

ANTHRACITE CAPITAL INC
Form S-3/A
April 23, 2008

As filed with the Securities and Exchange Commission on April 23, 2008

Registration No. 333-149915

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

AMENDMENT NO. 1
TO
FORM S-3
REGISTRATION STATEMENT
UNDER THE SECURITIES ACT OF 1933

Anthracite Capital, Inc.

(Exact name of Registrant as specified in its charter)

Maryland

(State or other jurisdiction of incorporation or organization)

13-3978906

(I.R.S. Employer Identification No.)

40 East 52nd St.
New York, New York 10022
(212) 810-3333

(Address, including zip code, and telephone number, including area code, of Registrant's principal executive offices)

Richard M. Shea
President and Chief Operating Officer
Anthracite Capital, Inc.

40 East 52nd St.
New York, New York 10022
Telephone: (212) 810-3333

(Name, address, including zip code, and telephone number, including area code, of agent for service)

with a copy to:
Matthew J. Mallow, Esq.
Skadden, Arps, Slate, Meagher & Flom LLP
4 Times Square
New York, New York 10036
Telephone: (212) 735-3000
Facsimile: (212) 735-2000

Approximate date of commencement of proposed sale to the public: As soon as practicable after the effective date of this registration statement.

If the only securities being registered on this Form are being offered pursuant to dividend or interest reinvestment plans, please check the following box:

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, other than securities offered only in connection with dividend or interest reinvestment plans, check the following box:

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering:

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a registration statement pursuant to General Instruction I.D. or a post-effective amendment thereto that shall become effective upon filing with the Commission pursuant to Rule 462(e) under the Securities Act, check the following box.

If this Form is a post-effective amendment to a registration statement filed pursuant to General Instruction I.D. filed to register additional securities or additional classes of securities pursuant to Rule 413(b) under the Securities Act, check the following box.

THE REGISTRANT HEREBY AMENDS THIS REGISTRATION STATEMENT ON SUCH DATE OR DATES AS MAY BE NECESSARY TO DELAY ITS EFFECTIVE DATE UNTIL THE REGISTRANT SHALL FILE A FURTHER AMENDMENT WHICH SPECIFICALLY STATES THAT THIS REGISTRATION STATEMENT SHALL THEREAFTER BECOME EFFECTIVE IN ACCORDANCE WITH SECTION 8(a) OF THE SECURITIES ACT OF 1933 OR UNTIL THE REGISTRATION STATEMENT SHALL BECOME EFFECTIVE ON SUCH DATE AS THE SECURITIES AND EXCHANGE COMMISSION, ACTING PURSUANT TO SAID SECTION 8(a), MAY DETERMINE.

The information in this prospectus is not complete and may be changed. The selling securityholders may not sell these securities until the registration statement filed with the Securities and Exchange Commission becomes effective. This preliminary prospectus is not an offer to sell these securities and it is not soliciting an offer to buy these securities in any jurisdiction where the offer or sale is not permitted.

Subject to Completion, dated April 23, 2008

PROSPECTUS

\$80,000,000 Aggregate Principal Amount of 11.75% Convertible Senior Notes due 2027
and the Shares of Common Stock Issuable upon Conversion of the Notes

On August 29, 2007, we issued \$60,000,000 in aggregate principal amount of 11.75% senior convertible notes due 2027 (the “notes”) in a private offering. Pursuant to the exercise of an option granted to the initial purchasers, on September 10, 2007, we issued an additional \$20,000,000 in aggregate principal amount of the notes. This prospectus relates to the resale by various selling securityholders of the notes and shares of our common stock issuable upon conversion of the notes. We will not receive any of the proceeds from these resales.

The notes bear interest at a rate of 11.75% per annum. Interest is payable on the notes on September 1 and March 1 of each year, beginning on March 1, 2008. The notes mature on September 1, 2027 unless earlier converted, redeemed or repurchased by us. Holders may require us to repurchase some or all of their notes on September 1, 2012, September 1, 2017 and September 1, 2022, and at any time following certain fundamental change transactions as described in this prospectus. We may redeem the notes for cash in whole or in part at any time on or after September 1, 2012, or earlier if necessary to preserve our status as a REIT, at 100% of the principal amount of the notes to be redeemed plus accrued and unpaid interest (including additional amounts, if any).

Holders may convert their notes into cash and shares of our common stock, if any, at an initial conversion rate of 92.7085 shares per \$1,000 principal amount of notes (equal to an initial conversion price of approximately \$10.79 per share), subject to adjustment upon certain events, under the following circumstances: (1) during specified periods, if the price of our common stock reaches specified thresholds described in this prospectus; (2) if the trading price of the notes is below a specified threshold; (3) at any time on or after April 1, 2027; (4) upon the occurrence of certain corporate transactions described in this prospectus; or (5) in the case of notes called for redemption, at any time prior to the close of business on the business day prior to the redemption date.

Upon conversion, we will deliver cash equal to the lesser of the aggregate principal amount of notes to be converted and our total conversion obligation and shares of our common stock in respect of the remainder, if any, of our conversion obligation (unless we have elected to deliver only shares of our common stock). If certain fundamental change transactions occur prior to September 1, 2012, we will increase the conversion rate for any notes converted in connection with those fundamental changes by a number of additional shares of common stock. For a more detailed description of the notes, see “Description of Notes” beginning on page 23.

Our common stock is listed on The New York Stock Exchange under the symbol “AHR.” The closing sale price of our common stock on The New York Stock Exchange on April 22, 2008 was \$7.62 per share. The notes are not listed on any securities exchange or included in any automatic quotation system.

Investing in the notes or our common stock issuable upon conversion of the notes involves risks that are described in the “Risk Factors” section of this prospectus beginning on page 6 and the risk factors incorporated herein by reference from our annual and quarterly reports filed with the Securities and Exchange Commission, or SEC.

NEITHER THE SEC NOR ANY STATE SECURITIES COMMISSION HAS APPROVED OR DISAPPROVED OF THESE SECURITIES OR DETERMINED IF THIS PROSPECTUS OR ANY ACCOMPANYING PROSPECTUS SUPPLEMENT IS TRUTHFUL OR COMPLETE. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

The date of this prospectus is _____, 2008

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ADDITIONAL INFORMATION

We file annual, quarterly and current reports, proxy statements and other information with the SEC. You may inspect without charge any documents filed by us at the SEC's Public Reference Room at 100 F Street, N.E., Washington, D.C. 20549. You may obtain copies of all or any part of these materials from the SEC upon the payment of certain fees prescribed by the SEC. Please call the SEC at 1-800-SEC-0330 for further information on the Public Reference Room. The SEC also maintains an Internet site that contains reports, proxy and information statements and other information regarding issuers that file electronically with the SEC. Our filings with the SEC are available to the public through the SEC's website at <http://www.sec.gov>.

The SEC allows us to "incorporate by reference" documents we file with the SEC into this prospectus, which means that we can disclose important information to you by referring you to those documents. The information incorporated by reference is considered part of this prospectus. Any statement in this prospectus or incorporated by reference into this prospectus shall be automatically modified or superseded for purposes of this prospectus to the extent that a statement contained herein or in a subsequently filed document that is incorporated by reference into this prospectus modifies or supersedes such prior statement. Any statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this prospectus.

We incorporate by reference into this prospectus the documents listed below and all documents we subsequently file with the SEC pursuant to Section 13(a), 13(c), 14 or 15(d) of the Securities Exchange Act of 1934, as amended, or the Exchange Act, after the date of this prospectus and until the selling securityholders named herein have sold all of the notes to which this prospectus relates.

- Our Annual Report on Form 10-K for the year ended December 31, 2007, filed on March 13, 2008;
- Our Current Reports on Form 8-K filed on January 31, 2008, February 21, 2008, March 4, 2008, March 7, 2008 and April 16, 2008; and
- The description of our common stock included in our registration statement on Form 8-A, filed on March 9, 1998.

These documents are available at <http://www.sec.gov>.

You may request a copy of these filings, at no cost, by writing or telephoning us at:

Anthracite Capital, Inc.
40 East 52nd Street
New York, New York 10022
Telephone: (212) 810-3333

You should rely only upon the information provided in this document, or incorporated in this document by reference. We have not authorized anyone to provide you with different information. You should not assume that the information in this document, including any information incorporated by reference, is accurate as of any date other than the date indicated on the front cover.

SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS

This prospectus and the information incorporated by reference in this prospectus include “forward-looking statements” within the meaning of Section 27A of the Securities Act of 1933, as amended, or the Securities Act, and Section 21E of the Exchange Act with respect to future financial or business performance, strategies or expectations.

Forward-looking statements are typically identified by words or phrases such as “trend,” “opportunity,” “pipeline,” “believe,” “comfortable,” “expect,” “anticipate,” “current,” “intention,” “estimate,” “position,” “assume,” “potential,” “outlook,” “maintain,” “sustain,” “seek,” “achieve” and similar expressions, or future or conditional verbs such as “will,” “would,” “could,” “may” or similar expressions. We caution that forward-looking statements are subject to numerous assumptions, risks and uncertainties, which change over time. Actual results could differ materially from those anticipated in forward-looking statements, and future results could differ materially from historical performance.

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In addition to factors previously disclosed in our SEC reports and those identified elsewhere in this prospectus, the following factors, among others, could cause actual results to differ materially from those anticipated in forward-looking statements or historical performance:

- | | |
|---|-------------------------|
| introduction, withdrawal, success and timing of business initiatives and strategies; | 1. the |
| political, economic or industry conditions, the interest rate environment or financial and capital markets, which could result in changes in the value of our assets; | 2. changes in |
| absolute investment performance and operations of BlackRock Financial Management, Inc., our manager; | 3. the relative and |
| increased competition; | 4. the impact of |
| future acquisitions and divestitures; | 5. the impact of |
| resolution of legal proceedings; | 6. the unfavorable |
| legislative and regulatory actions and reforms and regulatory, supervisory or enforcement actions of government agencies relating to us or our manager; | 7. the impact of |
| and international hostilities, which may adversely affect the general economy, domestic and global financial and capital markets, specific industries and us; | 8. terrorist activities |
| manager to attract and retain highly talented professionals; | 9. the ability of our |
| foreign currency exchange rates; and | 10. fluctuations in |
| changes to tax legislation and, generally, our tax position. | 11. the impact of |

Our Annual Report on Form 10-K for the year ended December 31, 2007 and our subsequent reports filed with the SEC, accessible on the SEC's website at <http://www.sec.gov>, identify additional factors that can affect forward-looking statements.

Forward-looking statements speak only as of the date they are made. Except as required under the federal securities laws and the rules and the regulations of the SEC, we do not undertake, and specifically disclaim any obligation, to release the result of any revisions which may be made to any forward-looking statements to reflect the occurrence of anticipated or unanticipated events or circumstances after the date of such statements.

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SUMMARY

This summary highlights information contained elsewhere in this prospectus. Because it is a summary, it does not include all of the information you should consider before deciding to purchase any notes or shares of common stock in this offering. Please review this entire prospectus and the documents incorporated by reference herein, including the risk factors discussed below, before you to decide to purchase any notes or shares of common stock issuable upon conversion of the notes. In this prospectus, unless otherwise indicated, “Anthracite,” the “Company,” “we,” “us” and “our” to Anthracite Capital, Inc. and its subsidiaries.

Anthracite Capital, Inc.

We are a specialty finance company that invests in commercial real estate assets on a global basis. We seek to generate income from the spread between the interest income, gains and net operating income on our commercial real estate assets and the interest expense from borrowings to finance our investments. Our primary activities are investing in high yielding commercial real estate debt and equity. We combine traditional real estate underwriting and capital markets expertise to maximize the opportunities arising from the continuing integration of these two disciplines. We focus on acquiring pools of performing loans in the form of commercial mortgage-backed securities (“CMBS”), issuing secured debt backed by CMBS and providing strategic capital for the commercial real estate industry in the form of mezzanine loan financing. We also began investing in diversified portfolios of commercial real estate in the United States during December 2005.

Our primary investment activities are conducted in three investment sectors: (i) commercial real estate securities, (ii) commercial real estate loans and (iii) commercial real estate equity. The commercial real estate securities portfolio provides diversification and high yields that are adjusted for anticipated losses over a period of time (typically, a ten-year weighted average life) and can be financed through the issuance of secured debt that matches the life of the investment. Commercial real estate loans and equity provide attractive risk adjusted returns over shorter periods of time through strategic investments in specific property types or regions.

We are a Maryland corporation, managed by BlackRock Financial Management, Inc., or the manager, a subsidiary of BlackRock, Inc., or BlackRock. The manager provides an operating platform that incorporates significant asset origination, risk management and operational capabilities. We commenced operations on March 24, 1998. We are organized and conduct our operations in a manner intended to qualify as a real estate investment trust, or REIT, for federal income tax purposes. We have adopted compliance guidelines, including restrictions on acquiring, holding, and selling assets, to ensure that we meet the requirements for qualification as a REIT. Our charter also contains restrictions on ownership of our common stock to assist us in maintaining our qualification as a REIT. See “Federal Income Tax Considerations” and “Risk Factors.”

Our principal executive offices are located at 40 East 52nd Street, New York, New York 10022, and our telephone number is (212) 810-3333. Our website is <http://www.anthracitecapital.com>. The information on our website is not considered part of this prospectus. Copies of the documents referred to in this prospectus and all documents incorporated by reference herein (other than the exhibits to such documents unless the exhibits are specifically incorporated herein by reference in the documents that this prospectus incorporate by reference) may be obtained without charge upon written or oral request to Anthracite Capital, Inc. at the address and telephone number under “Additional Information.”

