

WINMARK CORP  
Form POS AM  
March 26, 2009  
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As filed with the Securities and Exchange Commission on March 26, 2009

Registration No. 333-133393

**UNITED STATES**  
**SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

Pre-Effective Amendment No. 1 to

Post-Effective Amendment No. 5

to

**FORM S-1**

**Registration Statement under the Securities Act of 1933**

**WINMARK CORPORATION**

(Exact name of registrant as specified in its charter)

**Minnesota**

(State or other jurisdiction of incorporation or organization)

**5900**

(Primary Standard Industrial Classification Code Number)

**41-1622691**

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

**605 Highway 169 North, Suite 400**

**Minneapolis, Minnesota 55441**

**(763) 520-8500**

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

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**John L. Morgan, Chairman and Chief Executive Officer**

**Anthony D. Ishaug, Chief Financial Officer**

**Winmark Corporation**

**605 Highway 169 North, Suite 400**

**Minneapolis, Minnesota 55441**

**(763) 520-8500**

(Name, address, including zip code, and telephone number

including area code, of agent for service)

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**COPIES OF ALL COMMUNICATIONS TO:**

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Telephone: (612) 371-3211

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**Approximate date of commencement of proposed sale to public: From time to time after this Registration Statement becomes effective as determined by market conditions.**

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933 check the following box.  X

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

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

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

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of large accelerated filer, accelerated filer, and smaller reporting company in Rule 12b-2 of the Exchange Act (Check one):

Large accelerated filer  O  
 Accelerated filer  O  
 Non-accelerated filer  O  
 Smaller reporting company  X  
 (Do not check if a smaller reporting company)

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**CALCULATION OF REGISTRATION FEE**

Title of Each Class of Securities to be Registered	Amount to be Registered	Proposed Maximum Offering Price Per Unit	Proposed Maximum Aggregate Offering Price	Amount of Registration Fee
Renewable Unsecured Subordinated Notes	\$ 50,000,000	(1)	\$ 50,000,000	\$ 5,350(2)

(1) The Renewable Unsecured Subordinated Notes will be issued in denominations selected by the Purchasers in any amount equal to or exceeding \$1,000.

(2) Previously paid.

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The registrant hereby amends this registration statement on such date or dates as may be necessary to delay its effective date until the registrant shall file a further amendment that specifically states that this registration statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933 or until the registration statement shall become effective on such date as the Commission, acting pursuant to said Section 8(a), may determine.

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

Subject To Completion, Dated March 26, 2009

**PROSPECTUS**

\$	3,500,000	Three Month Renewable Unsecured Notes
\$	3,500,000	Six Month Renewable Unsecured Notes
\$	11,000,000	One Year Renewable Unsecured Notes
\$	10,000,000	Two Year Renewable Unsecured Notes
\$	13,000,000	Three Year Renewable Unsecured Notes
\$	2,000,000	Four Year Renewable Unsecured Notes
\$	6,000,000	Five Year Renewable Unsecured Notes
\$	1,000,000	Ten Year Renewable Unsecured Notes

Three and Six Month Renewable Unsecured Subordinated Notes

One, Two, Three, Four, Five and Ten Year Renewable Unsecured Subordinated Notes

We are offering an aggregate principal amount of up to \$50 million of our renewable unsecured subordinated notes. Notes with certain terms may not always be available because we reserve the right to reject any subscription, and during the course of the offering, we will not issue more than the aggregate principal for each type of note listed above. The offering will be made on a continuous basis, and is expected to continue for a period in excess of 30 days. We will establish interest rates on the securities offered in this prospectus from time to time in prospectus supplements. Once you purchased a note, changes in interest rates will not affect the interest rate you receive up to maturity. The notes are

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unsecured obligations and your right to payment is subordinated in right of payment to all of our existing or future senior, secured, unsecured and subordinate indebtedness and other of our financial obligations. Upon maturity, the notes will be automatically renewed for the same term as your maturing note at an interest rate that we are offering at that time to other investors with similar aggregate note portfolios for notes of the same term, unless we or you elect not to have them renewed. If notes of the same term are not then being offered, the interest rate upon renewal will be the rate specified by us on or before maturity, or the rate of the existing note if no such rate is specified. The interest rate on your renewed note may be different than the interest rate on your original note.

After giving you thirty days advance notice, we may redeem all or a portion of the notes for their original principal amount plus accrued but unpaid interest. You or your representative also may request us to repurchase your notes prior to maturity; however, unless the request is due to your death or total permanent disability, we may, in our sole discretion, decline to repurchase your notes, and will, if we do elect to repurchase your notes, charge you a penalty of up to three months of interest on notes with three month maturities and up to six months of interest on all other notes. Our obligation to repurchase notes prior to maturity for any reason in a single calendar quarter is limited to the greater of \$1 million or 2% of the aggregate principal amount of all notes outstanding at the end of the previous quarter.

The notes will be marketed and sold through Sumner Harrington Ltd., which is acting as our selling agent for the notes. The notes will not be listed on any securities exchange or quoted on Nasdaq or any over-the-counter market. Sumner Harrington Ltd. does not intend to make a market in the notes and we do not anticipate that a market in the notes will develop. There will be significant restrictions on your ability to transfer or resell the notes.

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Sumner Harrington Ltd. also will act as our servicing agent in connection with our ongoing administrative responsibilities for the notes. We have not requested a rating for the notes; however, third parties may independently rate them.

The notes are not certificates of deposit or similar obligations of, and are not guaranteed or insured by, any depository institution, the Federal Deposit Insurance Corporation, the Securities Investor Protection Corporation or any other governmental or private fund or entity.

This prospectus may be used to offer and sell securities only if accompanied by the prospectus supplement that describes the interest rate and maturity for those securities. This prospectus may also be accompanied by other prospectus supplements in addition to an interest rate prospectus supplement.

**An investment in the securities described in this prospectus involves risks. Please see Risk Factors on page 7.**

**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.**

This prospectus is dated .

	<b>Per Note</b>	<b>Total</b>
Public Offering Price	100%	100%
Selling Agent Commissions	3%	3%
Proceeds to Winmark, before expenses	97%	97%

The selling agent will not receive the entire 3% gross commission on notes with terms of less than two years unless the notes are successively renewed for a total term of two years or more. See Plan of Distribution for a description of additional compensation payable to the selling agent and its affiliates in connection with services rendered in offering and selling the notes, serving as servicing agents and providing and managing the advertising and marketing functions related to the sale of the notes. There will be no underwriting discount.

Sumner Harrington Ltd. is not required to sell any specific number or dollar amount of notes but will use its best efforts to sell the notes offered.

We will issue the notes in book-entry or uncertificated form. Subject to certain limited exceptions, you will not receive a certificated security or a negotiable instrument that evidences your notes. Sumner Harrington Ltd. will deliver written confirmations to purchasers of the notes. Wells Fargo Bank, National Association will act as trustee for the notes.

