

NATIONWIDE HEALTH PROPERTIES INC

Form 424B5

June 28, 2004

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

**Filed Pursuant to Rule 424(b)5**

**Registration File No. 333-105806**

**Subject to Completion      June 28, 2004**

**Preliminary Prospectus Supplement**

**(To Prospectus Dated October 16, 2003)**

## ***1,000,000 Shares of***

### ***% Series B Cumulative Convertible Preferred Stock***

This prospectus supplement relates to the offering of our      % Series B Cumulative Convertible Preferred Stock (liquidation preference \$100 per share). Dividends on the Convertible Preferred Stock will be cumulative from      , 2004 and will accumulate at a per annum rate of      % of the liquidation preference of \$100 per share of Convertible Preferred Stock. Dividends will be payable quarterly on March 31, June 30, September 30 and December 31, commencing September 30, 2004. We have applied to list the Convertible Preferred Stock on the New York Stock Exchange under the symbol      .

Holders may convert Convertible Preferred Stock into shares of our common stock under the following circumstances: (1) during any calendar quarter (and only during such calendar quarter) commencing after September 30, 2004 and before June 30, 2029, if the closing sale price of our common stock is greater than or equal to 125% of the conversion price for at least 20 trading days in the period of 30 consecutive trading days ending on the last trading day of the preceding calendar quarter; (2) at any time on or after June 30, 2029, if the closing sale price of our common stock on any date on or after June 30, 2029 is greater than or equal to 125% of the conversion price; (3) subject to certain limitations, during the five business day period after any five consecutive trading day period in which the trading price per share of Convertible Preferred Stock for each day of such period was less than 98% of the product of the conversion rate and the closing sale price of our common stock; (4) upon the occurrence of certain corporate transactions as described in this prospectus supplement; (5) if the credit ratings, if any, assigned to the Convertible Preferred Stock are below the levels described in this prospectus supplement; or (6) if we call the Convertible Preferred Stock for redemption.

The conversion rate will initially be      shares of our common stock per share of Convertible Preferred Stock, which is equivalent to a conversion price of \$      per share of common stock. The conversion rate will be subject to adjustment upon the occurrence of specified events. Our common stock is traded on the New York Stock Exchange under the symbol      NHP. On June 25, 2004, the last reported sale price of our common

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stock on the New York Stock Exchange was \$19.49 per share.

We may redeem the Convertible Preferred Stock, in whole or in part, at any time on or after July 5, 2009, at the redemption prices described in this prospectus supplement.

You may require us to repurchase some or all of your shares of Convertible Preferred Stock at a repurchase price per share equal to 100% of the liquidation preference per share of the Convertible Preferred Stock plus accumulated and unpaid dividends following a fundamental change as described in this prospectus supplement. In addition, following certain fundamental changes as more fully described in this prospectus supplement, we will pay to all holders of shares of Convertible Preferred Stock who elect to require us to repurchase such shares or to convert such shares in connection with such a fundamental change a make-whole premium. The fundamental change repurchase price and/or the make-whole premium, if any, may be paid in cash, shares of common stock, or a combination thereof in the manner described in this prospectus supplement.

**Investing in the Convertible Preferred Stock or our common stock involves risks. Before buying any shares of Convertible Preferred Stock you should carefully read this prospectus supplement and the entire accompanying prospectus, including the sections entitled Risk Factors beginning on page S-7 of this prospectus supplement and page 3 of the accompanying prospectus.**

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

	Per share	Total
Public offering price (1)	\$	\$
Underwriting discounts and commissions	\$	\$
Proceeds, before expenses, to us	\$	\$

(1) Plus accumulated dividends from \_\_\_\_\_, 2004 if settlement occurs after that date.

The underwriters may also purchase up to 150,000 additional shares of Convertible Preferred Stock from us at the public offering price, less the underwriting discounts and commissions payable by us, to cover over-allotments, if any, within 30 days from the date of this prospectus supplement. If the underwriters exercise the option in full, the total underwriting discounts and commissions payable by us will be \$ \_\_\_\_\_, and the total proceeds, before expenses, to us will be \$ \_\_\_\_\_.

The underwriters are offering the shares of Convertible Preferred Stock as set forth under \_\_\_\_\_ Underwriting. Delivery of the shares of Convertible Preferred Stock will be made on or about \_\_\_\_\_, 2004.

*Sole Book-Running Manager*

# JPMorgan

**Banc of America Securities LLC**

**Citigroup**

**Wachovia Securities**

June , 2004.

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You should rely only on the information contained and incorporated by reference in this prospectus supplement and the accompanying prospectus. We have not, and the underwriters have not, authorized anyone to give you different or additional information. You should not assume that the information in this prospectus supplement and the accompanying prospectus is accurate as of any date after their respective dates. We are not, and the underwriters are not, making an offer of these securities in any state where the offer is not permitted.

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## Prospectus supplement summary

*The following summary may not contain all the information that may be important to you. You should read the entire prospectus supplement, the accompanying prospectus and the documents incorporated by reference in the prospectus before making an investment decision. You should carefully consider the information set forth under Risk factors. In addition, certain statements include forward-looking information which involves risks and uncertainties. See Forward-looking statements.*

*Whenever we refer herein to us, we or our, we are referring to Nationwide Health Properties, Inc. and its subsidiaries.*

### The company

Nationwide Health Properties, Inc., a Maryland corporation, is a real estate investment trust, or REIT, that invests primarily in health care-related facilities and provides financing to health care providers. As of March 31, 2004, the gross investment in our properties, including mortgage loans receivable and our investment in an unconsolidated joint venture, was approximately \$1.4 billion.

As of March 31, 2004, we had investments in 381 facilities in 38 states, consisting of:

179 skilled nursing facilities;

133 assisted and independent living facilities;

13 continuing care retirement communities;

seven specialty hospitals;

one building held for sale; and

48 assisted living facilities operated by an unconsolidated joint venture in which we have a 25% interest.

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Our facilities are operated by 70 different operators, and other than the one building held for sale, substantially all of our owned facilities are leased under triple-net leases, which are accounted for as operating leases.

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

### **Recent developments**

On April 1, 2004, we acquired 17 assisted and independent living facilities which are to be operated by Emeritus Corporation. The total cost of these facilities was approximately \$136,000,000 and we assumed approximately \$36,000,000 of mortgage debt with an average interest rate of approximately 7.0% in connection with the acquisition. In addition to this acquisition, since the first quarter ended March 31, 2004, we have made various other acquisitions totaling approximately \$49,000,000. We funded these acquisitions with borrowings on our unsecured revolving credit facility.

On April 15, 2004, our new \$400,000,000 unsecured revolving credit facility became effective and replaced our previous \$150,000,000 credit facility. The new credit facility, including the financial covenants, is substantially the same as the old credit facility with the only significant changes being the total amount available for borrowing, a new maturity date of April 15, 2007 and an increase in the maximum secured debt ratio from 15% to 30%.

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## The offering

The following summary contains basic information about the Convertible Preferred Stock and is not intended to be complete. It does not contain all the information that is important to you. For a more complete understanding of Convertible Preferred Stock, please refer to the section of this prospectus supplement entitled "Description of Convertible Preferred Stock" and the section of the accompanying prospectus entitled "Description of Preferred Stock." For purposes of the description of the Convertible Preferred Stock included in this prospectus supplement and in the accompanying prospectus, references to us, we and our refer only to Nationwide Health Properties, Inc. and not to any of our subsidiaries.

<b>Issuer</b>	Nationwide Health Properties, Inc.
<b>Securities Offered</b>	1,000,000 shares of % Series B Cumulative Convertible Preferred Stock, which we refer to as the Convertible Preferred Stock.
<b>Dividends</b>	Cumulative annual dividends at the per annum rate of % of the liquidation preference of \$100 per share of Convertible Preferred Stock payable quarterly in cash on each March 31, June 30, September 30 and December 31, commencing September 30, 2004, when, as and if declared by our board of directors. Dividends will be paid in arrears on the basis of a 360-day year consisting of twelve 30-day months. Dividends on the Convertible Preferred Stock will accumulate and be cumulative from the date of issuance thereof. Accumulated dividends on the Convertible Preferred Stock will not bear interest.
<b>Liquidation Preference</b>	\$100 per share, plus accumulated and unpaid dividends.
<b>Ranking</b>	The Convertible Preferred Stock will rank with respect to dividend rights and rights upon our liquidation, winding-up or dissolution:  senior to all of our common stock and to each other class of our capital stock issued in the future that expressly provides that it ranks junior to the Convertible Preferred Stock;  on a parity with our existing 7.677% Series A Cumulative Preferred Stock and with any other series of preferred stock issued in the future unless the terms of such series of preferred stock expressly provide that it will rank other than on a parity with the Convertible Preferred Stock; and  junior to all of our capital stock the terms of which expressly provide that such stock will rank senior to the Convertible Preferred Stock.
<b>Redemption</b>	On and after July 5, 2009, we may redeem the Convertible Preferred Stock, in whole or, from time to time, in part, at the cash redemption prices described under "Description of Convertible Preferred Stock - Redemption." The redemption price (other than accumulated





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and unpaid dividends) is payable solely out of the sale proceeds of our other capital stock, which may include our common stock, preferred stock, depository shares, participation or other ownership interests in us, however designated, and any rights, warrants or options (excluding any debt securities convertible into or exchangeable for our capital stock) for the purchase of any of those securities.