About the Manager

BlackRock is one of the world's largest publicly traded (NYSE:BLK) investment management firms. As of March 31, 2008, its assets under management were approximately \$1.364 trillion. BlackRock manages assets on behalf of institutions and individuals worldwide through a variety of

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equity, fixed income, cash management and alternative investment products. Merrill Lynch & Co., Inc., or Merrill Lynch, has an approximate 45.15% stake in BlackRock's equity while The PNC Financial Services Group, Inc., or PNC, has an approximate 35.5% stake. The remaining approximate 19% is held by BlackRock employees and the public. We may transact business, including the purchase of mortgage pools, with either Merrill Lynch or PNC.

The Notes

The summary below highlights information contained elsewhere in this prospectus. This summary is not a complete description of the notes. You should read the full text and more specific details contained elsewhere in this prospectus. For a more detailed description of the notes and the common stock issuable upon conversion of the notes, see the section entitled "Description of Notes" and "Description of Capital Stock" in this prospectus. As used in this section, references to the "Company," "we," "us" and "our" refer only to Anthracite Capital, Inc. and do not include its subsidiaries

	Issuer
Anthracite Capital, Inc.	
Notes Offered	\$80,000,000 aggregate principal amount
of 11.75% Convertible Senior Notes due 2027.	
Maturity	September 1, 2027, unless earlier converted, redeemed or repurchased.

Ranking The notes are our general unsecured obligations and rank equally with all of our existing and future senior debt and senior to all of our subordinated debt. The notes are structurally subordinated to all existing and future liabilities of our subsidiaries and are effectively subordinated to our existing and future secured indebtedness.

As of December 31, 2007,

- we had \$242.5 million of senior, unsecured indebtedness (including \$80.0 million aggregate principal amount of the notes originally issued in private placements on August 29, 2007 and September 10, 2007);
- we had \$3.8 billion of secured indebtedness and had approximately \$300.8 million of secured debt that could be incurred under our secured credit facilities; and
- our subsidiaries had \$3.7 billion of indebtedness and other liabilities, including trade and other payables but excluding intercompany amounts.

Interest

The notes bear interest at an annual rate of 11.75%. Interest on the notes is payable semi-annually in arrears on September 1 and March 1 of each year, beginning March 1, 2008.

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Conversion Rights Holders may convert their notes into cash and shares of our common stock, if any, at an initial conversion rate of 92.7085 shares per \$1,000 principal amount of notes (equal to an initial conversion price of approximately \$10.79 per share) subject to adjustments upon certain events. The notes are convertible, prior to the close of business on the business day immediately preceding the stated maturity, only under the following circumstances:

- during any fiscal quarter commencing after the fiscal quarter ending September 30, 2007 if the closing sale price per share of our common stock is greater than 130% of the applicable conversion price for at least 20 trading days in the 30-consecutive-trading-day period ending on the last trading day of the preceding fiscal quarter;
- during the five-business-day-period following any five-consecutive-trading-day period in which the trading price of the notes for each day of such period was less than 98% of the product of the closing sale price per share of our common stock and the conversion rate in effect for the notes on each such day;
- in the case of notes called for redemption, at any time prior to the close of business one business day prior to the redemption date for the notes;
- at any time on or after April 1, 2027 until the close of business on the business day immediately preceding the stated maturity; or
- upon the occurrence of specified corporate transactions described under “Description of Notes — Conversion Rights — Conversion upon Specified Corporate Transactions.”

The initial conversion rate will be adjusted for certain events, but it will not be adjusted for accrued interest (or additional amounts, if any). Holders will not receive any cash payment or additional shares representing accrued and unpaid interest (or additional amounts, if any) upon conversion of a note, except in limited circumstances. Instead, interest (including additional amounts, if any) will be deemed paid by the cash and common stock, if any, delivered to such holder upon conversion.

Upon a surrender of notes for conversion, we will deliver:

- cash equal to the lesser of the aggregate principal amount of notes to be converted and our total conversion obligation; and
- shares of our common stock in respect of the remainder, if any, of our conversion obligation

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as described under “Description of Notes — Conversion Rights — Payment upon Conversion,” unless we have elected to satisfy our obligation upon such conversion by delivering only shares of our common stock as described under “Description of Notes — Conversion Rights — Option to Irrevocably Elect to Satisfy Future Conversion Obligations in Common Stock.”

If a holder elects to convert its notes in connection with certain fundamental change transactions described below under “Description of Notes — Conversion Rights — Make-Whole Amount” prior to September 1, 2012, we will increase the conversion rate by a number of additional shares of common stock as described under “Description of Notes — Conversion Rights — Make-Whole Amount.”

Redemption We will have the right to redeem the notes for cash in whole or in part, at any time or from time to time, (i) on or after September 1, 2012, or (ii) to preserve our status as a REIT, at 100% of the principal amount of the notes to be redeemed, plus any accrued and unpaid interest (including additional amounts, if any) as described under “Description of Notes — Redemption at Our Option.”

Repurchase at the Option of the Holder Holders have the right to require us to repurchase their notes, in whole or in part, on September 1, 2012, September 1, 2017 and September 1, 2022 for a cash price equal to 100% of the principal amount of the notes to be repurchased, plus accrued and unpaid interest (including additional amounts, if any) as described under “Description of Notes — Repurchase Rights.”

Repurchase upon Fundamental Change If we undergo certain fundamental change transactions, holders have the right, subject to certain conditions, to require us to repurchase their notes for cash, in whole or in part, at a repurchase price equal to 100% of the principal amount of the notes to be repurchased, plus accrued and unpaid interest (including additional amounts, if any) as described under “Description of Notes — Repurchase of Notes by Us at Option of Holder upon a Fundamental Change” (which includes the definition of the term “fundamental change”).

Ownership Limit In order to assist us in maintaining our qualification as a REIT for U.S. federal income tax purposes, no person may own, or be deemed to own by virtue of the attribution rules of the Internal Revenue Code of 1986, as amended (the “Internal Revenue Code” or the “Code”), more than 9.8% of the value of our outstanding capital stock, subject to certain exceptions. Notwithstanding any other provision

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of the notes, no holder of notes is entitled to convert such notes for our common stock to the extent that receipt of our common stock would cause the holder (together with the holder's affiliates) to exceed the ownership limit contained in our charter. See "Federal Income Tax Considerations" and "Risk Factors — Restrictions on ownership of our common stock may inhibit market activity."

Trading

The notes issued in the initial private placements have been eligible for trading in the PORTALsm Market. However, the notes resold and shares of our common stock issued pursuant to this prospectus will no longer be eligible for trading in the PORTALsm Market. We do not intend to list the notes on any securities exchange.

NYSE

Symbol for Our Common

Stock Our common stock is listed on The New York Stock Exchange under the symbol "AHR."

Use of

Proceeds The selling securityholders will receive all the proceeds from the sale under this prospectus of the notes and common stock issuable upon conversion of the notes. We will not receive any proceeds from these sales.

Trust,

Paying Agent and Conversion Agent Wells Fargo Bank, N.A.

Book-Entry Form The notes were issued in fully registered book-entry form and are represented by a permanent fully registered global note without coupons deposited with the trustee, as custodian for the Depository Trust Company, or DTC. Beneficial interests in any of the notes are shown on, and transfers thereof will be effected only through, records maintained by DTC or its nominee and any such interest may not be exchanged for certificated notes except in limited circumstances. See "Description of Notes — Book-Entry Delivery and Settlement."

Risk Factors You should carefully consider the information set forth under the heading "Risk Factors" in this prospectus and in our Annual Report on Form 10-K for the fiscal year ended December 31, 2007, as well as the other information included in or incorporated by reference into this prospectus before deciding whether to invest in the notes or the common stock into which the notes, in certain circumstances, are convertible.

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RISK FACTORS

An investment in our notes and the common stock issuable upon conversion of the notes involves a high degree of risk. You should carefully consider the following information, together with the other information contained in this prospectus and other documents that are incorporated by reference into this prospectus, including the section entitled “Risk Factors” in our Annual Report on Form 10-K for the year ended December 31, 2007, before making a decision to invest in the notes and the common stock into which the notes, in certain circumstances, are convertible.

Risks Related to the Notes and Our Common Stock

An active trading market may not develop for the notes. The failure of a market to develop for the notes could adversely affect the liquidity and value of holders’ notes.

We issued the notes on August 23, 2007 and September 10, 2007 to Banc of America Securities LLC and Deutsche Bank Securities Inc., which we refer to as the “initial purchasers,” in a private placement. The initial purchasers then sold the notes to persons reasonably believed by the initial purchasers to be “qualified institutional buyers,” as defined by Rule 144A under the Securities Act. Prior to this offering there was no trading market for the notes. The notes are not listed and we have no plans to list the notes on any securities exchange. Although the notes initially sold to qualified institutional buyers are eligible for trading in the PORTALsm Market, any notes resold pursuant to this prospectus will no longer be eligible for trading in the PORTALsm Market. The initial purchasers are not obligated to make a market in the notes. Any market-making activity, if initiated, may be discontinued at any time, for any reason or for no reason, without notice. Accordingly, there can be no assurance that any market for the notes will develop or, if one does develop, that it will be maintained. If an active market for the notes fails to develop or be sustained, the value of the notes could be materially adversely affected.

The liquidity of the trading market for the notes, if any, and future trading prices of the notes will depend on many factors, including, among other things, the market price of our common stock, prevailing interest rates, the market for similar securities, general economic conditions and our financial condition, performance and prospects. Historically, the market for convertible debt has been subject to disruptions that have caused volatility in prices. It is possible that the market for the notes will be subject to disruptions which may have a negative effect on the holders of the notes, regardless of our operating results, financial performance or prospects.

We may not be able to repurchase the notes upon a fundamental change or upon the exercise of your option to require us to repurchase the notes, or pay you cash upon conversion of your notes.

Upon the occurrence of a fundamental change, and on September 1, 2012, September 1, 2017, and September 1, 2022, you will have the right to require us to repurchase your notes at a price in cash equal to 100% of the principal amount of the notes you have selected to be repurchased plus accrued and unpaid interest, if any, to, but not including, the repurchase date. In addition, upon a conversion, we may be required to make a cash payment to you unless we have elected to satisfy our obligation upon such conversion by delivering only shares of our common stock as described under “Description of Notes — Conversion Rights — Option to Irrevocably Elect to Satisfy Future Conversion Obligations in Common Stock.” In the event that we experience a fundamental change that results in us having to repurchase the notes or upon the exercise of your option to require us to repurchase the notes, or upon your conversion of the notes, we may not have sufficient financial resources to satisfy all of our obligations under the notes and our other indebtedness. If any arrangement or agreement governing our indebtedness prohibits us from repurchasing or converting the notes when we become obligated to do so, we could seek the consent of the lenders to repurchase or convert the notes or attempt to refinance the borrowings that contain the prohibitions. If we did not obtain the

necessary consents or refinance such borrowings, we would not be able to repurchase or convert the notes.

Additionally, we derive our operating income, in part, from our subsidiaries. An important source of cash to repurchase the notes or to pay you cash upon conversion of your notes would be cash

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distributions, dividends and other payments from our subsidiaries. The payment of dividends by our subsidiaries is subject to the declaration of dividends by those subsidiaries' boards, and our subsidiaries are not obligated to pay dividends. Our subsidiaries' ability to make such payments may also be restricted by, among other things, applicable laws and regulations and current and future credit agreements into which our subsidiaries may enter. In any of the situations described above, or otherwise, our failure to make the fundamental change offer, to pay the fundamental change repurchase price when due, to make payments upon the exercise of a holder's option to require us to repurchase the notes or to pay cash to a holder upon its conversion of notes, would result in a default under the indenture governing the notes.

A change of control may not constitute a fundamental change for purposes of the notes.

The term "fundamental change" is limited to certain specified transactions and may not include other events that might adversely affect our financial condition or the market value of the notes or our common stock. Our obligation to offer to repurchase the notes upon a fundamental change would not necessarily afford holders of the notes protection in the event of a highly leveraged transaction, reorganization, merger or similar transaction involving us. Furthermore, the fundamental change provisions, including the provision requiring an increase to the conversion rate for conversions in connection with certain fundamental changes, may in certain circumstances make more difficult or discourage a takeover of our company and the removal of incumbent management.

On conversion of the notes, you may receive less proceeds than expected because the value of our common stock may decline after you exercise your conversion right.

The settlement amount that you will receive on conversion of your notes is in part determined by the volume weighted average price of our common stock on each of the 20 consecutive trading days beginning, subject to certain exceptions, on a specified trading day immediately following the day you have tendered your notes for conversion and complied with the other requirements to convert them. Accordingly, if the price of our common stock decreases after that day, the settlement amount you will receive may be adversely affected.

The market price of the notes could be significantly affected by the market price of our common stock.

We expect that the market price of the notes will be significantly affected by the market price of our common stock. This may result in greater volatility in the market price of the notes than would be expected for nonconvertible debt securities. The market price of our common stock likely will continue to fluctuate in response to factors including the following:

- the other risk factors described in or incorporated by reference into this prospectus;
- prevailing interest rates;
- the market for similar securities;
- additional issuances of common stock;
- general economic conditions; and
- our financial condition, performance and prospects, including our ability or inability to meet analyst expectations.

Most of these factors are beyond our control. In addition, the stock markets in general, including The New York Stock Exchange, have experienced price and trading fluctuations. These fluctuations have resulted in volatility in the market prices of securities that often has been unrelated or disproportionate to changes in operating performance. These broad market fluctuations may affect adversely the market prices of the notes and our common stock.

Sales of a significant number of shares of our common stock in the public markets, or the perception of such sales, could depress the market price of the notes.

Sales of a substantial number of shares of our common stock or other equity-related securities in the public markets, including the issuance of common stock upon conversion of the notes or the

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vesting of restricted stock or options, could depress the market price of the notes, our common stock, or both, and impair our ability to raise capital through the sale of additional equity securities. We cannot predict the effect that future sales of our common stock or other equity-related securities would have on the market price of our common stock or the value of the notes. In addition, the existence of the notes also may encourage short selling by market participants because the conversion of the notes could depress our common stock price.