**Sumner Harrington Ltd.**

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**ABOUT THIS PROSPECTUS**



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This prospectus is part of a registration statement that we filed with the Securities and Exchange Commission using a shelf registration process. Under this shelf process, we may sell an aggregate of up to \$50,000,000 of our renewable unsecured subordinated notes from time to time in various maturities noted on the cover of this prospectus, and with varying interest rates. This prospectus provides you with a general description of those securities. We will also provide you with a prospectus supplement that will contain specific information about the terms of the notes we are offering. The prospectus supplement may also provide you with information about us. When we refer in this prospectus to the prospectus supplement, we mean the specific prospectus supplement that applies to the securities we are offering to you. The prospectus supplement may also add, update or change information contained in this prospectus. You should read this prospectus and the prospectus supplement together with the additional information described under the heading Where You Can Find More Information.

The registration statement that contains this prospectus (including the exhibits to the registration statement) contains additional information about our company and the securities offered under this prospectus. That registration statement can be read at the SEC web site or at the SEC offices mentioned under the heading Where You Can Find More Information.

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**PROSPECTUS SUMMARY**



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*This section is a summary of certain information selected from this prospectus, including information incorporated by reference. This summary is an overview and does not contain all of the information you should consider. Therefore, you should also read the more detailed information set out in the prospectus supplement, this prospectus, and our financial statements and other information incorporated by reference into this prospectus and prospectus supplement. Except when we are discussing repayment obligations under the notes, which are solely obligations of Winmark Corporation, the terms we, our, and us refer to Winmark Corporation and our consolidated subsidiaries.*

### **WINMARK CORPORATION**





*Business of Winmark Corporation.* We develop and franchise four value-oriented retail concepts for stores that buy, sell, trade and consign quality used and new merchandise and one small-ticket leasing franchise that provides leasing and financing options for small businesses. Each retail franchise emphasizes consumer value by offering high quality used merchandise at substantial savings and by purchasing or accepting as trade customers used goods that have been outgrown or are no longer used. We offer new merchandise to supplement used goods. We are also engaged in the business of providing non-cancelable leases for high-technology and business-essential equipment to both larger organizations and smaller companies. We started our equipment leasing operations in April of 2004, and we are currently in the early stages of building this portion of our business.

We have approximately 870 franchised stores across North America. Franchisees are required to operate their businesses according to the systems, specifications, standards, and formats we develop for each brand. We train our franchisees on how to operate the business and provide continuing support and service to the brand. We have four retail brands:

- ***Play It Again Sports*** buys, sells and trades quality used and new sporting goods and equipment;
- ***Once Upon a Child*** buys and sells used and new children's clothing, toys, furniture and other accessories;
- ***Music Go Round*** buys, sells and trades quality used musical instruments and equipment;
- ***Plato's Closet*** buys and sells gently used, brand-name clothing and accessories for teens and young adults.

As of December 27, 2008, we had 364 Play It Again Sports franchises, 241 Plato's Closet franchises, 229 Once Upon a Child franchises and 36 Music Go Round franchises. Our franchisees are required to sign ten-year franchise agreements. We believe that the franchise agreement renewals are one indicator, among others, to assist us in evaluating our business and preserving future royalties. During the fiscal year ended December 27, 2008, we renewed 22 franchise agreements of the 23 franchise agreements that were available for renewal.

We operate a middle-market equipment leasing business through our wholly-owned subsidiary Winmark Capital Corporation, and a small-ticket financing business through our wholly-owned subsidiary Wirth Business Credit, Inc. (formerly known as Winmark Business Solutions, Inc.). Our middle-market leasing business serves large and medium-sized businesses and focuses on assets which generally have a cost of more than \$250,000. Our small-ticket financing business serves small businesses and focuses on assets which generally have a cost of \$5,000 to \$250,000. We generate equipment leases primarily through business alliances, equipment vendors and directly from customers. We offer our small-ticket financing products through a network of franchisees that operate under the name Wirth Business Credit. As of December 27, 2008, we had 54 Wirth Business Credit territories.

## THE OFFERING

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*Issuer*

Winmark Corporation

*Trustee*

Wells Fargo Bank, National Association

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***Selling and Servicing Agent***

Sumner Harrington Ltd.

***Securities Offered***

Renewable Unsecured Subordinated Notes in the following amounts:

- \$3,500,000 worth of three month notes;
- \$3,500,000 worth of six month notes;
- \$11,000,000 worth of one year notes;
- \$10,000,000 worth of two year notes;
- \$13,000,000 worth of three year notes;
- \$2,000,000 worth of four year notes;
- \$6,000,000 worth of five year notes;
- \$1,000,000 worth of ten year notes.

The notes represent our unsecured promise to repay principal at maturity and to pay interest during the term or at maturity. By purchasing a note, you are lending money to us. Notes for each of the above terms will not always be available because we will not issue more than the aggregate principal listed above for each note.

***Method of Purchase***

Prior to your purchase of notes, you will be required to complete a subscription agreement that will set forth the principal amount of your purchase, the term of the notes and certain other information regarding your ownership of the notes. The form of subscription agreement is filed as an exhibit to the registration statement of which this prospectus is a part. As our servicing agent, Sumner Harrington Ltd. will mail you written confirmation that your subscription has been accepted.

***Denomination***

You can choose the denomination of the notes you purchase in any principal amount of \$1,000 or more, including odd amounts.

***Offering Price***

100% of the principal amount per note.

***Rescission Right***

You can rescind your investment within five business days of the postmark date of your purchase confirmation without incurring an early redemption penalty. In addition, if your subscription agreement is accepted by our servicing agent at a time when we have determined that a post-effective amendment to the registration statement of which this prospectus is a part must be filed with the Securities and Exchange Commission, but such post-effective amendment has not yet been declared effective, you will be able to rescind your investment subject to the conditions set forth in this prospectus. See [Description of the Notes](#) [Rescission Right](#) for additional information.

***Maturity***

You can generally choose maturities for your notes of 3 or 6 months or 1, 2, 3, 4, 5 or 10 years; however, notes with certain terms may not always be available.

***Interest Rate***

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The interest rate paid on the notes will be established at the time you purchase them, or at the time of renewal, based upon the rates we are offering in our latest interest rate supplement to this prospectus, and will remain fixed throughout each term. We may offer higher rates of interest to investors with larger aggregate note portfolios, as set forth in the then current interest rate supplement.



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***Interest Payment Dates***

You can choose to receive interest payments monthly, quarterly, semiannually, annually or at maturity. If you choose to receive interest payments monthly, you can choose the day on which you will be paid. You may change the interest payment schedule or interest payment date once during the term of your note.