**Conversion Rights**

You may convert shares of Convertible Preferred Stock into shares of our common stock at a conversion rate of \_\_\_\_\_ shares per share of Convertible Preferred Stock (equal to a conversion price of \$ \_\_\_\_\_ per share), subject to adjustment, only under the following circumstances:

during any calendar quarter (and only during such calendar quarter) commencing after September 30, 2004 and before June 30, 2029, if the closing sale price of our common stock is greater than or equal to 125% of the conversion price for at least 20 trading days in the period of 30 consecutive trading days ending on the last trading day of the preceding calendar quarter;

at any time on or after June 30, 2029 if the closing sale price of our common stock on any date on or after June 30, 2029 is greater than or equal to 125% of the conversion price;

subject to certain limitations, during the five business day period after any five consecutive trading day period in which the trading price per share of Convertible Preferred Stock for each day of that period was less than 98% of the product of the conversion rate and the average of the closing sale prices of our common stock as described under Description of Convertible Preferred Stock Conversion rights Events triggering conversion rights Conversion upon satisfaction of trading price condition ;

upon the occurrence of specified corporate transactions described under Description of Convertible Preferred Stock Conversion rights Events triggering conversion rights Conversion rights upon occurrence of certain corporate transactions ;

if we obtain credit ratings with respect to the Convertible Preferred Stock from Moody's Investors Service, Inc. ( Moody's ) or Standard & Poor's Rating Services ( Standard & Poor's ) or both, at any time when (i) the long-term credit rating assigned to the Convertible Preferred Stock by either Moody's or Standard & Poor's is more than two levels below the credit rating initially assigned to the Convertible Preferred Stock, or (ii) either Moody's or Standard & Poor's has discontinued, withdrawn or suspended their ratings with respect to the Convertible Preferred Stock; or

if the Convertible Preferred Stock has been called for redemption by us.

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You will not receive any separate cash payment or additional shares representing accumulated and unpaid dividends upon conversion of Convertible Preferred Stock, except in limited circumstances. Instead, dividends will be deemed paid by the common stock issued to you upon conversion. Convertible Preferred Stock called for redemption may be surrendered for conversion prior to the close of business on the second business day immediately preceding the redemption date.

### **Fundamental Change**

If we undergo a fundamental change, you will have the right, at your option, to require us to repurchase some or all of your shares of Convertible Preferred Stock at a repurchase price equal to 100% of the liquidation preference of the shares of Convertible Preferred Stock being repurchased, plus any accumulated and unpaid dividends to but excluding the applicable repurchase date. In addition, following certain fundamental changes, we will pay to all holders of shares of Convertible Preferred Stock who elect to require us to repurchase such shares or to convert such shares in connection with such a fundamental change a make-whole premium. The fundamental change repurchase price and/or the make-whole premium, if any, may be paid in cash, shares of common stock, or a combination thereof, in the manner described under Description of Convertible Preferred Stock-Repurchase of Convertible Preferred Stock by us at the option of the holder upon a Fundamental Change .

### **Voting Rights**

Except as required by Maryland law and our amended and restated articles of incorporation, which include the articles supplementary establishing the terms of the Convertible Preferred Stock, the holders of Convertible Preferred Stock will have no voting rights unless dividends payable on the Convertible Preferred Stock are in arrears for six or more quarterly periods (whether or not consecutive). In that event, the holders of the Convertible Preferred Stock, voting as a single class with any other preference securities having similar voting rights (including the existing preferred stock), will be entitled at the next regular or special meeting of our stockholders to elect two directors and the number of directors that comprise our board will be increased by the number of directors so elected. These voting rights and the terms of the directors so elected will continue until such time as the dividend arrearage on the Convertible Preferred Stock has been paid in full. In addition, the affirmative consent of holders of at least 66 <sup>2</sup>/<sub>3</sub>% of the outstanding Convertible Preferred Stock will be required for the issuance of any class or series of stock (or security convertible into stock) ranking senior to the Convertible Preferred Stock as to dividend rights or rights upon our liquidation, winding-up or dissolution and for amendments to our amended and restated articles of incorporation that would affect adversely the rights of holders of the Convertible Preferred Stock.

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**Tax Consequences**

The U.S. federal income tax consequences of purchasing, owning and disposing of the Convertible Preferred Stock and any common stock received upon its conversion are described under Certain federal income tax consequences. Prospective investors are urged to consult their own tax advisors regarding the tax consequences of purchasing, owning and disposing of the Convertible Preferred Stock and any common stock received upon its conversion in light of their personal investment circumstances, including consequences resulting from the possibility that actual or constructive distributions on the Convertible Preferred Stock may exceed our current and accumulated earnings and profits, as calculated for U.S. federal income tax purposes, in which case they would not be treated as dividends for U.S. federal income tax purposes.

**Use of Proceeds**

We intend to use the net proceeds from the sale of the Convertible Preferred Stock estimated, before expenses, to be \$ (or \$ if the underwriters exercise their over-allotment option in full) to repay amounts outstanding under our revolving bank line of credit and for general corporate purposes. See Use of proceeds.

**Trading**

We have applied to list the Convertible Preferred Stock on the New York Stock Exchange under the symbol . The Convertible Preferred Stock will be new securities for which no market currently exists. While the underwriters have informed us that they intend to make a market in the Convertible Preferred Stock, they are under no obligation to do so and may discontinue such activities at any time without notice. We cannot assure you that any active or liquid market will develop for the Convertible Preferred Stock.

**Common Stock**

Our common stock is listed for trading on the New York Stock Exchange under the symbol NHP.

Table of Contents**Summary consolidated financial information**

The following table presents summary consolidated financial data. Certain of this financial data has been derived from our unaudited consolidated financial statements included in our quarterly report on Form 10-Q for the first quarter ended March 31, 2004 and our audited consolidated financial statements included in our 2003 Annual Report on Form 10-K and should be read in conjunction with these consolidated financial statements and accompanying notes and with Management's Discussion and Analysis of Financial Condition and Results of Operations included in our quarterly report on Form 10-Q and our annual report on Form 10-K incorporated by reference herein. Operating results for the first quarter ended March 31, 2004 are not necessarily indicative of the operating results to be expected for the year ending December 31, 2004.

Operating data	Years ended December 31,			Three months ended March 31,	
	2001	2002	2003	2003 (unaudited)	2004 (unaudited)
	(in thousands, except per share data)				
Revenues	\$ 161,345	\$ 151,301	\$ 162,102	\$ 39,880	\$ 41,192
Income from continuing operations	59,242	41,230	55,962	12,993	14,628
Discontinued operations	9,096	(4,676)	(2,520)	(83)	(72)
Net income	68,338	36,554	53,442	12,910	14,556
Preferred stock dividends	(7,677)	(7,677)	(7,677)	(1,919)	(1,919)
Income available to common stockholders	\$ 60,661	\$ 28,877	\$ 45,765	\$ 10,991	\$ 12,637
Dividends paid on common stock	87,093	90,585	88,566	22,923	25,373
Basic/diluted income from continuing operations available to common stockholders per share	\$ 1.10	\$ 0.69	\$ 0.87	\$ 0.23	\$ 0.20
Basic/diluted income available to common stockholders per share	\$ 1.30	\$ 0.59	\$ 0.82	\$ 0.22	\$ 0.20
Dividends paid on common stock per share	\$ 1.84	\$ 1.84	\$ 1.57	\$ 0.46	\$ 0.37

As of March 31, 2004

**Balance sheet data**

	Actual (in thousands, unaudited)	As adjusted (1)
Cash and cash equivalents	\$ 12,788	\$ 84,538
Investments in real estate, net	1,387,793	1,387,793
Total assets	1,461,543	1,533,293
Borrowings under unsecured revolving credit facility	25,000	

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Senior notes due 2004-2038	517,000	517,000
Notes and bonds payable	140,737	140,737
Stockholders' equity	729,617	826,367

(1) As adjusted to give effect to the issuance and sale of 1,000,000 shares of our Convertible Preferred Stock being offered by this prospectus supplement and the accompanying prospectus, after deducting underwriting discounts and commissions and estimated offering expenses to be paid by us.

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## Risk factors

*Generally speaking, the risks facing our company fall into two categories: risks associated with the operations of our operators and other risks unique to our operations. You should carefully consider the risks and uncertainties described below before making an investment decision in our company. These risks and uncertainties are not the only ones facing us and there may be additional matters that we are unaware of or that we currently consider immaterial. All of these could adversely affect our business, financial condition, results of operations and cash flows and, thus, the value of an investment in our company.*

### Risks relating to our operators

Our financial position could be weakened and our ability to make distributions could be limited if any of our major operators were unable to meet their obligations to us or failed to renew or extend their relationship with us as their lease terms expire, or if we were unable to lease or re-lease our facilities or make mortgage loans on economically favorable terms. These adverse developments could arise due to a number of factors, including those listed below.

***The bankruptcy, insolvency or financial deterioration of our operators could significantly delay our ability to collect unpaid rents or require us to find new operators for rejected facilities.***

We are exposed to the risk that our operators may not be able to meet their obligations, which may result in their bankruptcy or insolvency. Although our leases and loans provide us the right to terminate an investment, evict an operator, demand immediate repayment and other remedies, the bankruptcy laws afford certain rights to a party that has filed for bankruptcy or reorganization. An operator in bankruptcy may be able to restrict our ability to collect unpaid rent and interest during the bankruptcy proceeding.

**Leases.** If one of our lessees seeks bankruptcy protection, the lessee can either assume or reject the lease. Generally, the operator is required to make rent payments to us during its bankruptcy until it rejects the lease. If the lessee assumes the lease, the court cannot change the rental amount or any other lease provision that could financially impact us. However, if the lessee rejects the lease, the facility would be returned to us. In that event, if we were able to re-lease the facility to a new operator only on unfavorable terms or after a significant delay, we could lose some or all of the associated revenue from that facility for an extended period of time.

**Mortgage loans.** If an operator defaults under one of our mortgage loans, we may have to foreclose on the mortgage or protect our interest by acquiring title to a property and thereafter making substantial improvements or repairs in order to maximize the facility's investment potential. Operators may contest enforcement of foreclosure or other remedies, seek bankruptcy protection against an enforcement and/or bring claims for lender liability in response to actions to enforce mortgage obligations. If an operator seeks bankruptcy protection, the automatic stay of the federal bankruptcy law would preclude us from enforcing foreclosure or other remedies against the operator unless relief is obtained from the court. High loan to value ratios or declines in the value of the facility may prevent us from realizing an amount equal to our mortgage loan upon foreclosure.

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The receipt of liquidation proceeds or the replacement of an operator that has defaulted on its lease or loan could be delayed by the approval process of any federal, state or local agency necessary for the replacement of the operator licensed to manage the facility. In some instances, we may take possession of a property that exposes us to successor liabilities. These events, if they were to occur, could reduce our revenue and operating cash flow.