The price of our common stock could be affected by possible sales of our common stock by investors who view the notes as a more attractive means of equity participation in us and by hedging or arbitrage trading activity which we expect to occur involving our common stock. This hedging or arbitrage could, in turn, affect the market price of the notes.

Restrictions on ownership of our common stock may inhibit market activity.

In order for us to meet the requirements for qualification as a REIT at all times, our charter prohibits any person from acquiring or holding, directly or indirectly, shares of capital stock in excess of 9.8% (in value or in number of shares, whichever is more restrictive) of the aggregate of the outstanding shares of any class of our capital stock. Our charter further prohibits (i) any person from beneficially or constructively owning shares of capital stock that would result in our being “closely held” under Section 856(h) of the Code or would otherwise cause us to fail to qualify as a REIT, and (ii) any person from transferring shares of capital stock if such transfer would result in shares of capital stock being beneficially owned by fewer than 100 persons. If any transfer of shares of capital stock occurs which, if effective, would result in a violation of one or more ownership limitations, then that number of shares of capital stock, the beneficial or constructive ownership of which otherwise would cause such person to violate such limitations (rounded to the nearest whole share) shall be automatically transferred to a trustee of a trust for the exclusive benefit of one or more charitable beneficiaries, and the intended transferee may not acquire any rights in such shares; provided, however, that if any transfer occurs which, if effective, would result in shares of capital stock being owned by fewer than 100 persons, then the transfer shall be null and void and the intended transferee shall acquire no rights to the stock. Subject to certain limitations, our board of directors may waive the limitations for certain investors.

Our authorized capital stock includes preferred stock issuable in one or more series. The issuance of preferred stock could have the effect of making an attempt to gain control of us more difficult by means of a merger, tender offer, proxy contest or otherwise. The currently outstanding preferred stock has a preference on dividend payments that could affect our ability to make dividend distributions to the common stockholders.

The provisions of our charter or relevant Maryland law may inhibit market activity and the resulting opportunity for the holders of our common stock to receive a premium for their common stock that might otherwise exist in the absence of such provisions. Such provisions also may make us an unsuitable investment vehicle for any person seeking to obtain ownership of more than 9.8% of the outstanding shares of our common stock.

Material provisions of the Maryland General Corporation Law (“MGCL”), including those relating to “business combinations” and a “control share acquisition,” and of our charter and bylaws may also have the effect of delaying, deterring or preventing a takeover attempt or other change in control of us that would be beneficial to stockholders and might otherwise result in a premium over then prevailing market prices. Although our bylaws contain a provision exempting the acquisition of our common stock by any person from the control share acquisition statute, there can be no assurance that such provision will not be amended or eliminated at any time in the future.

Upon conversion of the notes, converting holders will receive shares or a combination of cash and shares of our common stock. Therefore, holders of the notes may receive no shares of our common stock or fewer shares than they

may expect.

To satisfy our conversion obligation to holders, for each \$1,000 principal amount of notes, a holder will receive a settlement amount equal to the sum of the daily settlement amounts for each of

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the 20 consecutive trading days in the conversion reference period. The settlement amount will be paid in common stock or a combination of cash or common stock, at our option. Accordingly, upon conversion of a note, holders may not receive any shares of common stock, or they might receive fewer shares of common stock than they may expect.

If you hold notes, you will not be entitled to any rights with respect to our common stock, but will be subject to all changes made with respect to our common stock.

If you hold notes, you are not entitled to any rights with respect to our common stock (including, without limitation, voting rights or rights to receive any dividends or other distributions on our common stock), but you are subject to all changes affecting our common stock. You will have rights with respect to our common stock only if and when you tender your notes for conversion and comply with the other requirements to convert them (the “conversion date”) and, in limited cases, under the conversion rate adjustments applicable to the notes. For example, in the event that an amendment is proposed to our charter or bylaws requiring stockholder approval and the record date for determining the stockholders of record entitled to vote on the amendment occurs prior to the conversion date, you will not be entitled to vote on the amendment, although you will nevertheless be subject to any changes in the powers, preferences or special rights of our common stock that result from such amendment. Similarly, if we declare a dividend, you will only be entitled to the conversion rate adjustment, if any, provided for under “Description of Notes — Conversion Rights — Conversion Rate Adjustments.”

The conversion rate of the notes may not be adjusted for all dilutive events, which may adversely affect the trading price of the notes.

The conversion rate of the notes is subject to adjustment for certain events, including the issuance of stock dividends on our common stock, the issuance of certain rights or warrants, subdivisions, combinations, distributions of capital stock, indebtedness or assets, certain cash dividends and certain issuer tender or exchange offers as described under “Description of Notes — Conversion Rights — Conversion Rate Adjustments.” However, the conversion rate will not be adjusted for other events, such as certain exchange offers or an issuance of common stock for cash, that may adversely affect the trading price of the notes or our common stock. An event that adversely affects the value of the notes may occur, and the event may not result in an adjustment to the conversion rate.

Our subsidiaries may not be able to make payments to us, which could cause us to be unable to service our indebtedness, including the notes.

We derive our operating income, in part, from our subsidiaries. An important source of cash to pay principal and interest on our indebtedness, including the notes, is from cash distributions, dividends and other payments from our subsidiaries. The payment of dividends by our subsidiaries is subject to the declaration of dividends by those subsidiaries’ boards, and our subsidiaries are not obligated to pay dividends. Our subsidiaries’ ability to make such payments may also be restricted by, among other things, applicable laws and regulations and current and future credit agreements into which our subsidiaries may enter.

Rating agencies may provide unsolicited ratings on the notes that could reduce the market value or liquidity of the notes and our common stock.

We have not requested a rating of the notes from any rating agency, the notes are not currently rated to our knowledge and we do not anticipate that the notes will be rated. However, if one or more rating agencies rates the notes and assigns the notes a rating lower than the rating expected by investors, or reduces their rating in the future, the market price or liquidity of the notes and our common stock could be harmed.

The adjustment to increase the conversion rate for notes converted in connection with certain fundamental changes may not adequately compensate holders for the lost option time value of their notes as a result of such fundamental change and may not be enforceable.

If a fundamental change occurs on or prior to September 1, 2012, we may be required to increase the conversion rate for any notes converted in connection with such fundamental change. The extent

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to which the conversion rate will be increased will be based on the date on which the fundamental change becomes effective and the price paid, or deemed to be paid, in respect of a share of our common stock in the fundamental change as described under “Description of Notes — Conversion upon Specified Corporate Transactions — Fundamental Change Transactions.” While this adjustment is designed to compensate you for the lost option time value of your notes as a result of a fundamental change, the adjustment is only an approximation of such lost value and may not adequately compensate you for such loss.

You should consider the United States federal income tax consequences of owning the notes.

Investors should be aware that the conversion of notes into a combination of cash and shares of our common stock will be taxable at the time of such conversion (or subject to alternative treatment different from that of conventional convertible debt instruments). These consequences may be materially different from the consequences that may be expected by investors in considering other convertible debt investments. Investors considering the purchase of notes are urged to consult with their own tax advisors concerning such consequences and the potential impact in their particular circumstances. The material United States federal income tax consequences of the purchase, ownership and disposition of the notes are summarized in this prospectus under the heading “Federal Income Tax Considerations.”

The contingent conversion features of the notes could result in your receiving less than the value of the common stock upon which the settlement amount would otherwise be based.

Except during the six months prior to the maturity date of the notes, the notes are convertible only if specified conditions are met. If the specific conditions for conversion are not met prior to September 1, 2012, you may not be able to receive the settlement amount prior to such date. Therefore, you may not be able to realize the appreciation, if any, in the value of our common stock after the issuance of the notes in this offering and prior to such date.

The notes contain restrictive covenants, and there is limited protection in the event of a fundamental change.

The indenture under which the notes were issued contains restrictive covenants that will not protect you from several kinds of transactions that may adversely affect you. Neither the indenture nor the terms of the notes restrict us from incurring additional debt, including senior debt or secured debt. In addition, the limited covenants contained in the indenture do not require us to achieve or maintain any minimum financial ratios relating to our financial position or results of operations. The indenture also does not impose any limitation on the incurrence by our subsidiaries of any indebtedness or on our ability to transfer our assets and property among our subsidiaries. Moreover, the right of each holder to require us to repurchase for cash all or part of that holder’s notes in a “fundamental change” is limited to the transactions specified in the definition of a “fundamental change” under “Description of Notes — Repurchase of Notes by Us at Option of Holder upon a Fundamental Change.” Accordingly, we could enter into certain transactions, such as acquisitions, refinancings or a recapitalization, that could affect our capital structure and the value of our common stock but would not constitute a “fundamental change.”

The notes are unsecured and, therefore, are effectively subordinated to any secured indebtedness that we may incur in the future.

The notes are our senior unsecured obligations and are not be secured by any of our assets. Holders of our secured obligations, including obligations under our credit facilities, will have claims that are prior to claims of the holders of the notes with respect to the assets securing those obligations. In the event of liquidation, dissolution, reorganization, bankruptcy or any similar proceeding, our assets and those of certain subsidiaries will be available to pay obligations on the notes only after holders of our senior secured debt have been paid the value of the assets securing such debt.

Accordingly, there may not be sufficient funds remaining to pay amounts due on all or any of the notes.

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The notes are structurally subordinated to all liabilities of our current and future subsidiaries.

The notes are structurally subordinated to the indebtedness and other liabilities of our subsidiaries. In the event of a bankruptcy, liquidation or reorganization of any of our subsidiaries, these subsidiaries will pay the holders of their debts, holders of preferred equity interests and their trade creditors before they will be able to distribute any of their assets to us. In addition, even if we were a creditor of any of our subsidiaries, our rights as a creditor would be subordinate to any security interest in the assets of our subsidiaries and any indebtedness of our subsidiaries senior to that held by us. This subordination could adversely affect our ability to pay our obligations on the notes. As of December 31, 2007, our subsidiaries had \$3.7 billion of indebtedness and other liabilities, including trade and other payables but excluding intercompany amounts to which the notes would be structurally subordinated.

You may have to pay taxes if we make or fail to make certain adjustments to the conversion rate of the notes even though you do not receive a corresponding cash distribution.

The conversion rate of the notes is subject to adjustment for certain events arising from stock splits and combinations, stock dividends, certain cash dividends and certain other actions by us that modify our capital structure. See “Description of Notes — Conversion Rights — Conversion Rate Adjustments.” If, for example, the conversion rate is adjusted as a result of a distribution that is taxable to our common stockholders, such as a cash dividend, you may be required to include an amount in income for U.S. federal income tax purposes, notwithstanding the fact that you do not receive a corresponding cash distribution. In addition, a failure to adjust (or to adjust adequately) the conversion rate after an event that has the effect of increasing your proportionate interest in our company could be treated as a deemed taxable dividend to you. The amount that you would have to include in income generally will be equal to the amount of the distribution that you would have received if you had converted your notes into our common stock.

If certain types of fundamental changes occur on or before the maturity date of the notes, under some circumstances, we will increase the conversion rate for notes converted in connection with the fundamental change. Such increase may also be treated as a distribution subject to U.S. federal income tax as a dividend. See “Federal Income Tax Considerations.”

If you are a non-U.S. holder (as defined in “Federal Income Tax Considerations”), any deemed dividend would be subject to U.S. federal withholding tax at a 30% rate, or such lower rate as may be specified by an applicable treaty, which may be set off against subsequent payments. See “Federal Income Tax Considerations.”

We cannot assure you that we will not be required to withhold on payments to non-U.S. holders of notes in connection with a sale, exchange, redemption, repurchase, conversion, or other disposition of notes based on the facts and circumstances at the time.

Although we believe that currently the notes do not constitute “U.S. real property interests” and we therefore do not currently intend to withhold under the Foreign Investment in Real Property Tax Act, or FIRPTA, we cannot assure you that the notes will not constitute U.S. real property interests depending on the facts in existence at the time of any sale, exchange, redemption, repurchase, conversion or other disposition of a note. If the notes were to constitute U.S. real property interests, withholding on payments to non-U.S. holders in connection with such a sale, exchange, redemption, repurchase, conversion or other disposition of notes may be required regardless of whether such non-U.S. holders provided certification documenting their non-U.S. status. See “Federal Income Tax Considerations.”

Changes in the accounting treatment of the notes could decrease our earnings per share and, potentially, our stock price.

There may, in the future, be new or different accounting pronouncements or regulatory rulings, which could impact the way we are required to account for the notes, and which may have an adverse

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impact on our future financial condition and results of operations. With respect to the notes, we are required under U.S. GAAP as presently in effect to include in outstanding shares for purposes of computing earnings per share only a number of shares underlying the notes that, at the end of a given quarter, have a value in excess of the outstanding principal amount of the notes. This is because of the “net share settlement” feature of the notes, under which we are required to pay the principal amount of the notes in cash. During the third quarter of 2007, the FASB Staff issued a proposed FASB Staff Position (FSP) that applies to convertible debt instruments that, by their stated terms, may be settled in cash (or other assets) upon conversion, including partial cash settlement, unless the embedded conversion option is required to be separately accounted for as a derivative under FAS 133. Convertible debt instruments within the scope of the proposed FSP are not addressed by the existing FSP. The proposed FSP would require that the liability and equity components of convertible debt instruments within the scope of the proposed FSP shall be separately accounted for in a manner that reflects the entity’s nonconvertible debt borrowing rate. This will require an allocation of the convertible debt proceeds between the liability component and the embedded conversion option (i.e., the equity component). The difference between the principal amount of the debt and the amount of the proceeds allocated to the liability component would be reported as a debt discount and subsequently amortized to earnings over the instrument’s expected life using the effective interest method. This proposed FSP as currently written would require this accounting to be applied retrospectively for all periods presented.