***Principal Payment***

We will not pay principal over the term of the notes. We are obligated to pay the entire principal balance of the outstanding notes upon maturity.

***Payment Method***

Principal and interest payments will be made by direct deposit to the account you designate in your subscription documents.

***Renewal or Redemption on Maturity***

Upon maturity, the notes will be automatically renewed for the same term at the interest rate we are offering at that time to other investors with similar aggregate note portfolios for notes of the same maturity, unless we notify you prior to the maturity date that we intend to repay the notes. You may also notify us within 15 days after the maturity date that you want your notes repaid. This 15-day period will be automatically extended if you would otherwise be required to make the repayment election at a time when we have determined that a post-effective amendment to the registration statement of which this prospectus is a part must be filed with the Securities and Exchange Commission, but such post-effective amendment has not yet been declared effective.

If similar notes are not being offered at the time of renewal, the interest rate upon renewal will be the rate specified by us on or before the maturity date, or the rate of your existing notes if no such rate is specified. The interest rate being offered upon renewal may, however, be different than the interest rate on your original note. See Description of the Notes Renewal or Redemption on Maturity.

***Optional Redemption or Repurchase***

After giving you 30 days prior notice, we may redeem the notes at a price equal to their original principal amount plus accrued but unpaid interest.

You or your representative may request us to repurchase your notes prior to maturity; however, unless the request is due to your death or total permanent disability, we may, in our sole discretion, decline to repurchase your notes, and will, if we elect to repurchase your notes, charge you a penalty of up to three months of interest for notes with a three-month maturity and up to six months of interest for all other notes. The total principal amount of notes that we will be required to repurchase prior to maturity, for any reason in any calendar quarter, will be limited to the greater of \$1 million or 2% of the total principal amount of all notes outstanding at the end of the previous quarter.

See Description of Notes Redemption or Repurchase Prior To Stated Maturity.

***Consolidation, Merger or Sale***

Upon any consolidation, merger or sale of our company, we will either redeem all of the notes or our successor will be required to assume our obligation to pay principal and interest on the notes pursuant to the indenture. For a description of these provisions see Description of the Notes Consolidation, Merger or Sale.





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***Ranking; No Security***

The notes:

- are unsecured;
- rank junior to our existing and future senior debt, including debt we may incur under our existing and future credit facilities;
- rank junior to our existing and future secured debt;
- rank junior to our existing and future subordinated debt, except for offerings of additional renewable unsecured subordinated notes which will rank equally with the notes; and
- rank junior to other of our financial obligations, including obligations we may incur in connection with our investments, acquisitions, and obligations in connection with discounted lease rentals.

As of December 27, 2008, we had outstanding debt senior to the notes under our credit facility with Bank of America and The PrivateBank of \$13.6 million. This facility permits us to draw up to \$55 million from time to time for certain purposes. This credit facility is secured by substantially all of our assets. If we draw on credit facility, our obligation to repay the Bank of America and The PrivateBank would be senior to our obligation to repay the notes.

***Restrictive Covenants***

The indenture governing the notes contains limited restrictive covenants. These covenants:

- require us to maintain a positive net worth; and
- prohibit us from paying dividends on our capital stock if there is an event of default with respect to the notes or a payment of the dividend would result in an event of default.

The covenants set forth in the indenture are more fully described under Description of the Notes Restrictive Covenants. These covenants have significant exceptions.

***Use of Proceeds***

If all the notes are sold, with original or aggregate maturities of two years or more, we would expect to receive approximately \$47 million of net proceeds from this offering after deducting the selling agent's commissions and estimated initial offering expenses payable by us. The exact amount of net proceeds may vary considerably depending on how long the notes are offered and other factors. We intend to use the net proceeds to provide capital to grow and expand our leasing portfolio, to acquire businesses or assets, to repurchase our common stock from time to time as we may deem prudent and for other general corporate

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purposes. Until the capital is deployed, we will invest the proceeds in short term investment grade financial instruments. See Use of Proceeds.

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***Absence of Public Market and Transfer Restrictions***

There is no existing market for the notes.

Sumner Harrington Ltd. has advised us that it does not intend to make a market in the notes after the completion of this offering and we do not anticipate that a secondary market for the notes will develop. We do not intend to apply for listing of the notes on any securities exchange or for quotation of the notes in any automated dealer quotation system.

You will be able to transfer or pledge the notes only with our prior written consent. See Description of the Notes Transfers.

***Book Entry***

The notes will be issued in book entry or uncertificated form only. Except under limited circumstances, the notes will not be evidenced by certificated securities or negotiable instruments. See Description of the Notes Book Entry Registration and Transfer.



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***Notes Previously Sold and Remaining  
Notes Available***

The following table shows the aggregate principal amount of notes that we have offered, the aggregate amount of notes we have sold as of the date of this prospectus and the remaining notes available by maturity. As notes are purchased, notes available for purchase will decrease.

<b>Term</b>	<b>Notes initially offered</b>	<b>Notes purchased</b>	<b>Notes available</b>
Three month	\$ 3,500,000.00	\$ 1,491,352.68	\$ 2,008,647.32
Six month	\$ 3,500,000.00	\$ 3,145,061.17	\$ 354,938.83
One year	\$ 11,000,000.00	\$ 3,175,517.02	\$ 7,824,482.98
Two year	\$ 10,000,000.00	\$ 4,524,979.34	\$ 5,475,020.06
Three year	\$ 13,000,000.00	\$ 8,178,043.79	\$ 4,821,956.21
Four year	\$ 2,000,000.00	\$ 1,998,500.00	\$ 1,500.00
Five year	\$ 6,000,000.00	\$ 5,998,500.00	\$ 1,500.00
Ten year	\$ 1,000,000.00	\$ 961,500.00	\$ 38,500.00
<b>Total</b>	<b>\$ 50,000,000.00</b>	<b>\$ 29,473,454.00</b>	<b>\$ 20,526,546.00</b>

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**RISK FACTORS**





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You should carefully consider the risks involved in deciding whether to invest in the notes we are offering, including the risk factors and those risks described in our Form 10-K for the year ended December 27, 2008. You should also consider the other information in this prospectus and any prospectus supplement as well as other documents incorporated by reference.

The risks described below set forth the material risks associated with the purchase of notes and our company, as well as factors that may influence the outcome of any forward looking statement. Before you invest in the notes, you should carefully consider these risk factors, as well as the other information contained in this prospectus and in the documents incorporated by reference into this prospectus.

### ***RISK FACTORS RELATING TO THE NOTES***

***The notes may not be a suitable investment for all investors.***

The notes may not be a suitable investment for you, and we advise you to consult your investment, tax and other professional financial advisors prior to purchasing notes. The characteristics of the notes, including maturity, interest rate and lack of liquidity, may not satisfy your investment objectives. The notes may not be a suitable investment for you based on your ability to withstand a loss of interest or principal or other aspects of your financial situation, including your income, net worth, financial needs, investment risk profile, return objectives, investment experience and other factors. Prior to purchasing any notes, you should consider your investment allocation with respect to the amount of your contemplated investment in the notes in relation to your other investment holdings and the diversity of those holdings.

***You lack priority in payment on the notes, which rank junior to substantially all of our existing and future debt and other financial obligations.***

Your right to receive payments on the notes is junior to the extent we incur indebtedness now or in the future. Your notes will be subordinated to the prior payment in full of all of our other debt and financial obligations, including our obligations to make capital contributions in connection with our investments in other private companies. As of December 27, 2008, we had \$13.6 million in outstanding indebtedness to Bank of America and The PrivateBank, under a credit facility that permits us to draw up to \$55 million from time to time. Any amount that we draw under the credit facility will be senior to your notes while it remains outstanding. We also may obtain additional indebtedness at any time that will rank senior to the notes you purchase. Further, we have in the past, and expect in the future, to enter into funding commitments in connection with acquisitions and investments. Our obligations under these types of arrangements may continue for several years following an acquisition or investment, and will rank senior to your notes. In addition, we have in the past and will continue to enter into non-recourse discounting of lease rentals with financial institutions at fixed interest rates. These obligations are also senior to your notes. Because of the subordination provisions of the notes, in the event of our bankruptcy, liquidation or dissolution, our assets would be available to make payments to you under the notes only after all payments had been made on all of our secured and unsecured indebtedness and other obligations that are senior to the notes. Sufficient assets may not remain after all such senior payments have been made to make any payments to you under the notes, including payments of interest when due or principal upon maturity.

***There will be no trading market for the notes, which may make it difficult to transfer your notes.***

Your ability to liquidate your investment is limited because of transfer restrictions, the lack of a trading market and the limitation on repurchase requests prior to maturity. Your notes may not be transferred without our prior written consent. In addition, there will be no trading market for the notes. Due to the restrictions on transfer of the notes and the lack of a market for the sale of the notes, even if we permitted a transfer, you might be unable to sell, pledge or otherwise liquidate your investment. Except in the case of death or total permanent disability, repurchases of

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the notes prior to maturity are subject to our approval and to repurchase penalties of up to three months interest on notes with three-month maturities and up to six months interest on notes with maturities of six months or longer. The total principal amount of notes that we would be required to repurchase in any calendar quarter, for any reason, will be limited to the greater of \$1 million or 2% of the aggregate principal amount of all notes outstanding at the end of the previous quarter. See Description of the Notes.

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***The notes will have no sinking fund, security, insurance or guarantee.***

There is no sinking fund, security, insurance or guarantee of our obligation to make payments on the notes. The notes are not secured by any of our assets. We will not contribute funds to a separate account, commonly known as a sinking fund, to make interest or principal payments on the notes. The notes are not certificates of deposit or similar obligations of, and are not guaranteed or insured by, any depository institution, the Federal Deposit Insurance Corporation, the Securities Investor Protection Corporation, or any other governmental or private fund or entity. Therefore, if you invest in the notes, you will have to rely only on our cash flow from operations and other sources of funds for repayment of principal at maturity or redemption and for payment of interest when due. If our cash flow from operations and other sources of funds are not sufficient to pay the notes, then you may lose all or part of your investment. The notes are not expected to be rated by any rating agency such as Fitch's, Moody's or Standard & Poor's.

***The notes will automatically renew unless you request repayment.***

Upon maturity, the notes will be automatically renewed for the same term as your maturing note and at an interest rate that we are offering at that time to other investors with similar aggregate note portfolios for notes of the same term, unless we notify you prior to the maturity date that we intend to repay the notes or you notify us within 15 days after the maturity date that you want your notes repaid. This 15-day period will be automatically extended if you would otherwise be required to make the repayment election at a time when we have determined that a post-effective amendment to the registration statement of which this prospectus is a part must be filed with the Securities and Exchange Commission, but such post-effective amendment has not yet been declared effective. If notes with the same term are not then being offered, the interest rate upon renewal will be the rate specified by us on or before the maturity date, or the rate of the existing note if no such rate is specified. The interest rate on your renewed note may be lower than the interest rate of your original note. If your note pays interest only at maturity, you can receive the accrued interest that you have earned during the note term just ended while allowing the principal amount of your note to roll over and renew for the same term at the interest rate then in effect. To exercise this option, you will need to call, fax or send a written request to our servicing agent. Any requests for repurchases after your notes are renewed will be subject to our approval and to repurchase penalties and the limitations on the amount of notes we would be willing to repurchase in any calendar quarter.

***We have the right to incur substantial indebtedness that is senior to the notes, which may affect our ability to repay the notes.***

We have now and, after we sell these notes, will continue to have the right to incur a substantial amount of indebtedness. If we incur substantial indebtedness it could adversely affect our financial condition and prevent us from fulfilling our obligations under the notes by, among other things:

- increasing our vulnerability to general adverse economic and industry conditions;
- requiring us to dedicate a substantial portion of our cash flow from operations to payments on our indebtedness, thereby reducing amounts available for working capital, capital expenditures and other general corporate purposes;
- limiting our flexibility in planning for, or reacting to, changes in our business and the industry in which we

operate;

- placing us at a competitive disadvantage compared to our competitors that have less debt; and
- limiting our ability to borrow additional funds.

Although we believe we will generate sufficient free cash flow to service any debt we incur and our obligations under the notes, there is no assurance that we will be able to do so. If we do not generate sufficient operating profits, our ability to make required payments on our senior debt, as well as on the debt represented by the notes described in this prospectus, may be impaired.

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***Our management has broad discretion over the use of proceeds from the offering.***

Although we expect to use the proceeds from the offering to grow our leasing portfolio, acquire businesses or assets, and repurchase our common stock, the indenture does not require us to do so. The proceeds of the offering will also be used for other general corporate purposes, which may include the payment of general and administrative expenses. Because no specific allocation of the proceeds will be required in the indenture, our management will have broad discretion in determining how the proceeds of the offering will be used and may choose not to use the funds to pay down debt that is senior to the notes. See Use of Proceeds.

