

NEW YORK MORTGAGE TRUST INC  
 Form 424B5  
 November 30, 2011  
 FILED PURSUANT TO RULE 424(b)(5)  
 SEC FILE NUMBER 333-162654

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

Subject to Completion  
 Preliminary Prospectus Supplement dated November 30, 2011

PROSPECTUS SUPPLEMENT  
 (To prospectus dated December 11, 2009)

3,000,000 Shares  
 Common Stock

---

We are selling 3,000,000 shares of common stock as described in this prospectus supplement and the accompanying prospectus. Our common stock is listed on The Nasdaq Capital Market, or Nasdaq, under the symbol “NYMT.” On November 29, 2011, the last reported sale price of our common stock on Nasdaq was \$7.09 per share.

To preserve our status as a real estate investment trust, or REIT, for U.S. federal income tax purposes, we impose restrictions on the ownership and transfer of our common stock. See “Description of Capital Stock—Restrictions on Ownership and Transfer” in the accompanying prospectus.

Investing in our common stock involves a high degree of risk. You should carefully consider the risks described under “Risk Factors” in our Annual Report on Form 10-K for the year ended December 31, 2010, our Quarterly Report on Form 10-Q for the period ended March 31, 2011, our Quarterly Report on Form 10-Q for the period ended June 30, 2011 and our Quarterly Report on Form 10-Q for the period ended September 30, 2011 before making an investment decision.

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

	Price to Public	Underwriting Discounts and Commissions	Proceeds to Us (1)
Per Share	\$	\$	\$
Total	\$	\$	\$

(1) Before deducting approximately \$155,000 in expenses payable by us.

We have granted the underwriter an option to purchase a maximum of 450,000 additional shares from us at the public offering price, less the underwriting discount, within 30 days after the date of this prospectus supplement to cover over-allotments, if any.

Edgar Filing: NEW YORK MORTGAGE TRUST INC - Form 424B5

We are offering the shares of common stock for sale on a firm commitment basis. The underwriter expects to deliver the shares of common stock to investors in this offering on or about December , 2011.

Ladenburg Thalmann & Co. Inc.

Bookrunning Manager

Maxim Group LLC

National Securities Corporation  
Co-Managers

Aegis Capital Corp

The date of this prospectus supplement is November , 2011.

---

TABLE OF CONTENTS

Prospectus Supplement

ABOUT THIS PROSPECTUS SUPPLEMENT	i
FORWARD-LOOKING STATEMENTS	ii
INFORMATION INCORPORATED BY REFERENCE	iii
PROSPECTUS SUPPLEMENT SUMMARY	S-1
THE OFFERING	S-3
RISK FACTORS	S-4
USE OF PROCEEDS	S-5
CAPITALIZATION	S-6
ADDITIONAL FEDERAL INCOME TAX CONSIDERATIONS	S-7
UNDERWRITING	S-9
EXPERTS	S-12
LEGAL MATTERS	S-12

TABLE OF CONTENTS

Prospectus

ABOUT THIS PROSPECTUS	ii
CERTAIN DEFINITIONS	ii
RISK FACTORS	1
FORWARD-LOOKING INFORMATION	1
OUR COMPANY	3
USE OF PROCEEDS	4
DESCRIPTION OF CAPITAL STOCK	4
CERTAIN PROVISIONS OF MARYLAND LAW AND OUR CHARTER BYLAWS	14
FEDERAL INCOME TAX CONSEQUENCES OF OUR STATUS AS A REIT	19
PLAN OF DISTRIBUTION	38
CERTAIN LEGAL MATTERS	41
EXPERTS	41
WHERE YOU CAN FIND MORE INFORMATION	41
INCORPORATION BY REFERENCE OF INFORMATION FILED WITH THE SEC	41

---

You should rely only on the information contained in this prospectus supplement and the accompanying prospectus or incorporated by reference in these documents. No dealer, salesperson or other person is authorized to give any information or to represent anything not contained or incorporated by reference in this prospectus supplement or the accompanying prospectus. If anyone provides you with different, inconsistent or unauthorized information or representations, you must not rely on them. This prospectus supplement and the accompanying prospectus are an offer to sell only the securities offered by these documents, but only under circumstances and in jurisdictions where it is lawful to do so. You should assume that the information contained in this prospectus supplement and the accompanying prospectus or incorporated by reference in these documents is current only as of the respective dates of those documents or the dates that are specified therein.

ABOUT THIS PROSPECTUS SUPPLEMENT

This document consists of two parts. The first part is this prospectus supplement, which describes the specific terms of the offering of common stock and also adds to and updates information contained in the accompanying prospectus. The second part is the accompanying prospectus, which gives more general information. If the information set forth in this prospectus supplement differs in any way from the information set forth in the accompanying prospectus, you should rely on the information set forth in this prospectus supplement.

This prospectus supplement does not contain all of the information that is important to you. You should read the accompanying prospectus as well as the documents incorporated by reference in this prospectus supplement and the accompanying prospectus. See “Where You Can Find More Information” in the accompanying prospectus. In this prospectus supplement, we refer to New York Mortgage Trust, Inc., together with its consolidated subsidiaries, as “we,” “us,” “Company,” or “our,” unless we specifically state otherwise or the context indicates otherwise. We refer to Hypotheca Capital, LLC, our wholly-owned taxable REIT subsidiary, as “Hypotheca,” New York Mortgage Funding, LLC, our wholly-owned qualified REIT subsidiary, as “NYMF,” and RB Commercial Mortgage LLC, our wholly-owned subsidiary, as “RBCM.” In addition, the following defines certain of the commonly used terms in this prospectus supplement: “RMBS” refers to residential adjustable-rate, hybrid adjustable-rate, fixed-rate mortgage-backed securities consisting of pass-through certificates, collateralized mortgage obligations (“CMOs”), interest only and inverse interest only securities (collectively, “IOs”) and principal-only securities (“POs”); “Agency RMBS” refers to RMBS that are issued or guaranteed by a federally chartered corporation (“GSE”), such as the Federal National Mortgage Association (“Fannie Mae”) or the Federal Home Loan Mortgage Corporation (“Freddie Mac”), or an agency of the U.S. government, such as the Government National Mortgage Association (“Ginnie Mae”); “non-Agency RMBS” refers to RMBS backed by prime jumbo and Alternative A-paper (“Alt-A”) mortgage loans; “ARMs” refers to adjustable-rate residential mortgage loans; “prime ARM loans” refers to prime credit quality residential ARM loans (“prime ARM loans”) held in securitization trusts; and “CMBS” refers to commercial mortgage-backed securities.

Unless expressly stated otherwise, the information set forth throughout this prospectus supplement assumes no exercise of the underwriter’s over-allotment option.

#### FORWARD-LOOKING STATEMENTS

When used in this prospectus supplement, the accompanying prospectus, in future filings with the Securities and Exchange Commission, or the SEC, or in press releases or other written or oral communications, statements which are not historical in nature, including those containing words such as “anticipate,” “believe,” “could,” “estimate,” “expect,” “intend,” “may,” “plan,” “goal,” “objective,” “potential,” “project,” “should,” “will” and “would” or the negative of these terms or other comparable terminology, are intended to identify “forward-looking statements” within the meaning of Section 27A of the Securities Act of 1933, as amended, or the Securities Act, and Section 21E of the Securities Exchange Act of 1934, as amended, or the Exchange Act, and, as such, may involve known and unknown risks, uncertainties and assumptions. These forward-looking statements may relate to, among other things, our expectations, beliefs, projections, future plans and strategies, anticipated events or trends and similar expressions concerning matters that are not historical facts.

The forward-looking statements are based on our beliefs, assumptions and expectations of our future performance, taking into account information currently in our possession. These beliefs, assumptions and expectations may change as a result of many possible events or factors, not all of which are known to us or are within our control. If a change occurs, the performance of our portfolio and our business, financial condition, liquidity and results of operations may vary materially from those expressed, anticipated or contemplated in our forward-looking statements. You should carefully consider these risks, along with the following factors that could cause actual results to vary from our forward-looking statements, before making an investment in our securities:

changes in our business and strategies;

our ability to successfully diversify our investment portfolio and identify suitable assets to invest in;

the effect of the Federal Reserve’s and the U.S. Treasury’s actions and programs, including future purchases or sales by the Federal Reserve or U.S. Treasury of Agency RMBS, on the liquidity of the capital markets and the impact

and timing of any further programs or regulations implemented by the U.S. Government or its agencies;

any changes in laws and regulations affecting the relationship between Fannie Mae, Freddie Mac or Ginnie Mae and the U.S. Government;

increased prepayments of the mortgages and other loans underlying our investment securities;

the volatility of the markets for our targeted assets;

increased rates of default and/or decreased recovery rates on our assets;

mortgage loan modification programs and future legislative action, including actions that may lead to greater refinancings and higher prepayment spreads;

the degree to which our hedging strategies may or may not protect us from, or expose us to, credit, prepayment or interest rate risk;

changes in the availability, terms and deployment of capital;

changes in interest rates and interest rate mismatches between our assets and related borrowings;

our ability to maintain existing financing agreements, obtain future financing arrangements and the terms of such arrangements;

changes in economic conditions generally and the mortgage, real estate and debt securities markets specifically;

legislative or regulatory changes;

changes to United States generally accepted accounting principles, or GAAP; and

the other important factors identified, or incorporated by reference in this prospectus supplement or the accompanying prospectus, including, but not limited to those under the captions “Management’s Discussion and Analysis of Financial Condition and Results of Operations” and “Quantitative and Qualitative Disclosures about Market Risk” in our Annual Report on Form 10-K for the year ended December 31, 2010, Quarterly Report on Form 10-Q for the period ended March 31, 2011, Quarterly Report on Form 10-Q for the period ended June 30, 2011 and Quarterly Report on Form 10-Q for the period ended September 30, 2011, and those described under the caption “Risk Factors” in this prospectus supplement and in our Annual Report on Form 10-K for the year ended December 31, 2010, Quarterly Report on Form 10-Q for the period ended March 31, 2011, Quarterly Report on Form 10-Q for the period ended June 30, 2011 and Quarterly Report on Form 10-Q for the period ended September 30, 2011.

We cannot guarantee future results, levels of activity, performance or achievements. You should not place undue reliance on forward-looking statements, which apply only as of the date on which they are made. Except as obligated by law, we do not intend and disclaim any duty or obligation to update or revise any industry information or forward-looking statements set forth or incorporated by reference in this prospectus supplement or the accompanying prospectus to reflect new information, future events or otherwise.