We cannot predict the outcome of the proposed FSP or any changes in GAAP that may be made affecting accounting for convertible debt securities. Any change in the accounting method for convertible debt securities could have an adverse impact on our reported or future financial results and could adversely affect the trading price of our common stock and in turn negatively affect the trading price of the notes.

We may not be able to pay dividends upon events of default under our financing documents.

Some of our financing documents contain restrictions on dividends upon the occurrence of events of default thereunder. If such an event of default occurs, such as our failure to pay principal at maturity or interest when due for a specified period of time, we would be prohibited from making payments on our capital stock, including our common stock.

The “taxable mortgage pool” rules may increase the taxes that we or our stockholders may incur, and may limit the manner in which we effect future securitizations.

Certain of our securitizations have resulted in the creation of taxable mortgage pools for federal income tax purposes. As a REIT, so long as we own 100% of the equity interests in a taxable mortgage pool, we would generally not be adversely affected by the characterization of the securitization as a taxable mortgage pool. Certain categories of stockholders, however, such as foreign stockholders eligible for treaty or other benefits, stockholders with net operating losses, and certain tax-exempt stockholders that are subject to unrelated business income tax, could be subject to increased taxes on a portion of their dividend income from us that is attributable to the taxable mortgage pool. In addition, to the extent that our stock is owned by tax-exempt “disqualified organizations,” such as certain government-related entities and charitable remainder trusts that are not subject to tax on unrelated business income, under recently issued IRS guidance, we may incur a corporate level tax on a portion of our income from the taxable mortgage pool. In that case, we may reduce the amount of our distributions to any disqualified organization whose stock ownership gave rise to the tax. See “Federal Income Tax Considerations — Taxation of Anthracite Capital, Inc. — Taxable Mortgage Pools and Excess Inclusion Income” and “Federal Income Tax Considerations — Taxation of Stockholders — Taxation of Tax-Exempt Stockholders.” Moreover, we could be precluded from selling equity interests in these securitizations to outside investors, or selling any debt securities issued in connection with these securitizations that might be considered to be equity interests for tax purposes. These limitations may prevent us from using certain

techniques to maximize our returns from securitization transactions.

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We may not be able to refinance the notes if required or if we so desire.

We may need or desire to refinance all or a portion of the notes or any other future indebtedness that we incur on or before the maturity of the notes. We may not be able to refinance any of our indebtedness on commercially reasonable terms, if at all.

The notes are held in book-entry form and, therefore, you must rely on the procedures and the relevant clearing systems to exercise your rights and remedies.

Unless and until certificated notes are issued in exchange for book-entry interests in the notes, owners of the book-entry interests are not be considered owners or holders of notes. Instead, DTC, or its nominee, is the sole holder of the notes. Payments of principal, interest and other amounts owing on or in respect of the notes in global form will be made to the paying agent, which will make payments to DTC. Thereafter, those payments will be credited to DTC participants' accounts that hold book-entry interests in the notes in global form and credited by such participants to indirect participants. Unlike holders of the notes themselves, owners of book-entry interests will not have the direct right to act upon our solicitations for consents or requests for waivers or other actions from holders of the notes. Instead, if you own a book-entry interest, you will be permitted to act only to the extent you have received appropriate proxies to do so from DTC or, if applicable, a participant. Procedures implemented for the granting of such proxies may not be sufficient to enable you to vote on any requested actions on a timely basis.

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USE OF PROCEEDS

The selling securityholders will receive all of the net proceeds from the sale of the notes or shares of our common stock issuable upon conversion of the notes. We will not receive any of the proceeds from the sale of any of these securities.

The selling securityholders will not cover any of the expenses that are incurred by us in connection with the registration of the notes or common stock issuable upon conversion of the notes, but the selling securityholders will pay any commissions, discounts and other compensation to any broker-dealers through whom any such selling securityholder sells any of the notes or common stock issuable upon conversion of the notes.

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RATIO OF EARNINGS TO COMBINED FIXED CHARGES AND PREFERRED STOCK DIVIDENDS

The historical ratio of earnings to combined fixed charges and preferred stock dividends for the periods indicated is as follows:

Year ended December 31,	2007	2006	2005	2004	2003	Ratio of earnings to combined fixed charges and preferred stock dividends
	1.20	1.26	1.34	1.16	—	

For the purpose of calculating the above ratios, earnings represent:

<p>from continuing operations before adjustment for income or loss from equity investees; plus</p> <p>amortization of capitalized expenses related to indebtedness; plus</p> <p>of equity investees; minus</p> <p>dividend requirements of consolidated subsidiaries.</p>	<ul style="list-style-type: none"> • income • fixed charges; plus • distributed income • preferred stock
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Combined fixed charges and preferred stock dividends represent:

<p>expensed; plus</p> <p>premiums, discounts and capitalized expenses related to indebtedness; plus</p> <p>dividend requirements of consolidated subsidiaries.</p>	<ul style="list-style-type: none"> • interest • amortized • preferred stock
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The ratios are based solely on historical financial information, and no pro forma adjustments have been made thereto. For the year ended December 31, 2003, earnings were insufficient to cover combined fixed charges and preferred stock dividends by \$20.2 million.

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DESCRIPTION OF CAPITAL STOCK

The following is a description of our capital stock and certain provisions of our charter, bylaws and certain provisions of applicable law. The following is only a summary and is qualified by applicable law and by the provisions of our charter and bylaws, copies of which are available as set forth under “Additional Information.”

Authorized Capital Stock

The authorized capital stock of Anthracite Capital, Inc. consists of 500,000,000 shares of capital stock, 400,000,000 of such shares being common stock, par value \$0.001 per share, and 100,000,000 shares being preferred stock, par value \$0.001 per share, issuable in one or more series.

As of April 4, 2008, 68,285,782 shares of our common stock were issued and outstanding, 2,300,000 shares of our 9.375% Series C Cumulative Redeemable Preferred Stock were issued and outstanding, 3,450,000 shares of our 8.25% Series D Cumulative Redeemable Preferred Stock were issued and outstanding, 23,375 shares of our Series E-1 Cumulative Convertible Redeemable Preferred Stock were issued and outstanding, 23,375 shares of our 12% Series E-2 Cumulative Convertible Redeemable Preferred Stock were issued and outstanding and 23,375 shares of our 12% Series E-3 Cumulative Convertible Redeemable Preferred Stock were issued and outstanding.

Common Stock

Voting Rights. Each holder of common stock is entitled to one vote for each share held on all matters to be voted upon by our stockholders, subject to the provisions of our charter regarding the ownership of shares of common stock in excess of the ownership limitations described below under “— Restrictions on Ownership and Transfer of Our Capital Stock; Repurchase of Shares.”

Dividends. The holders of outstanding shares of common stock, subject to any preferences that may be applicable to any outstanding series of preferred stock, are entitled to receive ratably such dividends out of assets legally available for that purpose at such times and in such amounts as our board of directors may from time to time determine.

Liquidation and Dissolution. Upon our liquidation or dissolution, the holders of the common stock will be entitled to share ratably in our assets legally available for distribution to stockholders after payment of, or provision for, all known debts and liabilities and subject to the prior rights of any holders of any preferred stock then outstanding.

Other Rights. Holders of the common stock generally have equal dividend, distribution, liquidation and other rights, and shall have no preference, conversion, exchange, appraisal, preemptive or cumulative voting rights. All outstanding shares of common stock are duly authorized, fully paid and nonassessable.

Transfer Agent and Registrar. American Stock Transfer & Trust Company, New York, New York, acts as transfer agent and registrar for the common stock.

Preferred Stock

We are authorized to issue 100,000,000 shares of preferred stock. As of April 4, 2008, 2,300,000 shares of our 9.375% Series C Cumulative Redeemable Preferred Stock were issued and outstanding, 3,450,000 shares of our 8.25% Series D Cumulative Redeemable Preferred Stock were issued and outstanding, 23,375 shares of our Series E-1 Cumulative Convertible Redeemable Preferred Stock were issued and outstanding, 23,375 shares of our 12% Series E-2

Cumulative Convertible Redeemable Preferred Stock were issued and outstanding and 23,375 shares of our 12% Series E-3 Cumulative Convertible Redeemable Preferred Stock were issued and outstanding. No warrants to purchase either common stock or preferred stock are issued or outstanding. Our board of directors has the authority, without further action by the stockholders, to issue shares of preferred stock in one or more series and to fix the number of shares, dividend rights, conversion rights, voting rights, redemption rights, liquidation preferences, sinking funds, and any other rights, preferences, privileges and restrictions applicable to each such series of preferred stock.

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Restrictions on Ownership and Transfer of Our Capital Stock; Repurchase of Shares

Two of the requirements for qualification as a real estate investment trust are that:

(1) during the last half of each taxable year for which a REIT election is made, other than the first taxable year for which a REIT election is made, not more than 50% in value of the outstanding shares may be owned directly or indirectly by five or fewer individuals. This requirement is known as the “5/50 Rule”; and

(2) there must be at least 100 stockholders on 335 days of each taxable year of 12 months, other than the first taxable year for which a REIT election is made.

To assist us in meeting these requirements, our charter prohibits any person from acquiring or holding, directly or indirectly, in excess of 9.8%, in value or in number of shares, whichever is more restrictive, of the number of our outstanding shares of common stock or any class of preferred stock. For this purpose, the term “ownership” is defined in accordance with the REIT Provisions of the Internal Revenue Code and the constructive ownership provisions of Section 544 of the Internal Revenue Code, as modified by Section 856(h)(1)(B) of the Internal Revenue Code. Subject to certain limitations, our board of directors may modify the ownership limitations provided such action does not affect our qualification as a REIT.

For purposes of the 5/50 Rule, the constructive ownership provisions applicable under Section 544 of the Internal Revenue Code

(1) attribute ownership of securities owned by a corporation, partnership, estate or trust proportionately to its stockholders, partners or beneficiaries,

(2) attribute ownership of securities owned by certain family members to other members of the same family, and

(3) treat securities with respect to which a person has an option to purchase as actually owned by that person.

These rules will be applied in determining whether a person holds shares of common stock or preferred stock in violation of the ownership limitations specified in our charter. Accordingly, under certain circumstances, shares of common stock or preferred stock owned by a person who individually owns less than 9.8% of the shares outstanding may nevertheless be in violation of the ownership limitations specified in our charter. Ownership of shares of common stock through such attribution is generally referred to as constructive ownership. The 100 stockholder test is determined by actual, and not constructive, ownership.

Our charter further provide that if any transfer of shares of common stock which, if effective, would

(1) result in any person beneficially or constructively owning shares of common stock in excess or in violation of the 9.8% ownership limitations described above,

(2) result in our stock being beneficially owned by fewer than 100 persons, determined without reference to any rules of attribution, or

(3) result in us being “closely held” under Section 856(h) of the Internal Revenue Code,

then that number of shares of common or preferred stock the beneficial or constructive ownership of which otherwise would cause such person to violate such limitations, rounded to the nearest whole shares, shall be automatically transferred to a trustee as trustee of a trust for the exclusive benefit of one or more charitable beneficiaries, and the intended transferee shall not acquire any rights in such shares. Shares of common or preferred stock held by the trustee shall be issued and outstanding shares of common or preferred stock. The intended transferee shall not benefit economically from owning any shares held in the trust, shall have no rights to dividends, and shall possess no rights to vote or other rights attributable to the shares held in the trust. The trustee shall have all voting rights and rights to dividends or other distributions with respect to shares held in the trust, which will be exercised for the exclusive benefit of the charitable beneficiary. Any dividend or other distribution

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paid to the intended transferee before our discovery that shares of common or preferred stock have been transferred to the trustee shall be paid with respect to such shares to the trustee by the intended transferee upon demand and any dividend or other distribution authorized but unpaid shall be paid to the trustee. Our board of directors may, in its discretion, modify these restrictions on owning shares in excess of the ownership limitations, to the extent such modifications do not affect our qualification as a REIT.

Within 20 days of receiving notice from us that shares of common or preferred stock have been transferred to the trust, the trustee shall sell the shares held in the trust to a person, designated by the trustee, whose ownership of the shares will not violate the ownership limitations specified in our charter. Upon such sale, the interest of the charitable beneficiary in the shares sold shall terminate and the trustee shall distribute the net proceeds of the sale to the intended transferee and to the charitable beneficiary as follows: The intended transferee shall receive the lesser of (1) the price paid by the intended transferee for the shares or, if the intended transferee did not give value for the shares in connection with the event causing the shares to be held in the trust, e.g., in the case of a gift, devise or other such transaction, the market price, as defined below, of the shares on the day of the event causing the shares to be held in the trust, and (2) the price per share received by the trustee from the sale or other disposition of the shares held in the trust. Any net sales proceeds in excess of the amount payable to the intended transferee shall be immediately paid to the charitable beneficiary. In addition, shares of common or preferred stock transferred to the trustee shall be deemed to have been offered for sale to us, or our designee, at a price per share equal to the lesser of (1) the price per share in the transaction that resulted in such transfer to the trust or, in the case of a devise or gift, the market price at the time of such devise or gift, and (2) the market price on the date we, or our designee, accept such offer. We shall have the right to accept such offer until the trustee has sold shares held in the trust. Upon such a sale to us, the interest of the charitable beneficiary in the shares sold shall terminate and the trustee shall distribute the net proceeds of the sale to the intended transferee.