***We are subject to many restrictions in our credit facility with Bank of America and The PrivateBank.***

The terms of our credit facility impose certain operating and financial restrictions on us and our subsidiaries and require us to meet certain financial tests including tests related to tangible net worth. As of the end of each month our tangible net worth cannot be less than the sum of the tangible net worth of the previous month plus 50% of our net income for the month, if positive. We also must maintain a ratio of earnings before income taxes, depreciation and amortization less capital expenditures and taxes divided by interest expense of at least 2.0 to 1.0. As of the end of each quarter our maximum senior leverage ratio cannot exceed 3.0 to 1.0. This means that the ratio of the amount of debt at any time under the credit facility compared to our tangible net worth must be no higher than 3.0 to 1.0. The credit facility's terms and restrictions may also be amended or supplemented from time to time without requiring any notice to or consent of the holders of the notes or the trustee. These restrictions may have an adverse impact on our business activities, results of operations and financial condition. These restrictions may also significantly limit or prohibit us from engaging in certain transactions, including the following:

- using the credit facility for certain acquisitions or investments or to support our leasing business unless approved by Bank of America and The PrivateBank;
- incurring or guaranteeing additional indebtedness;
- restricting the amount of rental payments we make under operating leases in any year to \$1 million;
- paying dividends or other distributions to our stockholders or redeeming, repurchasing or retiring our capital stock or subordinated obligations;
- creating or permitting liens on our assets or the assets of our subsidiaries except for capital leases on leased property and liens incurred in connection with purchase money security interests;
- issuing or selling capital stock of our subsidiaries;
- transferring or selling our assets;
- engaging in mergers or consolidations unless certain conditions are satisfied, including the consent of Bank of America and The PrivateBank, the business we want to acquire is in our industry, the absence of any defaults, pro forma compliance with all ratios and at least \$5 million of loan availability;
- permitting a change of control of our company;

- liquidating, winding up or dissolving our company;
- changing our name or the nature of our business, or the names or nature of the business of our subsidiaries;  
and
- engaging in transactions with our affiliates outside the normal course of business.

These restrictions may limit our ability to obtain additional sources of capital, which may limit our ability to repay the notes. In addition, the failure to comply with any of the covenants of our credit facility or the indenture or to maintain certain indebtedness ratios would cause a default under our credit facility and may cause a default under the indenture or our other debt agreements that may be outstanding from time to time. A default, if not waived, could result in acceleration of the related indebtedness, in which case such debt would become immediately due and payable. A continuing default or acceleration of our credit facility, the indenture or any other debt agreement, will likely cause a default under the indenture and other debt agreements that otherwise would not be in default, in which case all such related indebtedness could be accelerated. If this occurs, we may not be able to repay our debt or borrow sufficient funds to refinance our indebtedness. Even if any new financing is available, it may not be on terms that are acceptable to us or it may not be sufficient to refinance all of our indebtedness as it becomes due. Complying with these covenants may cause us to take actions that are not favorable to holders of the notes. See Description of the Notes - Restrictive Covenants.

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***You will have only limited protection under the indenture.***

In comparison to the restrictive covenants that are imposed on us by our credit facility with Bank of America and The PrivateBank and other borrowing arrangements, the indenture governing the notes contains relatively minimal restrictions on our activities. In addition, the indenture contains only limited events of default other than our failure to pay principal and interest on time. Because there are only very limited restrictions and limited events of default under the indenture, we will not be restricted from issuing additional debt senior to your notes or be required to maintain any ratios of assets to debt in order to increase the likelihood of timely payments to you under the notes. Further, if we default in the payment of the notes or otherwise under the indenture, you will likely have to rely on the trustee to exercise your remedies on your behalf. You may not be able to seek remedies against us directly. See Description of the Notes - Events of Default.

***Our right to redeem the notes prior to maturity may result in reinvestment risk for you.***

We have the right to redeem any note at any time prior to its stated maturity upon 30 days written notice to you. The notes will be redeemed at 100% of the principal amount plus accrued but unpaid interest up to but not including the redemption date. Any such redemption may have the effect of reducing the income or return on investment that any investor may receive on an investment in the notes by reducing the term of the investment. If this occurs, you may not be able to reinvest the proceeds at an interest rate comparable to the rate paid on the notes. See Description of the Notes - Redemption or Repurchase Prior To Stated Maturity.

***Sumner Harrington Ltd. may not remain the selling agent for the notes if the distribution and management agreement is terminated.***

The distribution and management agreement between us and Sumner Harrington Ltd. may be terminated by us upon prior notice. Therefore, it is not certain Sumner Harrington Ltd. will be responsible for the marketing, sale and administration of the notes for the duration of this offering. Other parties, including our company, may take over the functions currently provided by Sumner Harrington Ltd. Therefore, you should not rely on Sumner Harrington Ltd. continuously being responsible for marketing, selling and administering the notes.

***You may be required to pay taxes on accrued interest on notes prior to receiving a sufficient amount of cash interest payments.***

If you choose to have interest on your note paid at maturity and the term of your note exceeds one year, you may be required to pay taxes on the accrued interest prior to our making any interest payments to you. In addition, if you choose to have interest on your note paid monthly, quarterly, semiannually or annually, the amount of interest income reported to the Internal Revenue Service may differ from the sum of your cash interest payments in some years. You should consult your tax advisor to determine your tax obligations.

**CAUTION REGARDING FORWARD-LOOKING STATEMENTS**





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This prospectus, including the documents that are incorporated by reference into this prospectus, contain forward-looking statements regarding our plans, expectations, estimates and beliefs. Forward-looking statements are subject to certain risks and uncertainties that could cause actual results to differ materially from historical earnings or results from those presently anticipated or projected. We wish to caution readers not to place undue reliance on any forward-looking statements, which speak only as of the date made. Forward-looking statements can be identified by the fact that they do not relate strictly to historical or current facts. They often include words such as believe, expect, anticipate, intend, plan, estimate, or words of similar meaning, or future or conditional verbs such as will, would, should, could or may.

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Forward-looking statements give our expectations or predictions of future conditions, events or results. They are not guarantees of future performance. By their nature, forward-looking statements are subject to risks and uncertainties. A number of factors, many of which are beyond our control, could cause actual conditions, events or results to differ significantly from those described in the forward-looking statements. The important factors that could cause our actual results to include those discussed in Risk Factors in this prospectus and those discussed in Risk Factors in any prospectus supplement and in our SEC filings that are incorporated by reference. We encourage you to read these sections carefully. We will not necessarily update information in this prospectus or incorporated by reference into this prospectus if any forward-looking statement turns out to be inaccurate. We do not undertake and specifically decline any obligation to publicly release the result of any revisions which may be made to any forward-looking statements to reflect events or circumstances after the date of such statements or to reflect the occurrence of anticipated or unanticipated events.

**RATIO OF EARNINGS TO FIXED CHARGES**

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	12/27/08	12/29/07	Fiscal Year Ended 12/30/06	12/31/05	12/25/04
Ratio of earnings to fixed charges	3.1x	3.1x	6.3x	55.9x	89.9x

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For purposes of calculating the ratios of earnings to fixed charges, earnings represent income before income taxes, equity investments, extraordinary items and fixed charges. Fixed charges represent interest expense, amortized premiums and discounts, and an estimate of interest within rental expense.

### **USE OF PROCEEDS**



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If all of the notes are sold, with original or aggregate maturities of two years or more, we would expect to receive approximately \$47.0 million of net proceeds from this offering after deducting the selling agent's commissions and estimated offering expenses payable by us, including document fulfillment expenses of \$300,000 and a maximum portfolio management fee of \$1,125,000 over the course of the notes. See Plan of Distribution. The exact amount of net proceeds may vary considerably depending how long the notes are offered and other factors. Although we expect to use the proceeds from the offering to grow our leasing portfolio, acquire businesses or assets and repurchase our common stock, the indenture does not require us to do so. The proceeds of the offering will also be used for other general corporate purposes, which may include the payment of general and administrative expenses. Because no specific allocation of the proceeds will be required in the indenture, we will have broad discretion in determining how the proceeds of the offering will be used and may choose not to use the funds to pay down debt that is senior to the notes.

### **DESCRIPTION OF THE NOTES**





*General*

The notes we are offering will represent subordinated, unsecured debt obligations of Winmark. We will issue the notes under an indenture between us and Wells Fargo Bank, National Association, as trustee. The terms and conditions of the notes include those stated in the indenture and those made part of the indenture by reference to the Trust Indenture Act of 1939. The following is a summary of the material provisions of the indenture. For a complete understanding of the notes, you should review the definitive terms and conditions contained in the indenture, which include definitions of certain terms used below. A copy of the indenture has been filed with the SEC as an exhibit to the registration statement of which this prospectus is a part and is available from us at no charge upon request. The notes will be subordinated in right of payment to the prior payment in full of all our secured, unsecured, senior and subordinate debt and other financial obligations, including contingent or deferred payment obligations incurred in connection with acquisitions, whether outstanding on the date of the indenture or incurred following the date of the indenture. Subject to limited restrictions contained in the indenture discussed below, there is no limit under the indenture on the amount of additional debt we may incur. See - Subordination below.

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The notes are not secured by any collateral or lien and we are not required to establish or maintain a sinking fund to provide for payments on the notes. See - No Security; No Sinking Fund below. In addition, the notes are not bank certificates of deposit and are not insured by the Federal Deposit Insurance Corporation, the Securities Investor Protection Corporation or any other agency or company. You may select the amount (subject to a minimum principal amount of \$1,000) and term (ranging from 3 months to 10 years) of the notes you would like to purchase when you subscribe; however, depending upon our capital requirements, we may not always offer notes with the requested terms. See - Denomination and - Term below. We will determine the rate at which we will pay you interest on the notes at the time of subscription and the rate will be fixed for the term of your note. Currently available rates will be set forth in interest rate supplements to this prospectus. The interest rate will vary based on the term to maturity of the note you purchase and the total principal amount of all notes owned by you and your immediate family. We may change the interest rates at which we are offering new or renewed notes based on market conditions, the demand for notes and other factors. See - Interest Rate below.

Upon acceptance of your subscription to purchase notes, our servicing agent will create an account in a book-entry registration and transfer system for you, and credit the principal amount of your subscription to your account. Our servicing agent will send you a purchase confirmation that will indicate our acceptance of your subscription. You will have five business days from the postmark date of your purchase confirmation to rescind your subscription. If your subscription is rejected by us or our servicing agent, or if you rescind your subscription during the rescission period, all funds deposited will be promptly returned to you without any interest. See - Book-Entry Registration and Transfer and - Rescission Right below. Investors whose subscriptions for notes have been accepted and anyone who subsequently acquires notes in a qualified transfer are referred to as holders or registered holders in this prospectus and in the indenture. We may modify or supplement the terms of the notes described in this prospectus from time to time in a supplement to the indenture and a supplement to this prospectus. Except as set forth under - Amendment, Supplement And Waiver below, any modification or amendment will not affect notes outstanding at the time of such modification or amendment.

Certain of our officers, directors, and their affiliates have purchased notes from time to time from the selling agent. As appropriate, our audit committee has approved these transactions, and we have disclosed them in prospectus supplements. The investing directors and officers purchased notes on the same terms and conditions as those available to the public, and have agreed that in the event of a default, they would vote their notes in accordance with the majority of principal amount of notes outstanding other than notes held by officers and directors. Our officers, directors and their affiliates are not obligated to purchase notes and there can be no assurance that they will purchase notes in the future or that they will waive any rights in the event of a default for future note purchases.

***Denomination***

You may purchase notes in the minimum principal amount of \$1,000 or any amount in excess of \$1,000. You will determine the original principal amount of each note you purchase when you subscribe. You may not cumulate purchases of multiple notes with principal amounts less than \$1,000 to satisfy the minimum denomination requirement.

***Terms to Maturity***

The maximum aggregate principal amount of each note we may offer is as follows:

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- \$3,500,000 worth of three month notes;
- \$3,500,000 worth of six month notes;
- \$11,000,000 worth of one year notes;
- \$10,000,000 worth of two year notes;
- \$13,000,000 worth of three year notes;
- \$2,000,000 worth of four year notes;
- \$6,000,000 worth of five year notes;
- \$1,000,000 worth of ten year notes;

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You will select the term of each note you purchase when you subscribe. You may purchase multiple notes with different terms by filling in investment amounts for more than one term on your subscription agreement. However, we may not always sell notes with all of the above terms to maturity.

***Interest Rate***

The rate of interest we will offer to pay you on notes at any particular time will vary based upon market conditions, and will be determined by the length of the term of the notes, the total principal amount of all notes owned by you and your immediate family, our capital requirements and other factors described below. The interest rate on a particular note will be determined at the time of subscription or renewal, and then remain fixed for the original or renewal term of the note. We will establish and may change the interest rates payable for notes of various terms and at various investment levels in an interest rate supplement to this prospectus. The notes will earn incrementally higher interest rates when, at the time they are purchased or renewed, the aggregate principal amount of the note portfolios of the holder and the holder's immediate family is at least \$25,000, \$50,000, \$75,000 or \$100,000. But, in case of a renewal, the interest rates payable at the time may be lower due to market conditions. The interest rates payable at each level of investment will be set forth in an interest rate supplement to this prospectus. Immediate family members include parents, children, siblings, grandparents, and grandchildren. Members of sibling families are also considered immediate family members if the holder's sibling is also a note holder. An investor must identify his or her immediate family members in the subscription agreement in order to use their notes to determine the interest rate for such investor's notes. Interest rates we offer on the notes may vary based on numerous factors in addition to length of the term and aggregate principal amount.

These factors may include, but are not limited to:

- the desire to attract new investors;
- whether the notes exceed certain principal amounts;
- whether the notes are being renewed by existing holders; and
- whether the notes are beneficially owned by persons residing in particular geographic localities.

***Computation of Interest***

We will compute interest on notes on the basis of a 365-day calendar year. Interest will compound daily and accrue from the date of purchase. The date of purchase will be the date we receive and accept funds if the funds are received prior to 12:01 p.m. central time on a business day, or the next business day if the funds are received on a non-business day or at or after 12:01 p.m. central time on a business day. Our business days are Monday through Friday, except for legal holidays in the State of Minnesota.

***Interest Payment Dates***

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At the time your subscription agreement is completed, you may elect to have interest paid either monthly, quarterly, semiannually, annually or at maturity. If you choose to have interest paid monthly, you may elect the day of the month on which interest will be paid, subject to our approval. For all other payment periods, interest will be paid on the same day of the month as the purchase date of your note. You will not earn interest on any rescinded note. See **Rescission Right** below for additional information on your right to rescind your investment.

The period or day of interest payment for each note may be changed one time only by the holder during the term of the note, subject to our approval. Requests to change the election must be made in writing to our servicing agent and will be effective no later than the first business day following the 45th day after the election change request is received. No specific change in election form is required and there is no charge to change the election once during the term of a note. Any interest not paid on an interest payment date will be paid at maturity.

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***Place and Method of Payment***

We will pay principal and interest on the notes by direct deposit to the account you specify in your subscription documents. We will not accept subscription agreements from investors who are unwilling to receive their interest payments via direct deposit. If the foregoing payment method is not available, principal and interest on the notes will be payable at our principal executive office or at such other place as we may designate for payment purposes.

***Servicing Agent***

We have engaged Sumner Harrington Ltd., the investment banking firm that is helping us sell the notes, to act as our servicing agent for the notes. Sumner Harrington Ltd.'s responsibilities as servicing agent will involve certain administrative and customer service functions for the notes that we are responsible for performing as the issuer of the notes. For example, as our servicing agent, Sumner Harrington Ltd. will serve as our registrar and transfer agent and will manage all aspects of the customer service function for the notes, including handling all phone inquiries, mailing investment kits, meeting with investors, processing subscription agreements, issuing quarterly investor statements and redeeming and repurchasing notes. In addition, as servicing agent, Sumner Harrington Ltd. will provide us with monthly reports and analysis regarding the status of the notes, the marketing efforts and the amount of notes that remain available for purchase and also will have the ability to exercise discretion with respect to rejecting subscription agreements.

Other duties of Sumner Harrington Ltd. as our servicing agent under the distribution and management agreement are described throughout this section and under Plan of Distribution. As compensation for its services as servicing agent, we will pay Sumner Harrington Ltd. an annual portfolio management fee equal to 0.25% of the weighted average daily principal balance of the notes so long as Sumner Harrington Ltd. is engaged as our servicing agent, subject to certain maximum payment provisions set forth below in Plan of Distribution. The ongoing fee will be paid monthly.

The distribution and management agreement may be terminated by either party by prior notice. Sumner Harrington Ltd.'s duties and compensation as selling agent under this agreement are described under Plan of Distribution. You may contact our servicing agent with any questions about the notes at the following address and telephone number:

**Sumner Harrington Ltd.**

11100 Wayzata Boulevard, Suite 170

Minneapolis, MN 55305

Telephone: (800) 234-5777

Fax: (952) 546-5585

*Book-Entry Registration and Transfer*

The notes are issued in book entry form, which means that no physical note is created. Evidence of your ownership is provided by written confirmation. Except under limited circumstances described below, holders will not receive or be entitled to receive any physical delivery of a certificated security or negotiable instrument that evidences their notes. The issuance and transfer of notes will be accomplished exclusively through the crediting and debiting of the appropriate accounts in our book-entry registration and transfer system. Our servicing agent will maintain the book-entry system.

The holders of the accounts established upon the purchase or transfer of notes will be deemed to be the owners of the notes under the indenture. The holder of the notes must rely upon the procedures established by the trustee to exercise any rights of a holder of notes under the indenture. Our servicing agent will regularly provide the trustee with information regarding the establishment of new accounts and the transfer of existing accounts. Our servicing agent will also regularly provide the trustee with information regarding the total amount of any principal and/or interest due to holders with regard to the notes on any interest payment date or upon redemption.

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On each interest payment date, the servicing agent will credit interest due on each account and direct payments to the holders. The servicing agent will determine the interest payments to be made to the book-entry accounts and maintain, supervise and review any records relating to book-entry beneficial interests in the notes.

Book-entry notations in the accounts evidencing ownership of the notes are exchangeable for actual notes in principal denominations of \$1,000 and any amount in excess of \$1,000 and fully registered in those names as we direct only if:

- we, at our option, advise the trustee in writing of our election to terminate the book-entry system, or
- after the occurrence of an event of default under the indenture, holders of more than 50% of the aggregate outstanding principal amount of the notes advise the trustee in writing that the continuation of a book-entry system is no longer in the best interests of the holders of notes and the trustee notifies all registered holders of the occurrence of any such event and the availability of certificated securities that evidence the notes.

Subject to the exceptions described above, the book-entry interests in these securities will not be exchangeable for fully registered certificated notes.

***Rescission Right***

A purchaser of notes has the right to rescind his or her investment, without penalty, upon written request to our servicing agent within five business days from the postmark date of the purchase confirmation (but not upon transfer or automatic renewal of a note). You will not earn interest on any rescinded note. We will promptly return any funds sent with a subscription agreement that is properly rescinded. A written request for rescission, if personally delivered or delivered via electronic transmission, must be received by our servicing agent on or prior to the fifth business day following the mailing of written confirmation by us of the acceptance of your subscription. If mailed, the written request for rescission must be postmarked on or before the fifth business day following the mailing of such written confirmation by us.

In addition, if your subscription agreement is accepted by our servicing agent at a time when we have determined that a post-effective amendment to the registration statement of which this prospectus is a part must be filed with the Securities and Exchange Commission, but such post-effective amendment has not yet been declared effective, our servicing agent will send to you at your registered address a notice and a copy of the post-effective amendment once it has been declared effective. You will have the right to rescind your investment upon written request to our servicing agent within five business days from the postmark date of the notice that the post-effective amendment has been declared effective. We will promptly return any funds sent with a subscription agreement that is properly rescinded without penalty, although any interest previously paid on the notes being rescinded will be deducted from the funds returned to you upon rescission. A written request for rescission, if personally delivered or delivered via electronic transmission, must be received by our servicing agent on or prior to the fifth business day following the mailing of the notice that the post-effective amendment has been declared effective. If mailed, the written request for rescission must be postmarked on or before the fifth business day following the mailing of such notice.



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The limitations on the amount of notes that can be redeemed early in a single calendar quarter described under - Redemption or Repurchase Prior to Stated Maturity below do not affect your rescission rights.

### *Right to Reject Subscriptions*

Our servicing agent may reject any subscription for notes in its sole discretion. If a subscription for notes is rejected, we will promptly return any funds sent with that subscription, without interest.

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***Renewal or Redemption on Maturity***

Approximately 15, but not less than 10 days prior to maturity of your note, our servicing agent will send you a notice at your registered address indicating that your note is about to mature and whether we will allow automatic renewal of your note. If we allow you to renew your note, our servicing agent will also send to you a current interest rate supplement and a current prospectus or prospectus supplement if the prospectus has changed since the delivery of this prospectus in connection with your original subscription or any prior renewal. The interest rate supplement will set forth the interest rates then in effect. The notice will recommend that you review the prospectus and any prospectus supplement, along with the interest rate supplement, prior to exercising one of the below options. If we do not send you a new prospectus, a new prospectus will be sent to you upon request. Unless the election period is extended as described below, you will have until 15 days after the maturity date to exercise one of the following options:

- You can do nothing, in which case your note will automatically renew for a new term equal to the original term at the interest rate in effect at the time of renewal. If your note pays interest only at maturity, all accrued interest will be added to the principal amount of your note upon renewal. For notes with other payment options, interest will be paid on the renewed note on the same schedule as the original note.
- You can elect repayment of your note, in which case the principal amount will be repaid in full along with any accrued but unpaid interest. If you choose this option, your note will not earn interest on or after the maturity date.
- You can elect repayment of your note and use all or part of the proceeds to purchase a new note with a different term or principal amount. To exercise this option, you will need to complete a subscription agreement for the new note and mail it along with your request to our servicing agent. The issue date of the new note will be the maturity date of the old note. Any proceeds from the old note that are not applied to the new note will be sent to you.
- If your note pays interest only at maturity, you can receive the accrued interest that you have earned during the note term just ended while allowing the principal amount of your note to roll over and renew for the same term at the interest rate then in effect. To exercise this option, you will need to call, fax or send a written request to our servicing agent.

The foregoing options will be available to holders until termination or redemption under the indenture and the notes by either the holder or us. Interest will accrue from the first day of each renewed term. Each renewed note will retain all its original provisions, including provisions relating to payment, except that the interest rate payable during any renewal term will be the interest rate that is being offered at that time to other holders with similar aggregate note portfolios for notes of the same term as set forth in the interest rate supplement delivered with the maturity notice. If similar notes are not then being offered, the interest rate upon renewal will be the rate specified by us on or before the maturity date, or the rate of the existing note if no such rate is specified.

If we notify the holder of our intention to repay a note at maturity, we will pay the holder the principal amount and any accrued but unpaid interest on the stated maturity date. Similarly, if, within 15 days after a note's stated maturity date (or during any applicable extension of the 15 day period, as described below), the holder requests repayment with respect to a note, we will pay the holder the principal amount of the note plus accrued but unpaid interest up to, but not including, the note's stated maturity date.

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In the event that a holder's regularly scheduled interest payment date falls after the maturity date of the note but before the date on which the holder requests repayment, the holder may receive interest payments that include interest for periods after the maturity date of the note. If this occurs, the excess interest will be deducted from our final payment of the principal amount of the note to the holder. We will initiate payment to any holder timely requesting repayment by the later of the maturity date or five business days after the date on which we receive such notice from the holder. Because payment is made by ACH transfer, funds may not be received in the holder's account for 2 to 3 business days. Requests for repayment should be made to our servicing agent in writing.

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From time to time we will be required to file post-effective amendments to the registration statement of which this prospectus is a part to update the information it contains. If you would otherwise be required to elect to have your notes renewed or repaid following their stated maturity at a time when we have determined that a post-effective amendment must be filed with the Securities and Exchange Commission but such post-effective amendment has not yet been declared effective, the period during which you can elect renewal or repayment will be automatically extended until ten days following the postmark date of a notice that will be sent to you at your registered address by the servicing agent that the post-effective amendment has been declared effective. In the event that a holder's regularly scheduled interest payment date falls after the maturity date of the note but before the date on which the holder requests repayment, the holder may receive an interest payment that includes interest for periods after the maturity date of the note. If this occurs, the excess interest will be deducted from our final payment of the principal amount of the note to the holder. All other provisions relating to the renewal or redemption of notes upon their stated maturity described above shall remain unchanged.

***Redemption or Repurchase prior to Stated Maturity***

The notes may be redeemed prior to stated maturity only as set forth in the indenture and described below. The holder has no right to require us to prepay or repurchase any note prior to its maturity date as originally stated or as it may be extended, except as indicated in the indenture and described below.

***Redemption by Us***

We have the right to redeem any note at any time prior to its stated maturity upon 30 days written notice to the holder of the note. The holder of the note being redeemed will be paid a redemption price equal to the outstanding principal amount thereof plus accrued and unpaid interest up to but not including the date of redemption without any penalty or premium. We may use any criteria we choose to determine which notes we will redeem if we choose to do so. We are not required to redeem notes on a pro rata basis.

***Repurchase Election upon Death or Total Permanent Disability***

Notes may be repurchased prior to maturity, in whole and not in part, at the election of a holder who is a natural person (including notes held in an individual retirement account), by giving us written notice within 45 days following the holder's total permanent disability, as established to our satisfaction, or at the election of the holder's estate, by giving written notice within 45 days following his or her death. Subject to the limitations described below, we will repurchase the notes within 10 days after the later to occur of the request for repurchase or the establishment to our satisfaction of the holder's death or total permanent disability. The repurchase price, in the event of such a death or total permanent disability, will be the principal amount of the notes, plus interest accrued and not previously paid up to but not including the date of repurchase. If spouses are joint registered holders of a note, the right to elect to have us repurchase will apply when either registered holder dies or suffers a total permanent disability. If the note is held jointly by two or more persons who are not legally married, none of these persons will have the right to request that we repurchase the notes unless all joint holders have either died or suffered a total permanent disability. If the note is held by a person who is not a natural person such as a trust, partnership, corporation or other similar entity, the right to request repurchase upon death or total permanent disability does not apply.

*Repurchase at request of holder.* In addition to the right to elect repurchase upon death or total permanent disability, a holder may request that we repurchase one or more of the holders' notes prior to maturity, in whole and not in part, at any time by giving us written notice. Subject to approval, at our sole discretion, and the limitations described below, we will repurchase the holder's note(s) specified in the notice within 10 days of receipt of the notice. The repurchase price, in the event we elect to repurchase the notes, will be the principal amount of the note, plus interest accrued and not previously paid (up to but not including the date of repurchase), minus a repurchase penalty. The early repurchase penalty for a note with a three month maturity is the interest accrued on such note up to the date of repurchase, not to exceed three months of simple interest at the existing rate. The early repurchase penalty for a note with a maturity of six months or longer is the interest accrued on such note up to the date of repurchase, not to exceed six months of simple interest at