#### INFORMATION INCORPORATED BY REFERENCE

This prospectus supplement and the accompanying prospectus are part of a registration statement that we have filed with the SEC. The SEC allows us to “incorporate by reference” the information that we file with them, which means that we can disclose important information to you by referring you to those documents. The information incorporated by reference is considered to be part of this prospectus supplement and the accompanying prospectus from the date we file that document. Any reports filed by us with the SEC after the date of this prospectus supplement and before the date that the offering of the securities by means of this prospectus supplement and accompanying prospectus is terminated will automatically update and, where applicable, supersede any information contained or incorporated by reference in this prospectus supplement and accompanying prospectus. We incorporate by reference into this prospectus supplement and the accompanying prospectus the following documents or information filed with the SEC (other than, in each case, documents or information deemed to have been furnished and not filed in accordance with SEC rules):

Edgar Filing: NEW YORK MORTGAGE TRUST INC - Form 424B5

Our Annual Report on Form 10-K for the year ended December 31, 2010;

Our Quarterly Report on Form 10-Q for the quarter ended March 31, 2011;

Our Quarterly Report on Form 10-Q for the quarter ended June 30, 2011;

Our Quarterly Report on Form 10-Q for the quarter ended September 30, 2011;

Our Current Reports on Form 8-K filed with the SEC on March 4, 2011, March 18, 2011, May 13, 2011 and May 31, 2011; June 30, 2011; September 20, 2011 and November 23, 2011;



Our Definitive Proxy Statement on Schedule 14A filed on March 29, 2011 other than sections thereof deemed furnished and not filed; and

Our Form 8-A filed on June 3, 2008.

We will provide without charge to each person, including any beneficial owner, to whom this prospectus supplement and the accompanying prospectus are delivered, upon his or her written or oral request, a copy of any or all documents referred to above that have been or may be incorporated by reference into this prospectus supplement and the accompanying prospectus, excluding exhibits to those documents unless they are specifically incorporated by reference into those documents. You may request those documents from us by contacting: Corporate Secretary, New York Mortgage Trust, Inc., 52 Vanderbilt Avenue, Suite 403, New York, New York 10017, telephone: (212) 792-0107.

## PROSPECTUS SUPPLEMENT SUMMARY

The following summary is qualified in its entirety by the more detailed information included elsewhere or incorporated by reference into this prospectus supplement and the accompanying prospectus. Because this is a summary, it may not contain all of the information that is important to you. You should read the entire prospectus supplement and the accompanying prospectus, including the section entitled “Risk Factors” and the documents incorporated by reference herein, before making an investment decision.

### Our Company

We are a real estate investment trust, or REIT, in the business of acquiring, investing in, financing and managing primarily mortgage-related assets. Our principal business objective is to generate net income for distribution to our stockholders resulting primarily from the spread between the interest and other income we earn on our interest-earning assets and the interest expense we pay on the borrowings that we use to finance our leveraged assets plus our operating costs. We intend to achieve this objective by investing in a broad class of mortgage-related assets that in aggregate will generate what we believe are attractive risk-adjusted total returns for our stockholders. Our target assets currently include:

Agency RMBS, consisting of pass-through certificates, CMOs, IOs and POs;

CMBS comprised of mortgage loans backed by multi-family properties, or multi-family CMBS; and

other commercial real estate-related debt investments.

Subject to maintaining our qualification as a REIT, we also may opportunistically acquire and manage various other types of financial assets that we believe will compensate us appropriately for the risks associated with them, including, without limitation, non-Agency RMBS (which may include IOs and POs) and residential mortgage loans.

Prior to 2009, our investment portfolio was primarily comprised of Agency RMBS, certain non-Agency RMBS originally rated in the highest rating category by two rating agencies and prime ARM loans held in securitization trusts. The prime ARM loans held in our three securitization trusts were purchased from third parties or originated by us through our wholly-owned taxable REIT subsidiary, Hypotheca. Since 2009, we have repositioned our investment portfolio away from one primarily focused on leveraged Agency RMBS and prime ARM loans held in securitization trusts to a more diversified portfolio that includes elements of credit risk with reduced leverage, as evidenced by our investments in residential mortgage loans in 2010 and our establishment and initial funding of each of our Midway Residential Mortgage Portfolio and commercial mortgage strategy in 2011. We believe this strategy will enable us to construct a diversified investment portfolio designed to provide attractive risk-adjusted returns across a variety of market conditions and economic cycles. We anticipate continuing to contribute capital to these asset classes in the future such that these investments will become significant contributors to our revenues and earnings and will represent a significant portion of our total assets in the future.

We have elected to be taxed as a REIT and have complied, and intend to continue to comply, with the provisions of the Internal Revenue Code of 1986, as amended, or Internal Revenue Code, with respect thereto. Accordingly, we do not expect to be subject to federal income tax on our REIT taxable income that we currently distribute to our stockholders if certain asset, income and ownership tests and recordkeeping requirements are fulfilled. However, even if we maintain our qualification as a REIT, we may be subject to some federal, state and local taxes on our income generated in our taxable REIT subsidiary.

Our principal executive offices are located at 52 Vanderbilt Avenue, Suite 403, New York, New York 10017, and our telephone number is (212) 792-0107. Our website is [www.nymtrust.com](http://www.nymtrust.com). The information on our website is not, and should not be interpreted to be, part of this prospectus supplement or the accompanying prospectus.

#### Recent Developments

##### Third Quarter 2011 Common Stock Dividend

On September 20, 2011, our Board of Directors declared a cash dividend of \$0.25 per share of common stock for the quarter ended September 30, 2011, which was paid on October 25, 2011 to stockholders of record as of September 30, 2011. The third quarter of 2011 common stock dividend represents an increase of \$0.03 per share over the common stock dividend paid by us for the second quarter of 2011.

S-1

---

## Investment in Multi-Family Loan Securitization Assets

During November 2011, we purchased the majority of the privately placed first loss security from the Freddie Mac Multifamily Loan Securitization Series 2011-K015 (the "K-015 Series") in November 2011. In addition, we also invested in an IO strip off of the K-015 Series. Our total investment in these K-015 Series assets was approximately \$15.1 million, which was funded through a combination of working capital and short-term financing. The K-015 Series is backed by approximately 91 multi-family properties with mortgages totaling \$1.2 billion. The investment in the K-015 Series brings our total investment in the multi-family sector to approximately \$20.5 million.

## Federal Housing Finance Agency HARP II program

In October, the U.S. Government indicated that it would be implementing a new program to assist borrowers who are current with their mortgage payments but are unable to refinance due to property valuation ratios. Based on the information released by the U.S. Government, the revamped Home Affordable Refinance Program ("HARP"), which we refer to as "HARP II," will target homeowners who did not participate in the original version of HARP and whose mortgages were originated prior to May 31, 2009. The U.S. Government disclosed final details of the HARP II program on November 15, 2011. The following table summarizes the investment securities in our portfolio that contain mortgages which are eligible for refinancing and thus may be prepaid under HARP II given the parameters of the program.

(dollar amount in thousands)

	Constant Prepayment Rates (CPR)									
	9/30/2011 Carrying Value	9/30/2011 Qtr Avg	6/30/2011 Qtr Avg	9/30/2011 Monthly Avg	10/31/11 Monthly Avg	HARP II Exposure (>4% WAC*)				
Agency RMBS**	\$ 73,213	16.6 %	19.3 %	22.9 %	16.9 %	\$ 16,352				
Midway Residential Portfolio***	\$ 69,603	10.1 %	8.0 %	11.4 %	15.8 %	\$ 17,273				

\* WAC – Weighted Average Coupon

\*\* Agency RMBS comprised of pass-through certificates

\*\*\* Primarily comprised of Agency IOs

## Portfolio Results at September 30, 2011

The following table summarizes our significant interest earning assets at September 30, 2011, classified by relevant categories:

(dollar amount in thousands)	Current Par Value	Carrying Value	Coupons *		Yield *		CPR *	
Agency RMBS	\$ 69,414	\$ 73,213	3.71 %		2.66 %		16.6 %	
Non Agency RMBS	7,098	4,862	1.15 %		4.34 %		14.7 %	
Midway Residential Mortgage Portfolio	568,108	69,603	5.25 %		24.96 %		10.1 %	
CLO	35,550	22,715	4.25 %		34.50 %		NA	
Loans held in Limited Partnership	12,293	8,690	7.59 %		11.27 %		NA	
RB Commercial Mortgage**	7,013	7,013	6.32 %		13.49 %		NA	
Loans Held in Securitization Trusts	212,404	210,423	2.70 %		2.60 %		10.2 %	

- \* Coupons, yields and CPRs are based on third quarter 2011 average balances.
- \*\* RB Commercial Mortgage represents our investments in multi-family CMBS.

S-2

---

## THE OFFERING

Common stock offered	3,000,000 shares
Shares outstanding after the offering (1)	14,178,273 shares
Use of proceeds	<p>We expect to use the net proceeds of this offering to acquire certain of our target assets, including multi-family CMBS, such as the Multi-family CMBS issued under other Freddie Mac Multifamily Loan Securitization Series, and Agency RMBS. With respect to the net proceeds that will be used to acquire Agency RMBS, we expect then to borrow against the Agency RMBS through repurchase agreements and to use the proceeds of the borrowings to acquire additional Agency RMBS. We may also use net proceeds for general working capital purposes. See “Use of Proceeds” below.</p>
Listing	<p>Our common stock is listed on The Nasdaq Capital Market under the symbol “NYMT.”</p>
Dividend Policy	<p>We intend to pay quarterly dividends and to make distributions to our common stockholders in amounts such that all or substantially all of our REIT taxable income in each year, subject to certain adjustments, is distributed. We have not, however, established a minimum dividend payment level for shares of our common stock. All distributions to holders of our common stock will be made at the discretion of our Board of Directors and will depend on our earnings, our financial condition, maintenance of our REIT status and such other factors as our Board of Directors may deem relevant from time to time. There are no assurances of our ability to pay dividends in the future at the current rate or at all. See “Risk Factors.”</p>
Ownership Restrictions	<p>Our charter provides that generally no person may own, or be deemed to own by virtue of the attribution provisions of the Internal Revenue Code, either (i) more than 5.0% in value of our outstanding shares of capital stock or (ii) more than 5.0% in value or in number of shares, whichever is more restrictive, of our outstanding common stock. Our Board of Directors has discretion to grant exemptions from the 5.0% ownership limitation, subject to such terms and conditions as it deems appropriate. These restrictions on ownership of our common stock and capital stock</p>

are intended to preserve our qualification as a REIT for U.S. federal income tax purposes. See “Description of Capital Stock — Restrictions on Ownership and Transfer” and “Federal Income Tax Consequences of Our Status as a REIT” in the accompanying prospectus.

Risk factors

An investment in our common stock is subject to risks. Please refer to “Risk Factors” and other information included or incorporated by reference in this prospectus supplement and the accompanying prospectus for a discussion of factors you should carefully consider before investing in shares of our common stock.

(1) Does not include 1,154,992 additional shares of common stock reserved for issuance under our 2010 Stock Incentive Plan.

## RISK FACTORS

Investing in our shares of common stock involves a high degree of risk. Please see the risk factors beginning on page 20 of our Annual Report on Form 10-K for the year ended December 31, 2010, on page 56 of our Quarterly Report on Form 10-Q for the quarter ended March 31, 2011, on page 60 of our Quarterly Report on Form 10-Q for the quarter ended June 30, 2011, and on page 57 of our Quarterly Report on Form 10-Q for the quarter ended September 30, 2011, which are incorporated by reference into this prospectus supplement. Such risks are not the only risks that we face. Additional risks and uncertainties not currently known to us or that we currently deem to be immaterial may also materially adversely affect us. The risks described could affect our business, financial condition or results of operations. In such a case, you may lose all or part of your original investment. You should carefully consider the risks described in these reports, as well as other information and data set forth in this prospectus supplement, the accompanying prospectus and the documents incorporated by reference herein and therein before making an investment decision with respect to the shares of common stock.



## USE OF PROCEEDS

We estimate that the net proceeds we will receive from the sale of 3,000,000 shares of our common stock in this offering will be approximately \$ million (or approximately \$ million if the underwriter fully exercises the over-allotment option) after deducting underwriting discounts and commissions of approximately \$ million (or approximately \$ million if the underwriter fully exercises the over-allotment option), and estimated offering expenses of approximately \$155,000 payable by us.

We expect to use the net proceeds of this offering to acquire certain of our target assets, including multi-family CMBS, such as the multi-family CMBS issued under other Freddie Mac Multifamily Loan Securitization Series, and Agency RMBS. With respect to the net proceeds that will be used to acquire Agency RMBS, we expect then to borrow against the Agency RMBS through repurchase agreements and to use the proceeds of the borrowings to acquire additional Agency RMBS. We may also use net proceeds for general working capital purposes.

Pending these uses, we intend to maintain the net offering proceeds in interest-bearing, short-term, marketable investment grade securities or money market accounts or (interest or non-interest bearing) checking (or escrow) accounts that are consistent with our intention to qualify as a REIT. These investments may include, for example, government securities other than agency securities, certificates of deposit and interest-bearing bank deposits. These investments are expected to provide a lower net return than we will seek to achieve from our target assets.

## CAPITALIZATION

The following table shows our cash and cash equivalents and capitalization as of September 30, 2011:

on an actual basis; and

on an as adjusted basis, after giving effect to the sale of 3,000,000 shares of common stock in this offering at an offering price of \$            per share, and the receipt of the total net proceeds of approximately \$            million from this offering (assuming no exercise of the underwriter's over-allotment option).

	As of September 30, 2011	
	Actual	As Adjusted
	(Dollars in thousands) unaudited	
Cash and cash equivalents	\$ 11,679	\$
<b>Debt:</b>		
Financing arrangements, portfolio investments	\$ 111,500	\$ 111,500
Collateralized debt obligations	203,054	203,054
Subordinated debentures	45,000	45,000
Total debt	359,554	359,554
<b>Stockholders' equity</b>		
Common stock, \$0.01 par value, 400,000,000 shares authorized, 11,178,273 shares issued and outstanding actual and 14,178,273 shares issued and outstanding as adjusted	112	
Additional paid-in capital	140,843	
Accumulated other comprehensive income	12,453	12,453
Accumulated deficit	(77,971 )	(77,971 )
Noncontrolling interest	984	984
Total stockholders' equity	76,421	
Total capitalization	\$ 524,539	\$

## ADDITIONAL FEDERAL INCOME TAX CONSIDERATIONS

The following is a summary of certain additional federal income tax considerations with respect to the ownership of our common stock. This summary supplements and should be read together with “Federal Income Tax Consequences of Our Status as a REIT” beginning on page 19 of the accompanying prospectus.

In connection with this offering, Hunton & Williams LLP is rendering an opinion that we qualified to be taxed as a REIT for our taxable years ended December 31, 2004 through December 31, 2010, and our organization and current and proposed method of operation will enable us to continue to meet the requirements for qualification and taxation as a REIT for our taxable year ending December 31, 2011 and subsequent taxable years. Investors should be aware that Hunton & Williams LLP’s opinion is based upon customary assumptions, is conditioned upon certain representations made by us as to factual matters, including representations regarding the nature of our assets and the conduct of our business, and is not binding upon the Internal Revenue Service (“IRS”) or any court. In addition, Hunton & Williams LLP’s opinion is based on existing U.S. federal income tax law governing qualification as a REIT, which is subject to change either prospectively or retroactively. Moreover, our qualification and taxation as a REIT depend upon our ability to meet on a continuing basis, through actual annual operating results, certain qualification tests set forth in the federal tax laws. Those qualification tests involve the percentage of income that we earn from specified sources, the percentage of our assets that falls within specified categories, the diversity of our stock ownership, and the percentage of our earnings that we distribute. Hunton & Williams LLP will not review our compliance with those tests on a continuing basis. Accordingly, no assurance can be given that our actual results of operations for any particular taxable year will satisfy such requirements. For a discussion of the tax consequences of our failure to qualify as a REIT, see “Federal Income Tax Consequences of Our Status as a REIT—Failure to Qualify”.

### Recently Enacted Legislation

On March 18, 2010, the President signed into law the Hiring Incentives to Restore Employment Act of 2010, or the HIRE Act. On March 30, 2010, the President signed into law the Health Care and Education Reconciliation Act of 2010, or the Reconciliation Act. Finally, on December 17, 2010, the President signed into law the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, or the Jobs Creation Act. The descriptions below describe the impact of the HIRE Act, the Reconciliation Act and the Jobs Creation Act on certain U.S. and Non-U.S. holders of our common stock.

### Taxation of Taxable U.S. Stockholders

Pursuant to the HIRE Act and related IRS guidance, a U.S. withholding tax at a 30% rate will be imposed on dividends, for taxable years beginning after December 31, 2013, and proceeds of sale in respect of our common stock, for taxable years beginning after December 31, 2014, received by U.S. stockholders who own their common stock through foreign accounts or foreign intermediaries if certain disclosure requirements related to U.S. accounts or ownership are not satisfied. We will not pay any additional amounts in respect of any amounts withheld.

Pursuant to the Reconciliation Act, for taxable years beginning after December 31, 2012, certain U.S. stockholders who are individuals, estates or trusts will be required to pay a 3.8% Medicare tax on dividends on, and capital gains from the sale or other disposition of, our common stock, subject to certain exceptions. U.S. stockholders should consult their tax advisors regarding the effect, if any, of the Reconciliation Act on their ownership and disposition of our common stock.

### Taxation of Non-U.S. Stockholders

Pursuant to the HIRE Act and related IRS guidance, a U.S. withholding tax at a 30% rate will be imposed on dividends, for taxable years beginning after December 31, 2013, and proceeds of sale in respect of our common stock, for taxable years beginning after December 31, 2014, received by certain non-U.S. stockholders if certain disclosure requirements related to U.S. accounts or ownership are not satisfied. If payment of withholding taxes is required, non-U.S. stockholders that are otherwise eligible for an exemption from, or reduction of, U.S. withholding taxes with respect to such dividends and proceeds will be required to seek a refund from the IRS to obtain the benefit or such exemption or reduction. We will not pay any additional amounts in respect of any amounts withheld.

S-7

---

#### Sunset of Reduced Tax Rate Provisions

Several of the tax considerations described in the accompanying prospectus are subject to a sunset provision. The Jobs Creation Act prevented an expiration of current federal income tax rates on December 31, 2010 by amending the sunset provisions such that they will take effect on December 31, 2012. The amended sunset provisions generally provide that for taxable years beginning after December 31, 2012, certain provisions that are currently in the Internal Revenue Code will revert back to a prior version of those provisions. These provisions include provisions related to the reduced maximum income tax rate for long-term capital gains of 15% (rather than 20%) for taxpayers taxed at individual rates, the application of the 15% tax rate to qualified dividend income, and certain other tax rate provisions in the accompanying prospectus. Prospective stockholders are urged to consult their tax advisors regarding the effect of sunset provisions on an investment in our common stock.

## UNDERWRITING

In accordance with the terms and conditions contained in the underwriting agreement, we have agreed to sell to each of the underwriters named below, and each of the underwriters, for which Ladenburg Thalmann & Co. Inc. is acting as the representative, has, severally, and not jointly, agreed to purchase from us, on a firm commitment basis the shares offered in this offering set forth opposite their respective names below:

Underwriters	Number of Shares
Ladenburg Thalmann & Co. Inc.	
Maxim Group LLC	
National Securities Corporation	
Aegis Capital Corp.	
<b>Total</b>	<b>3,000,000</b>

A copy of the underwriting agreement will be filed as an exhibit to the registration statement of which this prospectus forms a part.

We have been advised by the representative of the underwriters that the underwriters propose to offer the shares directly to the public at the public offering price set forth on the cover page of this prospectus supplement. Any shares sold by the underwriters to securities dealers will be sold at the public offering price less a selling concession not in excess of \$        per share.

The underwriting agreement provides that the underwriters' obligations to purchase the shares are subject to conditions contained in the underwriting agreement. The underwriters are obligated to purchase and pay for all of the shares offered by this prospectus other than those covered by the over-allotment option, if any of these securities are purchased.

## Underwriting Discount

The following table summarizes the underwriting discount to be paid to the underwriters by us.

	Total, Without Over-allotment	Total, With Over-allotment
Underwriting discount to be paid to the underwriters by us for the shares (5.0% of gross proceeds)	\$	\$

The expenses of the offering, exclusive of the underwriting discount, are estimated at approximately \$155,000 and payable by us.

We are not under any contractual obligation to engage any of the underwriters to provide investment banking, lending, asset management or financial advisory services to us in the future. If any of the underwriters provide such services to us after this offering, we may pay such underwriter fair and reasonable fees that would be determined at that time in an arm's length negotiation. However, we will not enter into any agreement with any of the underwriters, nor will we pay any fees for such services to any of the underwriters, prior to the date which is 90 days after the date of this offering, unless the Financial Industry Regulatory Authority, Inc. determines that such payment would not be deemed underwriters' compensation in connection with the offering.



### Over-allotment Option

We have granted to the underwriters an option, exercisable not later than 30 days after the date of this prospectus, to purchase up to 450,000 shares at the public offering price, less the underwriting discount, set forth on the cover page of this prospectus supplement. The representative may exercise the option solely to cover over-allotments, if any, made in connection with this offering. If any additional shares are purchased pursuant to the over-allotment option, the underwriters will offer these additional shares on the same terms as those on which the other shares are being offered hereby.

### Lock-Ups

We have agreed that we will not directly or indirectly, issue, sell, offer, agree to sell, contract or grant any option to sell (including, without limitation, pursuant to any short sale), pledge, make any short sale of, maintain any short position with respect to, transfer, establish or maintain an open “put equivalent position” within the meaning of Rule 16a-1(h) under the Exchange Act, enter into any swap, derivative transaction or other arrangement (whether such transaction is to be settled by delivery of our common stock, other securities, cash or other consideration) that transfers to another, in whole or in part, any of the economic consequences of ownership, or otherwise dispose of any shares of our common stock, options or warrants to acquire shares of our common stock, or securities exchangeable or exercisable for or convertible into shares of our common stock, or publicly disclose the intention to take any such action, without, in each case, the prior written consent of Ladenburg Thalmann & Co. Inc. for a period of 30 days after the date of this prospectus. However, we may, during this 30-day “lock-up” period, (a) grant common stock-based awards to our directors under our existing 2010 Stock Incentive Plan and (b) file any amendments to the registration statement of which this prospectus supplement forms a part.

Each of our directors and executive officers has agreed that they will not sell or offer or contract to sell or offer, grant any option or warrant for the sale of, assign, transfer, pledge, hypothecate, or otherwise encumber or dispose of any legal or beneficial interest in any shares of our common stock, enter into any swap or any other agreement or any transaction that transfers, in whole or in part, directly or indirectly, the economic consequence of ownership of our common stock or other securities, in cash or otherwise, or publicly disclose the intention to make any offer, sale, pledge or disposition, or to enter into any transaction, swap, hedge or other arrangement, without, in each case, the prior written consent of Ladenburg Thalmann & Co. Inc. for a period of 30 days after the date of this prospectus. However, each of our directors and executive officers may transfer or dispose of our shares during this 30-day “lock-up” period, provided, that (i) such transfer shall not involve a disposition for value, (ii) the transferee agrees to be bound in writing by the restrictions set forth in this paragraph for the remainder of the 30-day “lock-up” period prior to such transfer, and (iii) no filing by the transferor or transferee under the Exchange Act is required or voluntarily made in connection with such transfer (other than a filing on a Form 5 made after the expiration of the 30-day “lock-up” period).

### Stabilization, Short Positions and Penalty Bids

The underwriters may engage in over-allotment, syndicate covering transactions, stabilizing transactions and penalty bids or purchases for the purpose of pegging, fixing or maintaining the price of our common stock:

Over-allotment involves sales by the underwriters of shares in excess of the number of shares the underwriters are obligated to purchase, which creates a syndicate short position. The short position may be either a covered short position or a naked short position. In a covered short position, the number of shares over-allotted by an underwriter is not greater than the number of shares that it may purchase in the over-allotment option. In a naked short position, the number of shares involved is greater than the number of shares in the over-allotment option. An underwriter may close out any short position by exercising its over-allotment option, in whole or in part, or purchasing shares in the open market.



Syndicate covering transactions involve purchases of securities in the open market after the distribution has been completed in order to cover syndicate short positions. In determining the source of securities needed to close out the short position, the representative will consider, among other things, the price of the securities available for purchase in the open market as compared to the price at which it may purchase the securities through the over-allotment option. If the underwriters sell more securities than could be covered by the over-allotment option, a naked short position, the position can only be closed out by buying securities in the open market. A naked short position is more likely to be created if the representative is concerned that there could be downward pressure on the price of the securities in the open market after pricing that could adversely affect investors who purchase in the offering.

S-10

---

Stabilizing transactions permit bids to purchase the underlying security so long as the stabilizing bids do not exceed a specific maximum.

Penalty bids permit the representative to reclaim a selling concession from a syndicate member when the securities originally sold by the syndicate member are purchased in a stabilizing or syndicate covering transaction to cover syndicate short positions.

These syndicate covering transactions, stabilizing transactions and penalty bids may have the effect of raising or maintaining the market prices of our securities or preventing or retarding a decline in the market prices of our securities. As a result, the price of our common stock may be higher than the price that might otherwise exist in the open market. These transactions may be effected on the Nasdaq, in the over-the-counter market or on any trading market and, if commenced, may be discontinued at any time.

Neither we nor the underwriters make any representation or prediction as to the direction or magnitude of any effect that the transactions described above may have on the prices of our securities. In addition, neither we nor the underwriters make any representation that the underwriters will engage in these stabilizing transactions or that any transactions, once commenced, will not be discontinued without notice.

#### Indemnification

We have agreed to indemnify the underwriters against certain liabilities, including liabilities under the Securities Act, or to contribute to payments the underwriters may be required to make with respect to any of these liabilities.

This prospectus supplement and the accompanying prospectus in electronic format may be made available on websites maintained by the underwriter as selling group member, and the underwriter or selling group member may distribute the prospectus supplement and accompanying prospectus electronically.

#### EXPERTS

The audited consolidated financial statements incorporated by reference in this prospectus supplement and elsewhere in the registration statement have been so incorporated by reference in reliance upon the report of Grant Thornton LLP, independent registered public accountants, upon the authority of said firm as experts in giving said report.

#### LEGAL MATTERS

Certain legal matters will be passed upon for us by Hunton & Williams LLP, and for the underwriters by Graubard Miller.

S-12

---

PROSPECTUS

\$50,000,000

Common Stock

---

We may offer and sell, from time to time, in one or more offerings, shares of common stock described in this prospectus. The aggregate initial offering price of the common stock that we offer will not exceed \$50,000,000. We may offer and sell these shares of common stock to or through one or more underwriters, dealers and agents, or directly, on a continuous or delayed basis.

The specific terms of any shares of common stock to be offered, and the specific manner in which they may be offered, will be described in one or more supplements to this prospectus. This prospectus may not be used to sell any of the shares of common stock unless it is accompanied by a prospectus supplement. Before investing, you should carefully read this prospectus and any related prospectus supplement.

Our shares of common stock are listed on the NASDAQ Capital Market under the symbol "NYMT." The last reported sale price of our common stock on the NASDAQ Capital Market on December 3, 2009, was \$6.95 per share.

The aggregate market value of our outstanding common stock held by non-affiliates is approximately \$54.4 million based on the last reported sale price of our common stock on the NASDAQ Capital Market on December 3, 2009. We have not offered any of our common stock pursuant to General Instruction I.B.6 of Form S-3 during the 12 calendar months prior to and including the date of this prospectus.

To assist us in qualifying as a real estate investment trust, or REIT, for federal income tax purposes, ownership of our capital stock by any person is generally limited to 5.0% in value or in number of shares, whichever is more restrictive, of any class or series of the outstanding shares of our capital stock. In addition, our charter contains various other restrictions on the ownership and transfer of our common stock, see "Description of Capital Stock—Restrictions on Ownership and Transfer."

Investing in our common stock involves substantial risks. See "Risk Factors" in our most recent Annual Report on Form 10-K, which is incorporated by reference herein, as updated and supplemented by our periodic reports and other information that we file with the Securities and Exchange Commission.

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

The date of this prospectus is December 11, 2009.

---

TABLE OF CONTENTS

	Page
ABOUT THIS PROSPECTUS	ii
CERTAIN DEFINITIONS	ii
RISK FACTORS	1
FORWARD-LOOKING INFORMATION	1
OUR COMPANY	3
USE OF PROCEEDS	4
DESCRIPTION OF CAPITAL STOCK	4
CERTAIN PROVISIONS OF MARYLAND LAW AND OUR CHARTER AND BYLAWS	14
FEDERAL INCOME TAX CONSEQUENCES OF OUR STATUS AS A REIT	19
PLAN OF DISTRIBUTION	38
CERTAIN LEGAL MATTERS	41
EXPERTS	41
WHERE YOU CAN FIND MORE INFORMATION	41
INCORPORATION BY REFERENCE OF INFORMATION FILED WITH THE SEC	41

## ABOUT THIS PROSPECTUS

This prospectus is part of a registration statement that we have filed with the Securities and Exchange Commission, or the SEC, utilizing a “shelf” registration process. This prospectus provides you with a general description of the common stock we may issue and sell and the manner in which we may offer these securities. Each time we issue and sell shares of common stock from the registration statement of which this prospectus forms a part, we will provide a prospectus supplement that will contain specific information about the terms of that offering. The prospectus supplement may add, update or change information in this prospectus. If there is any inconsistency between the information in this prospectus and the prospectus supplement, you should rely solely on the information in the prospectus supplement. You should read both this prospectus and the prospectus supplement applicable to any offering, together with the additional information described under the heading “Incorporation by Reference of Information Filed With the SEC” below.

You should rely only on the information contained or incorporated by reference in this prospectus and any prospectus supplement. We have not authorized any other person to provide you with different information. If anyone provides you with different or inconsistent information, you should not rely on it. We will not make an offer to sell our common stock in any jurisdiction where the offer or sale is not permitted. You should assume that the information appearing in this prospectus, as well as information we previously filed with the SEC and have incorporated by reference, is accurate as of the date on the front cover of this prospectus only. Our business, financial condition, results of operations and prospects may have changed since that date.

## CERTAIN DEFINITIONS

References in this prospectus to “we,” “our,” “us” and “our company” refer to New York Mortgage Trust, Inc., including, as the context requires, our direct and indirect subsidiaries.

## RISK FACTORS

Investing in our common stock involves substantial risks, including the risk that you might lose your entire investment. Any one of the risk factors discussed, or other factors, could cause actual results to differ materially from expectations and could adversely affect our business, financial condition and results of operations. These risks are interrelated, and you should treat them as a whole. The risks described are not the only risks that may affect us. Additional risks and uncertainties not presently known to us or not identified, may also materially and adversely affect our business, financial condition and results of operations. Before making an investment decision, you should carefully consider the risk factors incorporated by reference to our most recent Annual Report on Form 10-K, as updated and supplemented by any risk factors in our other SEC filings incorporated by reference herein, in addition to the other information contained or incorporated by reference in this prospectus and any accompanying prospectus supplement. In connection with the forward-looking statements that appear in this prospectus, you should also carefully review the cautionary statements referred to in “Forward-Looking Information” below.

## FORWARD-LOOKING INFORMATION

This prospectus and the information incorporated by reference into it contains certain “forward-looking statements” within the meaning of Section 27A of the Securities Act of 1933, as amended, or Securities Act, and Section 21E of the Securities Exchange Act of 1934, as amended, or Exchange Act, including, without limitation, statements containing the words “believes,” “anticipates,” “expects,” “estimates,” “intends,” “plans,” “projects,” “may”, “will” and words import. Any projection of revenues, earnings or losses, capital expenditures, distributions, capital structure or other financial terms is a forward-looking statement. Certain statements regarding the following particularly are forward-looking in nature:

- our business strategy;
- future performance, developments, market forecasts or projected dividends;
- projected investments, rates of return, acquisitions or joint ventures; and
- projected capital expenditures.

It is important to note that the description of our business is a statement about our operations as of a specific point in time. It is not meant to be construed as an investment policy, and the types of assets we hold, the amount of leverage we use, the liabilities we incur and other characteristics of our assets and liabilities are subject to reevaluation and change without notice.