The term “market price” on any date shall mean, with respect to any class or series of outstanding shares of our stock, the closing price, as defined below, for such shares on such date. The “closing price” on any date shall mean the last sale price for such shares, regular way, or, in case no such sale takes place on such day, the average of the closing bid and asked prices, regular way, for such shares, in either case as reported in the principal consolidated transaction reporting system with respect to securities listed or admitted to trading on The New York Stock Exchange or, if such shares are not listed or admitted to trading on The New York Stock Exchange, as reported on the principal consolidated transaction reporting system with respect to securities listed on the principal national securities exchange on which such shares are listed or admitted to trading or, if such shares are not listed or admitted to trading on any national securities exchange, the last quoted price, or, if not so quoted, the average of the high bid and low asked prices in the over-the-counter market, as reported by the National Association of Securities Dealers, Inc., Automated Quotation Systems, or, if such system is no longer in use, the principal other automated quotation system that may then be in use or, if such shares are not quoted by any such organization, the average of the closing bid and asked prices as furnished by a professional market maker making a market in such shares selected by our board of directors or, in the event that no trading price is available for such shares, the fair market value of the shares, as determined in good faith by our board of directors.

Every owner of more than 5%, or such lower percentage as required by the Internal Revenue Code or the regulations promulgated under the Internal Revenue Code, of the outstanding shares or any class or series of our stock, within 30 days after the end of each taxable year, is required to give written notice to us stating the name and address of such owner, the number of shares of each class and series of our stock beneficially owned and a description of the manner in which such shares are held. Each owner of more than 5% shall provide to us additional information as we may request in order to determine the effect, if any, of such beneficial ownership on our qualification as a REIT and to ensure compliance with the ownership limitations.

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Material Provisions of Maryland Law and of Our Charter and Bylaws

The following is a summary of the material provisions of the MGCL, as amended from time to time, and of our charter and bylaws. It does not restate the material provisions completely. We urge you to read our charter and bylaws. See “Additional Information.” For a description of additional restrictions on transfer of the common stock, see “— Restrictions on Ownership and Transfer of Our Capital Stock; Repurchase of Shares.”

Removal of Directors

Our charter provides that a director may be removed from office at any time for cause by the affirmative vote of the holders of at least two-thirds of the votes of the shares entitled to be cast in the election of directors.

Our board has elected to opt in to a corporate governance provision providing that each vacancy on the board of directors may be filled only by the affirmative vote of a majority of the remaining directors in office, even if the remaining directors do not constitute a quorum. For a more detailed description, see “— Corporate Governance.”

Staggered Board

Our charter and bylaws divide the board of directors into three classes of directors, each class constituting approximately one-third of the total number of directors, with the classes serving staggered three-year terms. The classification of the board of directors will make it more difficult for stockholders to change the composition of the board of directors because only a minority of the directors can be elected at any one time. The classification provisions could also discourage a third party from accumulating our stock or attempting to obtain control of us, even though this attempt might be beneficial to us and some, or a majority, of our stockholders. Accordingly, under certain circumstances stockholders could be deprived of opportunities to sell their shares of common stock or preferred stock at a higher price than might otherwise be available.

Furthermore, as described under “— Corporate Governance,” our board may classify itself without the vote of stockholders. Such classification cannot be altered by a charter amendment, thereby making it more difficult for stockholders to change the composition of the board because they cannot veto the board’s classification.

Business Combinations

Under the MGCL, certain “business combinations” including a merger, consolidation, share exchange or, in some circumstances, an asset transfer or issuance or reclassification of equity securities, between a Maryland corporation and an “interested stockholder” or an affiliate of an interested stockholder are prohibited for five years after the most recent date on which the interested stockholder becomes an interested stockholder. An interested stockholder is defined in the MGCL as any person who beneficially owns 10% or more of the voting power of the corporation’s shares or an affiliate 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 stock of the corporation. During the five year period, any applicable business combination must be recommended by the board of directors of that corporation and approved by the affirmative vote of at least:

- (a) 80% of the votes entitled to be cast by holders of outstanding shares of voting stock of the corporation; and
- (b) two-thirds of the votes entitled to be cast by holders of voting stock of the corporation other than shares held by the interested

stockholder with whom, or with whose affiliate, the business combination is to be effected, unless, among other conditions, the corporation's common stockholders receive a minimum price, as defined in the MGCL, for their shares and the consideration is received in cash or in the same form as previously paid by the interested stockholder for its shares. The MGCL does not apply, however, to business combinations that are approved or exempted by the board of directors of the corporation before the interested stockholder becomes an interested stockholder.

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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 approved by a vote of two-thirds of the votes entitled to be cast on the matter, excluding shares of stock owned by the acquirer, by officers or by directors who are employees of the corporation. “Control shares” are voting shares of stock which, if aggregated with all other such shares of stock previously acquired by the acquirer or in respect of which the acquirer is able to exercise or direct the exercise of voting power, except solely by virtue of a revocable proxy, would entitle the acquirer to exercise voting power in electing directors within one of the following ranges of voting power:

- (1) one-tenth or more but less than one-third,
- (2) one-third or more but less than a majority or
- (3) a majority or more of all voting power. Control shares do not include shares the acquiring person is then entitled to vote as a result of having previously obtained stockholder approval. A “control share acquisition” means the acquisition of control shares, subject to certain exceptions.

A person who has made or proposes to make a control share acquisition, upon satisfaction of certain conditions, including an undertaking to pay expenses, may compel the board of directors of the corporation to call a special meeting of stockholders to be held within 50 days of demand to consider the voting rights of the shares. If no request for a meeting is made, the corporation may itself 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 certain conditions and limitations, the corporation may redeem any or all of the control shares, except those for which voting rights have previously been approved, for fair value 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 acquirer or of any meeting of stockholders at which the voting rights of such shares are considered and not approved. If voting rights for control shares are approved at a stockholders meeting and the acquirer 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 such appraisal rights may not be less than the highest price per share paid by the acquirer in the control share acquisition.

The control share acquisition statute does not apply:

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

Our bylaws contain a provision exempting from the control share acquisition statute any and all acquisitions by any person of our shares of common stock. We cannot give any assurance that such provision will not be amended or eliminated at any time in the future.

Corporate Governance

The MGCL provides that Maryland corporations that are subject to the Exchange Act and have at least three outside directors can elect by resolution of the board of directors to be subject to some corporate governance provisions that may be inconsistent with the corporation's charter and bylaws. Under the applicable statute, a board of directors may classify itself without the vote of stockholders. A board of directors classified in that manner cannot be altered by amendment to the charter of the corporation. Further, the board of directors may, by electing into the applicable statutory provisions and notwithstanding the charter or bylaws:

that a special meeting of stockholders will be called only at the request of stockholders entitled to cast at least a majority of the votes entitled to be cast at the meeting;

right to fix the number of directors;

- provide
- reserve for itself the

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director may be removed only by the vote of the holders of two-thirds of the stock entitled to vote; and

- provide that a
- retain for itself sole

authority to fill vacancies created by an increase in the size of the board or by the death, removal or resignation of a director.

Our board has elected into the last of the foregoing provisions providing that each vacancy on the board of directors may be filled only by the affirmative vote of a majority of the remaining directors in office, even if the remaining directors do not constitute a quorum. A director elected to fill a vacancy under this provision will serve for the balance of the unexpired term instead of until the next annual meeting of stockholders. A board of directors may implement all or any of these provisions without amending the charter or bylaws and without stockholder approval. A corporation may be prohibited by its charter or by resolution of its board of directors from electing any of the provisions of the statute. We are not prohibited from implementing any or all of the statute. If implemented, these provisions could discourage offers to acquire our stock and could increase the difficulty of completing an offer to acquire our stock.

Amendment to the Charter

We reserve the right from time to time to make any amendment to our charter that is authorized by law at present or in the future, including any amendment which alters the contract rights as expressly stated in our charter, of any shares of outstanding stock. Our charter may be amended only by the affirmative vote of holders of shares entitled to cast at least a majority of all the votes entitled to be cast on the matter; provided, however, that provisions relating to the indemnification of our present and former directors and officers, our election to be taxed as a REIT, the removal of directors for cause and our dissolution may be amended only by the affirmative vote of a majority of the board of directors and the holders of shares entitled to cast at least two-thirds of all the votes entitled to be cast in the election of directors.

Dissolution of Anthracite

Our dissolution must be approved by the affirmative vote of at least two-thirds of all of the votes ordinarily entitled to be cast in the election of directors, voting together as a single class, and the affirmative vote of holders of at least two-thirds of any series or class of stock expressly granted a series or class vote on our dissolution in the resolutions providing for such series or class. Before such vote, the dissolution must be approved by a majority of the board of directors.

Advance Notice of Director Nominations and New Business

The bylaws provide that

respect to an annual meeting of stockholders, nominations of persons for election to the board of directors and the proposal of business to be considered by stockholders may be made only

- (a) with
- (1) pursuant to our notice
- (2) by the board of
- (3) by a stockholder who

of the meeting,

directors, or

is entitled to vote at the meeting and has complied with the advance notice procedures specified in the bylaws, and

- (b) with

respect to special meetings of stockholders, only the business specified in our notice of meeting may be brought before the meeting of stockholders and nominations of persons for election to the board of directors or (c) provided that the board of directors has determined that directors shall be elected at such meeting, by a stockholder who is entitled to vote at the meeting and has complied with the advance notice provisions specified in the bylaws.

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

The business combination provisions and, if the applicable provision in our bylaws is rescinded, the control share acquisition provisions of the MGCL, the provisions of our charter creating a

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staggered board, implementation of the corporate governance provisions described above and the advance notice provisions of our bylaws could delay, defer or prevent a change in control of us or other transaction that might involve a premium price for holders of our common stock or otherwise be in their best interest.

Reports to Stockholders

We will furnish our stockholders with annual reports containing audited financial statements and such other periodic reports as we may determine to furnish or as may be required by law.

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DESCRIPTION OF NOTES

We issued \$80,000,000 in aggregate principal amount of our 11.75% convertible senior notes due 2027 under an indenture, dated as of August 29, 2007, or the indenture, between us and Wells Fargo Bank, N.A., as trustee. We entered into a registration rights agreement, dated as of August 29, 2007, or the registration rights agreement, with the initial purchasers pursuant to which we agreed to file a shelf registration statement with the SEC covering resales of notes, as well as shares of our common stock issuable upon conversion of notes, of which this prospectus is a part. Each holder may request a copy of the indenture and the registration rights agreement from us at the address set forth under “Additional Information.”

The following description is a summary of the material provisions of the notes, the indenture and the registration rights agreement and does not purport to be complete. This summary is subject to and is qualified by reference to all the provisions of the notes and the indenture, including the definitions of certain terms used in the indenture, and to all provisions of the registration rights agreement. We urge you to read the indenture, the notes and the registration rights agreement because they, and not this description, define each holder’s rights as a holder of the notes.

As used in this section, “Description of Notes,” references to “Anthracite Capital,” the “Company,” “we,” “us” and “our” to Anthracite Capital, Inc. and do not include its subsidiaries, unless the context otherwise requires.

General

The notes mature on September 1, 2027 unless earlier converted, redeemed or repurchased. Each holder of notes has the option, subject to certain qualifications and the satisfaction of certain conditions, to convert its notes into cash and shares, if any, of our common stock at an initial conversion rate of 92.7085 shares per \$1,000 principal amount of notes. This is equivalent to an initial conversion price of approximately \$10.79 per share of common stock. The conversion rate is subject to adjustment if certain events occur.

Upon a surrender of a holder’s notes for conversion, unless we have previously exercised our option to satisfy all of our future conversion obligations entirely in common stock as described below under “— Conversion Rights — Option to Irrevocably Elect to Satisfy Future Conversion Obligations in Common Stock,” we will deliver cash equal to the lesser of the aggregate principal amount of notes to be converted and our total conversion obligation. We will deliver shares of our common stock in respect of the remainder, if any, of our conversion obligation, as described below under “— Conversion Rights — Payment upon Conversion.” If we deliver common stock upon conversion of a note, a holder will not receive fractional shares but will instead receive a cash payment to account for any such fractional share, as described below. A holder will not receive any cash payment for interest (or additional amounts, if any) accrued and unpaid to the conversion date except under the limited circumstances described below.

The notes are our senior, unsecured obligations and rank in right of payment:

- equal with all of our other existing and future obligations that are unsecured and unsubordinated;
- effectively junior to our existing and future secured indebtedness to the extent of the value of the collateral securing such indebtedness;
- and
- structurally subordinated to our subsidiaries’ indebtedness and other liabilities.

As of December 31, 2007,

• we had
\$242.5 million of senior, unsecured indebtedness (including \$80.0 million aggregate principal amount of the notes originally issued in private placements on August 29, 2007 and September 10, 2007);

• we had \$3.8 billion
of secured indebtedness and had approximately \$300.8 million of secured debt that could be incurred under our secured credit facilities; and

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\$3.7 billion of indebtedness and other liabilities, including trade and other payables but excluding intercompany amounts.

- our subsidiaries had

The notes were issued only in denominations of \$1,000 principal amount and integral multiples thereof. References to “a note” or “each note” in this prospectus refer to \$1,000 principal amount of the notes.

We may, without the consent of holders, reopen the notes and issue additional notes under the indenture with the same terms and with the same CUSIP numbers as the notes in an unlimited aggregate principal amount, provided that no such additional notes may be issued unless fungible with the notes for U.S. federal income tax purposes. The notes and any such additional notes would be treated as a single class for all purposes under the indenture and would vote together as one class on all matters with respect to the notes. We may also from time to time repurchase the notes in open market purchases or negotiated transactions without prior notice to holders.

As used in this prospectus, “business day” means any day, other than a Saturday or Sunday, that is neither a legal holiday nor a day on which commercial banks are authorized or required by law, regulation or executive order to close in New York City.

Any reference to “common stock” means our common stock, par value, \$0.001 per share.

Interest

The notes bear interest at a rate of 11.75% per year.

For so long as the notes are held in book-entry only form, interest (including additional amounts, if any) is payable on each interest payment date to the person in whose name a given note is registered at the close of business on the business day before the interest payment date (each, a “record date”). In the event that the notes do not remain in book-entry only form or are not in the form of a global certificate, we will have the right to select record dates, which will be at least one business day before an interest payment date. Interest will be calculated on the basis of a 360-day year consisting of twelve 30-day months and will accrue from the issue date or from the most recent date to which interest has been paid or duly provided for. We will pay interest (including additional amounts, if any) semi-annually, in arrears on September 1 and March 1 of each year, commencing on March 1, 2008.