In addition, some of our leases provided for free rent at the beginning of the lease. These deferred amounts are repaid over the remainder of the lease term. Although the payment of cash rent is deferred, rental income is recorded on a straight-line basis over the life of the lease, such that the income recorded during the early years of the lease is higher than the actual cash rent received during that period, creating an asset on our balance sheet called deferred rent receivable. To the extent any of the operators under these leases, for the reasons discussed above, become unable to pay the deferred rents, we may be required to write down the rents receivable from those operators, which would reduce our net income.

***Operators that fail to comply with governmental reimbursement programs such as Medicare or Medicaid, licensing and certification requirements, fraud and abuse regulations or new legislative developments may be unable to meet their obligations to us.***

Our operators are subject to numerous federal, state and local laws and regulations that are subject to frequent and substantial changes (sometimes applied retroactively) resulting from legislation, adoption of rules and regulations, and administrative and judicial interpretations of existing law. The ultimate timing or effect of these changes cannot be predicted. These changes may have a dramatic effect on our operators' costs of doing business and the amount of reimbursement by both government and other third-party payors. The failure of any of our operators to comply with these laws, requirements and regulations could adversely affect their ability to meet their obligations to us. In particular:

**Medicare and Medicaid.** A significant portion of our skilled nursing facility operators' revenue is derived from governmentally-funded reimbursement programs, such as Medicare and Medicaid, and failure to maintain certification and accreditation in these programs would result in a loss of funding from them. Moreover, federal and state governments have adopted and continue to consider various reform proposals to control health care costs. In recent years, there have been fundamental changes in the Medicare program that have resulted in reduced levels of payment for a substantial portion of health care services. In many instances, revenues from Medicaid programs are already insufficient to cover the actual costs incurred in providing care to those patients. In addition, reimbursement from private payors has in many cases effectively been reduced to levels approaching those of government payors. Governmental concern regarding health care costs and their budgetary impact may result in significant reductions in payment to health care facilities, and future reimbursement rates for either governmental or private payors may not be sufficient to cover cost increases in providing services to patients. Loss of certification or accreditation, or any changes in reimbursement policies that reduce reimbursement to levels that are insufficient to cover the cost of providing patient care, could cause the revenues of our operators to decline, potentially jeopardizing their ability to meet their obligations to us. In that event, our revenues from those facilities could be reduced, which could in turn cause the value of our affected properties to decline.



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**Licensing and certification.** Our operators and facilities are subject to regulatory and licensing requirements of federal, state and local authorities and are periodically audited by them to confirm compliance. Failure to obtain licensure or loss of licensure would prevent a facility from operating. Our skilled nursing facilities require governmental approval, in the form of a certificate of need that generally varies by state and is subject to change, prior to the addition or construction of new beds, the addition of services or certain capital expenditures. Some of our facilities may not be able to satisfy current and future certificate of need requirements and may for this reason be unable to continue operating in the future. In such event, our revenues from those facilities could be reduced or eliminated for an extended period of time. State licensing and Medicare and Medicaid laws also require operators of nursing homes and assisted living facilities to comply with extensive standards governing operations. Federal and state agencies administering those laws regularly inspect such facilities and investigate complaints. Our tenants and their managers receive notices of potential sanctions and remedies from time to time, and such sanctions have been imposed from time to time on facilities operated by them. If they are unable to cure deficiencies which have been identified or which are identified in the future, such sanctions may be imposed and if imposed may adversely affect our tenants' ability to pay rent to us.

**Fraud and abuse regulations.** There are various extremely complex and largely uninterpreted federal and state laws governing a wide array of referrals, relationships and arrangements and prohibiting fraud by healthcare providers, including criminal provisions that prohibit filing false claims or making false statements to receive payment or certification under Medicare and Medicaid, or failing to refund overpayments or improper payments. Governments are devoting increasing attention and resources to anti-fraud initiatives against health care providers. The Health Insurance Portability and Accountability Act of 1996 and the Balanced Budget Act of 1997 expand the penalties for health care fraud, including broader provisions for the exclusion of providers from the Medicare and Medicaid programs. Further, under Operation Restore Trust, a major anti-fraud demonstration project, the Office of Inspector General of the US Department of Health and Human Services, in cooperation with other federal and state agencies, has focused on the activities of skilled nursing facilities in certain states in which we have properties. The violation of any of these regulations by an operator may result in the imposition of fines or other penalties that could jeopardize that operator's ability to make lease or mortgage payments to us or to continue operating its facility.

**Legislative developments.** Each year, legislative proposals are introduced or proposed in Congress and in some state legislatures that would effect major changes in the healthcare system, either nationally or at the state level. Among the proposals under consideration are cost controls on state Medicaid reimbursements, hospital cost-containment initiatives by public and private payors, uniform electronic data transmission standards for healthcare claims and payment transactions, and higher standards to protect the security and privacy of health-related information. We cannot predict whether any proposals will be adopted or, if adopted, what effect, if any, these proposals would have on operators and, thus, our business.

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***Our operators are faced with increased litigation and rising insurance costs that not only affect their ability to obtain and maintain adequate liability and other insurance, but also may affect their ability to pay their lease or mortgage payments and fulfill their insurance, indemnification and other obligations to us.***

In some states, advocacy groups have been created to monitor the quality of care at skilled nursing facilities, and these groups have brought litigation against operators. Also, in several instances, private litigation by skilled nursing facility patients has succeeded in winning very large damage awards for alleged abuses. To a lesser extent, this litigation also has spilled over and affected assisted living facilities. The effect of this litigation and potential litigation has been to materially increase the costs of monitoring and reporting quality of care compliance incurred by our tenants. In addition, the cost of liability and medical malpractice insurance has increased and may continue to increase so long as the present litigation environment continues. This has affected the ability of some of our operators to obtain and maintain adequate liability and other insurance and, thus, manage their related risk exposures as well as they have in the past. In addition to being unable to fulfill their insurance, indemnification and other obligations to us under their leases and mortgages and thereby potentially exposing us to those risks, this could cause our tenants to be unable to pay their lease or mortgage payments potentially decreasing our revenues and increasing our collection and litigation costs. Moreover, to the extent we are required to foreclose on the affected facilities, our revenues from those facilities could be reduced or eliminated for an extended period of time.

In addition, we may in some circumstances be named as a defendant in litigation involving the actions of our operators. Although we have no involvement in the activities of our operators and our standard leases generally require our operators to carry insurance to cover us in certain cases, a significant judgment against us in such litigation could exceed our and our operators' insurance coverage, which would require us to make payments to cover the judgment.

***Overbuilding and increased competition has resulted in lower revenues for some of our operators and may affect the ability of our tenants to meet their payment obligations to us.***

The healthcare industry is highly competitive and we expect that it may become more competitive in the future. Our operators are competing with numerous other companies providing similar health care services or alternatives such as home health agencies, life care at home, community-based service programs, retirement communities and convalescent centers. In addition, overbuilding in the assisted and independent living market has caused a slow-down in the fill-rate of newly constructed buildings and a reduction in the monthly rate many newly built and previously existing facilities were able to obtain for their services. This has resulted in lower revenues for the operators of certain of our facilities. It may also have contributed to the prior and current financial difficulties of some of our operators. While we believe that overbuilt markets should reach stabilization in the next several years due to minimal new development, we cannot be certain the operators of all of our facilities will be able to achieve occupancy and rate levels that will enable them to meet all of their obligations to us. Our operators may encounter increased competition in the future that could limit their ability to attract residents or expand their businesses and therefore affect their ability to pay their lease or mortgage payments.

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### **Risks unique to us and our operations**

In addition to the operator related risks discussed above, there are a number of risks directly associated with us and our operations.

***We are subject to particular risks associated with real estate ownership, which could result in unanticipated losses or expenses.***

Our business is subject to many risks that are associated with the ownership of real estate. For example, if our operators do not renew their leases, we may be unable to re-lease the facilities at favorable rental rates. Other risks that are associated with real estate acquisition and ownership include, among other things, the following:

property and casualty losses, some of which may be uninsured;

the inability to purchase or sell our assets rapidly to respond to changing economic conditions, due to the illiquid nature of real estate and the real estate market;

costs relating to maintenance and repair of our facilities and the need to make expenditures due to change in governmental regulations, including the Americans with Disabilities Act; and

environmental hazards created by prior owners or occupants, existing tenants, mortgagors or other persons for which we may be liable.

***We rely on external sources of capital to fund future capital needs, and if our access to such capital is difficult, we may not be able to meet maturing commitments or make future investments necessary to grow our business.***

In order to qualify as a REIT under the Internal Revenue Code, we are required, among other things, to distribute each year to our stockholders at least 90% of our REIT taxable income. Because of this distribution requirement, we will not be able to fund, from cash retained from operations, all future capital needs, including capital needs to satisfy or refinance maturing commitments and to make investments. As a result, we rely on external sources of capital. If we are unable to obtain needed capital at all or only on unfavorable terms from these sources, we might not be able to make the investments needed to grow our business, or to meet our obligations and commitments as they mature, which could negatively affect the ratings of our debt and even, in extreme circumstances, affect our ability to continue operations. Our access to capital depends upon a number of factors over which we have little or no control, including general market conditions and the market's perception of our growth potential and our current and potential future earnings and cash distributions and the market price of the shares of our capital stock. Generally speaking, difficult capital market conditions in our industry during the past several years have limited our access to capital. As a result, while we have in the past been able to meet our maturing commitments, the level of our new investments has decreased in recent years except in 2002 and 2004. Although we believe our access to capital today is very good, we may face difficult market conditions, which could

limit our access to capital. This could limit our ability to make future investments or possibly affect our ability to meet our maturing commitments.

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Our potential capital sources include:

**Equity financing.** As with other publicly-traded companies, the availability of equity capital will depend, in part, on the market price of our common stock which, in turn, will depend upon various market conditions that may change from time to time. Among the market conditions and other factors that may affect the market price of our common stock are:

the extent of investor interest;

the general reputation of REITs and the attractiveness of their equity securities in comparison to other equity securities, including securities issued by other real estate-based companies;

our financial performance and that of our operators;

the contents of analyst reports about us and the REIT industry;

general stock and bond market conditions, including changes in interest rates on fixed income securities, which may lead prospective purchasers of our common stock to demand a higher annual yield from future distributions;

our failure to maintain or increase our dividend, which is dependent, to a large part, on growth of funds from operations which in turn depends upon increased revenues from additional investments and rental increases; and

other factors such as governmental regulatory action and changes in REIT tax laws.

The market value of the equity securities of a REIT is generally based upon the market's perception of the REIT's growth potential and its current and potential future earnings and cash distributions. Our failure to meet the market's expectation with regard to future earnings and cash distributions likely would adversely affect the market price of our common stock and reduce the value of your investment.

**Debt financing/leverage.** Financing for our maturing commitments and future investments may be provided by borrowings under our bank line of credit, private or public offerings of debt, the assumption of secured indebtedness, mortgage financing on a portion of our owned portfolio or through joint ventures. We are subject to risks normally associated with debt financing, including the risks that our cash flow will be insufficient to service our debt or make distributions to our stockholders, that we will be unable to refinance existing indebtedness and that the terms of refinancing may not be as favorable as the terms of existing indebtedness or may include restrictive covenants that limit our flexibility in operating our business. For example, \$67,750,000 in aggregate principal amount of our medium-term notes are scheduled to mature in 2004, of which \$23,750,000 million were repaid on January 12, 2004,

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and the holders of \$55,000,000 in aggregate principal amount of our medium-term notes may require us to repurchase their notes in 2004. If we are unable to refinance or extend principal payments due at maturity or pay them with proceeds from other capital transactions, our cash flow may not be sufficient in all years to pay distributions to our stockholders and to repay all maturing debt. Furthermore, if prevailing interest rates, changes in our debt ratings or other factors at the time of refinancing result in higher interest rates upon refinancing, the interest expense relating to that refinanced indebtedness would increase, which could reduce our profitability and the amount of dividends we are able to pay. Moreover, additional debt financing increases the amount of our leverage. The degree of leverage could have important consequences to stockholders, including affecting

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our investment grade ratings, our ability to obtain additional financing in the future for working capital, capital expenditures, acquisitions, development or other general corporate purposes and making us more vulnerable to a downturn in business or the economy generally.

***Three of the operators of our facilities each account for more than 10% of our revenues. If these operators experience financial difficulties, or otherwise fail to make payments to us, our revenues may significantly decline.***

For the three months ended March 31, 2004, as adjusted for facilities acquired and disposed of during that period, Alterra Healthcare Corporation accounted for 12% of our revenues, American Retirement Corporation, or ARC, accounted for 12% of our revenues and Atria Senior Living Group accounted for 11% of our revenues. We cannot assure you that Alterra, ARC and Atria will continue to satisfy their obligations to us. For example, Alterra filed for protection under the United States bankruptcy laws in January 2003. Although Alterra emerged from bankruptcy in December 2003 following significant restructuring activities, we cannot assure you of Alterra's financial health following this restructuring. The failure or inability of Alterra, ARC or Atria to pay their obligations to us could materially reduce our revenues and net income, which could in turn reduce the amount of dividends we pay and cause our stock price to decline.

***If we fail to maintain our REIT status, we will be subject to federal income tax on our taxable income at regular corporate rates.***

We intend to operate in a manner to qualify as a REIT under the Internal Revenue Code. While we believe that we have been organized and have operated in a manner which would allow us to qualify as a REIT under the Internal Revenue Code, it is possible that is not the case or that our future operations could cause us to fail to qualify. Qualification as a REIT requires us to satisfy numerous requirements established under highly technical and complex Internal Revenue Code provisions. For example, in order to qualify as a REIT, at least 95% of our gross income in any year must be derived from qualifying sources, and we must pay dividends to stockholders aggregating at least 90% of our annual REIT taxable income. You should be aware that future legislation, new regulations, administrative interpretations or court decisions could significantly change the tax laws with respect to qualification as a REIT or the federal income tax consequences of qualification as a REIT. If we fail to qualify as a REIT in any taxable year, we will be subject to federal income tax on our taxable income at regular corporate rates. Unless we are entitled to relief under statutory provisions, we would be disqualified from treatment as a REIT for the four taxable years following the year during which we lost qualification. If we lose our REIT status, our net earnings available for distribution to stockholders or investments would be significantly reduced for each of the years involved. In addition, we would no longer be required to make distributions to stockholders.

***A downgrade of our credit rating could impair our ability to obtain additional debt financing on favorable terms, if at all, and significantly reduce the trading price of our preferred stock and common stock.***

We currently have a credit rating of Baa3 from Moody's Investor Services and BBB- from Standard & Poor's and Fitch on our senior unsecured notes. If any of these rating agencies downgrade our credit rating, or place our rating under watch or review for possible downgrade, this could make it more difficult or expensive for us to obtain additional debt financing, and the trading price of

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our preferred stock and common stock will likely decline. Factors that may affect our credit rating include, among other things, our financial performance, our success in raising sufficient equity capital, our capital structure and level of indebtedness and pending or future changes in the regulatory framework applicable to our operators and our industry. We cannot assure you that these credit agencies will not downgrade our credit rating in the future.

### ***Unforeseen costs associated with the acquisition of new properties could reduce our profitability.***

Our business strategy contemplates future acquisitions that may not prove to be successful. For example, we might encounter unanticipated difficulties and expenditures relating to any acquired properties, including contingent liabilities, and newly acquired properties might require significant management attention that would otherwise be devoted to our ongoing business. If we agree to provide funding to enable healthcare operators to build, expand or renovate facilities on our properties and the project is not completed, we could be forced to become involved in the development to ensure completion or we could lose the property. These costs may negatively affect our results of operations.

### ***We may recognize losses on the sale of certain facilities.***

From time to time, we classify certain facilities, including unoccupied buildings and land parcels, as assets held for sale. For example, as of March 31, 2004, assets held for sale total approximately \$3,511,000. To the extent we are unable to sell these properties for book value, we may be required to take an impairment charge or loss on the sale, either of which would reduce our net income.

### ***Our success depends in part on our ability to retain key personnel.***

We depend on the efforts of our executive officers, particularly Mr. Douglas M. Pasquale, Mr. Mark L. Desmond and Mr. Donald D. Bradley. The loss of the services of these persons or the limitation of their availability could have an adverse impact on our operations. Although we have entered into employment and/or security agreements with certain of these executive officers, these agreements may not assure their continued service.

### ***As owners of real estate, we are subject to environmental laws that expose us to the possibility of having to pay damages to the government and costs of remediation if there is contamination on our property.***

Under various laws, owners of real estate may be required to investigate and clean up hazardous substances present at a property, and may be held liable for property damage or personal injuries that result from environmental contamination. These laws also expose us to the possibility that we become liable to reimburse the government for damages and costs it incurs in connection with the contamination, regardless of whether we were aware of, or responsible for, the environmental contamination. We review environmental surveys of the facilities we own prior to their purchase. Based upon those surveys we do not believe that any of our properties are subject to material environmental contamination. However, environmental liabilities may be present in our properties and we may incur costs to remediate contamination that could have a material adverse effect on our business or financial condition.





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***If the holders of our notes exercise their rights to require us to repurchase their notes, we may have to make substantial payments, incur additional debt or issue equity securities to finance the repurchase.***

Some of our medium-term notes grant the holders the right to require us, on specified dates, to repurchase their notes at a price equal to the principal amount of the notes to be repurchased plus accrued and unpaid interest. For example, the holders of \$55,000,000 in principal amount of our 6.9% medium-term notes may require us to repurchase their notes in October 2004. If the holders of these notes elect to require us to repurchase their notes, we may be required to make significant payments, which would adversely affect our liquidity. Alternatively, we could finance the repurchase through the issuance of additional debt securities, which may have terms that are not as favorable as the notes we are repurchasing, or equity securities, which will dilute the interests of our existing stockholders.

***Our level of indebtedness may adversely affect our financial results.***

As of March 31, 2004, we had total consolidated indebtedness of approximately \$682,737,000 and total assets of approximately \$1,461,543,000, and we may incur additional indebtedness in the future. The risks associated with a high degree of financial leverage include:

increasing our sensitivity to general economic and industry conditions;

limiting our ability to obtain additional financing on favorable terms;

requiring a substantial portion of our cash flow to make interest and principal payments due on our indebtedness;

a possible downgrade of our credit rating; and

limiting our flexibility in planning for, or reacting to, changes in our business and industry.

***Our charter and bylaws contain provisions that may delay, defer or prevent a change in control or other transactions that could provide stockholders with the opportunity to realize a premium over the then-prevailing market price for our common stock.***

In order to protect us against the risk of losing our REIT status for federal income tax purposes due to a rule that prevents five or fewer individuals from owning more than 50% of a REIT's stock, our charter prohibits the ownership by any single person of more than 9.9% of the issued and outstanding shares of our voting stock. We have the right to redeem shares acquired or held in excess of the ownership limit. In addition, any acquisition of our common stock or preferred stock that would result in our disqualification as

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a REIT is null and void. The ownership limit may have the effect of delaying, deferring or preventing a change in control of our company and could adversely affect our stockholders' ability to realize a premium over the market price for the shares of our common stock. Our board of directors has increased the ownership limit to 20% with respect to one of our stockholders, Cohen & Steers Capital Management, Inc. Based on SEC filings, Cohen & Steers Capital Management, Inc. beneficially owned 7,310,500 of our shares, or approximately 11% of our common stock, as of April 6, 2004.

Our charter authorizes us to issue additional shares of common stock and one or more series of preferred stock and to establish the preferences, rights and other terms of any series of preferred stock that we issue. Although our board of directors has no intention to do so at the present time, it could establish a series of preferred stock that could delay, defer or prevent a transaction

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or a change in control that might involve the payment of a premium over the market price for our common stock or otherwise be in the best interests of our stockholders.

In addition, the following provisions of our charter may delay, defer or prevent a transaction that may be in the best interests of our stockholders:

in certain circumstances, a proposed consolidation, merger, share exchange or transfer must be approved by two-thirds of the votes of our preferred stockholders entitled to be cast on the matter;

business combinations must be approved by 90% of the outstanding shares unless the transaction receives a unanimous vote or consent of our board of directors or is a combination solely with a wholly owned subsidiary; and

the classification of our board of directors into three groups, with each group of directors being elected for successive three-year terms, may delay any attempt to replace our board.

## **Risks related to our Convertible Preferred Stock**

***We may not have the ability to raise the funds necessary to repurchase the Convertible Preferred Stock upon a fundamental change.***

Following a fundamental change as described under [Description of Convertible Preferred Stock](#) [Repurchase of Convertible Preferred Stock](#) by us at the option of the holder upon a Fundamental Change, holders of Convertible Preferred Stock may require us to repurchase their shares of Convertible Preferred Stock. We cannot assure you that we will have sufficient financial resources, or will be able to arrange financing, to pay the repurchase price in cash with respect to any shares of Convertible Preferred Stock tendered by holders for repurchase on any of these dates or upon a Fundamental Change. In addition, our then existing indebtedness could provide that a fundamental change would constitute an event of default or prepayment event under, and result in the acceleration of the maturity of, such indebtedness or could otherwise contain restrictions which would not allow us to repurchase the Convertible Preferred Stock.

***You should consider the United States federal income tax consequences of owning the Convertible Preferred Stock.***

The U.S. federal income tax consequences of purchasing, owning and disposing of the Convertible Preferred Stock and any common stock received upon its conversion are described under [Certain federal income tax consequences](#). Certain of our actions, including an increase in the cash dividend on our common stock, may result in an adjustment to the conversion rate that could cause you to be deemed to receive a taxable dividend subject to U.S. federal income tax without the receipt of any cash. If you are a non-U.S. Holder (as defined in [Certain federal income tax consequences](#) ), such deemed dividend may be subject to U.S. federal withholding tax at a 30% rate or such lower rate as may be specified by an applicable treaty. See [Certain federal income tax](#)

consequences.

***An active trading market for the Convertible Preferred Stock may not develop.***

The Convertible Preferred Stock is a new issue of securities for which there is currently no public market. Although we have applied to list the Convertible Preferred Stock on the New York Stock Exchange under the symbol \_\_\_\_\_, we cannot assure you that an active or sustained trading

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market for the Convertible Preferred Stock will develop or that the holders will be able to sell their shares of Convertible Preferred Stock. The underwriters have informed us that they intend to make a market in the Convertible Preferred Stock after this offering is completed. However, the underwriters may cease their market making activities at any time. Moreover, even if you are able to sell your Convertible Preferred Stock, we cannot assure you as to the price at which any sales will be made. Future trading prices of the Convertible Preferred Stock will depend on many factors, including, among other things, prevailing interest rates, our operating results, the price of our common stock, and the market for similar securities. Historically, the market for convertible debt and preferred stock has been subject to disruptions that have caused volatility in prices. It is possible that the market for the Convertible Preferred Stock will be subject to disruptions which may have a negative effect on the holders of the Convertible Preferred Stock, regardless of our prospects or financial performance.

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

If you hold Convertible Preferred Stock, you will not be entitled to any rights with respect to our common stock (including, without limitation, voting rights and rights to receive any dividends or other distributions on our common stock), but you will be subject to all changes affecting the common stock. You will have rights with respect to our common stock only if and when we deliver shares of common stock to you upon conversion of your Convertible Preferred Stock and, in limited cases, under the conversion rate adjustments applicable to the Convertible Preferred Stock. For example, in the event that an amendment is proposed to our articles of incorporation or bylaws requiring shareholder approval and the record date for determining the shareholders of record entitled to vote on the amendment occurs prior to delivery of the common stock to you, 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.

***We may issue additional securities and thereby materially and adversely affect the price of our common stock and our convertible preferred stock.***

We are not restricted from issuing additional common stock, preferred stock, or securities convertible into or exchangeable for our common stock. If we issue additional shares of common stock, shares of preferred stock, or convertible or exchangeable securities, the price of our common stock and, in turn, the price of the convertible preferred stock may be materially and adversely affected.

***The conditional conversion features of the Convertible Preferred Stock could result in you receiving less than the value of the common stock into which the Convertible Preferred Stock is convertible.***

The Convertible Preferred Stock is convertible into common stock only if specified conditions are met. If the specific conditions for conversion are not met, you may not be able to receive the value of the common stock into which the Convertible Preferred Stock would otherwise be convertible.

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***The value of the conversion right associated with the Convertible Preferred Stock may be substantially lessened or eliminated if we are party to a merger, consolidation, or other similar transaction.***

If we are party to a consolidation, merger, binding share exchange or sale of all or substantially all of our assets pursuant to which our common stock is converted into the right to receive cash, securities, or other property, at the effective time of the transaction, the right to convert the Convertible Preferred Stock into our common stock will be changed into a right to convert it into the kind and amount of cash, securities, or other property which the holder would have received if the holder had converted its shares of Convertible Preferred Stock immediately prior to the transaction. This change could substantially lessen or eliminate the value of the conversion privilege associated with the Convertible Preferred Stock in the future. For example, if all of our outstanding common stock were acquired for cash in a merger transaction, each share of Convertible Preferred Stock would become convertible solely into cash and would no longer be convertible into securities whose value would vary depending on our future prospects and other factors.

***Our reported earnings per share may be more volatile because of the contingent conversion provision of the Convertible Preferred Stock.***

Holders of shares of Convertible Preferred Stock may convert those shares into our common stock (or, at our election, cash or a combination of cash and common stock), among other circumstances, in any fiscal quarter after the fiscal quarter ending September 30, 2004, if the closing sale price of our common stock for at least 20 trading days during the 30 consecutive trading days ending on the last trading day of the preceding fiscal quarter is greater than or equal to 125% of the conversion price per share on such trading day. Until this contingency or other conversion contingency is met, the shares underlying the Convertible Preferred Stock are not included in the calculation of diluted earnings per share. Should any conversion contingency be met, diluted earnings per share would be expected to decrease as a result of the inclusion of the underlying shares in the earnings per share calculation. An increase in volatility in our stock price could cause this condition to be met in one quarter and not in a subsequent quarter, increasing the volatility of reported diluted earnings per share.

***If we elect to pay the fundamental change repurchase price and/or the make-whole premium, if any, in shares of our common stock, the shares of common stock you receive may not have a value equal to those amounts.***

Following a fundamental change, holders will have the right to require us to repurchase their shares of Convertible Preferred Stock. In connection with this election, we will have the right to elect to pay the fundamental change repurchase price and/or the make-whole premium, if any, in cash, shares of our common stock or any combination thereof. The amount of common stock that we will deliver in satisfaction of the fundamental change repurchase right will be determined by reference to the market price of our common stock as determined under Description of Convertible Preferred Stock Repurchase of Convertible Preferred Stock by us at the option of the holder upon a Fundamental Change. Because the market price of our common stock is determined prior to the fundamental change repurchase date, you will bear the market risk with respect to the value of the shares of our common stock, if any, to be received from the date as of which the market price is determined to the date on which you receive such shares. In addition, the market price of our common stock is an average price rather than the price as of a single date.

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***Conversion of Convertible Preferred Stock will dilute the ownership interest of existing shareholders.***

The conversion of some or all of the Convertible Preferred Stock will dilute the ownership interests of existing shareholders. Any sales in the public market of the common stock issuable upon such conversion could adversely affect prevailing market prices of our common stock. In addition, the existence of the Convertible Preferred Stock may encourage short selling by market participants because the conversion of the Convertible Preferred Stock could depress the price of our common stock.

***Our charter and bylaws and Maryland law may deter takeovers.***

Our articles of incorporation and Maryland law contain provisions that could have anti-takeover effects that could discourage, delay, or prevent a change in control or an acquisition that our stockholders and holders of Convertible Preferred Stock may find attractive. These provisions may also discourage proxy contests and make it more difficult for our stockholders to take some corporate actions, including the election of directors. These provisions could limit the price that investors might be willing to pay for shares of our common stock or the Convertible Preferred Stock.



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## Forward-looking statements

Certain information contained in this prospectus supplement and the accompanying prospectus includes forward-looking statements. Forward-looking statements include statements regarding our expectations, beliefs, intentions, plans, objectives, goals, strategies, future events or performance and underlying assumptions and other statements which are not statements of historical facts. These statements may be identified, without limitation, by the use of forward-looking terminology such as may, will, anticipates, expects, believes, intends, should or comparable terms or their negatives. All forward-looking statements included in this prospectus supplement and the accompanying prospectus are based on information available to us on the date of the applicable document. These statements speak only as of the date of the applicable document, and we assume no obligation to update such forward-looking statements for any reason or to update the reasons actual results could differ materially from those anticipated in these forward-looking statements, even if new information becomes available in the future. These statements involve risks and uncertainties that could cause actual results to differ materially from those described in the statements. These risks and uncertainties include, without limitation, the following:

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

occupancy levels at certain facilities;

changes in the ratings of our debt securities;

access to the capital markets and the cost of capital;

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

the general distress of the healthcare industry;

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

the amount and yield of any additional investments;

the ability of our operators to repay deferred rent or loans in future periods;

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

our ability to attract new operators for certain facilities;

our ability to sell certain facilities for their book value;

changes in tax laws and regulations affecting REITs; and

the risk factors set forth under the caption "Risk factors" in this prospectus supplement.

Other risks, uncertainties and factors, including those discussed in other filings with the SEC, could cause our actual results to differ materially from those projected in any forward-looking statement we make.

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## Use of proceeds

We estimate that the net proceeds from this offering will be approximately \$       million (or \$       million if the over-allotment option is exercised in full), after the payment of underwriting discounts and commissions and estimated expenses of this offering. We intend to use the net proceeds from this offering to repay amounts outstanding under our revolving bank line of credit and the remainder for general corporate purposes, including investments in health care-related properties. As of May 31, 2004, the aggregate amount outstanding under our revolving bank line of credit was approximately \$166 million, having interest rates between 2.2% and 4.0% and a maturity date of April 15, 2007. Amounts outstanding under our bank line of credit were incurred for general corporate purposes, including the acquisition or construction of health care-related properties and the funding of mortgage loans secured by health care-related properties.

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Table of Contents**Price range of common stock and dividend policy**

Our common stock is listed on the New York Stock Exchange. It has been our policy to declare quarterly dividends to holders of our common stock in order to comply with applicable sections of the Internal Revenue Code governing real estate investment trusts. Set forth below are the high and low sales prices of our common stock for the periods indicated as reported by the New York Stock Exchange and the cash dividends per share paid with respect to such periods. Future dividends will be declared and paid at the discretion of our Board and will depend upon cash generated by operating activities, our financial condition, relevant financing instruments, capital requirements, annual distribution requirements under the REIT provisions of the Internal Revenue Code and such other factors as our Board deems relevant. However, we currently expect to pay cash dividends in the future, comparable in amount to dividends recently paid.