Our forward-looking statements are based upon our management’s beliefs, assumptions and expectations of our future operations and economic performance, taking into account the information currently available to us. Forward-looking statements involve risks and uncertainties, some of which are not currently known to us, that might cause our actual results, performance or financial condition to be materially different from the expectations of future results, performance or financial condition we express or imply in any forward-looking statements. Some of the important factors that could cause our actual results, performance or financial condition to differ materially from expectations are:

- our portfolio and operating strategy may be changed or modified by our management without advance notice to you, and we may suffer losses as a result of such modifications or changes;

our ability to successfully implement and grow our alternative investment strategy and to identify suitable alternative investments;

- market changes in the terms and availability of repurchase agreements used to finance our investment portfolio activities;

- interest rate mismatches between our interest-earning assets and our borrowings used to fund those assets;

- changes in interest rates and mortgage prepayment rates;

1

---



- changes in the financial markets and economy generally, including the continued or accelerated deterioration of the U.S. economy;
  - effects of interest rate caps on our adjustable-rate or hybrid adjustable-rate RMBS;
  - the degree to which our hedging strategies may or may not protect us from interest rate volatility;
  - potential impacts of our leveraging policies on our net income and cash available for distribution;
- our board's ability to change our operating policies and strategies without notice to you or stockholder approval;
- our ability to manage, minimize or eliminate liabilities stemming from our discontinued mortgage origination business;
- actions taken by the U.S. and foreign governments, central banks and other governmental and regulatory bodies for the purpose of stabilizing the financial credit and housing markets, and economy generally, including loan modification programs;
- changes to the nature of the guarantees provided by the Federal National Mortgage Association, or Fannie Mae, and the Federal Home Loan Mortgage Corporation, or Freddie Mac; and
- the other important factors described in this prospectus under the caption "Risk Factors," and in Part I, Item 1A of our most recent Annual Report on Form 10-K, as updated and supplemented by the various other factors identified in or incorporated by reference into this prospectus and any other documents filed by us with the SEC.

We undertake no obligation to publicly update or revise any forward-looking statements, whether as a result of new information, future events or otherwise. In light of these risks, uncertainties and assumptions, the events described by our forward-looking events might not occur. We qualify any and all of our forward-looking statements by these cautionary factors. In addition, you should carefully review the risk factors described in other documents we file from time to time with the SEC. See "Where You Can Find More Information" below.

## OUR COMPANY

### General

We are a self-advised REIT that is in the business of acquiring and managing primarily real estate-related assets, including residential adjustable-rate, hybrid adjustable-rate and fixed-rate mortgage-backed securities, or RMBS, for which the principal and interest payments are guaranteed by a U.S. Government agency, such as the Government National Mortgage Association, or Ginnie Mae, or a U.S. Government-sponsored entity, such as the Federal National Mortgage Association, or Fannie Mae, or the Federal Home Loan Mortgage Corporation, or Freddie Mac, which we refer to as “Agency RMBS,” and prime credit quality residential adjustable-rate mortgage loans, or “prime ARM loans.” We also acquire and manage, although to a lesser extent, certain alternative real estate-related and financial assets that present greater credit risk and less interest rate risk than our investments in Agency RMBS and prime ARM loans, such as non-Agency RMBS and certain non-rated residential mortgage assets, commercial mortgage-backed securities, commercial real estate loans, collateralized loan obligations and other similar investments. We sometimes refer to our acquisition and management of Agency RMBS, prime ARM loans and certain legacy non-Agency RMBS as our “principal investment strategy” and investments in certain alternative real estate-related and financial assets that present greater credit risk as our “alternative investment strategy” and such assets as our “alternative assets.” Our alternative investment strategy is currently managed by Harvest Capital Strategies LLC, or HCS (formerly known as JMP Asset Management LLC), an affiliate of JMP Group Inc., pursuant to an advisory agreement between our company and HCS. We elected to be taxed as a REIT for federal income tax purposes commencing with our taxable year ended December 31, 2004.

Our principal business objective is to generate net income for distribution to our stockholders resulting from the spread between the interest and other income we earn on our interest-earning assets and the interest expense we pay on the borrowings that we use to finance these assets, which we refer to as our net interest income. We intend to achieve this objective by investing in a broad class of real estate-related and financial assets to construct an investment portfolio that is designed to achieve attractive risk-adjusted returns and that is structured to comply with the various federal income tax requirements for REIT status and to maintain our exemption from registration under the Investment Company Act of 1940, as amended, or Investment Company Act. Because we intend to continue to qualify as a REIT and to maintain our exemption from registration under the Investment Company Act, we will be required to invest a substantial majority of our assets in qualifying real estate assets, such as Agency RMBS, mortgage loans and other liens on and interests in real estate.

### Corporate Offices

We are a Maryland corporation that was formed in 2003. Our principal offices are located at 52 Vanderbilt Avenue, Suite 403, New York, New York 10017 and our telephone number is (212) 792-0107. Our web site address is <http://www.nymtrust.com>. The information at or connected to our web site does not constitute a part of this prospectus.

## USE OF PROCEEDS

Unless otherwise indicated in the applicable prospectus supplement to this prospectus used for a specific offering of common stock, we intend to use the net proceeds from the sale of common stock offered by this prospectus to finance the acquisition of Agency RMBS, non-Agency RMBS and other alternative assets, subject to maintaining our REIT qualification and our Investment Company Act exemption.

We may also use the net proceeds for other general corporate purposes such as repayment of outstanding indebtedness (including indebtedness to our affiliates), working capital, and for liquidity needs. Pending any such uses, we may invest the net proceeds from the sale of any securities in interest-bearing short-term investments, including money market accounts that are consistent with our treatment as a REIT, or may use them to reduce short term indebtedness.

## DESCRIPTION OF CAPITAL STOCK

The following summary description of our capital stock does not purport to be complete and is subject to and qualified in its entirety by reference to Maryland law, our charter and our bylaws, copies of which are filed as exhibits to the registration statement of which this prospectus is a part. See “Where You Can Find More Information” above.

### General

Our charter provides that we may issue up to 400,000,000 shares of common stock, par value \$0.01 per share, and 200,000,000 shares of preferred stock, par value \$0.01 per share, including up to 2,000,000 shares of our Series A Preferred Stock. As of September 30, 2009, 9,419,094 shares of common stock and 1,000,000 shares of Series A Preferred Stock were issued and outstanding. Under Maryland law, our stockholders are not generally liable for our debts or obligations. Our charter authorizes our board of directors to amend our charter to increase or decrease the aggregate number of shares of capital stock of any class or series that we have the authority to issue, without your approval.

### Voting Rights of Common Stock

Subject to the provisions of our charter regarding restrictions on the transfer and ownership of shares of common stock, each outstanding share of common stock entitles the holder to one vote on all matters submitted to a vote of stockholders, including the election of directors, and, except as provided with respect to any other class or series of shares of our stock, the holders of our common stock possess the exclusive voting power. There is no cumulative voting in the election of directors, which means that the holders of a majority of the sum of our outstanding shares of common stock and outstanding shares of Series A Preferred Stock, on an “as-converted” basis, voting together as a single class, can elect all of the directors then standing for election. Under Maryland law, a Maryland corporation generally cannot dissolve, amend its charter, merge, sell all or substantially all of its assets, or engage in a share exchange or engage in similar transactions outside the ordinary course of business unless approved by the affirmative vote of stockholders holding at least two-thirds of the shares entitled to vote on the matter, unless a lesser percentage (but not less than a majority of all the votes entitled to be cast on the matter) is set forth in the corporation’s charter. Our charter provides for approval by a majority of all the votes entitled to be cast on the matter for the matters described in the preceding sentence.

### Dividends, Liquidation and Other Rights

All of our outstanding shares of common stock are duly authorized, fully paid and nonassessable. Holders of our shares of common stock are entitled to receive dividends when authorized by our board of directors and declared by us out of assets legally available for the payment of dividends. They also are entitled to share ratably in our assets legally

available for distribution to our stockholders in the event of our liquidation, dissolution or winding up, after payment of or adequate provision for all of our known debts and liabilities. These rights are subject to the preferential rights of any other class or series of our stock and to the provisions of our charter regarding restrictions on transfer and ownership of our stock.

Holders of our shares of common stock have no appraisal, preference, conversion, exchange, sinking fund or redemption rights and have no preemptive rights to subscribe for any of our securities. Subject to the restrictions on transfer of capital stock contained in our charter and to the ability of the board of directors to create shares of common stock with differing voting rights, all shares of common stock have equal dividend, liquidation and other rights.

Our charter also authorizes our board of directors to classify and reclassify any unissued shares of our common stock and preferred stock into any other classes or series of classes of our stock, as discussed below, to establish the number of shares in each class or series and to set the terms, preferences, conversion and other rights, voting powers, restrictions, limitations as to dividends or other distributions, qualifications and terms or conditions of redemption for each such class or series. Thus, our board of directors could authorize the issuance of shares of preferred stock with terms and conditions that could have the effect of delaying, deferring or preventing a transaction or a change of control that might involve a premium price for you or otherwise be in your best interest.

#### Preferred Stock

Our charter authorizes our board of directors to reclassify any unissued shares of common stock into preferred stock, to classify any unissued shares of preferred stock and to reclassify any previously classified but unissued shares of any series of preferred stock previously authorized by our board of directors. Prior to issuance of shares of each class or series of preferred stock, our board of directors is required by Maryland law and our charter to fix, subject to our charter restrictions on transfer and ownership, the terms, preferences, conversion or other rights, voting powers, restrictions, limitations as to dividends or other distributions, qualifications and terms or conditions of redemption for each class or series. Thus, our board could authorize the issuance of shares of preferred stock with terms and conditions that could have the effect of delaying, deferring or preventing a transaction or a change of control that might involve a premium price for you or otherwise be in your best interest.

In connection with our issuance and sale of 1,000,000 shares of our Series A Preferred Stock on January 18, 2008, we filed Articles Supplementary to our charter designating the terms of the Series A Preferred Stock with the Maryland State Department of Assessment and Taxation. On May 27, 2008, we completed a one-for-two reverse stock split on shares of our common stock. The following summary describes the terms of the Series A Preferred Stock after giving effect to the completion of the one-for-two reverse stock split on shares of our common stock. The following summary of the terms of our Series A Preferred Stock does not purport to be complete and is qualified in its entirety by reference to the Articles Supplementary to our charter, which is filed as an exhibit to this registration statement.

#### Series A Preferred Stock

##### Rank

The Series A Preferred Stock, with respect to dividend rights and rights upon liquidation, dissolution or winding up of our company, ranks: (a) prior or senior to any class or series of common stock of our company and any other class or series of equity securities of our company, if the holders of Series A Preferred Stock shall be entitled to the receipt of dividends or of amounts distributable upon liquidation, dissolution or winding up in preference or priority to the holders of shares of such class or series, or junior stock; (b) on a parity with any class or series of equity securities of our company if, pursuant to the specific terms of such class or series of equity securities, the holders of such class or series of equity securities and the Series A Preferred Stock shall be entitled to the receipt of dividends and of amounts distributable upon liquidation, dissolution or winding up in proportion to their respective amounts of accrued and unpaid dividends per share or liquidation preferences, without preference or priority one over the other, or parity stock; (c) junior to any class or series of equity securities of our company if, pursuant to the specific terms of such class or series, the holders of such class or series shall be entitled to the receipt of dividends or amounts distributable upon liquidation, dissolution or winding up in preference or priority to the holders of the Series A Preferred Stock, or

senior stock; and (d) junior to all existing and future indebtedness of our company. The term “equity securities” does not include convertible debt securities, which will rank senior to the Series A Preferred Stock prior to conversion.

## Dividends

Holders of shares of Series A Preferred Stock are entitled to receive, when and as authorized by the board of directors and declared by our company, out of funds legally available for the payment of distributions, cumulative preferential quarterly cash dividends at the rate of the greater of (i) two and one half percent (2.5%) per quarter of the \$20.00 per share liquidation preference of the Series A Preferred Stock (equivalent to a fixed annual amount of \$2.00 per share) or (ii) the quotient of the quarterly dividend declared by our company on shares of our common stock divided by the conversion price (defined below). Dividends accumulate on a daily basis and are payable quarterly in arrears on or before the last day of each January, April, July and October of each year (each such day being hereinafter called a Dividend Payment Date) to holders of record of the Series A Preferred Stock at the close of business on the last business day of March, June, September and December immediately preceding such Dividend Payment Date. The first dividend was payable based on a full quarter and was paid on April 30, 2009 to stockholders of record as of March 31, 2008. Any dividend payable on the Series A Preferred Stock for any partial dividend period will be computed on the basis of twelve 30-day months and a 360-day year. Holders of Series A Preferred Stock shall not be entitled to receive any dividends in excess of cumulative dividends on the Series A Preferred Stock and no interest shall be paid in respect of any dividend payment or payments on the Series A Preferred Stock that may be in arrears.

When dividends are not paid in full upon the Series A Preferred Stock or any other class or series of parity stock, all dividends declared upon the Series A Preferred Stock and any other class or series of parity stock shall be declared ratably in proportion to the respective amounts of dividends accumulated, accrued and unpaid on the Series A Preferred Stock and the parity stock. Except as set forth in the preceding sentence, unless dividends on the Series A Preferred Stock equal to the full amount of accumulated, accrued and unpaid dividends have been or contemporaneously are declared and paid, or declared and a sum sufficient for the payment thereof set apart for such payment for all past dividend periods, no dividends will be declared or paid or set aside for payment by us with respect to any class or series of parity stock. Unless full cumulative dividends on the Series A Preferred Stock have been paid or declared and set apart for payment for all past dividend periods, no dividends (or other cash or property) will be declared or paid or set apart for payment by us with respect to any shares of junior stock, nor shall any shares of junior stock be redeemed, purchased or otherwise acquired (except for purposes of an employee benefit plan) for any consideration. Notwithstanding the above, we are not prohibited from (i) declaring or paying or setting apart for payment any dividend or distribution on any shares of parity stock or (ii) redeeming, purchasing or otherwise acquiring any parity stock, in each case, if such declaration, payment, redemption, purchase or other acquisition is necessary to maintain our qualification as a real estate investment trust, or REIT, under the Internal Revenue Code.

No dividends on shares of Series A Preferred Stock may be declared by our board of directors or paid or set apart for payment by us at such time as the terms and provisions of any agreement of our company prohibits such declaration, payment or setting apart for payment or provides that such declaration, payment or setting apart for payment would constitute a breach thereof or a default thereunder, or if such declaration or payment shall be restricted or prohibited by law.

## Liquidation Preference

Upon any voluntary or involuntary liquidation, dissolution or winding up of our company, before any payment or distribution by us shall be made to or set apart for the holders of any shares of junior stock, the holders of shares of Series A Preferred Stock will be entitled to receive a liquidation preference of \$20.00 per share, or the Liquidation Preference, plus an amount equal to all accumulated, accrued and unpaid dividends (whether or not earned or declared) to the date of final distribution to such holders. Until the holders of the Series A Preferred Stock have been paid the Liquidation Preference in full, plus an amount equal to all accumulated, accrued and unpaid dividends (whether or not earned or declared) to the date of final distribution to such holders, no payment shall be made to any holder of junior stock upon the liquidation, dissolution or winding up of our company.

If upon any liquidation, dissolution or winding up of our company, our assets, or proceeds thereof, distributable among the holders of Series A Preferred Stock shall be insufficient to pay in full the above described preferential amount and liquidating payments on any other shares of any class or series of parity stock, then such assets, or the proceeds thereof, will be distributed among the holders of Series A Preferred Stock and any such other holder of parity stock ratably in the same proportion as the respective amounts that would be payable on the Series A Preferred Stock and any such other parity stock if all amounts payable thereon were paid in full. A voluntary or involuntary liquidation, dissolution or winding up of our company shall not include a consolidation or merger of our company with one or more corporations, a sale, lease, conveyance or transfer of all or substantially all of our assets or business, or a statutory share exchange.



Upon any liquidation, dissolution or winding up of our company, after payment has been made in full to the holders of Series A Preferred Stock and any holders of parity stock, any other series or class or classes of junior stock will be entitled to receive any and all assets remaining to be paid or distributed.

#### Redemption

Except as set forth below under “Special Optional Redemption by Company” or certain other exceptions, the Series A Preferred Stock is not redeemable prior to December 31, 2010. To the extent any shares of the Series A Preferred Stock are not converted into shares of our common stock as set forth below, we will redeem the Series A Preferred Stock, in whole but not in part, on or about December 31, 2010 at a cash redemption price equal to 100% of the Liquidation Preference, plus all accrued and unpaid dividends to the date fixed for redemption, or the redemption date. If full cumulative dividends on all outstanding shares of Series A Preferred Stock have not been paid or declared and set apart for payment, no shares of Series A Preferred Stock may be redeemed unless all outstanding shares of Series A Preferred Stock are simultaneously redeemed.

#### Special Optional Redemption by Company

At any time following a Change of Control Optional Conversion Termination Date (as defined in the Articles Supplementary), we will have the option upon written notice to the holders of record of the then outstanding shares of Series A Preferred Stock (in accordance with the notice requirements provided in the Articles Supplementary) to redeem the then outstanding shares of Series A Preferred Stock, in whole but not in part, within 90 days after the Change of Control Optional Conversion Termination Date, for a cash redemption price equal to 100% of the Liquidation Preference, plus all accrued and unpaid dividends to the redemption date. Upon any redemption of the Series A Preferred Stock pursuant to this special optional redemption by our company, we will pay any accrued and unpaid dividends to the redemption date, whether or not authorized, unless the redemption date falls after a dividend payment record date and prior to the corresponding Dividend Payment Date, in which case each holder of the Series A Preferred Stock at the close of business on such dividend payment record date will be entitled to the distribution payable on such shares on the corresponding Dividend Payment Date notwithstanding the redemption of such shares before the Dividend Payment Date. A “change of control” has the meaning ascribed to it in the Articles Supplementary.

#### Conversion

##### Optional Conversion

Subject to the requirements set forth in the Articles Supplementary for such conversion, a holder of any shares of the Series A Preferred Stock has the right, at its option, to convert all or any portion of its outstanding Series A Preferred Stock, or the Optional Conversion Right, into the number of fully paid and non-assessable shares of our common stock at a conversion rate of one share of common stock per \$8.00 liquidation preference, or the Conversion Rate, which is equivalent to a conversion price of approximately \$8.00 per share of our common stock, or the Conversion Price (subject to adjustment as described below). Such holder shall surrender to us such shares of Series A Preferred Stock to be converted in accordance with the provisions set forth in the Articles Supplementary.

If a holder of shares of Series A Preferred Stock exercises its Optional Conversion Right, upon delivery of the Series A Preferred Stock for conversion, those shares of Series A Preferred Stock shall cease to cumulate dividends as of the end of the day immediately preceding the conversion date (as defined in the Articles Supplementary) and the holder shall not receive any cash payment representing accrued and unpaid dividends of the Series A Preferred Stock, except in those limited circumstances discussed below. Except as provided below, we will make no payment for accrued and unpaid dividends, whether or not in arrears, on the Series A Preferred Stock converted at a holder’s election pursuant to a conversion right, or for dividends on shares of our common stock issued upon such conversion:



- if we receive a conversion notice after the Dividend Record Date but prior to the corresponding Dividend Payment Date, the holder on the Dividend Record Date shall receive on that Dividend Payment Date accrued dividends on those shares of Series A Preferred Stock, notwithstanding the conversion of those shares of Series A Preferred Stock prior to that Dividend Payment Date; provided, however, that at the time that such holder surrenders the Series A Preferred Stock for conversion, the holder shall pay to us an amount equal to the dividend that has accrued and that shall be paid on the related Dividend Payment Date; and
- a holder of shares of Series A Preferred Stock on a Dividend Record Date who exercises its Optional Conversion Right and converts such Series A Preferred Stock into our common stock on or after the corresponding Dividend Payment Date shall be entitled to receive the dividend payable on such Series A Preferred Stock on such Dividend Payment Date, and the converting holder need not include payment of the amount of such dividend upon surrender for conversion of the Series A Preferred Stock.

However, if we receive a conversion notice before the close of business on a Dividend Record Date, the holder shall not be entitled to receive any portion of the dividend payable on such converted Series A Preferred Stock on the corresponding Dividend Payment Date.

#### Mandatory Conversion

Each outstanding share of Series A Preferred Stock will be converted into the number of fully paid and non-assessable shares of our common stock at the Conversion Rate (subject to adjustment as described below) upon satisfaction of the following conditions, or the Mandatory Conversion:

- we have obtained the requisite approval(s), if any, of our common stockholders in connection with the issuance of the Series A Preferred Stock or any of our common stock issuable upon conversion of such shares of Series A Preferred Stock;
- the resale registration statement registering for resale the Series A Preferred Stock or the common stock into which it is convertible has been declared effective by the SEC; and
- the number of shares of our common stock issuable upon conversion of the outstanding shares of Series A Preferred Stock equal a number that is less than ten percent (10%) of our then outstanding common stock;

provided, however, that no such Mandatory Conversion will occur if such conversion would result in our company being consolidated for accounting purposes as a subsidiary of JPM Group, Inc. Upon exercise of the Mandatory Conversion right and the surrender of shares of the Series A Preferred Stock by a holder thereof, we will issue and deliver or cause to be issued and delivered to such holder, or to such other person on such holder's written order, certificates representing the number of validly issued, fully paid and non-assessable shares of our common stock to which a holder of shares of Series A Preferred Stock being converted, or a holder's transferee, shall be entitled.

To exercise this Mandatory Conversion right, we must issue a press release prior to the opening of business on any trading day not more than five trading days following any date on which we became aware that the conditions set forth above for the Mandatory Conversion have been satisfied, announcing the satisfaction of the Mandatory Conversion conditions. The conversion date, or the Mandatory Conversion Date, will be on the date that is five trading days after the date on which we issue such press release. Each conversion shall be deemed to have been made at the close of business on the Mandatory Conversion Date so that the rights of the holder thereof as to the Series A Preferred Stock being converted shall cease except for the right to receive the number of fully paid and non-assessable shares of our common stock at the Conversion Rate (subject to adjustment as described below), and the person entitled to receive shares of our common stock will be treated for all purposes as having become the record holder of those

shares of common stock at that time.

8

---

If we exercise the Mandatory Conversion right and the Mandatory Conversion Date is a date that is on, or after the close of business on, any Dividend Record Date and prior to the close of business on the corresponding Dividend Payment Date, all dividends, including accrued and unpaid dividends, whether or not in arrears, with respect to the Series A Preferred Stock called for conversion on such date, will be payable on such Dividend Payment Date to the record holder of such shares on such record date. However, if we exercise the Mandatory Conversion right and the Mandatory Conversion Date is a date that is prior to the close of business on any Dividend Record Date, the holder shall not be entitled to receive any portion of the dividend payable for such period on such converted shares on the corresponding Dividend Payment Date; provided, however, that all unpaid dividends that are in arrears as of the Mandatory Conversion Date will be payable to the holder of the Series A Preferred Stock.

#### Conversion Rate Adjustments

If we shall, at any time or from time to time after the original issue date of the Series A Preferred Stock while any shares of Series A Preferred Stock are outstanding, effect one or more stock dividends, stock split-ups (including reverse splits), subdivisions or consolidations of shares of our common stock, the Conversion Rate shall be appropriately adjusted to reflect such stock dividends, stock split-ups, subdivisions or consolidations of shares of common stock. For example, on May 27, 2008, we completed a one-for-two reverse stock on shares of our common stock. Upon completion of this reverse stock split, the Conversion Rate was automatically adjusted to one share of common stock per \$8.00 liquidation preference from one share of common stock per \$4.00 liquidation preference. In addition, if during the period in which shares of the Series A Preferred Stock remain outstanding we issue or sell any shares of common stock (excluding any equity awards granted under our 2005 Stock Plan) for a price per share that is less than the Conversion Price at the time of such issuance or sale, the Conversion Rate immediately will be adjusted by multiplying the Conversion Rate by the quotient of (x) the Conversion Price at the time of such issuance or sale divided by (y) the product of the Conversion Price at the time of such issuance or sale multiplied by (a) an amount equal to the sum of (i) the number of shares of common stock outstanding and deemed to be outstanding immediately prior to such sale plus the number of shares of common stock to be issued upon such issuance or sale multiplied by the Conversion Price at the time of such issuance or sale and (ii) the total consideration received and deemed to be received by us upon such issuance and sale and (b) dividing the result by an amount equal to (i) the sum of (A) the amount determined in (a) and (B) the product of the number of shares issued or sold multiplied by the Conversion Price at the time of such issuance or sale, minus (ii) the consideration received.

#### Voting Rights

Holders of the Series A Preferred Stock have the same voting rights as holders of our common stock and will vote together with holders of common stock as a single class, except as set forth below.

If and whenever distributions on any shares of Series A Preferred Stock or any series or class of parity stock are in arrears for six or more quarterly periods (whether or not consecutive), the number of directors then constituting the board of directors will be increased by two and the holders of such shares of Series A Preferred Stock voting together as a single class with all other shares of parity stock of any other class or series which is entitled to similar voting rights (excluding common stock, or the Voting Preferred Stock), will be entitled to vote for the election of the two additional directors of our company at any annual meeting of stockholders or at a special meeting of the holders of the Series A Preferred Stock and of the Voting Preferred Stock called for that purpose. We must call such special meeting upon the request of any holder of record of shares of Series A Preferred Stock. Whenever dividends in arrears on outstanding shares of the Series A Preferred Stock and the Voting Preferred Stock have been paid and dividends thereon for the current quarterly dividend period have been paid or declared and set apart for payment, then the right of the holders of the Series A Preferred Stock to elect such additional two directors will cease and the terms of office of such directors will terminate, with the number of directors constituting the board of directors being reduced accordingly.

The affirmative vote or consent of at least  $66 \frac{2}{3}$  percent of the votes entitled to be cast by the holders of the outstanding Series A Preferred Stock and the holders of all other classes or series of preferred stock of our company entitled to vote on such matters, voting as a single class, will be required to (i) authorize the creation of, the increase in the authorized amount of, or issuance of any shares of any class of senior stock or any security convertible into shares of any class of senior stock or (ii) amend, alter or repeal any provision of, or add any provision to, the charter, including the Articles Supplementary for the Series A Preferred Stock, if such action would materially adversely affect the voting powers, rights or preferences of the holders of the Series A Preferred Stock. The amendment of the charter to authorize, create, or increase the authorized amount of junior stock or any class of parity stock, is not deemed to materially adversely affect the voting powers, rights or preferences of the holders of Series A Preferred Stock.

With respect to the exercise of the above described voting rights, each share of Series A Preferred Stock is entitled to a number of votes equal to the Conversion Rate then in effect. The foregoing voting provisions will not apply if, at or prior to the time when the act with respect to which such vote would otherwise be required shall be effected, all outstanding Series A Preferred Stock shall have been redeemed or called for redemption upon proper notice and sufficient funds shall have been deposited in trust to effect such redemption.

#### Power to Issue Additional Shares of Common Stock and Preferred Stock

We believe that the power of our board of directors to issue additional authorized but unissued shares of our common stock or preferred stock and to classify or reclassify unissued shares of our common stock or preferred stock and thereafter to cause us to issue such classified or reclassified shares of stock provides us with increased flexibility in structuring possible future financings and acquisitions and in meeting other needs which might arise. The additional classes or series, as well as our common stock, are available for issuance without further action by our stockholders, unless stockholder action is required by applicable law or the rules of any stock exchange or automated quotation system on which our securities may be listed or traded. Although our board of directors has no intention at the present time of doing so, it could authorize us to issue a class or series that could, depending upon the terms of such class or series, delay, defer or prevent a transaction or a change in control of us that might involve a premium price for holders of our common stock or otherwise be in your best interest.

#### Restrictions on Ownership and Transfer

In order to qualify as a REIT under the Internal Revenue Code, our shares of stock must be beneficially owned by 100 or more persons during at least 335 days of a taxable year of 12 months or during a proportionate part of a shorter taxable year. Also, no more than 50% of the value of our outstanding shares of capital stock may be owned, directly or constructively, by five or fewer individuals (as defined in the Internal Revenue Code to include certain entities) during the last half of any taxable year. In addition, if certain “disqualified organizations” hold our stock, although the law on the matter is unclear, a tax might be imposed on us if a portion of our assets is treated as a taxable mortgage pool. In addition, a tax will be imposed on us if certain disqualified organizations hold our stock and we hold a residual interest in a real estate mortgage investment conduit, or REMIC.

To help us to qualify as a REIT, our charter, subject to certain exceptions, contains restrictions on the number of shares of our capital stock that a person may own and prohibits certain entities from owning our stock. Our charter was amended in June 2009 to reduce the aggregate stock ownership limit and common stock ownership limit from 9.9% to 5%. As amended, our charter provides that generally no person may own, or be deemed to own by virtue of the attribution provisions of the Internal Revenue Code, either (i) more than 5% in value of our outstanding shares of capital stock or (ii) more than 5% in value or in number of shares, whichever is more restrictive, of our outstanding common stock. However, to the extent that any person’s “beneficial ownership” or “constructive ownership” of our stock immediately prior to the effectiveness of the June 2009 charter amendment exceeded the 5% ownership limit described in this sentence, the ownership limit is not effective for such person until that person’s ownership percentage falls below the 5% ownership limit; provided, however, that until such time as the person’s ownership percentage falls below the 5% ownership limit, any further acquisition of our capital stock by such person will be in violation of the ownership limits established by Article VII. Our board of directors is permitted under our charter to waive these ownership limits on a case by case basis so long as the waiver will not cause us to fail to comply with applicable REIT ownership requirements under the Internal Revenue Code. Our charter prohibits the following “disqualified organizations” from owning our stock: the United States; any state or political subdivision of the United States; any foreign government; any international organization; any agency or instrumentality of any of the foregoing; any other tax-exempt organization, other than a farmer’s cooperative described in Section 521 of the Internal Revenue Code, that is exempt from both income taxation and from taxation under the unrelated business taxable income provisions of the Internal Revenue Code; and any rural electrical or telephone cooperative.





Our charter also prohibits any person from (a) beneficially or constructively owning shares of our capital stock that would result in us being “closely held” under Section 856(h) of the Internal Revenue Code, and (b) transferring shares of our capital stock if such transfer would result in our capital stock being beneficially owned by fewer than 100 persons. Any person who acquires or attempts or intends to acquire beneficial ownership of shares of our capital stock that will or may violate any of the foregoing restrictions on transferability and ownership will be required to give notice immediately to us and provide us with such other information as we may request in order to determine the effect of such transfer on our status as a REIT. The foregoing restrictions on transferability and ownership will not apply if our board of directors determines that it is no longer in our best interests to attempt to qualify, or to continue to qualify, as a REIT.

Our board of directors, in its sole discretion, may exempt a person from the above ownership limits and any of the restrictions described in the first sentence of the paragraph directly above. However, the board of directors may not grant an exemption to any person unless the board of directors obtains such representations, covenants and undertakings as the board of directors may deem appropriate in order to determine that granting the exemption would not result in our losing our status as a REIT. As a condition of granting the exemption, our board of directors may require a ruling from the Internal Revenue Service or an opinion of counsel, in either case in form and substance satisfactory to the board of directors, in its sole discretion, in order to determine or ensure our status as a REIT. Our board of directors has granted exemptions from the ownership limits from time to time in the past, including the grant of a waiver to allow Joseph A. Jolson, an affiliate of HCS and JMP Group Inc., to own up to 25% of the aggregate value of our outstanding stock.

Any transfer that results in our shares of stock being owned by fewer than 100 persons will be void. However, if any transfer of our shares of stock occurs which, if effective, would result in any person beneficially or constructively owning shares of stock in excess or in violation of the above transfer or ownership limitations, known as a prohibited owner, then that number of shares of stock, the beneficial or constructive ownership of which otherwise would cause such person to violate the transfer or ownership limitations (rounded up to the nearest whole share), will be automatically transferred to a charitable trust for the exclusive benefit of a charitable beneficiary, and the prohibited owner will not acquire any rights in such shares. This automatic transfer will be considered effective as of the close of business on the business day before the violative transfer. If the transfer to the charitable trust would not be effective for any reason to prevent the violation of the above transfer or ownership limitations, then the transfer of that number of shares of stock that otherwise would cause any person to violate the above limitations will be void. Shares of stock held in the charitable trust will continue to constitute issued and outstanding shares of our stock. The prohibited owner will not benefit economically from ownership of any shares of stock held in the charitable trust, will have no rights to dividends or other distributions and will not possess any rights to vote or other rights attributable to the shares of stock held in the charitable trust. The trustee of the charitable trust will be designated by us and must be unaffiliated with us or any prohibited owner and will have all voting rights and rights to dividends or other distributions with respect to shares of stock held in the charitable trust, and these rights will be exercised for the exclusive benefit of the trust’s charitable beneficiary. Any dividend or other distribution paid before our discovery that shares of stock have been transferred to the trustee will be paid by the recipient of such dividend or distribution to the trustee upon demand, and any dividend or other distribution authorized but unpaid will be paid when due to the trustee. Any dividend or distribution so paid to the trustee will be held in trust for the trust’s charitable beneficiary. Subject to Maryland law, effective as of the date that such shares of stock have been transferred to the trustee, the trustee, in its sole discretion, will have the authority to:

- rescind as void any vote cast by a prohibited owner prior to our discovery that such shares have been transferred to the trustee; and
- recast such vote in accordance with the desires of the trustee acting for the benefit of the trust’s beneficiary.

However, if we have already taken irreversible corporate action, then the trustee will not have the authority to rescind and recast such vote.

Within 20 days of receiving notice from us that shares of stock have been transferred to the charitable trust, and unless we buy the shares first as described below, the trustee will sell the shares of stock held in the charitable trust to a person, designated by the trustee, whose ownership of the shares will not violate the ownership limitations in our charter. Upon the sale, the interest of the charitable beneficiary in the shares sold will terminate and the trustee will distribute the net proceeds of the sale to the prohibited owner and to the charitable beneficiary. The prohibited owner will receive the lesser of:

- the price paid by the prohibited owner for the shares or, if the prohibited owner did not give value for the shares in connection with the event causing the shares to be held in the charitable trust (for example, in the case of a gift or devise), the market price of the shares on the day of the event causing the shares to be held in the charitable trust; and
- the price per share received by the trustee from the sale or other disposition of the shares held in the charitable trust (less any commission and other expenses of a sale).

The trustee may reduce the amount payable to the prohibited owner by the amount of dividends and distributions paid to the prohibited owner that are owed by the prohibited owner to the trustee. Any net sale proceeds in excess of the amount payable to the prohibited owner will be paid immediately to the charitable beneficiary. If, before our discovery that shares of stock have been transferred to the charitable trust, such shares are sold by a prohibited owner, then:

- such shares will be deemed to have been sold on behalf of the charitable trust; and
- to the extent that the prohibited owner received an amount for such shares that exceeds the amount that the prohibited owner was entitled to receive as described above, the excess must be paid to the trustee upon demand.

In addition, shares of stock held in the charitable trust will be deemed to have been offered for sale to us, or our designee, at a price per share equal to the lesser of:

- the price per share in the transaction that resulted in such transfer to the charitable trust (or, in the case of a gift or devise, the market price at the time of the gift or devise); and
- the market price on the date we, or our designee, accept such offer.

We may reduce the amount payable to the prohibited owner by the amount of dividends and distributions paid to the prohibited owner that are owed by the prohibited owner to the trustee. We may pay the amount of such reduction to the trustee for the benefit of the charitable beneficiary. We will have the right to accept the offer until the trustee has sold the shares of stock held in the charitable trust. Upon such a sale to us, the interest of the charitable beneficiary in the shares sold will terminate and the trustee will distribute the net proceeds of the sale to the prohibited owner and any dividends or other distributions held by the trustee will be paid to the charitable beneficiary.

All certificates representing shares of our capital stock will bear a legend referring to the restrictions described above.

Every holder of more than 5% (or such lower percentage as required by the Internal Revenue Code or the regulations promulgated thereunder) in value of all classes or series of our capital stock, including shares of common stock, within 30 days after the end of each taxable year, will be required to give written notice to us stating the name and address of such holder, the number of shares of each class and series of shares of our stock that the holder beneficially owns and a description of the manner in which the shares are held. Each holder shall provide to us such additional information as we may request in order to determine the effect, if any, of the holder's beneficial ownership on our

status as a REIT and to ensure compliance with our ownership limitations. In addition, each stockholder shall upon demand be required to provide to us such information as we may request, in good faith, in order to determine our status as a REIT and to comply with the requirements of any taxing authority or governmental authority or to determine such compliance.

Our ownership limitations could delay, defer or prevent a transaction or a change in control of us that might involve a premium price for holders of our common stock or might otherwise be in the best interest of our stockholders.

**Transfer Agent and Registrar**

The transfer agent and registrar for our shares of common stock is American Stock Transfer & Trust Company.

CERTAIN PROVISIONS OF MARYLAND LAW  
AND OUR CHARTER AND BYLAWS

The following description of certain provisions of Maryland law and of our charter and bylaws is only a summary. For a complete description, we refer you to the applicable Maryland law, our charter and our bylaws. Our charter and bylaws are filed as exhibits to this registration statement. See “Where You Can Find More Information.”

Number of Directors; Vacancies

Our charter and bylaws provide that the number of our directors shall be nine and may only be increased or decreased by a vote of a majority of the members of our board of directors. Our board of directors has determined that the board should currently consist of six directors. Our charter provides that any vacancy, including a vacancy created by an increase in the number of directors, may be filled only by a majority of the remaining directors, even if the remaining directors do not constitute a quorum.

Removal of Directors

Our charter provides that a director may be removed with or without cause upon the affirmative vote of at least two-thirds of the votes entitled to be cast in the election of directors. Absent removal of all of our directors, this provision, when coupled with the provision in our bylaws authorizing our board of directors to fill vacant directorships, may preclude stockholders from removing incumbent directors and filling the vacancies created by such removal with their own nominees.

Amendment to the Charter

Generally, our charter may be amended only by the affirmative vote of the holders of not less than a majority of all of the votes entitled to be cast on the matter. However, provisions in our charter related to (1) removal of directors, (2) blank check stock and (3) the restrictions on transfer and ownership may only be amended by the affirmative vote of the holders of not less than two-thirds of all of the votes entitled to be cast on the matter.

Dissolution

Our dissolution must be approved by the affirmative vote of the holders of not less than a majority of all of the votes entitled to be cast on the matter.

Business Combinations

Maryland law prohibits “business combinations” between us and an interested stockholder or an affiliate of an interested stockholder for five years after the most recent date on which the interested stockholder becomes an interested stockholder. These business combinations include a merger, consolidation, share exchange, or, in circumstances specified in the statute, an asset transfer or issuance or reclassification of equity securities. Maryland law defines an interested stockholder as:

- any person or entity who beneficially owns 10% or more of the voting power of our stock; or
- an affiliate or associate of ours who, at any time within the two year period prior to the date in question, was the beneficial owner of 10% or more of the voting power of our then outstanding voting stock.

A person is not an interested stockholder if our board of directors approves in advance the transaction by which the person otherwise would have become an interested stockholder. However, in approving a transaction, our board of directors may provide that its approval is subject to compliance, at or after the time of approval, with any terms and conditions determined by our board of directors.

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

- 80% of the votes entitled to be cast by holders of our then outstanding shares of voting stock; and
- two-thirds of the votes entitled to be cast by holders of our voting stock other than stock held by the interested stockholder with whom or with whose affiliate the business combination is to be effected or stock held by an affiliate or associate of the interested stockholder.

These super-majority vote requirements do not apply if our common stockholders receive a minimum price, as defined under Maryland law, for their shares in the form of cash or other consideration in the same form as previously paid by the interested stockholder for its stock.

The statute permits various exemptions from its provisions, including business combinations that are approved by our board of directors before the time that the interested stockholder becomes an interested stockholder.

As permitted by the Maryland General Corporation Law, our board of directors has adopted a resolution that the business combination provisions of the Maryland General Corporation Law will not apply to us.

#### Control Share Acquisitions

Maryland law provides that “control shares” of a Maryland corporation acquired in a “control share acquisition” have no voting rights unless approved by a vote of two-thirds of the votes entitled to be cast on the matter. Shares owned by the acquiror or by officers or directors who are our employees are excluded from the shares entitled to vote on the matter. “Control shares” are voting shares that, if aggregated with all other shares currently owned by the acquiring person, or in respect of which the acquiring person is able to exercise or direct the exercise of voting power (except solely by virtue of a revocable proxy), would entitle the acquiring person to exercise voting power in electing directors within one of the following ranges of voting power:

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

Control shares do not include shares the acquiring person is then entitled to vote as a result of having previously obtained stockholder approval. A “control share acquisition” means the acquisition of control shares, subject to certain exceptions.

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

If voting rights are not approved at the stockholders meeting or if the acquiring person does not deliver the statement required by Maryland law, then, subject to certain conditions and limitations, we may redeem any or all of the control shares, except those for which voting rights have previously been approved, for fair value. Fair value is determined, without regard to the absence of voting rights for the control shares, as of the date of the last control share acquisition



by the acquiror or of any meeting of stockholders at which the voting rights of the shares were considered and not approved. If voting rights for control shares are approved at a stockholders meeting and the acquiror becomes entitled to vote a majority of the shares entitled to vote, all other stockholders may exercise appraisal rights. The fair value of the shares for purposes of these appraisal rights may not be less than the highest price per share paid by the acquiror in the control share acquisition. The control share acquisition statute does not apply to shares acquired in a merger, consolidation or share exchange if we are a party to the transaction, nor does it apply to acquisitions approved by or exempted by our charter or bylaws.

Our bylaws contain a provision exempting any and all acquisitions of our shares of stock from the control shares provisions of Maryland law. Nothing prevents our board of directors from amending or repealing this provision in the future.

#### Limitation of Liability and Indemnification

Our charter limits, to the maximum extent permitted by Maryland law, the liability of our directors and officers for money damages, except for liability resulting from:

- actual receipt of an improper benefit or profit in money, property or services; or
- a final judgment based upon a finding of active and deliberate dishonesty by the director or officer that was material to the cause of action adjudicated.

Our charter authorizes us, and our bylaws obligate us, to the maximum extent permitted by Maryland law to indemnify, and to pay or reimburse reasonable expenses in advance of final disposition of a final proceeding to, any of our present or former directors or officers or any individual who, while a director or officer and at our request, serves or has served another corporation, real estate investment trust, partnership, joint venture, trust, employee benefit plan or any other enterprise as a director, officer, partner or trustee. The indemnification covers any claim or liability arising from such status against the person.

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

Maryland law permits us to indemnify our present and former directors and officers against judgments, penalties, fines, settlements and reasonable expenses actually incurred by them in any proceeding to which they may be made a party by reason of their service in those or other capacities unless it is established that:

- the act or omission of the director or officer was material to the matter giving rise to the proceeding and (i) was committed in bad faith or (ii) was the result of active and deliberate dishonesty;

· the director or officer