Upon conversion of a note, a holder will not receive any cash payment of interest (including additional amounts, if any) unless, as described below, such conversion occurs after the close of business on a record date and prior to the opening of business on the interest payment date to which that record date relates or such conversion occurs during a registration default as described under “— Registration Rights” below. If we deliver common stock upon surrender of a note for conversion, we will not issue fractional shares of common stock. Instead, we will pay cash in lieu of fractional shares based on the volume weighted average price of our common stock on the trading day immediately prior to the conversion date. Our delivery to a holder of the full amount of cash and common stock, if any, as described below under “— Conversion Rights — Payment upon Conversion,” together with any cash payment for any fractional share, will be deemed to satisfy our obligation to pay:

principal amount of the note; and

- the
- accrued but unpaid

interest (including additional amounts, if any) to but excluding the conversion date.

As a result, accrued but unpaid interest (including additional amounts, if any) to but excluding the conversion date will be deemed to be paid in full rather than cancelled, extinguished or forfeited. For a general discussion of the U.S. federal income tax treatment upon receipt of our common stock upon conversion, see ‘Federal Income Tax Considerations.’

Notwithstanding the preceding paragraph, if notes are converted after the close of business on a record date but prior to the opening of business on the interest payment date to which that record

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date relates, holders of such notes at the close of business on the record date will receive the interest (including additional amounts, if any) payable on the notes on such interest payment date notwithstanding the conversion. Such notes, upon surrender for conversion, must be accompanied by funds equal to the amount of interest (including additional amounts, if any) payable on the notes so converted on the next succeeding interest payment date. However, no such payment need be made:

- in connection with any conversion following the record date immediately preceding the maturity date;
- if we have specified a redemption date that is after a record date and on or prior to the corresponding interest payment date;
- if we have specified a fundamental change purchase date that is after a record date and on or prior to the corresponding interest payment date;
- if a scheduled repurchase date occurs after a record date and on or prior to the corresponding interest payment date; or
- to the extent of any overdue interest (including overdue additional amounts, if any) if the same exists at the time of conversion with respect to such note.

In addition, notwithstanding the previous paragraph, we will pay, on the stated maturity, accrued and unpaid interest to but excluding such stated maturity on any notes surrendered for conversion on or after August 1, 2027 to a converting holder.

If any interest payment date, maturity date, redemption date or repurchase date (including upon the occurrence of a fundamental change, as described below) falls on a day that is not a business day, then the required payment will be made on the next succeeding business day with the same force and effect as if made on the date that the payment was due, and no additional amounts will accrue on that payment for the period from and after the interest payment date, maturity date, redemption date or repurchase date, as the case may be, to that next succeeding business day.

Conversion Rights

General

Subject to the qualifications and the satisfaction of the conditions and during the periods described below, holders will have the right to convert their notes prior to the close of business on the business day immediately preceding the maturity date, initially at a conversion rate of 92.7085 shares per \$1,000 principal amount of notes, which is equivalent to an initial conversion price of approximately \$10.79 per share of common stock. Upon a surrender of a holder's notes for conversion, unless we have previously exercised our option to satisfy all of our future conversion obligations entirely in common stock as described below under “— Option to Irrevocably Elect to Satisfy Future Conversion Obligations in Common Stock,” we will deliver cash equal to the lesser of the aggregate principal amount of notes to be converted and our total conversion obligation. We will deliver shares of our common stock in respect of the remainder, if any, of our conversion obligation, as described below under “— Payment upon Conversion.”

The conversion rate in effect at any given time is referred to in this prospectus as the “applicable conversion rate” and will be subject to adjustments as described under “— Conversion Rate Adjustments,” but it will not be adjusted for accrued interest. The “applicable conversion price” at any given time is equal to the principal amount of a note divided by the applicable conversion rate. Holders will be entitled to convert notes in denominations of \$1,000 principal amount or multiples thereof. Upon surrender of a note for conversion, we will deliver cash and shares of our common

stock, if any, as described below under “— Payment upon Conversion.”

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A holder may convert its notes in whole or in part only in the following circumstances, which are described in more detail below, and to the following extent:

satisfaction of the sale price condition;

the trading price condition;

notes for redemption, until the close of business one business day prior to the redemption date for such notes;

or after April 1, 2027; or

of specified corporate transactions.

- upon
- upon satisfaction of
- if we have called
- at any time on
- upon the occurrence

Upon any determination by us that holders are or will be entitled to convert their notes in accordance with the foregoing provisions, we will (1) issue a press release and publish the information on our website or otherwise publicly disclose the information or (2) provide notice to the holders of the notes in a manner contemplated by the indenture, including through the facilities of DTC.

A holder that has submitted its notes for repurchase on a scheduled repurchase date or upon a fundamental change may not subsequently convert those notes unless it validly withdraws its repurchase notice on a timely basis as described below under “— Repurchase Rights” or “— Repurchase of Notes by Us at Option of Holder upon a Fundamental Change.”

If a holder converts notes, we will pay any documentary, stamp or similar issue or transfer tax due on the issue of shares of our common stock upon the conversion, unless the tax is due because a holder requests the shares to be issued or delivered to another person, in which case that holder will pay that tax.

Our ability to pay cash to holders upon conversion may be restricted by agreements governing our indebtedness and limitations or prohibitions on our ability to obtain funds for such payment through dividends from our subsidiaries. See “Risk Factors — Risks Relating to the Notes and our Common Stock — We may not be able to repurchase the notes upon a fundamental change or upon the exercise of your option to require us to repurchase the notes, or pay you cash upon conversion of the notes.”

Conversion upon Satisfaction of Sale Price Condition

A holder may surrender any or all of its notes for conversion during any fiscal quarter after the fiscal quarter ending September 30, 2007 if the closing sale price per share of our common stock for at least 20 trading days during the 30-consecutive-trading-day period ending on the last trading day of the previous fiscal quarter is more than 130% of the applicable conversion price per share of our common stock on such last trading day.

The “closing sale price” of our common stock on any date means the closing sale price per share (or, if no closing sale price is reported, the average of the bid and asked prices or, if more than one in either case, the average of the average bid and the average asked prices) on such date as reported by The New York Stock Exchange or, if our common stock is not reported by The New York Stock Exchange, in composite transactions for the principal U.S. national or regional securities exchange on which our common stock is traded. If our common stock is not listed for trading on a U.S. national or regional securities exchange on the relevant date, the closing sale price will be the last quoted bid price for

our common stock in the over-the-counter market on the relevant date as reported by the National Quotation Bureau Incorporated or similar organization. If our common stock is not so quoted, the closing sale price will be the average of the mid-point of the last bid and asked prices for our common stock on the relevant date from each of at least three independent nationally recognized investment banking firms selected by us for this purpose.

A “trading day” is any day on which (i) there is no market disruption event (as defined below) and (ii) trading in our common stock generally occurs on The New York Stock Exchange or, if our common stock is not listed on The New York Stock Exchange, the principal national securities exchange on which our common stock is listed, admitted for trading or quoted or, if the common

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stock is not so listed, admitted for trading or quoted, any business day. A “trading day” only includes those days that have a scheduled closing time of 4:00 p.m. (New York City time) or the then-standard closing time for regular trading on the relevant exchange or trading system.

A “market disruption event” means the occurrence or existence for more than one half-hour in the aggregate on any scheduled trading day for our common stock of any suspension or limitation imposed on trading (by reason of movements in price exceeding limits permitted by The New York Stock Exchange or otherwise) in our common stock or in any options, contracts or future contracts relating to our common stock, and such suspension or limitation occurs or exists at any time before 1:00 p.m. (New York City time) on such day.

We will determine daily whether the notes are convertible as a result of the closing sale price of our common stock and will notify the trustee of such determination.

Conversion upon Satisfaction of Trading Price Condition

A holder may surrender any or all of its notes for conversion during the five business days immediately following any five-consecutive-trading day period in which the trading price per \$1,000 principal amount of the notes (as determined following a request by a holder of the notes in accordance with the procedures described below) for each day of that period was less than 98% of the product of the closing sale price of our common stock and the applicable conversion rate of the notes on each such day.

The “trading price” of the notes on any date of determination means the average of the secondary market bid quotations per note obtained by the trustee for \$5,000,000 aggregate principal amount of the notes at approximately 3:30 p.m., New York City time, on the determination date from three independent nationally recognized securities dealers we select, provided that:

such bids cannot reasonably be obtained by the trustee, but two such bids are obtained, then the average of the two bids shall be used, and

- if three

can reasonably be obtained by the trustee, this one bid shall be used;

- if only one such bid

provided further that if no bids are received, then for purposes of determining whether the trading price condition has been met the trading price per \$1,000 principal amount of the notes will be deemed to be less than 98% of the product of the closing sale price of our common stock and the applicable conversion rate of the notes on that day.

The trustee will have no obligation to determine the trading price of the notes as described in this section unless we have requested such determination; and we shall have no obligation to make such request unless a holder provides us with reasonable evidence that the trading price per \$1,000 principal amount of notes would be less than 98% of the product of the closing sale price of our common stock and the applicable conversion rate of the notes on that day. At such time, we will instruct the trustee to determine the trading price of the notes beginning on the next trading day and on each successive trading day until the trading price per \$1,000 principal amount of notes is greater than or equal to 98% of the product of the closing price of our common stock and the applicable conversion rate of the notes.

Conversion upon Notice of Redemption

Holders may surrender for conversion any or all of its notes called for redemption at any time prior to the close of business one business day prior to the redemption date for such notes, even if those notes are not otherwise convertible at that time.

Conversion On or After April 1, 2027

A holder may surrender any or all of its notes for conversion at any time on or after April 1, 2027 until the close of business on the business day immediately preceding the maturity date.

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Conversion upon Specified Corporate Transactions

Certain Distributions

If we elect to:

- distribute to all or substantially all holders of our common stock certain rights or warrants entitling them to purchase, for a period expiring within 60 days after the date of the distribution, shares of our common stock at less than the closing sale price of a share of our common stock on the trading day immediately preceding the announcement date of the distribution; or

- distribute to all or substantially all holders of our common stock, assets (including cash), debt securities or rights or warrants to purchase our securities, which distribution has a per-share value as determined by our board of directors exceeding 10% of the closing sale price of our common stock on the trading day immediately preceding the announcement date for such distribution,

we must notify holders of the notes at least 20 business days prior to the ex-dividend date for such distribution. Once we have given such notice, holders may surrender their notes for conversion at any time until the earlier of the close of business on the business day immediately prior to the ex-dividend date or any announcement that such distribution will not take place. No holder may exercise this right to convert if the holder otherwise could participate in the distribution without conversion. The “ex-dividend” date is the first date upon which a sale of the common stock does not automatically transfer the right to receive the relevant distribution from the seller of the common stock to its buyer.

Fundamental Change Transactions

If a fundamental change occurs, regardless of whether a holder has the right to put the notes as described under “— Repurchase of Notes by Us at Option of Holder upon a Fundamental Change,” a holder may surrender notes for conversion at any time from and including the effective date of the transaction until and including the 30th business day following such effective date. We will notify holders and the trustee at the same time we publicly announce such transaction (but in no event less than five business days prior to the anticipated effective date of such transaction).

If a holder elects to convert its notes in connection with certain fundamental change transactions described below under “— Make-Whole Amount,” the effective date of which occurs prior to September 1, 2012, we will increase the applicable conversion rate by a number of additional shares of our common stock as described below under “— Make-Whole Amount.”

If a transaction described above occurs, a holder may also have the right to require us to repurchase all or a portion of its notes, as described under “— Repurchase of Notes by Us at Option of Holder upon a Fundamental Change.”

Ownership Limit

In order to assist us in maintaining our qualification as a REIT for U.S. federal income tax purposes, no person may own, or be deemed to own by virtue of the attribution rules of the Internal Revenue Code, more than 9.8% of the value of our outstanding stock, subject to certain exceptions. Pursuant to the terms of the notes, no holder of notes will be entitled to convert such notes into shares of our common stock to the extent that receipt of such common stock would cause the holder to exceed the ownership limit contained in our charter. Accordingly, for purposes of the ownership

limit contained in our charter, ownership of the notes will not be treated as ownership of the shares of common stock that are potentially issuable upon conversion of the notes, and the notes will not be subject to transfer to a trust or to repurchase or other remedies that are provided in the charter for violations of the stock ownership limit. However, any shares of common stock that are received following a conversion will be subject to the ownership limit and the other provisions of the charter, and such shares would be subject to the remedies for violation as contained in the charter (for

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example, if, following a conversion of notes into shares of common stock, the holder thereof subsequently acquires additional shares of common stock such that its aggregate ownership exceeds the ownership limit). See “Description of Capital Stock — Restrictions on Ownership and Transfer of Our Capital Stock; Repurchase of Shares.”

Conversion Procedures

To convert a note, a holder must do each of the following:

- complete and manually sign the conversion notice on the back of the note, or a facsimile of the conversion notice, and deliver this notice to the conversion agent, which notice will be irrevocable;
- surrender the note to the conversion agent;
- if required, furnish appropriate endorsements and transfer documents;
- if required, pay all transfer or similar taxes; and
- if required, pay funds equal to interest payable on the next interest payment date.

The date a holder complies with these requirements and all other requirements for conversion have been satisfied is the “conversion date” under the indenture. The notes will be deemed to have been converted immediately prior to the close of business on the conversion date. If a holder’s interest is a beneficial interest in a global note, to convert, a holder must comply with the last three requirements listed above and comply with the depository’s procedures for converting a beneficial interest in a global note.

