting rights of control shares are considered and not

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approved. If voting rights for control shares are approved at a stockholders meeting and the acquiror becomes entitled to vote a majority of the shares entitled to vote, all other stockholders may exercise appraisal rights. The fair value of the shares as determined for purposes of these appraisal rights may not be less than the highest price per share paid in the control share acquisition. Limitations and restrictions otherwise applicable to the exercise of dissenters' rights do not apply in the context of a control share acquisition.

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The control share acquisition statute does not apply to shares acquired in a merger, consolidation or share exchange if the company is a party to the transaction, or to acquisitions approved or exempted by its charter or bylaws. Our bylaws have exempted any shares of our stock that are acquired by Cohen & Steers Capital Management, Inc. or its associates.

Unsolicited Takeovers

Subtitle 8 of Title 3 of the MGCL permits a Maryland corporation with a class of equity securities registered under the Exchange Act and with at least three independent directors to elect to be subject to any or all of the following five provisions:

a classified board;

a two-thirds vote requirement to remove a director;

a requirement that the number of directors be fixed only by the vote of the directors;

a requirement that a vacancy on the board be filled only by the remaining directors and for the remainder of the full term of the directorship in which the vacancy occurred; and

a majority requirement for the calling of a special meeting of stockholders.

A corporation can elect into this statute by provision in its charter or bylaws or by a resolution of its board of directors. Furthermore, a corporation can elect to be subject to the above provisions regardless of any contrary provisions in the charter or bylaws.

We have elected to be subject to the requirement that the number of directors be fixed only by the vote of the directors. Additionally, through provisions in our charter and bylaws unrelated to Subtitle 8, (1) we have a classified board, (2) vacancies on the board may be filled exclusively by the remaining directors, (3) a two-thirds vote and cause are required to remove any director from the board and (4) unless called by our chairman of the board, chief executive officer, president or the board of directors, the written request of stockholders entitled to cast not less than a majority of all the votes entitled to be cast at a special meeting is required to call such a meeting.

Amendment of Our Charter and Bylaws

Our charter may generally be amended only if the amendment is declared advisable by our board of directors and approved by our stockholders by the affirmative vote of at least two-thirds of the shares entitled to vote on the amendment. However, the provisions relating to (1) business combinations as described in Business Combination Provisions of Our Charter, (2) director removal and filling of resultant vacancies and (3) redemption as described in Redemption Rights may be amended only with the affirmative vote of at least 90% of the shares entitled to vote on the amendment. Our bylaws generally may be amended by the affirmative vote of a majority of the board of directors or of a majority of our shares entitled to vote.

Meetings of Stockholders

Our bylaws provide generally for annual meetings of our stockholders to elect directors and to transact other business properly brought before the meeting. In addition, a special meeting of stockholders may be called by the chairman of the board, the chief executive officer, the president, the board of directors or holders of 50% or more of our outstanding common stock entitled to vote by making a written request.

Our bylaws provide that any action to be taken by the stockholders may be taken without a meeting, if, prior to such action, all stockholders entitled to vote thereon consent in writing to such action being taken.

Advance Notice of Director Nominations and New Business

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Our bylaws provide that with respect to an annual meeting of stockholders, nominations of persons for election to our board of directors and the proposal of other business to be considered by stockholders at the meeting may be made only:

pursuant to our notice of the meeting;

by or at the direction of our board of directors; or

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by a stockholder who is entitled to vote at the meeting and has complied with the advance notice procedures of our bylaws. Our bylaws also provide that with respect to special meetings of stockholders, only the business specified in the notice of meeting may be brought before the meeting.

Generally, under our bylaws, a stockholder seeking to nominate a director or bring other business before our annual meeting of stockholders must deliver a notice to our secretary not later than the close of business on the 120th day nor earlier than the 150th day prior to the first anniversary of the date of the mailing of notice for the prior year's annual meeting. For a stockholder seeking to nominate a candidate for our board of directors, the notice must describe various matters regarding the nominee, including name, address, occupation and number of shares held, and other specified matters. For a stockholder seeking to propose other business, the notice must include a description of the proposed business, the reasons for the proposal and other specified matters.

Authorized but Unissued Capital Stock

Our charter authorizes us to issue additional shares of common stock and one or more series of preferred stock without stockholder approval and to establish the preferences, rights and other terms of any series of preferred stock that we issue. Although our board of directors has no intention to do so at the present time, it could establish a series of preferred stock that could delay, defer or prevent a transaction or a change in control that might involve the payment of a premium over the market price for our common stock or otherwise be in the best interests of our stockholders.

Dissolution of the Company

Under the MGCL, we may be dissolved if a majority of our entire board of directors determines by resolution that dissolution is advisable and submits a proposal for dissolution for consideration at any annual or special meeting of stockholders, and this proposal is approved by the vote of the holders of two-thirds of the shares of our capital stock entitled to vote on the dissolution.

Indemnification and Limitation of Liability of Directors and Officers

Our charter and bylaws, and the partnership agreement, provide for indemnification of our officers and directors against liabilities to the fullest extent permitted by the MGCL, as amended from time to time. Such indemnification extends to current and former officers and directors.

Section 2-418 of the MGCL generally permits indemnification of any director or officer made a party to any proceedings by reason of service as a director or officer unless it is established that (i) the act or omission of such person 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; or (ii) such person actually received an improper personal benefit in money, property or services; or (iii) in the case of any criminal proceeding, such person had reasonable cause to believe that the act or omission was unlawful. The indemnity may include judgments, penalties, fines, settlements and reasonable expenses actually incurred by the director or officer in connection with the proceeding; provided, however, that if the proceeding is one by, or in the right of the corporation, indemnification is not permitted with respect to any proceeding in which the director or officer had been adjudged to be liable to the corporation. The termination of any proceeding by conviction, upon a plea of *nolo contendere* or its equivalent or upon an entry of an order of probation prior to judgment creates a rebuttable presumption that the director or officer did not meet the requisite standard of conduct required for permitted indemnification. The termination of any proceeding by judgment, order or settlement, however, does not create a presumption that the director or officer failed to meet the requisite standard of conduct for permitted indemnification.

In addition, the MGCL provides that, unless limited by its charter, a corporation shall indemnify any director or officer who is made a party to any proceeding by reason of service in that capacity against reasonable expenses incurred by the director or officer in connection with the proceeding, in the event that the director or officer is successful, on the merits or otherwise, in the defense of the proceeding. Our charter contains no such limitation.

We are authorized to indemnify any individual who, while a director or officer of ours and at our request, serves or has served as a director, officer, partner, or trustee of any other enterprise and who is made or threatened to be made a party to any proceeding by reason of service in such capacity.

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Maryland law permits us to advance reasonable expenses to a director or officer upon a written affirmation that the director or officer has met the standard of conduct for indemnification and a written undertaking to repay the amount paid or reimbursed if it is ultimately determined that the standard was not met.

The foregoing MGCL indemnification provisions are not exclusive of additional indemnification that may be provided under the charter, bylaws, agreement, insurance or otherwise.

As permitted by Maryland law, our charter provides that our directors and officers shall have no liability to us or our stockholders for money damages except for liability resulting from actual receipt of an improper benefit or profit, or active and deliberate dishonesty established by a final judgment.

We have entered into indemnity agreements with certain of our officers and directors that provide that we will pay on behalf of the indemnified party any amount which the indemnified party is or becomes legally obligated to pay because of any act or omission or neglect or breach of duty, including any actual or alleged error or misstatement or misleading statement, which the indemnified party commits or suffers while acting in the capacity as one of our officers or directors.

Since November 1986, we have had in force directors and officers liability and company reimbursement insurance covering liability for any actual or alleged error, misstatement, misleading statement, act or omission, and neglect or breach of duty claimed against them solely by reason of their being one of our directors or officers.

Anti-takeover Effect of Certain Provisions of Maryland Law and of Our Charter and Bylaws

The foregoing provisions may have the effect of discouraging unilateral tender offers or other takeover proposals which certain stockholders might deem in their interests or in which they might receive a substantial premium. The provisions could also have the effect of insulating current management against the possibility of removal and could, by possibly reducing temporary fluctuations in market price caused by accumulations of shares, deprive stockholders of opportunities to sell at a temporarily higher market price.

Outstanding Series B Preferred Stock

Under our charter, the board of directors is authorized without further stockholder action to provide for the issuance of up to 5,000,000 shares of preferred stock, in one or more series, with the voting, dividend, conversion or liquidation rights, designations, preferences, powers and relative participating, optional or other special rights and qualifications, limitations or restrictions of shares of the series as are stated in the resolutions providing for the issuance of a series of preferred stock, adopted, at any time or from time to time, by our board of directors. At December 31, 2008, we had 749,184 shares of 7.75% Series B Cumulative Series B Preferred Stock outstanding (the Series B Preferred Stock). We have summarized the material terms of the Series B Preferred Stock below. More details are contained in the articles supplementary to our charter which we have filed with the SEC.

Ranking. The Series B Preferred Stock, with respect to dividend rights and rights upon liquidation, winding-up or dissolution, ranks senior to common stock.

Dividends. Holders of shares of Series B Preferred Stock are entitled to receive, when, as and if declared by our board of directors out of funds legally available for payment, cumulative cash dividends at the rate per annum of 7.75% per share on the liquidation preference thereof of \$100 per share of Series B Preferred Stock (equivalent to \$7.75 per annum per share). Dividends on the Series B Preferred Stock are payable quarterly on March 31, June 30, September 30 and December 31 of each year (each, a Dividend Payment Date) at such annual rate, and accumulate from the most recent date as to which dividends shall have been paid, whether or not in any dividend period or periods there have been funds legally available for the payment of such dividends. Accumulations of dividends on shares of Series B Preferred Stock do not bear interest.