	High	Low	Dividend
<b>2002</b>			
First quarter	\$ 20.38	\$ 18.40	\$ 0.46
Second quarter	22.80	17.10	0.46
Third quarter	19.15	14.90	0.46
Fourth quarter	17.85	14.64	0.46
<b>2003</b>			
First quarter	\$ 15.50	\$ 12.45	\$ 0.46
Second quarter	16.25	12.90	0.37
Third quarter	17.55	15.77	0.37
Fourth quarter	19.95	16.82	0.37
<b>2004</b>			
First quarter	22.69	19.41	0.37
Second quarter (through June 25, 2004)	22.80	16.38	0.37

As of June 25, 2004, the last reported sales price of our common stock on the New York Stock Exchange was \$19.49 per share.

As of February 29, 2004, there were approximately 1,200 holders of record of our common stock.

Table of Contents**Capitalization**

The following table presents our consolidated cash and cash equivalents and capitalization as of March 31, 2004:

on an actual basis; and

on an adjusted basis giving effect to the issuance and sale of our Convertible Preferred Stock being offered by this prospectus supplement and the accompanying prospectus and the application of the net proceeds from this offering.

This table should be read in conjunction with our consolidated financial statements and related notes contained therein in our quarterly report on Form 10-Q for the first quarter ended March 31, 2004, which is incorporated by reference in this prospectus supplement and the accompanying prospectus.

	<b>As of March 31, 2004</b>	
	<b>Actual</b>	<b>As adjusted</b>
	<b>(unaudited, in thousands except share data)</b>	
Cash and cash equivalents	\$ 12,788	\$
Debt:		
Borrowings under unsecured revolving credit facility	\$ 25,000	\$
Senior notes due 2003-2038	517,000	517,000
Notes and bonds payable	140,737	140,737
<b>Total debt</b>	<b>\$ 682,737</b>	<b>\$ 657,737</b>
Stockholders' equity:		
Preferred stock, \$1.00 par value per share; 5,000,000 shares authorized; 1,000,000 shares issued and outstanding, actual; 2,000,000 shares issued and outstanding, as adjusted; stated at liquidation preference of \$100 per share:		
7.677% Series A Cumulative Preferred Step-Up REIT Securities	100,000	100,000
% Series B Cumulative Preferred Stock		100,000
Common stock, \$0.10 par value per share; 100,000,000 shares authorized; 66,474,448 shares issued and outstanding, actual and as adjusted	6,647	6,647
Capital in excess of par value	864,456	861,206
Cumulative net income	748,509	748,509
Cumulative dividends	(989,995)	(989,995)
<b>Total stockholders' equity</b>	<b>729,617</b>	<b>826,367</b>

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Total capitalization	\$ 1,412,354	\$ 1,484,104
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The information in the preceding table excludes:

shares of our common stock issuable upon exercise of options outstanding as of March 31, 2004, at a weighted average exercise price of \$18.57 per share;

shares of our common stock available for future grant under our stock option and restricted stock plan as of March 31, 2004; and

150,000 shares of our common stock that may be purchased by the underwriters to cover over-allotments, if any.

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## Description of Convertible Preferred Stock

The following is a summary of certain provisions of our % Series B Cumulative Convertible Preferred Stock (which we will refer to as the Convertible Preferred Stock ). A copy of the articles supplementary to our amended and restated articles of incorporation establishing the terms of the Convertible Preferred Stock, which we refer to as the articles supplementary, as well as the form of Convertible Preferred Stock share certificate, will be filed with the SEC. The following summary of the terms of Convertible Preferred Stock does not purport to be complete and is subject to, and qualified in its entirety by reference to, the provisions of the articles supplementary. As used in this section, the terms us , we or our refer to Nationwide Health Properties, Inc. and not to any of its subsidiaries.

### General

When issued, the Convertible Preferred Stock and any common stock issued upon the conversion of the Convertible Preferred Stock will be validly issued, fully paid and nonassessable. The holders of the Convertible Preferred Stock will have no preemptive or preferential right to purchase or subscribe for our stock, obligations, warrants or any other securities of ours of any class. The transfer agent, registrar, redemption, conversion, calculation and dividend disbursing agent for shares of both the Convertible Preferred Stock and common stock is The Bank of New York.

The Convertible Preferred Stock will be redeemable by us at any time on or after July 5, 2009 at the redemption prices described under Redemption. In addition, the Convertible Preferred Stock will be subject to repurchase at the option of holders under the circumstances described under Repurchase of Convertible Preferred Stock by us at the option of the holder upon a Fundamental Change.

### Ranking

The Convertible Preferred Stock, with respect to dividend rights or rights upon our liquidation, winding-up or dissolution, ranks:

senior to all classes of our common stock and to each other class of capital stock or series of preferred stock established after the original issue date of the Convertible Preferred Stock (which we will refer to as the Issue Date ), the terms of which expressly provide that such class or series ranks junior to the Convertible Preferred Stock as to dividend rights or rights upon our liquidation, winding-up or dissolution (which we will refer to collectively as Junior Stock );

on a parity, in all respects, with our existing Series A Preferred Stock and with any other series of preferred stock established after the Issue Date unless the terms of such series of preferred stock expressly provide that such class or series will rank other than on a parity with the Convertible Preferred Stock as to dividend rights or rights upon our liquidation, winding-up or dissolution (which we will refer to collectively as Parity Stock ); and

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junior to each class of capital stock or series of preferred stock established after the Issue Date, the terms of which expressly provide that such class or series will rank senior to the Convertible Preferred Stock as to dividend rights or rights upon our liquidation, winding-up or dissolution (which we will refer to collectively as Senior Stock ).

Holders will generally have no voting rights. However, while any shares of Convertible Preferred Stock are outstanding, we may not authorize or issue any class or series of Senior Stock (or any

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security convertible into Senior Stock) or amend our articles of incorporation in a manner that would affect adversely the rights of holders of the Convertible Preferred Stock, in each case, without the affirmative vote or consent of the holders of at least 66 <sup>2</sup>/<sub>3</sub>% of the outstanding shares of Convertible Preferred Stock. In addition, if dividends on the Convertible Preferred Stock are in arrears and unpaid for six or more quarterly periods (whether or not consecutive), holders will have the voting rights set forth below under Voting rights.

## **Dividends**

Holders of shares of Convertible Preferred Stock will be entitled to receive, when, as and if declared by our board of directors out of funds legally available for payment, cumulative cash dividends at the rate per annum of \_\_\_\_\_ % per share on the liquidation preference thereof of \$100 per share of Convertible Preferred Stock (equivalent to \$ \_\_\_\_\_ per annum per share). Dividends on the Convertible Preferred Stock will be payable quarterly on March 31, June 30, September 30 and December 31 of each year, commencing September 30, 2004 (each, a Dividend Payment Date ) at such annual rate, and shall accumulate from the most recent date as to which dividends shall have been paid or, if no dividends have been paid, from the Issue Date of the Convertible Preferred Stock, whether or not in any dividend period or periods there have been funds legally available for the payment of such dividends. Dividends will be payable to holders of record as they appear on our stock register on the immediately preceding March 15, June 15, September 15 and December 15 (each, a Record Date ). Accumulations of dividends on shares of Convertible Preferred Stock do not bear interest. Dividends will be payable on the Convertible Preferred Stock on the basis of a 360-day year consisting of twelve 30-day months. If any Dividend Payment Date falls on a day that is not a business day, we will pay the related dividend on the next day that is a business day, with the same force and effect as if the dividend payment had been made on the Dividend Payment Date and without any interest or other payment with respect to the delay. As used in this prospectus supplement, the term 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 The City of New York.

Except if we determine it is necessary to maintain our status as a REIT, no dividend will be declared or paid upon, or any sum set apart for the payment of dividends upon, any outstanding share of the Convertible Preferred Stock with respect to any dividend period unless all dividends for all preceding dividend periods have been declared and paid or declared and a sufficient sum set apart for the payment of such dividend, upon all outstanding shares of Convertible Preferred Stock.

Except if we determine it is necessary to maintain our status as a REIT, no dividends or other distributions (other than a dividend or distribution payable solely in shares of Parity Stock or Junior Stock (in the case of Parity Stock) or Junior Stock (in the case of Junior Stock) and cash in lieu of fractional shares) may be declared, made or paid, or set apart for payment upon, any Parity Stock or Junior Stock, nor may any Parity Stock or Junior Stock be redeemed, purchased or otherwise acquired for any consideration (or any money paid to or made available for a sinking fund for the redemption of any Parity Stock or Junior Stock) by us or on our behalf (except by conversion into or exchange for shares of Parity Stock or Junior Stock (in the case of Parity Stock) or Junior Stock (in the case of Junior Stock)) unless all accumulated and unpaid dividends have been or contemporaneously are declared and paid, or are declared and a sum sufficient for the payment thereof is set apart for such payment, on the Convertible Preferred Stock and any Parity

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Stock for all dividend payment periods terminating on or prior to the date of such declaration, payment, redemption, purchase or acquisition. Notwithstanding the foregoing, if full dividends have not been paid on the Convertible Preferred Stock and any Parity Stock, dividends may be declared and paid on the Convertible Preferred Stock and such Parity Stock so long as the dividends are declared and paid pro rata so that the amounts of dividends declared per share on the Convertible Preferred Stock and such Parity Stock will in all cases bear to each other the same ratio that accumulated and unpaid dividends per share on the shares of the Convertible Preferred Stock and such Parity Stock bear to each other. Holders of shares of the Convertible Preferred Stock will not be entitled to any dividend, whether payable in cash, property or stock, in excess of full cumulative dividends.

In addition, no dividend will be declared or paid upon, or any sum set apart for the payment of dividends upon, any outstanding shares of Convertible Preferred Stock at any time when the terms and provisions of any agreement of ours, including any agreement relating to our indebtedness, prohibits such declaration, payment or setting apart for payment or provides that such declaration, payment or setting apart for payment would constitute a breach or a default under it, or if such declaration, payment or setting apart for payment is restricted or prohibited by law. Covenants in our bank credit agreement provide generally that we may not pay dividends in excess of 100% of cash flow, as defined in the bank credit agreement, but that covenant permits us, upon certain circumstances, to pay distributions in an amount necessary to maintain our qualification as a REIT. We do not believe that this provision has had or will have any adverse impact on our ability to pay dividends on the Convertible Preferred Stock or, in the normal course of business, to our stockholders in amounts necessary to maintain our qualification as a REIT.

## **Liquidation preference**

In the event of our voluntary or involuntary liquidation, winding-up or dissolution, each holder of Convertible Preferred Stock will be entitled to receive and to be paid out of our assets available for distribution to our stockholders, before any payment or distribution is made to holders of Junior Stock (including common stock), a liquidation preference in the amount of \$100 per share of the Convertible Preferred Stock, plus accumulated and unpaid dividends on the shares to the date fixed for liquidation, winding-up or dissolution. If, upon our voluntary or involuntary liquidation, winding-up or dissolution, the amounts payable with respect to the liquidation preference of the Convertible Preferred Stock and all Parity Stock are not paid in full, the holders of the Convertible Preferred Stock and the Parity Stock will share equally and ratably in any distribution of our assets in proportion to the full liquidation preference and accumulated and unpaid dividends to which they are entitled. After payment of the full amount of the liquidation preference and accumulated and unpaid dividends to which they are entitled, the holders of the Convertible Preferred Stock will have no right or claim to any of our remaining assets. Neither the sale of all or substantially all our assets or business (other than in connection with our liquidation, winding-up or dissolution), nor our merger or consolidation into or with any other person, will be deemed to be our voluntary or involuntary liquidation, winding-up or dissolution.

The articles supplementary will not contain any provision requiring funds to be set aside to protect the liquidation preference of the Convertible Preferred Stock even though it is substantially in excess of the par value thereof.

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### **Voting rights**

The holders of the Convertible Preferred Stock will have no voting rights except as set forth below or as otherwise required by Maryland law from time to time.

If dividends on the Convertible Preferred Stock are in arrears and unpaid for six or more quarterly periods (whether or not consecutive), the holders of the Convertible Preferred Stock, voting as a single class with any other preferred stock having similar voting rights that are exercisable (including our existing Series A Preferred Stock), will be entitled at our next regular or special meeting of stockholders to elect two additional directors to our board of directors. Upon the election of any such additional directors, the number of directors that comprise our board shall be increased by such number of additional directors. Such voting rights and the terms of the directors so elected will continue until such time as the dividend arrearage on the Convertible Preferred Stock has been paid in full.

In addition, the affirmative vote or consent of the holders of at least 66<sup>2</sup>/<sub>3</sub>% of the outstanding Convertible Preferred Stock will be required for the authorization or issuance of any class or series of Senior Stock (or any security convertible into Senior Stock) and for amendments to our amended and restated articles of incorporation that would affect adversely the rights of holders of the Convertible Preferred Stock. The articles supplementary will provide that the authorization of, the increase in the authorized amount of, or the issuance of any shares of any class or series of Parity Stock or Junior Stock will not require the consent of the holders of the Convertible Preferred Stock, and will not be deemed to affect adversely the rights of the holders of the Convertible Preferred Stock.

In all cases in which the holders of Convertible Preferred Stock shall be entitled to vote, each share of Convertible Preferred Stock shall be entitled to one vote.

### **Conversion rights**

Each share of Convertible Preferred Stock will be convertible only on or after the occurrence of the conversion triggering events described below at the option of the holder thereof into initially \_\_\_\_\_ shares of common stock (equivalent to an initial conversion price of \$ \_\_\_\_\_ per share of common stock based on the issue price of the Convertible Preferred Stock). See Events triggering conversion rights below. The number of shares into which each share of Convertible Preferred Stock is convertible is referred to as the Conversion Rate and will be subject to adjustment as described under Conversion rate adjustment.

The holders of shares of Convertible Preferred Stock at the close of business on a Record Date will be entitled to receive the dividend payment on those shares on the corresponding Dividend Payment Date notwithstanding the conversion of such shares following that Record Date or our default in payment of the dividend due on that Dividend Payment Date. However, shares of Convertible Preferred Stock surrendered for conversion during the period between the close of business on any Record Date and the close of business on the business day immediately preceding the applicable Dividend Payment Date, except for shares of Convertible Preferred Stock to be redeemed within this period or on the next Dividend Payment Date and except to the extent of all accumulated and unpaid dividends in respect of all Dividend Payment Dates prior to the applicable conversion date, must be accompanied by payment of an amount equal to the dividend payable on such shares on that Dividend Payment Date. Except as provided above with respect to a voluntary conversion, we will make no payment or allowance for unpaid dividends,



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whether or not in arrears, on converted shares or for dividends on the shares of common stock issued upon conversion.

### ***Events triggering conversion rights***

A holder's right to convert its shares of Convertible Preferred Stock will arise only upon the occurrence of the events specified in this section.

**Conversion rights based on trading price of our common stock.** A holder may surrender shares of Convertible Preferred Stock for conversion into shares of common stock (1) during any calendar quarter commencing after September 30, 2004 and before June 30, 2029 (and only during such calendar quarter) if the Closing Sale Price of our common stock for at least 20 Trading Days in a period of 30 consecutive Trading Days ending on the last Trading Day of the immediately preceding calendar quarter is greater than or equal to 125% of the conversion price (i.e., the liquidation preference of \$100 per share of Convertible Preferred Stock divided by the number of shares of our common stock equal to the Conversion Rate then in effect) on such Trading Day and (2) at any time on or after June 30, 2029 if the Closing Sale Price of our common stock on any Trading Day on or after June 30, 2029 is greater than or equal to 125% of the conversion price.

The term **Trading Day** means a day during which trading in securities generally occurs on the New York Stock Exchange or, if our common stock is not listed on the New York Stock Exchange, on the principal other national or regional securities exchange on which our common stock is then listed or, if our common stock is not listed on a national or regional securities exchange, on Nasdaq or, if our common stock is not quoted on Nasdaq, on the principal other market on which our common stock is then traded.

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 closing bid and ask prices or, if more than one in either case, the average of the average closing bid and the average closing ask prices) on such date as reported on the principal United States securities exchange on which our common stock is traded or, if our common stock is not listed on a United States national or regional securities exchange, as reported by Nasdaq or by the National Quotation Bureau Incorporated. In the absence of such a quotation, we will determine the Closing Sale Price on the basis we consider appropriate.

**Conversion upon satisfaction of trading price condition.** Holders may surrender shares of Convertible Preferred Stock for conversion into shares of our common stock during the five business day period after any five consecutive Trading Day period in which the Trading Price of the Convertible Preferred Stock for each day during such five Trading Day period, as determined following a request by a holder of shares of Convertible Preferred Stock in accordance with the procedures described below, was less than 98% of the product of the Conversion Rate and the average of the Closing Sale Prices of our common stock for each day during such five Trading Day period (the **Trading Price Condition**); provided that if, on the date of any conversion pursuant to the Trading Price Condition that is on or after June 30, 2029, the Closing Sale Price of our common stock on the Trading Day before the conversion date is greater than 100% but less than 125% of the conversion price, then holders surrendering Convertible Preferred Stock for conversion will receive, in lieu of common stock based on the applicable conversion rate, an amount in cash, shares of our common stock or a combination of cash and shares of our common stock, at our option, equal to the aggregate liquidation preference of the shares of Convertible

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Preferred Stock being converted, plus accumulated and unpaid dividends to but excluding the conversion date (a Liquidation Value Conversion ). Any common stock delivered upon a Liquidation Value Conversion will be valued at the average of the Closing Sale Price of our common stock for a five Trading Day period starting the third Trading Day following the conversion date and shall be delivered no later than the third business day following such valuation.

The Trading Price of the Convertible Preferred Stock on any date of determination will be determined by us or the calculation agent and will be the closing sale price per share of Convertible Preferred Stock (or if no closing sale price is reported, the average of the closing bid and ask prices or, if more than one in either case, the average of the average closing bid and the average closing ask prices) on such date as reported on the principal United States securities exchange on which the Convertible Preferred Stock is traded or, if the Convertible Preferred Stock is not listed on a United States national or regional securities exchange, as reported by Nasdaq or by the National Quotation Bureau Incorporated. In the absence of such a quotation, the Trading Price will mean the average of the secondary market bid quotations obtained by us or the calculation agent for 5,000 shares of Convertible Preferred Stock at approximately 3:30 p.m., New York City time, on such determination date from three independent nationally recognized securities dealers that we or the calculation agent selects; provided that if three such bids cannot reasonably be obtained by us or the calculation agent, but two such bids are obtained, then the average of the two bids shall be used, and if only one such bid can reasonably be obtained by us or the calculation agent, that one bid shall be used. If we or the calculation agent cannot reasonably obtain at least one bid for 5,000 shares of Convertible Preferred Stock from a nationally recognized securities dealer, then the Trading Price per share of Convertible Preferred Stock will be deemed to be less than 98% of the product of the Closing Sale Price of our common stock and the Conversion Rate.

In connection with any conversion upon satisfaction of the Trading Price Condition, the calculation agent shall have no obligation to determine the Trading Price of the Convertible Preferred Stock unless we have requested such determination; and we shall have no obligation to make such request unless you provide us with reasonable evidence that the Trading Price per share of Convertible Preferred Stock would be less than 98% of the product of the Closing Sale Price of our common stock and the applicable Conversion Rate. At such time, we shall instruct the calculation agent to determine the Trading Price of the Convertible Preferred Stock beginning on the next Trading Day and on each successive Trading Day until the Trading Price per share of Convertible Preferred Stock is greater than or equal to 98% of the product of the Closing Sale Price of our common stock and the applicable Conversion Rate.

**Conversion rights upon occurrence of certain corporate transactions.** If we are party to a consolidation, merger, binding share exchange or sale of all or substantially all of our assets, in each case pursuant to which our common stock would be converted into cash, securities or other property or if a Fundamental Change (as defined under Repurchase of Convertible Preferred Stock by us at the option of the holder upon a Fundamental Change ) occurs, a holder may surrender shares of Convertible Preferred Stock for conversion into common stock at any time from and after the date that is 15 days prior to the anticipated effective date of the transaction or the Fundamental Change until 15 days after the actual date of such transaction or such Fundamental Change. At the effective time of any such transaction or Fundamental Change, if applicable, the right to convert shares of Convertible Preferred Stock into common stock will be changed into a right to convert such Convertible Preferred Stock into the kind and amount of

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cash, securities or other property of us or another person that the holder would have received if the holder had converted the holder's Convertible Preferred Stock immediately prior to the transaction or the Fundamental Change.

In addition, if the event giving rise to the foregoing conversion right constitutes a Fundamental Change for which a Make-Whole Premium (as defined under Repurchase of Convertible Preferred Stock by us at the option of the holder upon a Fundamental Change ) would have been payable upon the election of a holder of shares of Convertible Preferred Stock to require us to repurchase such shares in connection with such a Fundamental Change, a holder who instead elects to convert its shares of Convertible Preferred Stock hereunder will be entitled to receive (i) shares of common stock in respect of the conversion obligation, plus (ii) the applicable Make-Whole Premium, which may be paid in cash, shares of common stock, or a combination thereof. If we elect to satisfy the Make-Whole Premium obligation in shares of our common stock, the number of shares of common stock that we will deliver will be determined in the manner set forth under Repurchase of Convertible Preferred Stock by us at the option of the holder upon a Fundamental Change.

If we elect to:

distribute to all holders of our common stock rights or warrants entitling them to purchase, for a period expiring within 45 days of the record date for such distribution, our common stock at less than the average Closing Sale Price for the ten consecutive Trading Days immediately preceding the declaration date for such distribution; or

distribute to all holders of our common stock, cash, assets, debt securities or rights to purchase our securities, which distribution has a per share value exceeding 5% of the Closing Sale Price of our common stock on the day immediately preceding the declaration date for such distribution;

we must notify you at least 20 days prior to the ex-dividend date for such distribution. Once we have given such notice, you may surrender your shares of Convertible Preferred Stock for conversion at any time until the earlier of the close of business on the business day immediately preceding the ex-dividend date or any announcement by us that such distribution will not take place. No adjustment to the Conversion Rate will be made and you will not be able to convert pursuant to this provision if you otherwise participate, by virtue of being a holder of Convertible Preferred Stock, in the distribution without conversion.

Upon determination that holders of Convertible Preferred Stock are or will be entitled to convert their Convertible Preferred Stock into common stock in accordance with any of the foregoing provisions, we will issue a press release and publish such information on our website on the World Wide Web.

**Conversion upon credit ratings event.** If we obtain a credit rating for the Convertible Preferred Stock from Moody's Investors Service, Inc. ( Moody's ) or Standard & Poor's Rating Services ( Standard & Poor's ) or both, then you will have the right to surrender any or all of your shares of Convertible Preferred Stock for conversion into our common stock as follows:

at any time when the long-term credit rating assigned to the Convertible Preferred Stock by either Moody's or Standard & Poor's is more than two levels below the credit rating initially assigned to the Convertible Preferred Stock; or

at any time when either Moody's or Standard & Poor's has discontinued, withdrawn or suspended its rating with respect to the Convertible Preferred Stock.

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The Convertible Preferred Stock has not been assigned a credit rating by any rating agency. We have no obligation to obtain a credit rating for the Convertible Preferred Stock, and these provisions do not apply to any credit rating that we have not requested.

**Conversion upon redemption.** If we redeem the Convertible Preferred Stock, holders may convert Convertible Preferred Stock into our common stock at any time prior to the close of business on the second business day immediately preceding the redemption date, even if the Convertible Preferred Stock is not otherwise convertible at such time.

## **Fractional shares**

No fractional shares of common stock or securities representing fractional shares of common stock will be issued upon conversion. Any fractional interest in a share of common stock resulting from conversion will be paid in cash based on the Closing Sale Price of the common stock on the New York Stock Exchange (or such other national securities exchange or automated quotation system on which the common stock is then listed or authorized for quotation or, if not so listed or authorized for quotation, an amount determined in good faith by our board of directors to be the fair value of the common stock) at the close of business on the Trading Day next preceding the date of conversion.

## **Conversion rate adjustment**

The Conversion Rate will be adjusted as described below.

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

$$CR^1 = CR_0 * OS_1 / OS_0$$

where,

$CR_0$  = the Conversion Rate in effect immediately prior to such event

$CR^1$  = the Conversion Rate in effect immediately after such event

$OS_0$  = the number of shares of our common stock outstanding immediately prior to such event

$OS_1$  = the number of shares of our common stock outstanding immediately after such event

(2) If we issue to all or substantially all holders of our common stock any rights, warrants, options or other securities entitling them for a period of not more than 45 days after the date of issuance thereof to subscribe for or purchase shares of our common stock, or securities convertible into shares of our common stock within 45 days after the issuance thereof, in either case at an exercise price per share or a conversion price per share less than the Closing Sale Price of shares of our common stock on the business day immediately preceding the time of announcement of such issuance, the Conversion Rate will be adjusted based on the following formula (provided that the Conversion Rate will be readjusted to the extent that such rights, warrants options, or other securities or convertible securities are not exercised or converted prior to the expiration of the exercisability or convertibility thereof):

$$CR^1 = CR_0 * (OS_0 + X) / (OS_0 + Y)$$

where,

$CR_0$  = the Conversion Rate in effect immediately prior to such event

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CR<sup>1</sup> = the Conversion Rate in effect immediately after such event

OS<sub>0</sub> = the number of shares of our common stock outstanding immediately prior to such event

X = the total number of shares of our common stock issuable pursuant to such rights, warrants, options, other securities or convertible securities

Y = the number of shares of our common stock equal to the quotient of (A) the aggregate price payable to exercise such rights, warrants, options, other securities or convertible securities and (B) the average of the Closing Sale Prices of our common stock for the 10 consecutive Trading Days prior to the business day immediately preceding the date of announcement for the issuance of such rights, warrants, options, other securities or convertible securities

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

dividends, distributions and rights, warrants, options, other securities or convertible securities referred to in clause (1) or (2) above;

dividends or distributions paid exclusively in cash described in clause (4) below; and

spin-offs described in this clause (3) below,

then the Conversion Rate will be adjusted based on the following formula:

$$CR^1 = CR_0 * SP_0 / (SP_0 - FMV)$$

where,

CR<sub>0</sub> = the Conversion Rate in effect immediately prior to such distribution

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CR<sup>1</sup> = the Conversion Rate in effect immediately after such distribution

SP<sub>0</sub> = the average of the Closing Sale Prices of our common stock for the 10 consecutive Trading Days prior to the business day immediately preceding the record date for such distribution

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 record 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 on our common stock or shares of capital stock of any class or series, or similar equity interest, of or relating to a subsidiary or other business unit, which we refer to as a spin-off, the Conversion Rate in effect immediately before the close of business on the record date fixed for determination of shareholders entitled to receive the distribution will be increased based on the following formula:

$$CR^1 = CR_0 * (FMV_0 + MP_0) / MP_0$$

where,

CR<sub>0</sub> = the Conversion Rate in effect immediately prior to such distribution

CR<sup>1</sup> = the Conversion Rate in effect immediately after such distribution

FMV<sub>0</sub> = 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 first 10 Trading Days after the effective date of the spin-off

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$MP_O$  = the average of the Closing Sale Prices of our common stock over the first 10 consecutive Trading Days after the effective date of the spin-off

The adjustment to the Conversion Rate under the preceding paragraph with respect to a spin-off will occur on the tenth Trading Day from, and including, the effective date of the spin-off.

(4) If we make any cash dividend or distribution during any of our quarterly fiscal periods to all or substantially all holders of our common stock, in an aggregate amount that, together with other cash dividends or distributions made during such quarterly fiscal period, exceeds the product of \$0.37 (appropriately adjusted from time to time for any share dividends on or subdivisions of our common stock) multiplied by the number of shares of common stock outstanding on the record date for such distribution, the conversion rate will be adjusted based on the following formula:

$$CR^1 = CR_O * SP_O / (SP_O - C)$$

where,

$CR_O$  = the Conversion Rate in effect immediately prior to the record date for such distribution

$CR^1$  = the Conversion Rate in effect immediately after the record date for such distribution

$SP_O$  = the average of the Closing Sale Prices of our common stock for the 10 consecutive Trading Days prior to the business day immediately preceding the record date of such distribution

$C$  = the amount in cash per share we distribute to holders of our common stock that exceeds \$0.37 (appropriately adjusted from time to time for any share dividends on, or subdivisions of, our common stock)

(5) If we or any of our subsidiaries makes 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 common stock exceeds the Closing Sale Price of our common stock on the Trading Day next succeeding the last date on which tenders or exchanges may be made pursuant to such tender or exchange offer, the Conversion Rate will be increased based on the following formula:

$$CR^1 = CR_O * (AC + (SP^1 * OS^1)) / (OS_O * SP^1)$$

where,

$CR_0$  = the Conversion Rate in effect on the date such tender or exchange offer expires

$CR^1$  = the Conversion Rate in effect on the day next succeeding the date 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 shares purchased in such tender or exchange offer

$OS_0$  = the number of shares of common stock outstanding immediately prior to the date such tender or exchange offer expires

$OS^1$  = the number of shares of common stock outstanding immediately after the date such tender or exchange offer expires

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SP<sup>1</sup> = the average of the Closing Sale Prices of our common stock for the 10 consecutive Trading Days commencing on the Trading Day next succeeding the date such tender or exchange offer expires

If, however, the application of the foregoing formula would result in a decrease in the Conversion Rate, no adjustment to the Conversion Rate will be made.

If we adopt a rights plan while the Convertible Preferred Stock remains outstanding, you will receive, upon conversion of Convertible Preferred Stock, in addition to shares of our common stock, the rights under the rights plan unless, prior to conversion, the rights have expired, terminated or been redeemed or unless the rights have separated from our common stock, in which case the applicable Conversion Rate will be adjusted at the time of separation as if we distributed to all holders of our common stock shares of our common stock, evidences of indebtedness or assets as described in clause (3) above, subject to readjustment upon the subsequent expiration, termination or redemption of the rights.

In addition to these adjustments, we may increase the Conversion Rate as our board of directors deems advisable to avoid or diminish any income tax to holders of shares of our capital stock resulting from any dividend or distribution of capital stock (or rights to acquire common