The conversion agent will initially be the trustee. The conversion agent will convert the notes into cash and shares, if any, of common stock at an initial conversion rate of shares per \$1,000 principal amount of notes. A holder may obtain copies of the required form of the conversion notice from the conversion agent. Payments of cash and, if common stock is to be delivered, a stock certificate or certificates will be delivered to the holder, or a book-entry transfer through DTC will be made, for the number of shares of common stock determined as set forth below under “— Payment upon Conversion.”

Payment upon Conversion

In connection with any conversion, we will satisfy our obligation to convert the notes (the “conversion obligation”) by delivering to holders in respect of each \$1,000 aggregate principal amount of notes being converted a “settlement amount” equal to the sum of the daily settlement amounts for each of the 20 consecutive trading days in the cash settlement averaging period.

The “daily settlement amount” for each of the 20 consecutive trading days in the cash settlement averaging period shall consist of:

- (1) cash equal to the lesser of \$50 and the daily conversion value; and
- (2) to the extent the daily conversion value exceeds \$50, a number of shares equal to (A) the difference between the daily conversion value and \$50 (such difference being referred to as the “daily excess amount”), divided by (B) the

volume weighted average price of our common stock for such trading day (or the consideration into which one share of our common stock has been converted or exchanged in connection with certain corporate transactions).

We will not issue fractional shares of common stock upon conversion of the notes. Instead, we will pay the cash value of such fractional shares based upon the volume weighted average price of our common stock on the trading day immediately preceding the conversion date. Upon conversion of a note, a holder will not receive any cash payment of interest (including additional amounts, if any) unless such conversion occurs between a record date and the interest payment date to which that record date relates. We will deliver the settlement amount on the third business day following the expiration of the cash settlement averaging period.

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The “daily conversion value” means, for each of the 20 consecutive trading days during the cash settlement averaging period, one-twentieth (1/20th) of the product of (1) the applicable conversion rate and (2) the volume weighted average price of our common stock on such trading day.

The “cash settlement averaging period” with respect to any notes means the 20-consecutive-trading-day period beginning:

- on the redemption date if prior to the relevant conversion date we have called the notes that are being converted for redemption;
- for notes that are converted during the period beginning on the 30th day prior to the maturity date of the notes, on the 27th trading day immediately preceding the maturity date; and
- in all other instances, on the second trading day after the relevant conversion date.

The “volume weighted average price” per share of our common stock on any trading day means such price as displayed on Bloomberg (or any successor service) page AHR <equity> VAP in respect of the period from 9:30 a.m. to 4:00 p.m., New York City time, on such trading day; or, if such price is not available, the volume weighted average price means the market value per share of our common stock on such day as determined by a nationally recognized independent investment banking firm retained for this purpose by us.

If a holder tenders notes for conversion and the daily conversion value is being determined at a time when the notes are convertible into other property in addition to or in lieu of our common stock, the settlement amount will be determined based on the kind and amount of shares of stock, securities or other property or assets (including cash or any combination thereof) that a holder of a number of shares of our common stock equal to the conversion rate would have owned or been entitled to receive in such transaction and the value thereof for each applicable trading day during the cash settlement averaging period, as described under “— Conversion Rate Adjustments.”

Option to Irrevocably Elect to Satisfy Future Conversion Obligations in Common Stock

Notwithstanding the provisions described above under “— Payment upon Conversion,” at any time on or prior to September 1, 2012 we may irrevocably elect, in our sole discretion without the consent of the holders of the notes, to satisfy all of our future conversion obligations entirely in common stock (a “physical settlement election”). If, in the future, we make a physical settlement election, we will deliver to you, in respect of any notes that you convert after that election, a number of whole shares equal to (i) the aggregate principal amount of notes to be converted (ii) divided by \$1,000 and (iii) multiplied by the applicable conversion rate (which will include any increase to reflect any additional shares which you may be entitled to receive as described under “— Make-Whole Amount”), and cash with respect to any fractional shares. We will deliver such shares on the third business day after the conversion date.

Prior to making any physical settlement election, we may irrevocably elect to waive our right to make any such election. Any such waiver would be effective upon our delivery to the trustee of a notice that we are irrevocably waiving our ability to make a physical settlement election at any time in the future with respect to the notes. If we make a physical settlement election in the future, that election will be irrevocable and our right to waive the ability to make a physical settlement election will expire.

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Conversion Rate Adjustments

The applicable conversion rate will be subject to adjustment, without duplication, upon the occurrence of any of the following events:

(1) If we issue our common stock as a dividend or distribution on our common stock, or if we effect a share split or share combination, the conversion rate will be adjusted based on the following formula:

$$CR1 = CR0 \times \frac{OS1}{OS0}$$

where

CR0 = the conversion rate in effect immediately prior to the ex-dividend date for such dividend or distribution, or the effective date of such share split or share combination;

CR1 = the new conversion rate in effect immediately after the ex-dividend date for such dividend or distribution, or the effective date of such share split or share combination;

OS0 = the number of shares of our common stock outstanding immediately prior to such ex-dividend date or effective date; and

OS1 = the number of shares of our common stock outstanding immediately prior to such ex-dividend date or effective date but after giving effect to such dividend, distribution, share split or share combination.

If any dividend or distribution described in this clause (1) is declared but not so paid or made, the new conversion rate shall be readjusted to the conversion rate that would then be in effect if such dividend or distribution had not been declared.

(2) If we distribute to all, or substantially all, holders of our common stock any rights, warrants or options entitling them for a period of not more than 60 days after the date of issuance thereof to subscribe for or purchase our common stock at an exercise price per share of our common stock less than the average of the closing sale prices of our common stock for each trading day in the 10-consecutive trading- day period ending on the trading day immediately preceding the time of announcement of such issuance, the conversion rate will be adjusted based on the following formula:

$$CR1 = CR0 \times \frac{(OS0 + X)}{(OS0 + Y)}$$

where

CR0 = the conversion rate in effect immediately prior to the ex-dividend date for such distribution;

CR1 = the new conversion rate in effect immediately after the ex-dividend date for such distribution;

OS0 = the number of shares of our common stock outstanding immediately prior to the ex-dividend date for such distribution;

X = the number of shares of our common stock issuable pursuant to such rights, warrants or options; and

Y = the number of shares of our common stock equal to the quotient of (A) the aggregate price payable to exercise such rights, warrants or options and (B) the average of the closing sale prices of our common stock for each trading day in the 10-consecutive-trading-day period ending on the trading day immediately preceding the date of announcement for the issuance of such rights, warrants or options.

For purposes of this clause (2), in determining whether any rights, warrants or options entitle the holders to subscribe for or purchase our common stock at less than the average of the closing

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sale prices for each trading day in the applicable 10-consecutive-trading-day period, there shall be taken into account any consideration we receive for such rights, warrants or options and any amount payable on exercise thereof, with the value of such consideration, if other than cash, to be determined by our board of directors. If any right, warrant or option described in this clause (2) is not exercised prior to the expiration of the exercisability thereof, the new conversion rate shall be readjusted to the conversion rate that would then be in effect if such right, warrant or option had not been so issued.

(3) If we distribute shares of our capital stock, evidences of indebtedness or other assets or property to all, or substantially all, holders of our common stock, excluding:

(A) dividends, distributions, rights, warrants or options referred to in clause (1) or (2) above;

(B) dividends or distributions paid exclusively in cash; and

(C) Spin-Offs described below in this clause (3),

then the conversion rate will be adjusted based on the following formula:

$$CR1 = CR0 \times \frac{SP0}{(OS0 - FMV)}$$

where

CR0 = the conversion rate in effect immediately prior to the ex-dividend date for such distribution;

CR1 = the new conversion rate in effect immediately after the ex-dividend date for such distribution;

SP0 = the average of closing sale prices of our common stock for each trading day in the 10-consecutive-trading-day period ending on the trading day immediately preceding the ex-dividend date for such distribution; and

FMV = the fair market value (as determined in good faith by our board of directors) of the shares of capital stock, evidences of indebtedness, assets or property distributed with respect to each outstanding share of our common stock on the earlier of the record date or the ex-dividend date for such distribution.

With respect to an adjustment pursuant to this clause (3), where there has been a payment of a dividend or other distribution to all, or substantially all, holders of our common stock of shares of capital stock of any class or series, or similar equity interest, of or relating to our subsidiary or other business unit (a “Spin-Off”), the conversion rate in effect immediately before the close of business on the effective date of the Spin-Off will be adjusted based on the following formula:

$$CR1 = CR0 \times \frac{(FMV0 + MP0)}{MP0}$$

where

CR0 = the conversion rate in effect immediately prior to the ex-dividend date of the Spin-Off;

CR1 = the new conversion rate after the Spin-Off;

FMV0 = the average of the closing sale prices of the capital stock or similar equity interest distributed to holders of our common stock applicable to one share of our common stock over the 10 consecutive trading days after, and including, the ex-dividend date of the Spin-Off; and

MP0 = the average of the closing sale prices of our common stock over the 10 consecutive trading days after, and including, the ex-dividend date of the Spin-Off.

An adjustment to the conversion rate made pursuant to the immediately preceding paragraph will occur on the 10th trading day from, and including, the effective date of the Spin-Off;

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provided that in respect of any conversion within the 10 trading days following, and including, the effective date of any Spin-Off, references within this clause (3) to 10 trading days shall be deemed replaced with such lesser number of trading days as have elapsed between the effective date of such Spin-Off and the conversion date in determining the applicable conversion rate.

If any such dividend or distribution described in this clause (3) is declared but not paid or made, the new conversion rate shall be readjusted to be the conversion rate that would then be in effect if such dividend or distribution had not been declared.

(4) If we make any cash dividend or distribution to all, or substantially all, holders of our outstanding common stock, other than regular quarterly cash dividends (without regard to the actual quarterly period in which paid) that do not exceed \$0.30 per share (the ‘reference dividend’), the conversion rate will be adjusted based on the following formula:

$$CR1 = CR0 \times \frac{SP0}{SP0 - C}$$

where

CR0 = the conversion rate in effect immediately prior to the ex-dividend date for such distribution;

CR1 = the new conversion rate immediately after the ex-dividend date for such distribution;

SP0 = the average of the closing sale prices of our common stock for each trading day in the 10-consecutive-trading-day period ending on the trading day immediately preceding the ex-dividend date for such distribution; and

C = the amount in cash per share that we distribute to holders of our common stock in respect of the applicable quarterly period that exceeds the reference dividend.

If any dividend or distribution described in this clause (4) is declared but not so paid or made, the new conversion rate shall be readjusted to the conversion rate that would then be in effect if such dividend or distribution had not been declared.

The reference dividend is subject to adjustment in a manner inversely proportional to adjustments to the conversion rate; provided that no adjustment will be made to the reference dividend amount for any adjustment made to the conversion rate under this clause (4).

Notwithstanding the foregoing, if an adjustment is required to be made under this clause (4) as a result of a distribution that is not a regular quarterly dividend, the reference dividend will be deemed to be zero.

(5) If we or any of our subsidiaries make a payment in respect of a tender offer or exchange offer for our common stock, to the extent that the cash and value of any other consideration included in the payment per share of our common stock exceeds the closing sale price of a share of our common stock on the trading day following the last date on which tenders or exchanges may be made pursuant to such tender or exchange offer, the conversion rate will be adjusted based on the following formula:

$$CR1 = CR0 \times \frac{(AC + (SP1 \times OS1))}{(SP1 \times OS0)}$$

where

CR0 = the conversion rate in effect on the day immediately following the date such tender or exchange offer expires;

CR1 = the new conversion rate in effect after such tender or exchange offer expires;

AC = the aggregate value of all cash and any other consideration (as determined by our board of directors) paid or payable for our common stock purchased in such tender or exchange offer;

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OS0 = the number of shares of our common stock outstanding immediately prior to the date such tender or exchange offer expires;

OS1 = the number of shares of our common stock outstanding immediately after the date such tender or exchange offer expires (after giving effect to the purchase or exchange of shares pursuant to such tender or exchange offer); and

SP1 = the average of the closing sale prices of our common stock for each trading day in the 10-consecutive-trading-day period commencing on the trading day following the date such tender or exchange offer expires.

The adjustment to the conversion rate under this clause (5) will occur on the 10th trading day from, and including, the trading day following the date such tender or exchange offer expires; provided that in respect of any conversion within 10 trading days immediately following, and including, the expiration date of any tender or exchange offer, references within this clause (5) to 10 trading days shall be deemed replaced with such lesser number of trading days as have elapsed between the expiration date of such tender or exchange offer and the conversion date in determining the applicable conversion rate.

In addition to these adjustments, we may in our sole discretion increase the conversion rate as our board of directors deems advisable to avoid or diminish any income tax to holders of our common stock resulting from any dividend or distribution of capital stock issuable upon conversion of the notes (or rights to acquire capital stock) or from any event treated as such for income tax purposes. We may also, from time to time, to the extent permitted by applicable law, increase the conversion rate by any amount for any period of at least 20 business days if our board of directors has determined that such increase would be in our best interests. If our board of directors makes that determination, it will be conclusive. We will give holders of notes at least 15 days' prior notice of such an increase in the conversion rate. For a general discussion of the U.S. federal income tax treatment of an adjustment to the conversion rate of the notes, see "Federal Income Tax Considerations — Taxation of Holders of our Notes — Taxation of U.S. Holders — Constructive Dividends."

To the extent that we have a rights plan in effect upon any conversion of the notes into common stock, a holder will receive, in addition to the common stock, the rights under the rights plan, unless, prior to any conversion, the rights have separated from the common stock, in which case the conversion rate will be adjusted at the time of separation as described in clause (3) above. A further adjustment will occur as described in clause (3) above, if such rights become exercisable to purchase different securities, evidences of indebtedness or assets, subject to readjustment in the event of the expiration, termination or redemption of such rights.