Except if we determine it is necessary to maintain our status as a REIT, no dividends or other distributions (other than a dividend or distribution payable solely in shares of common stock and cash in lieu of fractional shares) may be declared, made or paid, or set apart for payment upon, any common stock, nor may any common stock be redeemed, purchased or otherwise acquired for any consideration by us or on our behalf (except by conversion into or exchange for shares of common stock) unless all accumulated and unpaid dividends have been or contemporaneously are declared and paid, or are declared and a sum sufficient for the payment thereof is set apart for such payment, on the Series B Preferred Stock for all dividend payment periods terminating on or prior to the date of such declaration, payment, redemption, purchase or acquisition. Holders of shares of the Series B Preferred Stock are not entitled to any dividend, whether payable in cash, property or stock, in excess of full cumulative dividends.

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Liquidation Preference. In the event of our voluntary or involuntary liquidation, winding-up or dissolution, each holder of Series B Preferred Stock will be entitled to receive and to be paid out of our assets available for distribution to stockholders, before any payment or distribution is made to holders of common stock, a liquidation preference in the amount of \$100 per share of the Series B Preferred Stock, plus accumulated and unpaid dividends on the shares to the date fixed for liquidation, winding-up or dissolution.

Voting Rights. The holders of the Series B Preferred Stock have no voting rights except as set forth below or as otherwise required by Maryland law from time to time. If dividends on the Series B Preferred Stock are in arrears and unpaid for six or more quarterly periods (whether or not consecutive), the holders of the Series B Preferred Stock, voting as a single class with any other preferred stock having similar voting rights that are exercisable, will be entitled at the next regular or special meeting of stockholders to elect two additional directors to our board of directors. Upon the election of any such additional directors, the number of directors that comprise our board shall be increased by such number of additional directors. Such voting rights and the terms of the directors so elected will continue until such time as the dividend arrearage on the Series B Preferred Stock has been paid in full. In addition, the affirmative vote of the holders of at least 66-2/3% of the outstanding Series B Preferred Stock, voting separately as a series, will be required for amendments to our charter that would affect adversely the rights of holders of the Series B Preferred Stock.

Conversion. The Series B Preferred Stock was not convertible during the first quarter of 2009. At March 31, 2009, the conversion rate applicable to each share of Series B Preferred Stock was 4.4828 (equivalent to a conversion price of \$22.31 per share). At March 31, 2009, if all of the Series B Preferred Stock were to have converted, it would have resulted in the issuance of approximately 3,358,442 common shares. The Series B Preferred Stock is convertible upon the occurrence of any of the following events:

our common stock reaching a price equal to 125% of the conversion price for at least 20 trading days in the period of 30 consecutive trading days ending on the last trading day of the preceding calendar quarter, and at any time on or after June 30, 2029 if our common stock reaches a price equal to 125% of the conversion price;

the price per share of the Series B Preferred Stock falls below 98% of the product of the conversion rate and the average closing sale prices of our common stock for five consecutive trading days;

the credit ratings from Moody's Investors Service or Standard & Poor's Ratings Services are discontinued, suspended or withdrawn, or fall more than two levels below the initial ratings of Ba1 and BB+, respectively;

we are a party to a consolidation, merger, binding share exchange or sale of all or substantially all of our assets in which our common stock would be converted into cash, securities or other property, or if a fundamental change occurs, as defined, a holder may convert the holder's shares of Series B Preferred Stock into common stock or the cash, securities or other property that the holder would have received if the holder had converted the holder's Series B Preferred Stock prior to the transaction or fundamental change;

we distribute rights to all common stockholders entitling them (for a period of not more than 45 days after the date of issuance thereof) to subscribe for or purchase shares of common stock at less than the average closing sale price thereof for the ten trading days immediately preceding the declaration date of such distribution;

we distribute assets to all common stockholders having a per share value as determined by the board of directors exceeding 5% of the closing sale price of the common stock on the trading day immediately preceding the declaration of such distribution; or

we call the Series B Preferred Stock for redemption.

For at least 20 of the last 30 trading days of the first quarter of 2009, our common stock did not reach a price greater than or equal to 125% of the \$22.31 conversion price at March 31, 2009. As a result, the Series B Preferred Stock will not be convertible from April 1, 2009 through June 30, 2009. The same test will be performed on June 30, 2009 to determine whether the Series B Preferred Stock will be convertible in the third quarter of 2009.

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At May 22, 2009, the conversion rate applicable to each share of Series B Preferred Stock was 4.4953 (equivalent to a conversion price of \$22.25 per share). The conversion rate will be adjusted if we:

issue common stock as a dividend or distribution on shares of common stock;

effect a common stock share split or combination;

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