Following:

- any reclassification of our common stock;
- a consolidation, merger, binding share exchange or combination involving us; or
- a conveyance, transfer, sale, lease or other disposition to another person or entity of all or substantially all of our assets;

the settlement amount in respect of our conversion obligation will be computed as set forth under "— Payment upon Conversion" above, based on the kind and amount of shares of stock, securities, or other property or assets (including cash or any combination thereof) that holders of our common stock are entitled to receive in respect of each share of

our common stock in such transaction (the “reference property”), and reference property will be delivered in lieu of the shares of our common stock that would have otherwise been deliverable upon conversion.

In the event that holders of our common stock have the opportunity to elect the form of consideration to be received in any transaction described in the preceding paragraph, we will make adequate provision so that holders of the notes, treated as a single class, have the timely opportunity to determine the composition of the reference property that will replace any common stock that would otherwise be deliverable upon conversion of the notes. The reference property will be based on

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the weighted average of elections made by holders of the notes and will be subject to any limitations applicable to all holders of our common stock (such as pro rata reductions made to any portion of the consideration payable). The determination of the reference property will apply to all of the notes and we will notify the trustee of the composition of the reference property promptly after it is determined.

The applicable conversion rate will not be adjusted:

• upon the issuance of any shares of our common stock pursuant to any present or future plan providing for the reinvestment of dividends or interest payable on our securities and the investment of additional optional amounts in shares of our common stock under any plan;

• upon the issuance of any shares of our common stock or options or rights to purchase those shares pursuant to any present or future employee, director or consultant benefit plan or program of or assumed by us or any of our subsidiaries;

• upon the issuance of any shares of our common stock pursuant to any option, warrant, right or exercisable, exchangeable or convertible security not outstanding as of the date the notes were first issued (unless explicitly otherwise provided in this section, “— Conversion Rate Adjustments”);

• for a change in the par value of the common stock; or

• for accrued and unpaid interest (including additional amounts, if any).

Adjustments to the applicable conversion rate will be calculated to the nearest 1/10,000th of a share.

We will not take any action that would result in an adjustment pursuant to the above provisions without complying with the shareholder approval rules of The New York Stock Exchange or any stock exchange on which our common stock is listed at the relevant time.

Notwithstanding anything in this section, “— Conversion Rate Adjustments,” to the contrary, we will not be required to adjust the conversion rate unless the adjustment would result in a change of at least 1% of the conversion rate. However, we will carry forward any adjustments that are less than 1% of the conversion rate and make such carried forward adjustments, regardless of whether the aggregate adjustment is less than 1%, upon any conversion of the notes.

Make-Whole Amount

If the effective date of a transaction described under clause (1) or (3) of the definition of “fundamental change” occurs (regardless of whether the holder has the right to require us to repurchase the notes) prior to September 1, 2012 and 10% or more of the consideration for our common stock in the transaction consists of consideration other than common stock that is traded or scheduled to be traded immediately following such transaction on a U.S. national or regional securities exchange (collectively, “Listed Common Equity”) and notes are surrendered for conversion in connection with such transaction, we will increase the applicable conversion rate with respect to notes converted in connection with such transaction by a number of additional shares of our common stock (the “additional shares”) as described below. We will notify holders at least five business days prior to the anticipated effective date of any transaction described in this paragraph.

A conversion of the notes will be deemed for these purposes to be “in connection with” a given fundamental change if the related conversion notice is received by the conversion agent during the period from and including the effective date of the transaction until and including the 30th business day following such effective date.

The number of additional shares will be determined by reference to the table below, based on the date on which the transaction becomes effective (the “effective date”) and the price (the “stock price”) paid per share of our common stock in the transaction. If holders of our common stock receive only cash in the transaction, the stock price will be the cash amount paid per share of our common stock. Otherwise, the stock price will be the average of the closing sale prices of our common stock on the five trading days immediately prior to but not including the effective date of the transaction.

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The stock prices set forth in the first row of the table below (i.e., column headers) will be adjusted as of any date on which the conversion rate of the notes is adjusted, as described above under “— Conversion Rate Adjustments.” The adjusted stock prices will equal the stock prices applicable immediately prior to such adjustment multiplied by a fraction, the numerator of which is the conversion rate immediately prior to the adjustment giving rise to the stock price adjustment and the denominator of which is the conversion rate as so adjusted. The number of additional shares will be adjusted in the same manner as the conversion rate as set forth under “— Conversion Rate Adjustments.”

The following table sets forth the stock price, effective date and number of additional shares per \$1,000 principal amount of notes:

	Stock Price	Effective date	\$9.18	\$10.00	\$10.79	\$12.00	\$14.00	\$16.00		
\$18.00	\$20.00	\$25.00	\$30.00	\$40.00	August 23, 2007	16.2239	12.2915	9.1451	5.8748	3.0558
1.7040	0.9971	0.6315	0.3715	0.3582	0.1140	September 1, 2008	16.2239	12.2415		
9.0802	5.7998	2.9915	1.6228	0.9637	0.6165	0.3315	0.2582	0.0000	September 1, 2009	
16.2239	12.0915	8.9134	5.5665	2.7129	1.5165	0.9304	0.4665	0.3235	0.1948	
0.0000	September 1, 2010	16.2239	11.9815	8.4036	4.8665	2.0344	0.9978	0.5748	0.3815	
0.1955	0.1048	0.0000	September 1, 2011	16.2239	10.2115	6.2072	2.5998	0.4772		
0.0665	0.0000	0.0000	0.0000	0.0000	0.0000	September 1, 2012	16.2239	7.2915	0.0000	
0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000		

The maximum number of additional shares is 16.2239 per \$1,000 principal amount of notes, subject to adjustment in the same manner as in the conversion rate as set forth under “— Conversion Rate Adjustments” and in no event will the number of additional shares of our common stock issuable upon conversion as a result of a fundamental change exceed that amount.

The exact stock prices and effective dates may not be set forth in the table above, in which case:

- If the stock price is between two stock prices in the table or the effective date is between two effective dates in the table, the number of additional shares will be determined by straight-line interpolation between the number of additional shares set forth for the higher and lower stock prices and the two effective dates, as applicable, based on a 365-day year.
- If the stock price is in excess of \$40.00 per share (subject to adjustment), no additional shares will be added to the conversion rate.
- If the stock price is less than \$9.18 per share (subject to adjustment), no additional shares will be added to the conversion rate.

Redemption at Our Option

Prior to September 1, 2012, we will not have the right to redeem the notes, except to preserve our status as a REIT. We will have the right to redeem the notes in whole or in part, at any time or from time to time, (i) on or after September 1, 2012, or (ii) to preserve our status as a REIT, upon not less than 30 nor more than 60 days prior notice by mail, for a cash price equal to 100% of the principal amount of the notes to be redeemed plus any accrued and unpaid interest (including additional amounts, if any) thereon up to, but not including, the redemption date. If the redemption date is on a date that is after a record date and on or prior to the corresponding interest payment date, we

will pay the related interest (including additional amounts, if any) to the person to whom principal is payable.

If we decide to redeem fewer than all of the outstanding notes, the trustee will select the notes to be redeemed by lot, on a pro rata basis or by another method the trustee considers appropriate. If the trustee selects a portion of a holder's notes for partial redemption and that holder converts a portion of the same notes, the converted portion will be deemed first to be from the portion selected for redemption. In the event of any redemption in part, we will not be required to:

- issue,

register the transfer of or exchange any note during a period beginning at the opening of business 15 days before any selection of notes for redemption and ending at the close of business on the earliest date on which the relevant notice of redemption is deemed to have been given to all holders of notes to be so redeemed, or

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of or exchange any note so selected for redemption, in whole or in part, except the unredeemed portion of any note being redeemed in part.

- register the transfer

Repurchase Rights

Holders have the right to require us to repurchase their notes in whole or in part on September 1, 2012, September 1, 2017 and September 1, 2022, each of which we refer to as a “repurchase date.” We will be required to repurchase any outstanding notes for which a holder delivers a written repurchase notice to the paying agent. This notice must be delivered during the period beginning at the opening of business on the date that is 20 business days prior to the relevant repurchase date until the close of business on the second business day prior to the repurchase date. If the repurchase notice is given and withdrawn during the period, we will not be obligated to repurchase the notes covered by the notice of withdrawal.

Our ability to repurchase notes for cash upon any repurchase date may be restricted by our loan and other financing documents which may, among other things, contain limitations or prohibitions on our ability to repurchase the notes, obtain funds for such repurchase through dividends from our subsidiaries, the terms of our then existing financing arrangements or otherwise. See “Risk Factors — Risks Relating to the Notes and our Common Stock — We may not be able to repurchase the notes upon a fundamental change or upon the exercise of your option to require us to repurchase the notes, or pay you cash upon conversion of the notes.” No notes may be repurchased by us at the option of holders if there has occurred and is continuing an event of default with respect to the notes, other than a default in the payment of the repurchase price with respect to the notes.

The repurchase price will be payable in cash and will be equal to 100% of the principal amount of notes to be repurchased, plus accrued and unpaid interest (including additional amounts, if any) on such repurchase date. If the repurchase date is on a date that is after a record date and on or prior to the corresponding interest payment date, we will pay the related interest (including additional amounts, if any) to the person to whom principal is payable. To exercise this right, the holder must deliver a written notice to the paying agent prior to the close of business on the second business day prior to the repurchase date. The required repurchase notice shall state:

- if certificated notes have been issued, the certificate number of the notes (or if the notes are not certificated, the notice must comply with appropriate DTC procedures);
- the portion of the principal amount of notes to be repurchased, which portion must be \$1,000 or an integral multiple of \$1,000; and
- that we are to repurchase such notes pursuant to the applicable provisions of the notes and the indenture.

A holder may withdraw any repurchase notice by delivering to the paying agent a written notice of withdrawal prior to the close of business on the second business day prior to the repurchase date. The notice of withdrawal shall state:

- the principal amount being withdrawn;
- the certificate numbers of the notes being withdrawn (or, if the notes are not certificated, the notice must comply with appropriate DTC procedures); and
- the principal amount of the notes, if any, that remain subject to the repurchase notice.

Our obligation to pay the repurchase price for a note for which a repurchase notice has been delivered and not validly withdrawn is conditioned upon delivery of the note, together with all necessary endorsements and compliance by the holder with all DTC procedures, as applicable, to the paying agent at any time after the delivery of such repurchase notice. Payment of the repurchase price for such note will be made on the business day following the later of the repurchase date or the satisfaction of the foregoing conditions. If the paying agent holds money sufficient to pay the repurchase price of the note on the business day following the repurchase date in accordance with the terms of the indenture, then, from and including the repurchase date, interest (including additional

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amounts, if any) on such note will cease to accrue and all other rights of the holder shall terminate, other than the right to receive the repurchase price upon satisfaction of the foregoing conditions.

In connection with any repurchase of notes at the option of a holder, we will:

- to the extent applicable, comply with the provisions of Rule 13e-4, Rule 14e-1 and comply with any other tender offer rules under the Exchange Act that may then be applicable; and
- otherwise comply with all federal and state securities laws as necessary under the indenture to effect a repurchase of notes by us at the option of a holder.

Repurchase of Notes by Us at Option of Holder upon a Fundamental Change

If a fundamental change, as defined below, occurs prior to September 1, 2012, each holder will have the right on the fundamental change repurchase date to require us to repurchase for cash all of its notes or any portion of those notes that is equal to \$1,000 in principal amount or integral multiples thereof, at a fundamental change repurchase price equal to 100% of the principal amount of the notes to be repurchased plus any accrued and unpaid interest (including additional amounts, if any) thereon up to but not including the fundamental change repurchase date. If the fundamental change repurchase date is on a date that is after a record date and on or prior to the corresponding interest payment date, we will pay the related interest (including additional amounts, if any) to the person to whom principal is payable.

Within 15 days after the occurrence of a fundamental change, we must give notice to each holder and the trustee of each holder's resulting repurchase right, specifying the fundamental change repurchase date (which may be no earlier than 20 business days and no later than 30 business days after the date of such notice) and the procedures that each holder must follow to require us to repurchase its notes as described below. Simultaneously with providing such notice, we will issue a press release and publish the information on our website.

The fundamental change repurchase notice given by a holder electing to require us to repurchase its notes shall be given so as to be received by the paying agent no later than the close of business on the second business day prior to the fundamental change repurchase date and must state:

- if certificated notes have been issued, the certificate numbers of the holder's notes to be delivered for repurchase (or, if the notes are not issued in certificated form, the fundamental change repurchase notice must comply with appropriate DTC procedures);
- the portion of the principal amount of notes to be repurchased, which must be \$1,000 or an integral multiple thereof; and
- that the notes are to be repurchased by us pursuant to the applicable provisions of the indenture.

A holder may withdraw its fundamental change repurchase notice by delivering a written notice of withdrawal to the paying agent prior to the close of business on the second business day prior to the fundamental change repurchase date. The notice of withdrawal shall state:

principal amount of notes being withdrawn;

have been issued, the certificate numbers of the notes being withdrawn (or, if the notes are not issued in certificated form, the notice of withdrawal must comply with appropriate DTC procedures); and

amount of the notes, if any, that remain subject to the fundamental change repurchase notice.

- the

- if certificated notes

- the principal

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A “fundamental change” will be deemed to have occurred at such time after the original issuance of the notes as:

(1) a “person” or “group” (each within the meaning of Section 13(d)(3) of the Exchange Act) becomes the direct or indirect “beneficial owner,” as defined in Rule 13d-3 under the Exchange Act, of shares of our voting stock representing more than 50% of the total voting power of all outstanding shares of our capital stock entitled to vote generally in the election of directors; or

(2) the first day on which a majority of the members of our board of directors does not consist of continuing directors; or

(3) a consolidation, merger or binding share exchange, or any conveyance, transfer, sale, lease or other disposition of all or substantially all of our assets to another person, other than:

- any

transaction: