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**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**  
Washington, D.C. 20549

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**AMENDMENT NO. 1 TO  
FORM S-11**  
REGISTRATION STATEMENT  
UNDER  
THE SECURITIES ACT OF 1933

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**BIMINI MORTGAGE MANAGEMENT, INC.**

(Exact name of registrant as specified in its governing instruments)

**3305 Flamingo Drive, Suite 100, Vero Beach, Florida 32963  
(772) 231-1400**

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

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**Jeffrey J. Zimmer**  
Chairman, Chief Executive Officer and President  
Bimini Mortgage Management, Inc.

**3305 Flamingo Drive, Suite 100, Vero Beach, Florida 32963 (772) 231-1400**

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

*copies to:*

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

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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 the earlier effective registration statement for the same offering.

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

If this Form is a 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.

If delivery of the prospectus is expected to be made pursuant to Rule 434, check the following box.

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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 which specifically states that this registration statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933 or until the registration statement shall become effective on such date as the 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 APRIL 29, 2004

PROSPECTUS

[ ] Shares



Class A Common Stock

This is the initial public offering of our Class A Common Stock. No public market currently exists for our Class A Common Stock. We are selling all of the shares of Class A Common Stock offered hereby. Our Class A Common Stock is subject to ownership limitations intended to preserve our status as a real estate investment trust, or REIT, for federal income tax purposes.

Our Class A Common Stock is not currently listed on any national exchange or market system. We anticipate that the initial public offering price of our Class A Common Stock will be between \$[ ] and \$[ ] per share. We have applied to list our Class A Common Stock on the New York Stock Exchange under the symbol "BMM" and will use commercially reasonable efforts to have our listing application of the Class A Common Stock approved.

Investing in our Class A Common Stock involves risks. See "Risk Factors" beginning on page 8 for a discussion of risks relating to our Class A Common Stock, including, among others:

- We commenced operations in December 2003 and have a limited operating history. Accordingly, you have a limited basis to evaluate our ability to operate our business and implement our operating policies and strategies successfully.
Our officers, Jeffrey J. Zimmer and Robert E. Cauley, have limited experience managing a REIT. Their lack of experience may limit their ability to successfully manage our business as a REIT.
Interest rate mismatches between our mortgage related securities and our borrowings used to fund our purchases of mortgage related securities might reduce our net income or result in a loss during periods of changing interest rates.
Increased levels of prepayments on the mortgages underlying our mortgage related securities might decrease our net interest income or result in a net loss.
We generally seek to borrow eight to 12 times the amount of our equity, which could reduce our net income and our cash available for distributions to stockholders or cause us to suffer losses. There is no limit to the amount of leverage that we may incur.
Failure to qualify or maintain our qualification as a REIT for federal income tax purposes would subject us to federal income tax on our taxable income at regular corporate rates, thereby reducing the amount of funds available for distributions to stockholders.

Table with 3 columns: Description, Per Share, Total. Rows include Public offering price, Underwriting discounts, and Proceeds, before expenses, to us.

We have granted the underwriters a 30-day option to purchase up to an additional [ ] shares of our Class A Common Stock to cover over-allotments, if any.

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.

FRIEDMAN BILLINGS RAMSEY

FLAGSTONE SECURITIES

The date of this prospectus is , 2004

We have filed for registration in the U.S. Patent and Trademark Office for the marks "Bimini Mortgage Management, Inc.", "Bimini Investment Management" and "Bimini." All other brand names or trademarks appearing in this prospectus are the property of their respective holders.

## PROSPECTUS SUMMARY

*This section summarizes information contained elsewhere in this prospectus. You should read this entire prospectus carefully, including the section titled "Risk Factors" and our financial statements and related notes, before making an investment in our Class A Common Stock. As used in this prospectus, "Bimini," "company," "we," "our," and "us" refer to Bimini Mortgage Management, Inc., except where the context otherwise requires. Unless otherwise indicated, the information in this prospectus assumes that the underwriters will not exercise their over-allotment option to purchase additional shares of our Class A Common Stock, and that the shares of our Class A Common Stock to be sold in this offering are sold at \$[ ] per share, which is the midpoint of the range indicated on the front cover of this prospectus.*

### **Bimini Mortgage Management, Inc.**

#### **General**

We were formed in September 2003 to invest primarily in residential mortgage related securities issued by the Federal National Mortgage Association (more commonly known as Fannie Mae), the Federal Home Loan Mortgage Corporation (more commonly known as Freddie Mac) and the Government National Mortgage Association (more commonly known as Ginnie Mae). We will earn returns on the spread between the yield on our assets and our costs, including the interest expense on the funds we borrow. We intend to borrow between eight and 12 times the amount of our equity capital to attempt to enhance our returns to stockholders. We are self-managed and self-advised. We have elected to be taxed as a real estate investment trust, or REIT, for federal income tax purposes commencing with our taxable year ended December 31, 2003. As a REIT, we generally are not subject to federal income tax on the REIT taxable income that we distribute to our stockholders.

We commenced operations in December 2003, following an initial private placement of our Class A Common Stock. We raised aggregate net proceeds (after commissions and expenses) of approximately \$139.2 million between December 2003 and February 2004 in private placements of our Class A Common Stock.

As of March 31, 2004 we had a portfolio of mortgage related securities that totaled \$1.5 billion and was comprised of 41.4% fixed-rate mortgage-backed securities, 34.3% floating rate collateralized mortgage obligations, 15.4% adjustable-rate mortgage-backed securities, 4.8% hybrid adjustable-rate mortgage-backed securities (securities backed by mortgages with fixed initial rates which, after a period, convert to adjustable rates) and 4.1% balloon maturity mortgage-backed securities (securities backed by mortgages where a significant portion of principal is repaid only at maturity). Of this portfolio, 59% was issued by Fannie Mae, 35% was issued by Freddie Mac and 6% was issued by Ginnie Mae.

Our portfolio had a weighted average yield of 2.8% for the three months ended March 31, 2004. Our net weighted average borrowing cost for the three months ended March 31, 2004 was 1.2%. The constant prepayment rate for the portfolio was 22.0% for March 2004, which reflects the annualized proportion of principal that was prepaid. The effective duration for the portfolio was 1.44 as of March 31, 2004. Duration measures the price sensitivity of a fixed income security to movements in interest rates. Effective duration captures both the movement in interest rates and the fact that cash flows to a mortgage related security are altered when interest rates move.

We intend to use the proceeds of this offering and additional borrowings to acquire additional mortgage related securities which are similar to those in our current portfolio.

Our principal offices are located at 3305 Flamingo Drive, Suite 100, Vero Beach, Florida 32963. Our telephone number is (772) 231-1400.

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## Asset Acquisition Strategy

We seek to differentiate our company from other mortgage portfolio managers through our approach to risk management. We invest in a limited universe of mortgage related securities, primarily those issued by Fannie Mae, Freddie Mac and Ginnie Mae. Payment of principal and interest underlying securities issued by Ginnie Mae is guaranteed by the U.S. Government. Fannie Mae and Freddie Mac mortgage related securities are guaranteed as to payment of principal and interest by the respective agency issuing the security. We seek to manage the risk of prepayments of the underlying mortgages by purchasing securities with prepayment characteristics that we expect to result in slower prepayments, such as pools of mortgage-backed securities collateralized by mortgages with low loan balances, mortgages originated under Fannie Mae's Expanded Approval Program or agency pools collateralized by loans against investment properties.

The primary assets in our current portfolio of mortgage related securities are fixed-rate mortgage-backed securities, floating rate collateralized mortgage obligations, adjustable-rate mortgage-backed securities, hybrid adjustable-rate mortgage-backed securities and balloon maturity mortgage-backed securities. The mortgage related securities we acquire are obligations issued by federal agencies or federally chartered entities, primarily Fannie Mae, Freddie Mac and Ginnie Mae.

We use a three-step process in building and maintaining our investment portfolio. The first step is an asset allocation process that targets portfolio investments. The results of this process are then adjusted as needed based on management's views of the market. The final step involves employing our risk based capital methodology to set the amount of leverage to be applied to the portfolio. We repeat this process on a regular basis and as market conditions warrant.

We have created and will maintain a diversified portfolio in order to avoid undue loan originator, geographic and other types of concentrations. We seek to manage the effects on our income of prepayments of the mortgage loans underlying our securities, at a rate materially different than anticipated, by structuring a diversified portfolio with a variety of prepayment characteristics and investing in mortgage related securities or structures with prepayment protections.

## Leverage Strategy

We use leverage in an attempt to increase potential returns to our stockholders. However, the use of leverage may also have the effect of increasing losses when economic conditions are unfavorable. We generally borrow between eight to 12 times the amount of our equity, although our investment policies require no minimum or maximum leverage. We use repurchase agreements to borrow against existing mortgage related securities and use the proceeds to acquire additional mortgage related securities. As of March 31, 2004, we had relationships with 12 repurchase providers and our repurchase agreements totaled \$1.4 billion, or 10 times our equity capital at that date.

We seek to protect our capital base through the use of a risk-based capital methodology that is patterned on the general principles underlying the proposed risk-based capital standard for internationally active banks of the Basel Committee on Banking Supervision. Through this approach, we identify components of risk associated with the assets we intend to acquire, and we use these components of risk to arrive at a risk coefficient for each asset. The four primary components of our risk coefficient are duration, convexity, market expectations on return and the slope of the yield curve. We calculate risk measures for each asset and then aggregate them into the risk measure for the entire portfolio, which guides us to an appropriate amount of overall leverage. We analyze the portfolio's risk measures on a daily basis. The leverage ratio will rise as the risk level of the portfolio declines and fall as the portfolio's risk level increases. The goal of our approach is to ensure that our portfolio's leverage ratio is appropriate for the level of risk inherent in the portfolio.

## Interest Rate Risk Management

We believe the primary risk inherent in our investments is the effect of movements in interest rates. This arises because the changes in interest rates on our borrowings will not be perfectly coordinated with the effects of interest rate changes on the income from, or value of, our investments. We therefore follow an interest rate risk management program designed to offset the potential adverse effects resulting from the rate adjustment limitations on our mortgage related securities. We seek to minimize differences between interest rate indices and interest rate adjustment periods of our adjustable-rate securities and related borrowings by matching the terms of assets and related liabilities both as to maturity and to the underlying interest rate index used to calculate interest charges.

We may from time to time use derivative financial instruments to hedge all or a portion of the interest rate risk associated with our borrowings. We may enter into swap or cap agreements, option, put or call agreements, futures contracts, forward rate agreements or similar financial instruments to hedge indebtedness that we may incur. These contracts would be intended to more closely match the effective maturity of, and the interest received on, our assets with the effective maturity of, and the interest owed on, our liabilities. However, no assurances can be given that interest rate risk management strategies can successfully be implemented. Derivative instruments will not be used for speculative purposes.

## Risk Factors

An investment in our Class A Common Stock involves material risks. Each prospective purchaser of our Class A Common Stock should consider carefully the matters discussed under "Risk Factors" beginning on page 8 before investing in our Class A Common Stock. Some of the risks include:

- We commenced operations in December 2003 and have a limited operating history. Accordingly, you have a limited basis to evaluate our ability to operate our business and implement our operating policies and strategies successfully.
- Our officers, Jeffrey J. Zimmer and Robert E. Cauley, have limited experience managing a REIT. Their lack of experience may limit their ability to successfully manage our business as a REIT.
- Interest rate mismatches between our mortgage related securities and our borrowings used to fund our purchases of mortgage related securities might reduce our net income or result in a loss during periods of changing interest rates.
- Increased levels of prepayments on the mortgages underlying our mortgage related securities might decrease our net interest income or result in a net loss.
- We generally seek to borrow eight to 12 times the amount of our equity, which could reduce our net income and our cash available for distributions to stockholders or cause us to suffer losses. There is no limit on the amount of leverage that we may incur.

- Failure to qualify or maintain our qualification as a REIT for federal income tax purposes would subject us to federal income tax on our taxable income at regular corporate rates, thereby reducing the amount of funds available for distributions to stockholders.
- Our board of directors may change our operating policies and strategies without prior notice to you or stockholder approval, and such changes could harm our business and results of operations and the value of our stock.
- Our officers own shares of Class B Common Stock, which will begin to convert to shares of Class A Common Stock when stockholders' equity attributable to the Class A Common Stock is no less than \$15.00 per share. If all shares of Class B Common Stock are converted, the 319,388 shares of Class A Common Stock issued would equal approximately [ ]% of the shares of Class A Common Stock expected to be outstanding after this offering. Our officers may take undue risks in managing our company in an attempt to increase stockholders' equity and cause a conversion of these shares.
- Competition in purchasing assets consistent with our investment objectives might prevent us from acquiring mortgage related securities at favorable yields, which would harm our results of operations.
- Hedging transactions may limit our gains or result in losses. We may hedge our interest rate exposure through the use of derivative instruments. Our hedging transactions, which would be intended to limit losses, involve costs and may actually limit gains and increase our exposure to losses.
- If our distributions exceed our net income, a portion of the distribution may be deemed a return of capital for federal income tax purposes, which would reduce stockholders' basis in the underlying shares of our Class A Common Stock.

## Management

We are self-managed and self-advised. Our two executive officers have significant experience in the mortgage related securities market. Jeffrey Zimmer, our President, Chief Executive Officer and Chairman of the Board, has 19 years experience in the mortgage-backed securities markets, most recently as a managing director at RBS/Greenwich Capital, where he sold and researched almost every type of mortgage-backed security. Robert E. Cauley, CFA, our Secretary, Chief Investment Officer and Chief Financial Officer, has nine years of experience in the mortgage and asset-backed securities markets. Mr. Cauley was most recently Vice President, Portfolio Manager at Federated Investment Management Company where he was also a lead portfolio manager, co-manager, or assistant portfolio manager of \$4.25 billion in mortgage and asset-backed securities funds.

## This Offering

Class A Common Stock offered by us	[       ] shares(1)
Class A Common Stock to be outstanding after this offering	[       ] shares(2)(3)
Use of proceeds	We intend to invest 100% of the net proceeds of this offering (after offering expenses and underwriting discounts) to expand our portfolio of residential mortgage related securities issued primarily by Fannie Mae, Freddie Mac and Ginnie Mae. Until these assets can be identified and obtained, we may temporarily invest the balance of the proceeds of this offering in interest-bearing short-term investment grade securities or money market accounts consistent with our intention to qualify as a REIT, or we may hold cash. We estimate that the expenses of this offering will be approximately \$[       ]. See "Use of Proceeds."
Trading	This is our initial public offering. We have applied to list our Class A Common Stock on the New York Stock Exchange under the symbol "BMM" and will use commercially reasonable efforts to have our listing application of the Class A Common Stock approved. No public market currently exists for shares of our Class A Common Stock, and we can give no assurance that an active trading market for our shares will develop.

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- (1) Excludes up to [       ] shares of our Class A Common Stock that may be issued by us upon exercise of the underwriters' over-allotment option.
  - (2) Based on 10,011,801 shares outstanding on April 15, 2004 and excludes up to [       ] shares of our Class A Common Stock that may be issued by us upon exercise of the underwriters' over-allotment option.
  - (3) This amount excludes up to 638,776 shares of our Class A Common Stock issuable upon conversion of our shares of Class B Common Stock and Class C Common Stock. See "Description of Capital Stock—Common Stock—Conversion Rights." This amount also excludes 3,686,400 shares of our Class A Common Stock reserved for issuance under our 2003 stock incentive plan and 313,600 shares of our Class A Common Stock reserved for issuance upon exchange of phantom shares that we plan to issue under our stock incentive plan.

## Our Tax Status

We have elected to be taxed as a REIT under the Internal Revenue Code of 1986 as amended, or the Internal Revenue Code, commencing with our taxable year ended December 31, 2003. Provided that we qualify as a REIT, we generally will not be subject to federal income tax on our taxable income that is currently distributed to our stockholders. REITs are subject to a number of organizational and operational requirements, including a requirement that they currently distribute at least 90% of their



annual REIT taxable income excluding net capital gains. We cannot assure you that we will be able to comply with such requirements in the future. Failure to qualify as a REIT in any taxable year would render us subject to federal income tax on our taxable income at regular corporate rates. Even if we qualify for taxation as a REIT, we may be subject to certain U.S. federal, state, local and foreign taxes on our income and property. In connection with our election to be taxed as a REIT, our charter prohibits any stockholder from directly or indirectly owning more than 9.8% of the outstanding shares, by value or number, whichever is more restrictive, of our common stock or of our stock in the aggregate.

### **Distributions**

To avoid corporate income and excise taxes and to maintain our qualification as a REIT under the Internal Revenue Code, we intend to distribute to our stockholders all or substantially all of our REIT taxable income (which does not necessarily equal net income as calculated in accordance with generally accepted accounting principles, or GAAP). See "Certain Federal Income Tax Consequences—Annual Distribution Requirements." All distributions will be made by us at the discretion of our board of directors and will depend on our taxable earnings, financial condition and such other factors as our board of directors deems relevant. On April 23, 2004, we paid a dividend of \$0.39 per share of Class A Common Stock to stockholders of record as of March 10, 2004.

## Summary Financial Data

The following summary financial data is derived from our unaudited financial statements as of and for the three months ended March 31, 2004 and our audited financial statements as of December 31, 2003 and for the period from September 24, 2003 (date of inception) to December 31, 2003. The summary financial data should be read in conjunction with the more detailed information contained in our financial statements and related notes and "Management's Discussion and Analysis of Financial Condition and Results of Operations" included elsewhere in this prospectus.

	Three months ended March 31, 2004	September 24, 2003 through December 31, 2003
<b>Statement of Operations Data:</b>		
Revenues:		
Interest income	\$ 7,194,003	\$ 71,480
Interest expense	(2,736,434)	(20,086)
Net interest income	4,457,599	51,394
Expenses:		
Trading costs, commissions and other trading expenses	200,064	15,583
Other direct costs	25,919	29,899
Compensation and related benefits	91,345	35,964
Start-up and organization costs	—	111,092
Occupancy costs	15,104	13,675
Audit and legal fees	33,834	85,340
Other administrative expenses	148,171	27,008
Total expenses	514,437	318,561
Net income (loss)	\$ 3,943,162	\$ (267,167)
Basic and diluted income (loss) per Class A common share	\$ 0.49	\$ (0.54)
Weighted average number of Class A common shares outstanding, used in calculating per share amounts		
Basic and diluted	8,001,052	497,859
	March 31, 2004	December 31, 2003
<b>Balance Sheet Data:</b>		
Mortgage-backed securities available for sale, at fair value	\$ 16,452,046	\$ 27,750,602
Mortgage-backed securities pledged as collateral, at fair value	1,500,087,698	197,990,559
Total mortgage-backed securities, at fair value	1,516,539,744	225,741,161
Total assets	1,593,643,893	245,285,676
Repurchase agreements	1,442,788,000	188,841,000
Total liabilities	1,448,975,255	188,970,485
Accumulated other comprehensive income (loss)	3,156,878	(19,409)
Total stockholders' equity	\$ 144,668,638	\$ 56,315,191
Class A common shares issued and outstanding	10,009,150	4,012,102
Book value per share of Class A common stock	\$ 14.45	\$ 14.04

## RISK FACTORS

*You should carefully consider the risks described below before making an investment decision. Our business, financial condition or results of operations could be harmed by any of these risks. Similarly, these risks could cause the market price of our Class A Common Stock to decline and you might lose all or part of your investment. Our forward-looking statements in this prospectus are subject to the following risks and uncertainties. Our actual results could differ materially from those anticipated by our forward-looking statements as a result of the risk factors below.*

### ***Risks Related to Our Business***

#### **We have a limited operating history and might not be able to operate our business or implement our operating policies and strategies successfully.**

We began operations in December of 2003 and therefore have a limited operating history. The results of our operations will depend on many factors, including the availability of opportunities for the acquisition of mortgage related securities, the level and volatility of interest rates, readily accessible short- and long-term funding alternatives in the financial markets and economic conditions. Moreover, delays in fully investing and leveraging our net proceeds of this offering may cause our performance to be weaker than if we were fully invested and leveraged. Our lack of operating history provides you with a limited basis to evaluate the likelihood that we will successfully operate our business and implement our operating policies and strategies as described in this prospectus.

#### **Interest rate mismatches between our adjustable-rate securities and our borrowings used to fund our purchases of the mortgage related securities may reduce our net income or result in a loss during periods of changing interest rates.**

As of March 31, 2004, 54.5% of the mortgage-backed securities in our portfolio were subject to adjustable interest rates. This means that the interest rates of the securities may vary over time based on changes in a short-term interest rate index, of which there are many. We finance our acquisitions of adjustable-rate securities in part with borrowings that have interest rates based on indices and repricing terms similar to, but perhaps with shorter maturities than, the interest rate indices and repricing terms of the adjustable-rate securities. Short-term interest rates are ordinarily lower than longer-term interest rates. During periods of changing interest rates, this interest rate mismatch between our assets and liabilities could reduce or eliminate our net income and dividend yield and could cause us to suffer a loss. In particular, in a period of rising interest rates, we could experience a decrease in, or elimination of, net income or a net loss because the interest rates on our borrowings adjust faster than the interest rates on our adjustable-rate securities.

Interest rate fluctuations will also cause variances in the yield curve, which may reduce our net income. The relationship between short-term and longer-term interest rates is often referred to as the "yield curve." If short-term interest rates rise disproportionately relative to longer-term interest rates (a flattening of the yield curve), our borrowing costs may increase more rapidly than the interest income earned on our assets. Because our assets may bear interest based on longer-term rates than our borrowings, a flattening of the yield curve would tend to decrease our net income and the market value of our mortgage loan assets. Additionally, to the extent cash flows from investments that return scheduled and unscheduled principal are reinvested in mortgage loans, the spread between the yields of the new investments and available borrowing rates may decline, which would likely decrease our net income. It is also possible that short-term interest rates may exceed longer-term interest rates (a yield curve inversion), in which event our borrowing costs may exceed our interest income and we could incur operating losses.

**Increased levels of prepayments on the mortgages underlying our mortgage related securities might decrease our net interest income or result in a net loss.**

Pools of mortgage loans underlie the mortgage related securities that we acquire. We generally receive payments from the payments that are made on these underlying mortgage loans. When we acquire mortgage related securities, we anticipate that the underlying mortgages will prepay at a projected rate generating an expected yield. When borrowers prepay their mortgage loans faster than expected, this results in corresponding prepayments on the mortgage related securities that are faster than expected. Faster-than-expected prepayments could potentially harm the results of our operations in various ways, including the following:

- We seek to purchase some mortgage related securities that have a higher interest rate than the market interest rate at the time. In exchange for this higher interest rate, we will be required to pay a premium over the market value to acquire the security. In accordance with applicable accounting rules, we will be required to amortize this premium over the term of the mortgage related security. If the mortgage related security is prepaid in whole or in part prior to its maturity date, however, we must expense the premium that was prepaid at the time of the prepayment.
- A portion of our adjustable-rate mortgage-backed securities may bear interest at rates that are lower than their fully indexed rates, which are equivalent to the applicable index rate plus a margin. If an adjustable-rate mortgage-backed security is prepaid prior to or soon after the time of adjustment to a fully-indexed rate, we will have held that mortgage related security while it was less profitable and lost the opportunity to receive interest at the fully indexed rate over the remainder of its expected life.
- If we are unable to acquire new mortgage related securities to replace the prepaid mortgage related securities, our financial condition, results of operations and cash flow may suffer and we could incur losses.

Prepayment rates generally increase when interest rates fall and decrease when interest rates rise, but changes in prepayment rates are difficult to predict. Prepayment rates also may be affected by other factors, including, without limitation, conditions in the housing and financial markets, general economic conditions and the relative interest rates on adjustable-rate and fixed-rate mortgage loans. While we seek to minimize prepayment risk, we must balance prepayment risk against other risks and the potential returns of each investment when selecting investments. No strategy can completely insulate us from prepayment or other such risks.

**We have not yet identified any specific mortgage related securities to purchase with the net proceeds of this offering and may be unable to invest a significant portion of such net proceeds on acceptable terms or at all, which could harm our financial condition and operating results.**

As of the date of this prospectus, we have not identified any specific mortgage related securities which we intend to acquire with the proceeds from this offering. As a result, you will not be able to evaluate the economic merits of any investments we make with the net proceeds of this offering prior to the purchase of your shares. You must rely on our ability to evaluate our investment opportunities.

Until we identify and acquire mortgage related securities consistent with our investment strategy, we intend to temporarily invest the balance of the net proceeds of this offering in readily marketable interest-bearing assets consistent with our intention to qualify as a REIT. Depending on the amount of leverage that we use, the full investment of the net proceeds of this offering will result in a substantial increase in our total assets. We cannot assure you that we will be able to invest all of these funds in mortgage related securities that meet our investment strategy at favorable prices. As a result, we may not be able to acquire enough mortgage related securities in order to become fully invested after this offering, or we may have to pay more for mortgage related securities than we would like.

**We may incur increased borrowing costs related to repurchase agreements that would harm our results of operations.**

Our borrowing costs under repurchase agreements are generally adjustable and correspond to short-term interest rates, such as LIBOR or a short-term Treasury index, plus or minus a margin. The margins on these borrowings over or under short-term interest rates may vary depending upon a number of factors, including, without limitation:

- the movement of interest rates;
- the availability of financing in the market; and
- the value and liquidity of our mortgage related securities.

Most of our borrowings are collateralized borrowings in the form of repurchase agreements. If the interest rates on these repurchase agreements increase, our results of operations will be harmed and we may incur losses.

**Interest rate caps on our adjustable-rate mortgage-backed securities may reduce our income or cause us to suffer a loss during periods of rising interest rates.**

Adjustable-rate mortgage-backed securities are typically subject to periodic and lifetime interest rate caps. Periodic interest rate caps limit the amount an interest rate can increase during any given period. Lifetime interest rate caps limit the amount an interest rate can increase through the maturity of a mortgage-backed security. Our borrowings typically are not subject to similar restrictions. Accordingly, in a period of rapidly increasing interest rates, the interest rates paid on our borrowings could increase without limitation while caps could limit the interest rates on our adjustable-rate mortgage-backed securities. This problem is magnified for adjustable-rate mortgage-backed securities that are not fully indexed. Further, some adjustable-rate mortgage-backed securities may be subject to periodic payment caps that result in a portion of the interest being deferred and added to the principal outstanding. As a result, we may receive less cash income on adjustable-rate mortgage-backed securities than we need to pay interest on our related borrowings.

As of March 31, 2004, the floating rate collateralized mortgage obligations in our portfolio were subject to a weighted average lifetime interest rate cap of 8.0% and no periodic interest rate caps, the adjustable-rate mortgage-backed securities in our portfolio were subject to a weighted average lifetime interest rate cap of 9.7% and a weighted average periodic interest rate cap of 1.5% and the hybrid adjustable-rate mortgage-backed securities in our portfolio were subject to a weighted average lifetime interest rate cap of 9.3% and a weighted average periodic interest rate cap of 2.0%. Interest rate caps on our mortgage-backed securities could reduce our net interest income or cause us to suffer a net loss if interest rates were to increase beyond the level of the caps.

**We may not be able to purchase interest rate caps at favorable prices, which could cause us to suffer a loss in the event of significant changes in interest rates.**

Our policies permit us to purchase interest rate caps to help us reduce our interest rate and prepayment risks associated with our investments in mortgage related securities. This strategy potentially helps us reduce our exposure to significant changes in interest rates. A cap contract is ultimately no benefit to us unless interest rates exceed the target rate. If we purchase interest rate caps but do not experience a corresponding increase in interest rates, the costs of buying the caps would reduce our earnings. Alternatively, we may decide not to enter into a cap transaction due to its expense, and we would suffer losses if interest rates later rise substantially. Our ability to engage in interest rate hedging transactions is limited by the REIT gross income requirements. See "Legal and Tax Risks" below.

**We may experience reduced net interest income or a loss from holding fixed-rate investments during periods of rising interest rates.**

We fund our acquisition of fixed-rate mortgage-backed securities with repurchase agreements and term loans. During periods of rising interest rates, our costs associated with borrowings used to fund the acquisition of fixed-rate assets are subject to increases while the income we earn from these assets remains substantially fixed. This would reduce and could eliminate the net interest spread between the fixed-rate mortgage-backed securities that we purchase and our borrowings used to purchase them, which would reduce our net interest income and could cause us to suffer a loss.

**Our leverage strategy increases the risks of our operations, which could reduce our net income and the amount available for distributions to stockholders or cause us to suffer a loss.**

We generally seek to borrow between eight and 12 times the amount of our equity, although at times our borrowings may be above or below this amount. We incur this indebtedness by borrowing against a substantial portion of the market value of our mortgage related securities. Our total indebtedness, however, is not expressly limited by our policies and will depend on our and our prospective lender's estimate of the stability of our portfolio's cash flow. As a result, there is no limit on the amount of leverage that we may incur. We face the risk that we might not be able to meet our debt service obligations or a lender's margin requirements from our income and, to the extent we cannot, we might be forced to liquidate some of our assets at unfavorable prices. Our use of leverage amplifies the risks associated with other risk factors, which could reduce our net income and the amount available for distributions to stockholders or cause us to suffer a loss. For example:

- A majority of our borrowings are secured by our mortgage related securities, generally under repurchase agreements. A decline in the market value of the mortgage related securities used to secure these debt obligations could limit our ability to borrow or result in lenders requiring us to pledge additional collateral to secure our borrowings. In that situation, we could be required to sell mortgage related securities under adverse market conditions in order to obtain the additional collateral required by the lender. If these sales are made at prices lower than the carrying value of the mortgage related securities, we would experience losses.
- A default under a mortgage related security that constitutes collateral for a loan could also result in an involuntary liquidation of the mortgage related security, including any cross-collateralized mortgage related securities. This would result in a loss to us of the difference between the value of the mortgage related security upon liquidation and the amount borrowed against the mortgage related security.
- To the extent we are compelled to liquidate qualified REIT assets to repay debts, our compliance with the REIT rules regarding our assets and our sources of income could be negatively affected, which would jeopardize our status as a REIT. Losing our REIT status would cause us to lose tax advantages applicable to REITs and would decrease our overall profitability and distributions to our stockholders.
- If we experience losses as a result of our leverage policy, such losses would reduce the amounts available for distribution to our stockholders.

**An increase in interest rates may adversely affect our book value, which may harm the value of our stock.**

Increases in interest rates may negatively affect the fair market value of our mortgage related securities. Our fixed-rate mortgage-backed securities will generally be more negatively affected by such increases. In accordance with GAAP, we will be required to reduce the carrying value of our mortgage related securities by the amount of any decrease in the fair value of our mortgage related securities compared to amortized cost. If unrealized losses in fair value occur, we will have to either reduce

current earnings or reduce stockholders' equity without immediately affecting current earnings, depending on how we classify the mortgage related securities under GAAP. In either case, our net book value will decrease to the extent of any realized or unrealized losses in fair value.

**Changes in yields may harm the value of our stock.**

Our earnings will be derived primarily from the expected positive spread between the yield on our assets and the cost of our borrowings. There is no assurance that there will be a positive spread in either high interest rate environments or low interest rate environments, or that the spread will not be negative. In addition, during periods of high interest rates, our net income, and therefore the dividend yield on our Class A Common Stock, may be less attractive compared to alternative investments of equal or lower risk. Each of these factors could harm the market value of our Class A Common Stock.

**We depend on borrowings to purchase mortgage related securities and reach our desired amount of leverage. If we fail to obtain or renew sufficient funding on favorable terms or at all, we will be limited in our ability to acquire mortgage related securities, which will harm our results of operations.**

We depend on borrowings to fund acquisitions of mortgage related securities and reach our desired amount of leverage. Accordingly, our ability to achieve our investment and leverage objectives depends on our ability to borrow money in sufficient amounts and on favorable terms. In addition, we must be able to renew or replace our maturing borrowings on a continuous basis. We depend on many lenders to provide the primary credit facilities for our purchases of mortgage related securities. If we cannot renew or replace maturing borrowings on favorable terms or at all, we may have to sell our mortgage related securities under adverse market conditions, which would harm our results of operations and may result in permanent losses.

**Possible market developments could cause our lenders to require us to pledge additional assets as collateral. If our assets are insufficient to meet the collateral requirements, we might be compelled to liquidate particular assets at inopportune times and at unfavorable prices.**

Possible market developments, including a sharp or prolonged rise in interest rates, a change in prepayment rates or increasing market concern about the value or liquidity of one or more types of mortgage related securities in which our portfolio is concentrated, might reduce the market value of our portfolio, which might cause our lenders to require additional collateral. Any requirement for additional collateral might compel us to liquidate our assets at inopportune times and at unfavorable prices, thereby harming our operating results. If we sell mortgage related securities at prices lower than the carrying value of the mortgage related securities, we would experience losses.

**Our use of repurchase agreements to borrow funds may give our lenders greater rights in the event that either we or any of our lenders file for bankruptcy, which may make it difficult for us to recover our collateral in the event of a bankruptcy filing.**

Our borrowings under repurchase agreements may qualify for special treatment under the bankruptcy code, giving our lenders the ability to avoid the automatic stay provisions of the bankruptcy code and to take possession of and liquidate our collateral under the repurchase agreements without delay if we file for bankruptcy. Furthermore, the special treatment of repurchase agreements under the bankruptcy code may make it difficult for us to recover our pledged assets in the event that our lender files for bankruptcy. Thus, the use of repurchase agreements exposes our pledged assets to risk in the event of a bankruptcy filing by either our lenders or us.

**Because the assets that we acquire might experience periods of illiquidity, we might be prevented from selling our mortgage related securities at favorable times and prices, which could cause us to suffer a loss and/or reduce our distributions to stockholders.**

Although we plan to hold our mortgage related securities until maturity, there may be circumstances in which we sell certain of these securities. Mortgage related securities generally experience periods of illiquidity. As a result, we may be unable to dispose of our mortgage related securities at advantageous times and prices or in a timely manner. The lack of liquidity might result from the absence of a willing buyer or an established market for these assets, as well as legal or contractual restrictions on resale. The illiquidity of mortgage related securities may harm our results of operations and could cause us to suffer a loss and/or reduce our distributions to stockholders.

**Our board of directors may change our operating policies and strategies without prior notice or stockholder approval and such changes could harm our business and results of operations and the value of our stock.**

Although our board of directors has no current plans to do so, it has the authority to modify or waive our current operating policies and our strategies (including our election to operate as a REIT) without prior notice to you and without your approval. Any such changes to our current operating policies and strategies may be unsuccessful and may have an adverse effect on our business, operating results and the market value of our Class A Common Stock.

**Competition might prevent us from acquiring mortgage related securities at favorable yields, which could harm our results of operations.**

Our net income largely depends on our ability to acquire mortgage related securities at favorable spreads over our borrowing costs. In acquiring mortgage related securities, we compete with other REITs, investment banking firms, savings and loan associations, banks, insurance companies, mutual funds, other lenders and other entities that purchase mortgage related securities, many of which have greater financial resources than we do. Additionally, many of our competitors are not subject to REIT tax compliance or required to maintain an exemption from the Investment Company Act. As a result, we may not be able to acquire sufficient mortgage related securities at favorable spreads over our borrowing costs, which would harm our results of operations.

**Our investment strategy involves risk of default and delays in payments, which could harm our results of operations.**

We may incur losses if there are payment defaults under our mortgage related securities. Our mortgage related securities will be government or agency certificates. Agency certificates are mortgage related securities issued by Fannie Mae, Freddie Mac and Ginnie Mae. Payment of principal and interest underlying securities issued by Ginnie Mae are guaranteed by the U.S. Government. Fannie Mae and Freddie Mac mortgage related securities are guaranteed as to payment of principal and interest by the respective agency issuing the security. It is possible that guarantees made by Freddie Mac or Fannie Mae would not be honored in the event of default on the underlying securities. Legislation may be proposed to change the relationship between certain agencies, such as Fannie Mae or Freddie Mac, and the federal government. This may have the effect of reducing the actual or perceived credit quality of mortgage related securities issued by these agencies. As a result, such legislation could increase the risk of loss on investments in Fannie Mae and/or Freddie Mac mortgage related securities. We currently intend to continue to invest in such securities, even if such agencies' relationships with the federal government changes.

**Decreases in the value of the property underlying our mortgage related securities might decrease the value of our assets.**

The mortgage related securities in which we invest are secured by underlying real property interests. To the extent that the market value of the property underlying our mortgage related securities decreases, our security might be impaired, which might decrease the value of our assets.



**If we fail to maintain relationships with AVM, L.P. and its affiliate III Associates, or if we do not establish relationships with other repurchase agreement trading, clearing and administrative service providers, we may have to reduce or delay our operations and/or increase our expenditures.**

We have engaged AVM, L.P. and its affiliate III Associates, to provide us with certain repurchase agreement trading, clearing and administrative services. See "Business—Repurchase Agreement Trading, Clearing and Administrative Services." If we are unable to maintain relationships with AVM and III Associates or are unable to establish successful relationships with other repurchase agreement trading, clearing and administrative service providers, we may have to reduce or delay our operations and/or increase our expenditures and undertake the repurchase agreement trading, clearing and administrative services on our own.

**Hedging transactions may adversely affect our earnings, which could adversely affect cash available for distribution to our shareholders.**

We may enter into interest rate cap or swap agreements or pursue other hedging strategies, including the purchase of puts, calls or other options and futures contracts. Our hedging activity will vary in scope based on the level and volatility of interest rates and principal prepayments, the type of mortgage-backed securities we hold, and other changing market conditions. Hedging may fail to protect or could adversely affect us because, among other things:

- hedging can be expensive, particularly during periods of rising and volatile interest rates;
- available interest rate hedging may not correspond directly with the interest rate risk for which protection is sought;
- the duration of the hedge may not match the duration of the related liability;
- certain types of hedges may expose us to risk of loss beyond the fee paid to initiate the hedge;
- the amount of income that a REIT may earn from hedging transactions is limited by federal income tax provisions governing REITs;
- the credit quality of the party owing money on the hedge may be downgraded to such an extent that it impairs our ability to sell or assign our side of the hedging transaction; and
- the party owing money in the hedging transaction may default on its obligation to pay.

Our hedging activity may adversely affect our earnings, which could adversely affect cash available for distribution to our stockholders.

**Terrorist attacks and other acts of violence or war may affect any market for our Class A Common Stock, the industry in which we conduct our operations, and our profitability.**

Terrorist attacks may harm our results of operations and your investment. We cannot assure you that there will not be further terrorist attacks against the United States or U.S. businesses. These attacks or armed conflicts may directly impact the property underlying our mortgage related securities or the securities markets in general. Losses resulting from these types of events are uninsurable.

More generally, any of these events could cause consumer confidence and spending to decrease or result in increased volatility in the United States and worldwide financial markets and economies. They also could result in economic uncertainty in the United States or abroad. Adverse economic conditions could harm the value of the property underlying our mortgage related securities or the securities markets in general, which could harm our operating results and revenues and may result in the volatility of the market value of our securities.

### *Risks Related to Our Officers*

**Our officers have not managed a REIT, and we cannot assure you that their past experience will be sufficient to successfully manage our business as a REIT.**

Our officers, Jeffrey J. Zimmer and Robert E. Cauley, have not previously managed a REIT, and, prior to commencing operations of our company, did not have any experience in complying with the income, asset and other limitations imposed by the REIT provisions of the Internal Revenue Code. Those provisions are complex and the failure to comply with those provisions in a timely manner could cause us to fail to qualify as a REIT or could force us to pay unexpected taxes and penalties. In such event, our net income would be reduced, we could incur a loss, and we would have less cash available for distributions to stockholders.

**We depend primarily on two individuals to operate our business, and the loss of such persons would severely and detrimentally affect our operations.**

We depend substantially on two individuals, Jeffrey J. Zimmer, our Chairman, Chief Executive Officer and President, and Robert E. Cauley, our Chief Investment Officer and Chief Financial Officer, to manage our business. We depend on the diligence, experience and skill of Mr. Zimmer and Mr. Cauley for the selection, acquisition, structuring and monitoring of our mortgage related securities and associated borrowings. Although we have entered into employment contracts with Mr. Zimmer and Mr. Cauley, those employment contracts may not prevent either Mr. Zimmer or Mr. Cauley from leaving our company. The loss of either of them would likely have a severe negative effect on our business, financial condition, cash flow and results of operations.

**Our officers own shares of our Class B Common Stock, and may take undue risks in managing our company in order to cause a conversion of these shares.**

In connection with our formation, our founders and officers, Messrs. Zimmer and Cauley, were issued an aggregate of 319,388 shares of our Class B Common Stock. These shares of Class B Common Stock will begin to convert to shares of Class A Common Stock when stockholders' equity attributable to Class A Common Stock is no less than \$15.00 per share. Accordingly, our officers may take undue risks in managing our company in an attempt to increase stockholders' equity and cause a conversion of these shares. See "Description of Capital Stock—Common Stock—Conversion Rights."

### *Legal and Tax Risks*

**If we fail to qualify as a REIT, we will be subject to federal income tax as a regular corporation and may face substantial tax liability.**

We intend to continue to operate in a manner that is intended to cause us to qualify as a REIT for U.S. federal income tax purposes. However, qualification as a REIT involves the satisfaction of numerous requirements (some on an annual or quarterly basis) established under technical and complex provisions of the Internal Revenue Code for which only a limited number of judicial or administrative interpretations exist. The determination that we qualify as a REIT requires an analysis of various factual matters and circumstances that may not be totally within our control. Accordingly, it is not certain we will be able to qualify and remain qualified as a REIT for federal income tax purposes. Even a technical or inadvertent mistake could jeopardize our REIT status. Furthermore, Congress or the Internal Revenue Service, or IRS, might change tax laws or regulations and the courts

might issue new rulings, in each case potentially having retroactive effect, that could make it more difficult or impossible for us to qualify as a REIT. If we fail to qualify as a REIT in any tax year, then:

- we would be taxed as a regular domestic corporation, which, among other things, means that we would be unable to deduct distributions to stockholders in computing taxable income and would be subject to federal income tax on our taxable income at regular corporate rates;
- any resulting tax liability could be substantial and would reduce the amount of cash available for distribution to stockholders, and could force us to liquidate assets at inopportune times, causing lower income or higher losses than would result if these assets were not liquidated; and
- unless we were entitled to relief under applicable statutory provisions, we would be disqualified from treatment as a REIT for the subsequent four taxable years following the year during which we lost our qualification, and our cash available for distribution to our stockholders therefore would be reduced for each of the years in which we do not qualify as a REIT.

Even if we remain qualified as a REIT, we may face other tax liabilities that reduce our cash flow. We may also be subject to certain federal, state and local taxes on our income and property. Any of these taxes would decrease cash available for distribution to our stockholders.

**Complying with REIT requirements may cause us to forego otherwise attractive opportunities.**

To qualify as a REIT for federal income tax purposes, we must continually satisfy tests concerning, among other things, our sources of income, the nature and diversification of our assets, the amounts we distribute to our stockholders and the ownership of our stock. We may also be required to make distributions to our stockholders at unfavorable times or when we do not have funds readily available for distribution. Thus, compliance with REIT requirements may hinder our ability to operate solely with the goal of maximizing profits.

In addition, the REIT provisions of the Internal Revenue Code impose a 100% tax on income from "prohibited transactions." Prohibited transactions generally include sales of assets that constitute inventory or other property held for sale in the ordinary course of a business, other than foreclosure property. This 100% tax could impact our desire to sell mortgage related securities at otherwise opportune times if we believe such sales could result in us being treated as engaging in prohibited transactions. However, we would not be subject to this tax if we were to sell assets through a taxable REIT subsidiary.

**Complying with REIT requirements may limit our ability to hedge effectively, which could in turn leave us more exposed to the effects of adverse changes in interest rates.**

The existing REIT provisions of the Internal Revenue Code may substantially limit our ability to hedge mortgage related securities and related borrowings by requiring us to limit our income in each year from qualified hedges, together with any other income not generated from qualified REIT real estate assets, to less than 25% of our gross income. In addition, we must limit our aggregate gross income from non-qualified hedges, fees, and certain other non-qualifying sources, to less than 5% of our annual gross income. As a result, although we will not engage in hedging transactions except the purchase of interest rate caps and forward financing agreements, we may in the future have to limit our use of these techniques or implement these hedges through a taxable REIT subsidiary. This could result in greater risks associated with changes in interest rates than we would otherwise want to incur. If we fail to satisfy the 25% or 5% limitations, unless our failure was due to reasonable cause and not due to willful neglect and we meet certain other technical requirements, we could lose our REIT status for federal income tax purposes. Even if our failure was due to reasonable cause, we may have to pay a penalty tax equal to the amount of income in excess of certain thresholds, multiplied by a fraction intended to reflect our profitability.

**Complying with REIT requirements may force us to liquidate otherwise attractive investments, which could negatively affect our profitability.**

In order to qualify as a REIT, we must ensure that at the end of each calendar quarter at least 75% of the value of our assets consists of cash, cash items, government securities and qualified REIT real estate assets. The remainder of our investment in securities generally cannot include more than 10% of the outstanding voting securities of any one issuer or more than 10% of the total value of the outstanding securities of any one issuer. In addition, generally, no more than 5% of the value of our assets can consist of the securities of any one issuer. If we fail to comply with these requirements, we must dispose of a portion of our assets within 30 days after the end of the calendar quarter in order to avoid losing our REIT status and suffering adverse tax consequences.

**Dividends paid by REITs do not qualify for the reduced tax rates under recently enacted tax legislation, which could negatively affect the value of our stock.**

Recently enacted tax legislation reduces the maximum tax rate for dividends paid to individual U.S. stockholders to 15% (through 2008). Dividends paid by REITs, however, are generally not eligible for the reduced rates. Although this legislation does not adversely affect the taxation of REITs or dividends paid by REITs, the more favorable rates applicable to regular corporate dividends could cause stockholders who are individuals to perceive investments in REITs to be relatively less attractive than investments in the stock of non-REIT corporations that pay dividends to which more favorable rates apply, which could adversely affect the value of the stocks of REITs, including our Class A Common Stock.

**Complying with REIT requirements may force us to borrow funds on unfavorable terms or sell our securities at unfavorable prices to make distributions to our stockholders.**

As a REIT, we must distribute at least 90% of our annual REIT taxable income (excluding net capital gains) to our stockholders. To the extent that we satisfy this distribution requirement, but distribute less than 100% of our taxable income, we will be subject to federal corporate income tax on our undistributed taxable income. In addition, we will be subject to a 4% nondeductible excise tax if the actual amount that we pay out to our stockholders in a calendar year is less than a minimum amount specified under federal tax laws. From time to time, we may generate taxable income greater than our net income for financial reporting purposes from, among other things, amortization of capitalized purchase premiums, or our taxable income may be greater than our cash flow available for distribution to our stockholders. If we do not have other funds available in these situations, we could be required to borrow funds, sell a portion of our mortgage related securities at unfavorable prices or find other sources of funds in order to meet the REIT distribution requirement and to avoid corporate income tax and the 4% excise tax. These other sources could increase our costs or reduce our equity and reduce amounts available to invest in mortgage related securities.

**Failure to maintain an exemption from the Investment Company Act of 1940, as amended, would harm our results of operations.**

We intend to conduct our business so as not to become regulated as an investment company under the Investment Company Act. If we fail to qualify for this exemption, our ability to use leverage would be substantially reduced and we would be unable to conduct our business as described in this prospectus.

The Investment Company Act exempts entities that are primarily engaged in the business of purchasing or otherwise acquiring mortgages and other liens on, and interests in, real estate. Under the current interpretation of the SEC staff, in order to qualify for this exemption, we must maintain at least 55% of our assets directly in these qualifying real estate interests, with at least 25% of our

remaining assets invested in real estate-related securities. Mortgage related securities that do not represent all of the certificates issued with respect to an underlying pool of mortgages may be treated as separate from the underlying mortgage loans and, thus, may not qualify for purposes of the 55% requirement. Therefore, our ownership of these mortgage related securities is limited by the provisions of the Investment Company Act.

As of March 31, 2004, 64.0% of our portfolio constituted qualifying interests in mortgage related securities for purposes of the Investment Company Act. In satisfying the 55% requirement under the Investment Company Act, we treat as qualifying interests mortgage related securities issued with respect to an underlying pool as to which we hold all issued certificates. If the SEC or its staff adopts a contrary interpretation of such treatment, we could be required to sell a substantial amount of our mortgage related securities under potentially adverse market conditions. Further, in order to ensure that we at all times qualify for the exemption under the Investment Company Act, we may be precluded from acquiring mortgage related securities whose yield is higher than the yield on mortgage related securities that could be purchased in a manner consistent with the exemption. These factors may lower or eliminate our net income.

**Misplaced reliance on legal opinions or statements by issuers of mortgage related securities could result in a failure to comply with REIT gross income or asset tests.**

When purchasing mortgage related securities, we may rely on opinions of counsel for the issuer or sponsor of such securities, or statements made in related offering documents, for purposes of determining whether and to what extent those securities constitute REIT real estate assets for purposes of the REIT asset tests and produce income which qualifies under the REIT gross income tests. The inaccuracy of any such opinions or statements may adversely affect our REIT qualification and result in significant corporate-level tax.

**We may be harmed by changes in various laws and regulations.**

The rules dealing with federal income taxation are constantly under review by persons involved in the legislative process and by the Internal Revenue Service and the U.S. Treasury Department. Our business may be harmed by changes to the laws and regulations affecting us, including changes to securities laws and changes to the Internal Revenue Code applicable to the taxation of REITs. New legislation may be enacted into law or new interpretations, rulings or regulations could be adopted, any of which could harm us and our stockholders, potentially with retroactive effect.

**We may realize excess inclusion income that would increase the tax liability of our stockholders.**

If we realize excess inclusion income and allocate it to stockholders, this income cannot be offset by net operating losses of the stockholders. If the stockholder is a tax-exempt entity, then this income would be fully taxable as unrelated business taxable income under Section 512 of the Internal Revenue Code. If the stockholder is a foreign person, it would be subject to federal income tax withholding on this income without reduction or exemption pursuant to any otherwise applicable income tax treaty.

Excess inclusion income could result if we hold a residual interest in a real estate mortgage investment conduit, or REMIC. Excess inclusion income also could be generated if we were to issue debt obligations with two or more maturities and the terms of the payments on these obligations bore a relationship to the payments that we received on our mortgage related securities securing those debt obligations (i.e., if we were to own an interest in a taxable mortgage pool). However, Treasury regulations have not been issued regarding the allocation of excess inclusion income to stockholders of a REIT that owns an interest in a taxable mortgage pool. We do not expect to acquire significant amounts of residual interests in REMICs, and we intend to structure our borrowing arrangements in a manner designed to avoid generating significant amounts of excess inclusion income. We do, however,

expect to enter into various repurchase agreements that have differing maturity dates and afford the lender the right to sell any pledged mortgage securities if we default on our obligations.

**A portion of our distributions may be deemed a return of capital for federal income tax purposes.**

The amount of our distributions to the holders of our Class A Common Stock in a given quarter may not correspond to our taxable income for such quarter. If distributions exceed our net income, a portion of the distribution may be deemed a return of capital for federal income tax purposes. The amount of return of capital will not be taxable but will reduce stockholders' bases in the underlying shares of Class A Common Stock.

***Risks Related to this Offering***

**You will experience immediate and significant dilution in the book value per share.**

The offering price of our Class A Common Stock in this offering is substantially higher than the book value per share of our outstanding Class A Common Stock immediately after this offering. Based on our sale of [ ] shares of Class A Common Stock at an offering price of \$[ ] per share, purchasers of our Class A Common Stock in this offering will incur immediate dilution of approximately \$[ ] in the book value per share of Class A Common Stock from the price paid in this offering.

**We have not established a minimum distribution payment level and we cannot assure you of our ability to make distributions to our stockholders in the future.**

We intend to make quarterly distributions to our stockholders in amounts such that we distribute all or substantially all of our taxable income in each year, subject to certain adjustments. This, along with other factors, should enable us to qualify for the tax benefits accorded to a REIT under the Internal Revenue Code. We have not established a minimum distribution payment level and our ability to make distributions might be harmed by the risk factors described in this prospectus. All distributions 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. We cannot assure you that we will have the ability to make distributions to our stockholders in the future.

**The payment of dividends on our Class B Common Stock and the conversion of our Class B Common Stock and Class C Common Stock will dilute the interest of a Class A Common Stockholder in our future earnings and distributions.**

The Class B Common Stock will be entitled to participate in dividends on a share-for-share basis with the Class A Common Stock, and the Class B Common Stock and Class C Common Stock will be converted into Class A Common Stock, when certain conditions are met. Such conversions would increase the number of shares of Class A Common Stock outstanding and entitled to share pro rata in our earnings and distributions by 638,776 shares or [ ]% of the Class A Common Stock outstanding following the completion of this offering. See "Description of Capital Stock—Conversion Rights."

**Restrictions on ownership of a controlling percentage of our capital stock might limit your opportunity to receive a premium on our stock.**

For the purpose of preserving our REIT qualification and for other reasons, our charter prohibits direct or constructive ownership by any person of more than 9.8% of the lesser of the total number or value of the outstanding shares of our common stock or more than 9.8% of the outstanding shares of our combined common and preferred stock. The constructive ownership rules in our charter are complex and may cause the outstanding stock owned by a group of related individuals or entities to be deemed to be constructively owned by one individual or entity. As a result, the acquisition of less than

9.8% of the outstanding stock by an individual or entity could cause that individual or entity to own constructively in excess of 9.8% of the outstanding stock, and thus be subject to the ownership limit in our charter. Any attempt to own or transfer shares of our common or preferred stock in excess of the ownership limit without the consent of our board of directors shall be void, and will result in the shares being transferred by operation of law to a charitable trust. These provisions might inhibit market activity and the resulting opportunity for our stockholders to receive a premium for their shares that might otherwise exist if any person were to attempt to assemble a block of shares of our stock in excess of the number of shares permitted under our charter and which may be in the best interests of our stockholders.

**We have implemented certain provisions that could make any change in our board of directors or in control of our company more difficult.**

Maryland law, our charter and our bylaws contain provisions, such as provisions prohibiting, without the consent of our board of directors, any single stockholder or group of affiliated stockholders from beneficially owning in excess of an ownership limit, which could make it difficult or expensive for a third party to pursue a tender offer, change in control or takeover attempt that is opposed by our management and board of directors. We also have a staggered board of directors that makes it difficult for stockholders to change the composition of our board of directors in any one year. These and other anti-takeover provisions could substantially impede the ability of stockholders to change our management and board of directors.

**Future offerings of debt securities, which would be senior to our Class A Common Stock upon liquidation, or equity securities, which would dilute our existing stockholders and may be senior to our Class A Common Stock for the purposes of distributions, may harm the value of our Class A Common Stock.**

In the future, we may attempt to increase our capital resources by making additional offerings of debt or equity securities, including commercial paper, medium-term notes, senior or subordinated notes and classes of preferred stock or Class A Common Stock, as well as warrants to purchase shares of Class A Common Stock or convertible preferred stock. Upon the liquidation of our company, holders of our debt securities and shares of preferred stock and lenders with respect to other borrowings will receive a distribution of our available assets prior to the holders of our Class A Common Stock. Additional equity offerings by us may dilute the holdings of our existing stockholders or reduce the market value of our Class A Common Stock, or both. Our preferred stock, if issued, would have a preference on distributions that could limit our ability to make distributions to the holders of our Class A Common Stock. Because our decision to issue securities in any future offering will depend on market conditions and other factors beyond our control, we cannot predict or estimate the amount, timing or nature of our future offerings. Our stockholders are therefore subject to the risk of our future securities offerings reducing the market price of our Class A Common Stock and diluting their Class A Common Stock.

**A regular trading market for our Class A Common Stock might not develop, which would harm the liquidity and value of our Class A Common Stock; trading and pricing of our Class A Common Stock may be volatile following this offering.**

There is no established trading market for our Class A Common Stock. We have applied to list our Class A Common Stock on the New York Stock Exchange under the symbol "BMM" and will use commercially reasonable efforts to have our listing application of the Class A Common Stock approved. However, we cannot assure you that active trading of our Class A Common Stock will develop on that exchange or elsewhere or, if developed, that any active market will be sustained. Accordingly, we cannot assure you of the liquidity of any market in our Class A Common Stock, the ability of our

stockholders to sell their shares of our Class A Common Stock or the prices that our stockholders may obtain for their shares of our Class A Common Stock.

Even if an active trading market develops for our Class A Common Stock after this offering, the market price of our Class A Common Stock may be highly volatile and subject to wide price fluctuations. In addition, the trading volume in our Class A Common Stock may fluctuate and cause significant price variations to occur. If the market price of our Class A Common Stock declines significantly, you may be unable to resell your shares at or above the initial public offering price. We cannot assure you that the market price of our Class A Common Stock will not fluctuate or decline significantly in the future.

**Broad market fluctuations could harm the market price of our Class A Common Stock.**

The stock market has experienced extreme price and volume fluctuations that have affected the market price of many companies in industries similar or related to ours and that have been unrelated to these companies' operating performances. These broad market fluctuations could reduce the market price of our Class A Common Stock. Furthermore, our operating results and prospects may be below the expectations of public market analysts and investors or may be lower than those of companies with comparable market capitalizations, which could harm the market price of our Class A Common Stock.

**Shares of our Class A Common Stock eligible for future sale may harm our share price.**

We cannot predict the effect, if any, of future sales of shares of our Class A Common Stock, or the availability of shares for future sales, on the market price of our Class A Common Stock. Sales of substantial amounts of these shares of our Class A Common Stock, or the perception that these sales could occur, may harm prevailing market prices for our Class A Common Stock. As of April 15, 2004, there were 10,011,801 shares of outstanding Class A Common Stock, a combined total of 638,776 outstanding shares of Class B and Class C Common Stock convertible into Class A Common Stock, 3,686,400 shares of our Class A Common Stock reserved for issuance under our stock incentive plan and 313,600 shares of our Class A Common Stock reserved for issuance upon exchange of phantom shares that we plan to issue under our stock incentive plan.

We have filed a separate registration statement with the SEC that will permit the resale of all of the shares of our Class A Common Stock currently held by our stockholders that are not included in this offering and shares of our Class A Common Stock into which our outstanding shares of Class B and Class C Common Stock are convertible. We will use commercially reasonable efforts to cause that resale registration statement to be declared effective within 60 days after completion of this offering. If any or all of the current holders of our Class A Common Stock or holders of our Class B and Class C Common Stock that is convertible into Class A Common Stock sell a large number of securities in the public market, the sale could reduce the market price of our Class A Common Stock and could impede our ability to raise future capital.



## CAUTIONARY STATEMENTS

Certain statements in this prospectus under the captions "Summary," "Risk Factors," "Business—Risk Management Approach," "Management's Discussion and Analysis of Financial Condition and Results of Operations," "Business—Description of Mortgage Related Securities," and elsewhere constitute "forward-looking statements". When used in this prospectus, the words "anticipate," "believe," "estimate," "expect" and similar expressions are generally intended to identify forward-looking statements. Such forward-looking statements involve known and unknown risks, uncertainties and other important factors that could cause our actual results, performance or achievements, or industry results, to differ materially from any future results, performance or achievements expressed or implied by such forward-looking statements. Such risks, uncertainties and other important factors include, among others:

- changes in our industry, interest rates or general economic and business conditions;
- industry and market trends;
- availability of investment assets;
- the degree and nature of competition;
- changes in business strategy or development plans;
- availability, terms and deployment of capital;
- availability of qualified personnel;
- changes in, or the failure or inability to comply with, government laws and regulations;
- the impact of technology on our operations and business; and
- performance of our employees.

These forward-looking statements are based on our current beliefs, assumptions and expectations, taking into account information that we reasonably believe to be reliable. We expressly disclaim any obligation or undertaking to disseminate any updates or revisions to any forward-looking statement contained herein to reflect any change in our expectation with regard thereto or any change in events, conditions or circumstances on which any such statement is based.

## USE OF PROCEEDS

We estimate that the net proceeds from this offering will be approximately \$[ ] million, assuming a public offering price of \$[ ] per share, the midpoint of the range set forth on the cover of this prospectus, and after deducting the underwriting discount and estimated offering expenses of \$[ ] payable by us. If the underwriters' over-allotment option is exercised in full, we estimate that our net proceeds will be approximately \$[ ] million.

We intend to invest the net proceeds primarily in residential mortgage related securities similar to those we already own, primarily those issued by Fannie Mae, Freddie Mac and Ginnie Mae. We have not, however, identified any specific mortgage related securities to purchase with the net proceeds of this offering. We expect to fully invest the net proceeds of this offering in mortgage related securities within approximately three months of closing the offering and to implement our leveraging strategy to increase our investments in mortgage related securities to our desired level within approximately three additional months. Pending full investment in mortgage related securities, we intend to invest the funds in interest-bearing short-term investment grade securities or money market accounts consistent with our intention to qualify as a REIT. These investments are expected to provide a lower net return than we hope to achieve from our intended investments.

## MARKET PRICE OF AND DISTRIBUTIONS ON OUR CLASS A COMMON STOCK

### Market Information

Prior to this offering, our Class A Common Stock has not been listed or quoted on any national exchange. While our Class A Common Stock has been eligible for private sale on the PORTAL Market, we are not aware of any trades of our Class A Common Stock on the PORTAL Market.

As of April 15, 2004, we had 10,011,801 shares of Class A Common Stock issued and outstanding, which were held by five holders of record. The five holders of record include Cede & Co., which holds shares as nominee for The Depository Trust Company, which itself holds shares on behalf of approximately 300 beneficial owners of our Class A Common Stock. We have applied to list our Class A Common Stock on the New York Stock Exchange under the symbol "BMM" and will use commercially reasonable efforts to have our listing application of the Class A Common Stock approved.

### Distribution Policy

The following table sets forth, for the periods indicated, the cash distributions declared per share on our Class A Common Stock since our formation:

2004	Cash Distributions Declared Per Share
First Quarter	\$ 0.39

This distribution, which was paid on April 23, 2004, is the only distribution that we have declared or paid since our commencement of operations. It is not necessarily indicative of distributions that we will declare in the future. None of this distribution represented a return of capital to the holders of our Class A Common Stock. We intend to distribute all or substantially all of our REIT taxable net income (which does not ordinarily equal net income as calculated in accordance with GAAP) to our stockholders in each year. We intend to make regular quarterly distributions to our stockholders to be paid out of funds readily available for such distributions. Our distribution policy is subject to revision at the discretion of our board of directors without notice to you or stockholder approval. We have not established a minimum distribution level, and our ability to make distributions may be affected for the reasons described under the caption "Risk Factors." All distributions will be made by us at the discretion of our board of directors and will depend on our earnings and financial condition, maintenance of REIT status, applicable provisions of the Maryland general corporation law, or MGCL, and such other factors as our board of directors deems relevant.

In order to maintain our qualification as a REIT under the Internal Revenue Code, we must make distributions to our stockholders each year in an amount at least equal to:

- 90% of our REIT taxable net income;
- *plus* 90% of the excess of net income from foreclosure property over the tax imposed on such income by the Internal Revenue Code;
- *minus* any excess non-cash income.

In general, our distributions will be applied toward these requirements if paid in the taxable year to which they relate, or in the following taxable year if the distributions are declared before we timely file our tax return for that year, the distributions are paid on or before the first regular distribution payment following the declaration, and we elect on our tax return to have a specified dollar amount of such distributions treated as if paid in the prior year. Distributions declared by us in October, November or December of one taxable year and payable to a stockholder of record on a specific date in such a month are treated as both paid by us and received by the stockholder during such taxable year, provided that the distribution is actually paid by us by January 31 of the following taxable year.

We anticipate that distributions generally will be taxable as ordinary income to our stockholders, although a portion of such distributions may be designated by us as capital gain or may constitute a return of capital. We will furnish annually to each of our stockholders a statement setting forth distributions paid during the preceding year and their characterization as ordinary income, return of capital or capital gains.

In the future, our board of directors may elect to adopt a dividend reinvestment plan.

### CAPITALIZATION

The following table sets forth our capitalization as of March 31, 2004:

- on an actual basis;
- on an as adjusted basis to give effect to the sale of [ ] shares of our Class A Common Stock in this offering, assuming a public offering price of \$[ ] per share and after deducting the underwriters' discounts and commissions and estimated offering expenses payable by us.

	March 31, 2004	
	Actual	As Adjusted
<b>LIABILITIES:</b>		
Repurchase agreements	\$ 1,442,788,000	
Accrued interest payable	2,013,313	
Cash dividend payable	3,903,569	
Accounts payable, accrued expenses and other	270,373	
	\$ 1,448,975,255	
<b>STOCKHOLDERS' EQUITY:</b>		
Class A Common Stock, \$0.001 par value; 98,000,000 shares authorized; 10,009,150 shares outstanding and [ ] shares outstanding, as adjusted	\$ 10,009	
Class B Common Stock, \$0.001 par value; 1,000,000 shares authorized; 319,388 shares outstanding	319	
Class C Common Stock, \$0.001 par value; 1,000,000 shares authorized; 319,388 shares outstanding	319	
Additional paid-in capital	141,728,687	
Accumulated deficit		(227,574)
Accumulated other comprehensive income		3,156,878
	\$ 144,668,638	
<b>TOTAL STOCKHOLDERS' EQUITY</b>	<b>\$ 144,668,638</b>	
<b>TOTAL</b>	<b>\$ 1,593,643,893</b>	

## DILUTION

Our net tangible book value as of March 31, 2004 was approximately \$[ ] million, or \$[ ] per share of our Class A Common Stock. If you invest in our Class A Common Stock, your interest will be diluted to the extent of the difference between the price you pay per share for our Class A Common Stock and the net tangible book value per share of our Class A Common Stock at the time of your purchase. Net tangible book value per share is calculated by subtracting our total liabilities from our total tangible assets, which is total assets less intangible assets, and dividing this amount by the number of shares of our Class A Common Stock issued and outstanding. After giving effect to the sale by us of [ ] shares of our Class A Common Stock in this offering, assuming a public offering price of \$[ ] per share, and after deducting the underwriters' discounts and commissions and estimated offering expenses payable by us, our net tangible book value as of March 31, 2004 would have been \$[ ] million, or \$[ ] per share of our Class A Common Stock. This represents an immediate increase in the net tangible book value of \$[ ] per share to our existing stockholders and an immediate and substantial dilution in net tangible book value of \$[ ] per share to new investors. The following table illustrates this per share dilution:

Assumed public offering price per share		\$ [ ]
Net tangible book value per share as of March 31, 2004	\$ [ ]	
Increase per share attributable to new investors	\$ [ ]	
		\$ [ ]
Net tangible book value per share after this offering		\$ [ ]
		\$ [ ]

The following table summarizes the total number of shares of our common stock issued by us, the total consideration paid to us (cash contribution and/or contribution of services) and the average price per share paid by existing stockholders and by new investors, in each case based upon the number of shares of our common stock outstanding as of March 31, 2004, based on an assumed initial public offering price of \$[ ] per share.

	Shares Purchased		Total Consideration		Average Price Per Share
	Number	Percent	Amount	Percent	
Class A shares purchased in October 2003	7,500		\$ 35		\$.0047
Class B shares purchased in October 2003	319,388	100%	1,500		.0047
Class C shares purchased in October 2003	319,388	100%	1,500		.0047
Class A shares purchased from December 2003 through February 2004	10,000,000		150,000,000		15.00
Class A shares issued to outside directors in January 2004 as compensation for services	1,650		24,750		15.00
Class A shares issued to outside directors in April 2004 as compensation for services	2,651		39,765		15.00
New investors					
Total/Weighted average			\$		\$

There are currently 319,388 shares of our Class B Common Stock and 319,388 shares of our Class C Common Stock issued and outstanding. These will be converted into shares of our Class A Common Stock [when certain conditions are met]/[on the first day of the fiscal quarter following this offering]. Such conversions [would]/[will] increase by up to approximately [ ]% the number of shares of Class A Common Stock outstanding and entitled to share pro rata in our earnings and distributions, which [would]/[will] dilute the interest of purchasers of Class A Common Stock in this offering. See "Description of Capital Stock—Conversion Rights."

If the underwriters' over-allotment option is exercised in full, the [ ] shares of our Class A Common Stock held by existing stockholders immediately after the offering would comprise [ ]% of the total number of shares of our Class A Common Stock and the number of shares of our Class A Common Stock held by new investors would increase to [ ] shares, or [ ]% of the total number of shares of our Class A Common Stock outstanding immediately after this offering.

The foregoing discussion and tables are based upon the number of shares actually issued and outstanding as of March 31, 2004.

## SELECTED FINANCIAL DATA

The following selected financial data is derived from our audited financial statements as of December 31, 2003 and for the period September 24, 2003 (date of inception) through December 31, 2003, and from our unaudited financial statements as of and for the three months ended March 31, 2004. The selected financial data should be read in conjunction with the more detailed information contained in our financial statements and related notes and "Management's Discussion and Analysis of Financial Condition and Results of Operations" included elsewhere in this prospectus.

	Three months ended March 31, 2004	For the period Sept. 24, 2003 (inception) to Dec. 31, 2003
<b>Statement of Operations Data:</b>		
Revenues:		
Interest income	\$ 7,194,033	\$ 71,480
Interest expense	(2,736,434)	(20,086)
Net interest income	4,457,599	51,394
Expenses:		
Trading costs, commissions and other trading expenses	200,064	15,583
Other direct costs	25,919	29,899
Compensation and related benefits	91,345	35,964
Start-up and organization costs	—	111,092
Occupancy costs	15,104	13,675
Audit and legal fees	33,834	85,340
Other administrative expenses	148,171	27,008
Total expenses	514,437	318,561
Net income (loss)	\$ 3,943,162	\$ (267,167)
Basic and diluted income (loss) per Class A common share	\$ 0.49	\$ (0.54)
Weighted average number of Class A common shares outstanding, used in calculating per share amounts		
Basic and diluted	8,001,052	497,859
Dividends declared per Class A common share	\$ 0.39	\$ -0-
	March 31, 2004	Dec. 31, 2003
<b>Balance Sheet Data:</b>		
Mortgage-backed securities available for sale, at fair value	\$ 16,452,046	\$ 27,750,602
Mortgage-backed securities pledged as collateral, at fair value	1,500,087,698	197,990,559
Total mortgage-backed securities, at fair value	1,516,539,744	225,741,161
Total assets	1,593,643,893	245,285,676
Repurchase agreements	1,442,788,000	188,841,000
Total liabilities	1,448,975,255	188,970,485
Accumulated other comprehensive income (loss)	3,156,878	(19,409)
Total stockholders' equity	\$ 144,668,638	\$ 56,315,191
Class A common shares issued and outstanding	10,009,150	4,012,102
Book value per share of Class A Common Stock	\$ 14.45	\$ 14.04

## MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

The following discussion of our financial condition and results of operations should be read in conjunction with our financial statements and related notes included elsewhere in this prospectus.

### Introduction and Overview

Our business is to be a real estate investment trust investing in mortgage related securities. We seek to generate operating income based on the difference between the yields on our mortgage-backed investment assets and our expenses of doing business, which include the cost of our borrowings. We intend to borrow between eight and 12 times the amount of our equity. In evaluating our assets and their performance, our management team primarily evaluates these critical factors: asset performance in differing interest rate environments, duration of the security, yield to maturity, potential for prepayment of principal, and the market price of the investment.

### Financial Condition

All of our assets at March 31, 2004 were acquired with the proceeds of our private placements and use of leverage. We received net proceeds after offering costs of approximately \$139.2 million in these offerings, which closed on December 19, 2003, January 30, 2004 and February 17, 2004.

#### *Mortgage Related Securities*

At March 31, 2004, we held \$1.5 billion of mortgage related securities at fair value. Our portfolio of mortgage related securities will typically be comprised of fixed-rate mortgage-backed securities, floating rate collateralized mortgage obligations, adjustable-rate mortgage-backed securities, hybrid adjustable-rate mortgage-backed securities and balloon maturity mortgage-backed securities. We seek to acquire short duration assets (assets with short average expected lives) that offer high levels of protection from mortgage prepayments. The stated contractual final maturity of the mortgage loans underlying our portfolio of mortgage related securities generally ranges up to 30 years. However, the expected maturity is subject to change based on the prepayments of the underlying mortgage loans. Prepayments occur for various reasons, including refinancings of underlying mortgages and payoffs associated with sales of the underlying homes as people move. While we are always concerned with prepayment tendencies of the securities we purchase, we believe the specified fixed-rate market offers the greatest protection available. Accordingly, we may own such securities in equal or greater proportion than traditional adjustable-rate and floating rate securities.

For the quarter ended March 31, 2004, we had net interest earnings of \$7.2 million, interest expense of \$2.7 million, an average annualized yield on assets of 2.8% and average annualized rate on borrowings of 1.2%. The stated contractual final maturity of the mortgage loans underlying our portfolio of mortgage related securities generally range up to 30 years. However, prepayments can alter the timing of the cash flows from the underlying loans to the company. As a result, we gauge the interest rate sensitivity of our assets by measuring their effective duration. While modified duration measures the price sensitivity of a bond to movements in interest rates, effective duration captures both the movement in interest rates and the fact that cash flows to a mortgage related security are altered when interest rates move. Accordingly, when the contract interest rate on a mortgage loan is substantially above prevailing interest rates in the market, the effective duration of securities collateralized by such loans can be quite low because of expected prepayments. Although the fixed-rate mortgage backed securities in our portfolio are collateralized by loans with a lower propensity to prepay when the contract rate is above prevailing rates, their price movements track securities with like contract rates and therefore exhibit similar effective duration. The value of our portfolio will change as

interest rates rise or fall. See "Qualitative and Quantitative Disclosures about Market Risk—Interest Rate Risk—Effect on Fair Value."

The following tables summarize our mortgage related securities as of March 31, 2004:

**Settled Securities**

Asset Category	Market Value (\$000)	Percentage of Entire Settled Portfolio	Weighted Average Coupon	Weighted Average Maturity in Months	Longest Maturity	Weighted Average Coupon Reset in Months	Weighted Average Lifetime Cap	Weighted Average Periodic Cap
<b>Fixed-Rate Mortgage-Backed Securities</b>	\$ 628,034	41.4%	6.39%	301	2034	n/a	n/a	n/a
CMO Floaters	520,833	34.3	1.60	323	2033	1	8.0%	None
<b>Adjustable-Rate Mortgage-Backed Securities</b>	233,533	15.4	3.07	365	2042	7	9.7	1.5%
Hybrid Adjustable-Rate Mortgage-Backed Securities	72,712	4.8	3.34	355	2033	32	9.3	2.0
Balloon Maturity Mortgage-Backed Securities	61,427	4.1	3.80	72	2011	n/a	n/a	n/a
<b>Total Portfolio</b>	<b>\$ 1,516,539</b>	<b>100.0%</b>	<b>3.98%</b>	<b>312</b>	<b>2042</b>	<b>—</b>	<b>—</b>	<b>—</b>

**Settled Securities**

Agency	Market Value (\$000)	Percentage of Entire Settled Portfolio
Fannie Mae	\$ 889,078	58.6%
Freddie Mac	535,227	35.3
Ginnie Mae	92,234	6.1
<b>Total Portfolio</b>	<b>\$ 1,516,539</b>	<b>100.0%</b>

**Entire Portfolio (settled & unsettled securities)**

Effective Duration(1)	1.44
Weighted Average Purchase Price	102.78% of par value
Weighted Average Current Price	102.92% of par value

(1) Effective duration of 1.44 indicates that an interest rate increase of 1% would result in a 1.44% decline in the value of the securities in our portfolio.

Approximately 70% of our portfolio of 15 year fixed-rate coupon mortgage securities, and 38% of our 30 year fixed-rate coupon mortgage securities, contain only loans with principal balances of \$85,000 or less. Because of the low loan balance on these mortgages, we believe borrowers have a lower economic incentive to refinance and have historically prepaid more slowly than comparable securities.

We had approximately \$72.0 million of cash on hand as of March 31, 2004.

**Liabilities**

We have entered into repurchase agreements to finance acquisitions of mortgage related securities. None of the counterparties to these agreements are affiliates of us. These agreements are secured by our mortgage related securities and bear interest rates that have historically moved in close relationship to LIBOR. As of March 31, 2004 we had 12 master repurchase agreements with various investment banking firms and other lenders.

At March 31, 2004, we had approximately \$1.4 billion outstanding under repurchase agreements with a net weighted average current borrowing rate of 1.19%, \$125.7 million of which matures between two and 30 days, \$250.0 million of which matures between 31 and 90 days, and \$1.1 billion of which matures in more than 90 days. It is our present intention to seek to renew these repurchase agreements as they mature under the then-applicable borrowing terms of the counterparties to our repurchase



agreements. At March 31, 2004, the repurchase agreements were secured by mortgage related securities with an estimated fair value of \$1.5 billion and a weighted average maturity of 312 months.

At March 31, 2004, our repurchase agreements had the following counterparties, amounts outstanding, amounts at risk and weighted average remaining maturities:

Repurchase Agreement Counterparties	Amount Outstanding (\$000)	Amount at Risk(1) (\$000)	Weighted Average Maturity of Repurchase Agreements in Days	Percent of Total Amount outstanding
Deutsche Bank Securites, Inc.	\$ 340,691	\$ 17,430	237	24%
UBS Investment Bank, LLC	316,865	12,112	200	22
Daiwa Securities America Inc.	245,587	11,209	92	17
Bank of America Securities, LLC	190,114	10,331	227	13
Lehman Brothers	90,372	2,833	26	6
Goldman Sachs	82,883	3,602	177	6
Bear Stearns & Co. Inc.	76,887	3,871	67	5
Nomura Securities International, Inc.	59,410	3,153	275	4
JP Morgan Securities, Inc.	24,287	656	44	2
Countrywide Securities Corp.	15,692	843	223	1
<b>Total</b>	<b>\$ 1,442,788</b>	<b>\$ 66,040</b>	<b>175</b>	<b>100%</b>

(1) Equal to the fair value of securities sold, plus accrued interest income, minus the sum of repurchase agreement liabilities, plus accrued interest expense.

## Results of Operations

### Quarter Ended March 31, 2004

In the quarter ended March 31, 2004, we raised equity capital of approximately \$85 million and invested the proceeds, together with borrowings generated by leveraging the proceeds. Because our asset base grew substantially, our results are not comparable to a full period of continuing operations.

We recorded \$3.9 million in net income in the quarter ended March 31, 2004. Our assets at March 31, 2004 were \$1.6 billion and our liabilities were \$1.4 billion. Our net interest income for the quarter was \$4.5 million and our expenses were \$.5 million resulting in net income of \$3.9 million or \$.49 per share.

At the end of the quarter, we had a debt to equity ratio of 10:1. Our portfolio had a weighted average yield of 2.8% for the three months ended March 31, 2004. Our net weighted average borrowing cost for the quarter was 1.2%. The constant prepayment rate for the portfolio was 22.0% for March 2004, which reflects the annualized proportion of principal that was prepaid.

### September 24, 2003 through December 31, 2003

Our company was organized on September 24, 2003 and we began substantive operations in late December 2003, after the initial closing of our private placement of Class A Common Stock. We leveraged the proceeds from the private placement with short-term borrowings under repurchase agreements to invest in a portfolio of mortgage related securities. Because of the timing of our initial investment of portfolio assets (investment activities began on December 22, 2003, and the first security purchase settled on December 26, 2003), interest income for the period from September 24, 2003 through December 31, 2003 was substantially lower than would be expected for a typical full period, both in an absolute sense and also relative to the average net invested assets for the period.

Other operating expenses were high in proportion to gross interest income and expense and to net interest income for the period from September 24 through December 31, 2003, as compared to expectations for full periods of operations, because we did not complete our first security purchase until December 26, 2003. To varying degrees, and for the same reason, operating expenses were disproportionate to net interest income compared to a normal full period's results.

We did not sell any mortgage related securities during the period from September 24, 2003 through December 31, 2003. Although we generally intend to hold our investment securities to maturity, we may determine at some time before they mature that it is in our interest to sell them and purchase securities with other characteristics. In that event, our earnings will be affected by realized gains or losses.

### **Liquidity and Capital Resources**

Our primary source of funds as of March 31, 2004 consisted of repurchase agreements totaling \$1.4 billion, with a weighted average current net borrowing rate of 1.19%. We expect to continue to borrow funds in the form of repurchase agreements. At March 31, 2004, we had master repurchase agreements in place with 12 counterparties. Increases in short-term interest rates could negatively impact the valuation of our mortgage related securities, which could limit our borrowing ability or cause our lenders to initiate margin calls.

For liquidity, we will also rely on cash flow from operations, primarily monthly principal and interest payments to be received on our mortgage related securities, as well as any primary securities offerings authorized by our board of directors.

We believe that equity capital, combined with the cash flow from operations and the utilization of borrowings, will be sufficient to enable us to meet anticipated liquidity requirements. Various changes in market conditions could adversely affect our liquidity, including increases in interest rates and increases in prepayment rates substantially above our expectations. If our cash resources are at any time insufficient to satisfy our liquidity requirements, we may be required to pledge additional assets to meet margin calls, liquidate mortgage related securities or sell debt or additional equity securities. If required, the sale of mortgage related securities at prices lower than the carrying value of such assets would result in losses and reduced income.

We may in the future increase our capital resources by making additional offerings of equity and debt securities, including classes of preferred stock, common stock, commercial paper, medium-term notes, collateralized mortgage obligations and senior or subordinated notes. All debt securities, other borrowings, and classes of preferred stock will be senior to the Class A Common Stock in a liquidation of our company. Additional equity offerings may be dilutive to stockholders' equity or reduce the market price of our Class A Common Stock, or both. We are unable to estimate the amount, timing or nature of any additional offerings as they will depend upon market conditions and other factors.

## Contractual Obligations and Commitments

The following table provides information with respect to our contractual obligations at March 31, 2004.

Contractual Obligations	Payment due by period	
	(\$000)	
	Total	Less than 1 year
Repurchase Agreements	\$ 1,442,788	\$ 1,422,788
Operating Lease Obligations	30	30
<b>Total</b>	<b>\$ 1,442,818</b>	<b>\$ 1,442,818</b>

## Critical Accounting Policies

Our financial statements are prepared in accordance with accounting principles generally accepted in the United States, which are known as GAAP. These accounting principles require us to make some complex and subjective decisions and assessments. Our most critical accounting policies involve decisions and assessments which could significantly affect our reported assets and liabilities, as well as our reported revenues and expenses. We believe that all of the decisions and assessments upon which our financial statements are based were reasonable at the time made based upon information available to us at that time. Management has identified our most critical accounting policies to be the following:

### *Classifications of Investment Securities*

In accordance with applicable GAAP, our investments in mortgage related securities are classified as available-for-sale securities. As a result, changes in fair value are recorded as a balance sheet adjustment to accumulated other comprehensive income (loss), which is a component of stockholders' equity, rather than through our statement of operations. If available-for-sale securities were classified as trading securities, there could be substantially greater volatility in earnings from period-to-period.

### *Valuations of Mortgage Related Securities*

All investment securities are carried on the balance sheet at fair value. Our mortgage related securities have fair values determined by management based on the average of third-party broker quotes received and/or by independent pricing sources when available. Because the price estimates may vary to some degree between sources, management must make certain judgments and assumptions about the appropriate price to use to calculate the fair values for financial reporting purposes. Different judgments and assumptions could result in different presentations of value.

When the fair value of an available-for-sale security is less than amortized cost, management considers whether there is an other-than-temporary impairment in the value of the security (for example, whether the security will be sold prior to the recovery of fair value). If, in management's judgment, an other-than-temporary impairment exists, the cost basis of the security is written down to the then-current fair value, and this loss is realized and charged against earnings. The determination of other-than-temporary impairment is a subjective process, and different judgments and assumptions could affect the timing of loss realization.

The unrealized losses on the investments held in our portfolio at March 31, 2004 are considered temporary, and the related investments were therefore not written down as being permanently impaired (see Note 2 to the financial statements). The factors considered in making this determination included the expected cash flow from the investment, the general quality of the mortgage related security owned,

any credit protection available, current market conditions, and the magnitude and duration of the historical decline in market prices.

### ***Interest Income Recognition***

Interest income on our mortgage related securities is accrued based on the actual coupon rate and the outstanding principal amount of the underlying mortgages. Premiums and discounts are amortized or accreted into interest income over the estimated lives of the securities using the effective yield method adjusted for the effects of estimated prepayments based on Statement of Financial Accounting Standards, or SFAS, No. 91, *Accounting for Nonrefundable Fees and Costs Associated with Originating or Acquiring Loans and Initial Direct Costs of Leases—an amendment of FASB Statements No. 13, 60, and 65 and a rescission of FASB Statement No. 17*. Adjustments are made using the retrospective method to the effective interest computation each reporting period based on the actual prepayment experiences to date and the present expectation of future prepayments of the underlying mortgages. To make assumptions as to future estimated rates of prepayments, we currently use actual market prepayment history for our securities and for similar securities that we do not own and current market conditions. If our estimate of prepayments is incorrect, we are required to make an adjustment to the amortization or accretion of premiums and discounts that would have an impact on future income.

We earned \$4.5 million of net interest income for the three months ended March 31, 2004, and \$51,394 of net interest income for the initial short period ended December 31, 2003. As measured against invested assets during each period, these net interest earnings represented an annualized net yield of approximately 1.6% for the three months ended March 31, 2004 and 2.0% for the short period ended December 31, 2003. These earnings are not representative of what can be expected for future periods, as we only began to acquire investments in late December 2003, and the funds received during the three-months ended March 31, 2004 from our private placements were not fully invested for the entire three-month period.

### ***Accounting for Stock-Based Compensation***

We have adopted the fair value based method of accounting for stock-based compensation. Under this approach, we will recognize an expense for the fair value of any stock-based employee compensation at the time it is granted, as well as for transactions with non-employees in which services are performed in exchange for equity instruments.

### ***Off-Balance Sheet Arrangements***

Since inception, we have not maintained any relationships with unconsolidated entities or financial partnerships, such as entities often referred to as structured finance or special purpose entities, established for the purpose of facilitating off-balance sheet arrangements or other contractually narrow or limited purposes. Further, we have not guaranteed any obligations of unconsolidated entities nor do we have any commitment or intent to provide additional funding to any such entities. Accordingly, we are not materially exposed to any market, credit, liquidity or financing risk that could arise if we had engaged in such relationships.

### ***Inflation***

Virtually all of our assets and liabilities are financial in nature. As a result, interest rates and other factors influence our performance far more so than does inflation. Changes in interest rates do not necessarily correlate with inflation rates or changes in inflation rates. Our financial statements are prepared in accordance with accounting principles generally accepted in the United States and our distributions are determined by our board of directors based primarily on our net income as calculated for tax purposes; in each case, our activities and balance sheet are measured with reference to historical cost and or fair market value without considering inflation.

**General**

We commenced operations in December 2003 and invest primarily in residential mortgage related securities issued by Fannie Mae, Freddie Mac and Ginnie Mae. We will earn returns on the spread between the yield on our assets and our costs, including the interest expense on the funds we borrow. We intend to borrow between eight and 12 times the amount of our equity capital to attempt to enhance our returns to stockholders. We are self-managed and self-advised.

We conducted private placements of our Class A Common Stock in which we raised aggregate net proceeds (after commissions and expenses) of approximately \$139.2 million between December 2003 and February 2004. As of March 31, 2004 we had total assets of \$1.6 billion, all of which consisted of mortgage related securities and cash on hand. On that date, our portfolio of mortgage related securities totaled \$1.5 billion and was comprised of 41.4% fixed-rate mortgage-backed securities, 34.3% floating rate collateralized mortgage obligations, 15.4% adjustable-rate mortgage-backed securities, 4.8% hybrid adjustable-rate mortgage-backed securities (securities backed by mortgages with fixed initial rates which, after a period, convert to adjustable rates) and 4.1% balloon maturity mortgage-backed securities (securities backed by mortgages where a significant portion of principal is repaid only at maturity). Of this portfolio, 59% was issued by Fannie Mae, 35% was issued by Freddie Mac and 6% was issued by Ginnie Mae.

Our portfolio had a weighted average yield of 2.8% for the three months ended March 31, 2004. Our net weighted average borrowing cost for the three months ended March 31, 2004 was 1.2%. The constant prepayment rate for the portfolio was 22.0% for March 2004, which reflects the annualized proportion of principal that was prepaid. The effective duration for the portfolio was 1.44 as of March 31, 2004. Duration measures the price sensitivity of a fixed income security to movements in interest rates. Effective duration captures both the movement in interest rates and the fact that cash flows to a mortgage related security are altered when interest rates move. We intend to use the proceeds of this offering and additional borrowings to acquire additional mortgage related securities which are similar to those in our current portfolio.

We have elected to be taxed as a real estate investment trust, or REIT, under the Internal Revenue Code commencing with our taxable year ended December 31, 2003. Provided we continue to qualify as a REIT, we will generally distribute to our stockholders substantially all of our taxable income generated from our operations. As long as we retain our REIT status, we generally will not be subject to federal income tax to the extent that we distribute our net income to our stockholders.

**Risk Management Approach**

We seek to differentiate ourselves from other mortgage portfolio managers through our approach to risk management. We invest in a limited universe of mortgage related securities, primarily those issued by Fannie Mae, Freddie Mac and Ginnie Mae. Payment of principal and interest underlying securities issued by Ginnie Mae is guaranteed by the U.S. Government. Fannie Mae and Freddie Mac mortgage related securities are guaranteed as to payment of principal and interest by the respective agency issuing the security. We seek to manage the risk of prepayments of the underlying mortgages by creating a diversified portfolio with a variety of prepayment characteristics. We seek to address the risk of leverage through our proprietary model, which guides us to an appropriate level of borrowing. Finally, we seek to address interest rate risks by managing the interest rate indices and borrowing periods of our debt, as well as through hedging against interest rate changes.

We have implemented a risk-based capital methodology patterned on the general principles underlying the proposed risk-based capital standards for internationally active banks of the Basel Committee on Banking Supervision, commonly referred to as the Basel II Accord. The Basel II Accord

encourages banks to develop methods for measuring the risks of their banking activities to determine the amount of capital required to support those risks. Similarly, we use our methodology to calculate an internally generated risk measure for each asset in our portfolio. This measure is then used to establish the amount of leverage we use. We expect our risk management program to reduce our need to use hedging techniques.

## **Our Investment Strategy**

Our board of directors may change our investment strategy without prior notice to you or a vote of our stockholders.

### ***Asset Acquisition Strategy***

The primary assets in our current portfolio of mortgage related securities are fixed-rate mortgage-backed securities, floating rate collateralized mortgage obligations, adjustable-rate mortgage-backed securities, hybrid adjustable-rate mortgage-backed securities and balloon maturity mortgage-backed securities. The mortgage related securities we acquire are obligations issued by federal agencies or federally chartered entities, primarily Fannie Mae, Freddie Mac and Ginnie Mae.

We use a three-step process in building and maintaining our investment portfolio. The first step is an asset allocation process that targets portfolio investments. The results of this process are then adjusted as needed based on management's views of the market. The final step involves employing our risk based capital methodology to set the amount of leverage to be applied to the portfolio. We repeat this process on a regular basis and as market conditions warrant.

We seek to manage the effects on our income of prepayments of the mortgage loans underlying our securities at a rate materially different than anticipated. Our diversified portfolio includes securities with prepayment characteristics that we expect to result in slower prepayments, such as pools of mortgage-backed securities collateralized by mortgages with low loan balances, mortgages originated under Fannie Mae's Expanded Approval Program or agency pools collateralized by loans against investment properties. We intend to pursue this diversification as we invest the proceeds of this offering.

We have created and will maintain a diversified portfolio to avoid undue geographic, loan originator, and other types of concentrations. By maintaining essentially all of our assets in government or government-sponsored or chartered enterprises and government or federal agencies, which may include an implied guarantee of the federal government as to payment of principal and interest, we believe we can significantly reduce our exposure to losses from credit risk. We intend to acquire assets that will enable us to be exempt from the Investment Company Act.

Legislation may be proposed to change the relationship between certain agencies, such as Fannie Mae and the federal government. This may have the effect of reducing the actual or perceived credit quality of mortgage related securities issued by these agencies. As a result, such legislation could increase the risk of loss on investments in Fannie Mae and/or Freddie Mac mortgage-backed securities. We currently intend to continue to invest in such securities, even if such agencies' relationships with the federal government change.

### ***Leverage Strategy***

We use leverage in an attempt to increase potential returns to our stockholders. However, the use of leverage may also have the effect of increasing losses when economic conditions are unfavorable. We generally borrow between eight to 12 times the amount of our equity, although our investment policies require no minimum or maximum leverage. We use repurchase agreements to borrow against existing mortgage related securities and use the proceeds to acquire additional mortgage related securities. We

enter into collateralized borrowings only with institutions that are rated investment grade by at least one nationally-recognized statistical rating agency.

We seek to structure the financing in such a way as to limit the effect of fluctuations in short-term rates on our interest rate spread. In general, our borrowings are short-term and we actively manage, on an aggregate basis, both the interest rate indices and interest rate adjustment periods of our borrowings against the interest rate indices and interest rate adjustment periods on our mortgage related securities in order to limit our liquidity and interest rate related risks. We may also employ borrowings under longer term facilities.

We generally borrow at short-term rates using repurchase agreements. As of March 31, 2004, our debt to equity ratio was 10:1, and our repurchase agreements at that date totalled \$1.4 billion. Repurchase agreements are generally, but not always, short-term in nature. Under these repurchase agreements, we sell securities to a lender and agree to repurchase those securities in the future for a price that is higher than the original sales price. The difference between the sales price we receive and the repurchase price we pay represents interest paid to the lender. This is determined by reference to an interest rate index (such as LIBOR) plus an interest rate spread. Although structured as a sale and repurchase obligation, a repurchase agreement operates as a financing under which we effectively pledge our securities as collateral to secure a short-term loan equal in value to a specified percentage of the market value of the pledged collateral. We retain beneficial ownership of the pledged collateral, including the right to distributions. At the maturity of a repurchase agreement, we are required to repay the loan and concurrently receive our pledged collateral from the lender or, with the consent of the lender, we renew such agreement at the then prevailing financing rate. Our repurchase agreements may require us to pledge additional assets to the lender in the event the market value of the existing pledged collateral declines.

We have engaged AVM, L.P. (a securities broker-dealer) and III Associates (a registered investment adviser affiliated with AVM), to provide us with repurchase agreement trading, clearing and administrative services. III Associates acts as our agent and adviser in arranging for third parties to enter into repurchase agreements with us, executes and maintains records of our repurchase transactions and assists in managing the margin arrangements between us and our counterparties for each of our repurchase agreements.

We seek to protect our capital base through the use of a risk-based capital methodology. This methodology is patterned on the general principles underlying the Basel II Accord. These principles are intended to promote the use by internationally active banks of increasingly sophisticated internal risk management processes and measurements for purposes of allocating capital on a weighted basis. Our methodology follows this framework in that the inherent risk of an asset will create a capital allocation for the asset, which will in turn define the amount of leverage we will employ.

As with the Basel approach, we identify components of risk associated with the assets we employ. However, unlike typical bank loans, which may bear a significant degree of credit risk, the risks associated with the assets we employ are primarily related to movements in interest rates. The elements relating to interest rate risk we analyze are effective duration, convexity, expected return and the slope of the yield curve. "Effective duration" measures the sensitivity of a security's price to movements in interest rates. "Convexity" measures the sensitivity of a security's effective duration to movements in interest rates. "Expected return" captures the market's assessment of the risk of a security. We assume markets are efficient with respect to the pricing of risk.

While these three risk components primarily address the price movement of a security, we believe the income earning potential of our portfolio—as reflected in the slope of the yield curve—offsets potential negative price movements. We believe the risk of our portfolio is lower when the slope of the yield curve is steep, and thus is inversely proportional to the slope of the yield curve.

We use these components of risk to arrive at a risk coefficient for each asset. The product of this coefficient and the amount of our investment represents our "risk measure" for the asset. We calculate risk measures for each asset and then aggregate them into the risk measure for the entire portfolio, which guides us to an appropriate amount of overall leverage. We analyze the portfolio's risk measures on a daily basis. The leverage ratio will rise as the risk level of the portfolio declines and will fall as the portfolio's risk level increases. The goal of our approach is to ensure that our portfolio's leverage ratio is appropriate for the level of risk inherent in the portfolio.

### ***Interest Rate Risk Management***

We believe the primary risk inherent in our investments is the effect of movements in interest rates. This arises because the changes in interest rates on our borrowings will not be perfectly coordinated with the effects of interest rate changes on the income from, or value of, our investments. We therefore follow an interest rate risk management program designed to offset the potential adverse effects resulting from the rate adjustment limitations on our mortgage related securities. We seek to minimize differences between interest rate indices and interest rate adjustment periods of our adjustable-rate mortgage-backed securities and related borrowings by matching the terms of assets and related liabilities both as to maturity and to the underlying interest rate index used to calculate interest rate charges.

Our interest rate risk management program encompasses a number of procedures, including the following:

- monitoring and adjusting, if necessary, the interest rate sensitivity of our mortgage related securities compared with the interest rate sensitivities of our borrowings.
- attempting to structure our repurchase agreements that fund our purchases of adjustable-rate mortgage-backed securities to have a range of different maturities and interest rate adjustment periods. We attempt to structure these repurchase agreements to match the reset dates on our adjustable-rate mortgage-backed securities. At March 31, 2004, the weighted average months to reset of our adjustable-rate mortgage-backed securities was 6.5 months and the weighted average reset on the corresponding repurchase agreements was 6.5 months; and
- actively managing, on an aggregate basis, the interest rate indices and interest rate adjustment periods of our mortgage related securities compared to the interest rate indices and adjustment periods of our borrowings. Our liabilities under our repurchase agreements are all LIBOR-based, and we select our adjustable-rate mortgage-backed securities to favor LIBOR indexes. As of March 31, 2004, over 75% of our adjustable-rate mortgage-backed securities were LIBOR-based.

As a result, we expect to be able to adjust the average maturities and reset periods of our borrowings on an ongoing basis by changing the mix of maturities and interest rate adjustment periods as borrowings mature or are renewed. Through the use of these procedures, we attempt to reduce the risk of differences between interest rate adjustment periods of our adjustable-rate mortgage-backed securities and our related borrowings.

We may from time to time use derivative financial instruments to hedge all or a portion of the interest rate risk associated with our borrowings. We may enter into swap or cap agreements, option, put or call agreements, futures contracts, forward rate agreements or similar financial instruments to hedge indebtedness that we may incur or plan to incur. These contracts would be intended to more closely match the effective maturity of, and the interest received on, our assets with the effective maturity of, and the interest owed on, our liabilities. However, no assurances can be given that interest rate risk management strategies can successfully be implemented. Derivative instruments will not be used for speculative purposes.



We may also use derivative financial instruments in an attempt to protect us against declines in the market value of our assets that result from general trends in debt markets. The inability to match closely the maturities and interest rates of our assets and liabilities or the inability to protect adequately against declines in the market value of our assets could result in losses.

### **Repurchase Agreement Trading, Clearing and Administrative Services**

We have engaged AVM, L.P. (a securities broker-dealer) and III Associates (a registered investment adviser affiliated with AVM), to provide us with repurchase agreement trading, clearing and administrative services. Among other responsibilities, AVM acts as our clearing agent. III Associates acts as our agent and adviser in arranging for third parties to enter into repurchase agreements with us, executes and maintains records of our repurchase transactions and assists in managing the margin arrangements between us and our counterparties for each of our repurchase agreements. AVM and III Associates are entitled to fees for their services, and III Associates also has the opportunity to earn additional incentive fees when it achieves repurchase financing rates below certain predetermined levels.

### **Description of Mortgage Related Securities**

#### ***Mortgage-Backed Securities***

*Pass-Through Certificates.* We intend to invest in pass-through certificates, which are securities representing interests in pools of mortgage loans secured by residential real property in which payments of both interest and principal on the securities are generally made monthly. In effect, these securities pass through the monthly payments made by the individual borrowers on the mortgage loans that underlie the securities, net of fees paid to the issuer or guarantor of the securities. Pass-through certificates can be divided into various categories based on the characteristics of the underlying mortgages, such as the term or whether the interest rate is fixed or variable.

A key feature of most mortgage loans is the ability of the borrower to repay principal earlier than scheduled. This is called a prepayment. Prepayments arise primarily due to sale of the underlying property, refinancing, or foreclosure. Prepayments result in a return of principal to pass-through certificate holders. This may result in a lower or higher rate of return upon reinvestment of principal. This is generally referred to as prepayment uncertainty. If a security purchased at a premium prepays at a higher-than-expected rate, then the value of the premium would be eroded at a faster-than-expected rate. Similarly, if a discount mortgage prepays at a lower-than-expected rate, the amortization towards par would be accumulated at a slower-than-expected rate. The possibility of these undesirable effects is sometimes referred to as "prepayment risk."

In general, declining interest rates tend to increase prepayments, and rising interest rates tend to slow prepayments. Like other fixed-income securities, when interest rates rise, the value of mortgage related securities generally declines. The rate of prepayments on underlying mortgages will affect the price and volatility of mortgage related securities and may shorten or extend the effective maturity of the security beyond what was anticipated at the time of purchase. If interest rates rise, our holdings of mortgage related securities may experience reduced returns if the borrowers of the underlying mortgages pay off their mortgages later than anticipated. This is generally referred to as extension risk.

Payment of principal and interest on mortgage pass-through securities issued by Ginnie Mae, although not the market value of the securities themselves, are guaranteed by the full faith and credit of the federal government. Payment of principal and interest on mortgage pass-through certificates issued by Fannie Mae and Freddie Mac, although not the market value of the securities themselves, are guaranteed by the respective agency issuing the security.

The mortgage loans underlying pass-through certificates can generally be classified in the following five categories:

- *Fixed-Rate Mortgages.* As of March 31, 2003, 41.4% of our portfolio consisted of fixed-rate mortgage-backed securities. Fixed-rate mortgages are those where the borrower pays an interest rate that is constant throughout the term of the loan. Traditionally, most fixed-rate mortgages have an original term of 30 years. However, shorter terms (also referred to as final maturity dates) have become common in recent years. Because the interest rate on the loan never changes, even when market interest rates change, over time there can be a divergence between the interest rate on the loan and current market interest rates. This in turn can make a fixed-rate mortgage's price sensitive to market fluctuations in interest rates. In general, the longer the remaining term on the mortgage loan, the greater the price sensitivity. One way to attempt to lower the price sensitivity of a portfolio of fixed-rate mortgages is to buy those with shorter average expected lives.
- *Collateralized Mortgage Obligations.* As of March 31, 2004, 34.3% of our portfolio consisted of floating rate collateralized mortgage obligations. Collateralized mortgage obligations, or CMOs, are a type of mortgage-backed security. Interest and principal on a CMO are paid, in most cases, on a monthly basis. CMOs may be collateralized by whole mortgage loans, but are more typically collateralized by portfolios of mortgage pass-through securities issued directly by or under the auspices of Ginnie Mae, Freddie Mac or Fannie Mae. CMOs are structured into multiple classes, with each class bearing a different stated maturity. Monthly payments of principal, including prepayments, are first returned to investors holding the shortest maturity class. Investors holding the longer maturity classes receive principal only after the first class has been retired. Generally, fixed-rate mortgages are used to collateralize CMOs. However, the CMO tranches need not all have fixed-rate coupons. Some CMO tranches have floating rate coupons that adjust based on market interest rates, subject to some limitations. Such tranches, often called "CMO floaters," can have relatively low price sensitivity.
- *Adjustable-Rate Mortgages.* As of March 31, 2004, 15.4% of our portfolio consisted of adjustable-rate mortgage-backed securities. Adjustable-rate mortgages, or ARMs, are those for which the borrower pays an interest rate that varies over the term of the loan. The interest rate usually resets based on market interest rates, although the adjustment of such an interest rate may be subject to certain limitations. Traditionally, interest rate resets occur at regular set intervals (for example, once per year). We will refer to such ARMs as "traditional" ARMs. Because the interest rates on ARMs fluctuate based on market conditions, ARMs tend to have interest rates that do not deviate from current market rates by a large amount. This in turn can mean that ARMs have less price sensitivity to interest rates.
- *Hybrid Adjustable-Rate Mortgages.* As of March 31, 2004, 4.8% of our portfolio consisted of hybrid adjustable-rate mortgage-backed securities. Hybrid ARMs have a fixed-rate for the first few years of the loan, often three, five, or seven years, and thereafter reset periodically like a traditional ARM. Effectively such mortgages are hybrids, combining the features of a pure fixed-rate mortgage and a "traditional" ARM. Hybrid ARMs have price sensitivity to interest rates similar to that of a fixed-rate mortgage during the period when the interest rate is fixed and similar to that of an ARM when the interest rate is in its periodic reset stage. However, because many hybrid ARMs are structured with a relatively short initial time span during which the interest rate is fixed, even during that segment of its existence, the price sensitivity may be high.
- *Balloon Maturity Mortgages.* As of March 31, 2004, 4.1% of our portfolio consisted of balloon maturity mortgage-backed securities. Balloon maturity mortgages are a type of fixed-rate mortgage where all or most of the principal amount is due at maturity, rather than paid down,

or amortized, over the life of the loan. These mortgages have a static interest rate for the life of the loan. However, the term of the loan is usually quite short, typically less than seven years. As the balloon maturity mortgage approaches its maturity date, the price sensitivity of the mortgage declines.

Although there are a variety of other mortgage related securities, including various derivative securities, securities known as "inverse floaters," "inverse I.O.'s" and "residuals," we do not expect to invest in them. We currently intend to acquire a similar mix of assets with the proceeds of this offering. However, our actual purchases will be based upon market conditions at the time investments are made and could differ from the ratios described above.

### ***Other Investments***

We may purchase interest rate caps to hedge against quick and unexpected changes in our funding rates. The purchaser of these caps is only at risk for the fee paid. We may also enter into longer term funding arrangements with acceptable counterparties. We intend to limit these investments to less than 10% of our total assets.

We also intend to operate in a manner that will not subject us to regulation under the Investment Company Act. Although it does not anticipate any major changes at this time, our board of directors has the authority to modify or waive our current operating policies and our strategies without prior notice to you and without stockholder approval.

### **Policies With Respect to Certain Other Activities**

If our board of directors determines that additional funding is required, we may raise such funds through additional offerings of equity or debt securities or the retention of cash flow (subject to provisions in the Internal Revenue Code concerning distribution requirements and the taxability of undistributed REIT taxable income) or a combination of these methods. In the event that our board of directors determines to raise additional equity capital, it has the authority, without stockholder approval, to issue additional common stock or preferred stock in any manner and on such terms and for such consideration as it deems appropriate, at any time.

We have authority to offer our Class A Common Stock or other equity or debt securities in exchange for property and to repurchase or otherwise reacquire our shares and may engage in such activities in the future.

Subject to gross income and asset tests necessary for REIT qualification, we may invest in securities of other REITs, other entities engaged in real estate activities or securities of other issuers, including for the purpose of exercising control over such entities.

We may engage in the purchase and sale of investments. We do not underwrite the securities of other issuers.

Our board of directors may change any of these policies without prior notice to you or a vote of our stockholders.

### **Custodian Bank**

We have engaged J.P. Morgan Chase & Co. to serve as our custodian bank. J.P. Morgan Chase & Co. is entitled to fees for its services.

### **Competition**

When we invest in mortgage related securities and other investment assets, we compete with a variety of institutional investors, including other REITs, insurance companies, mutual funds, pension

funds, investment banking firms, banks and other financial institutions that invest in the same types of assets. Many of these investors have greater financial resources and access to lower costs of capital than we do. The existence of these competitive entities, as well as the possibility of additional entities forming in the future, may increase the competition for the acquisition of mortgage related securities, resulting in higher prices and lower yields on assets.

### **Website Access to our Periodic SEC Reports**

The Internet address of our corporate website is [www.biminaireit.com](http://www.biminaireit.com). We intend to make our periodic SEC reports (on Forms 10-K and 10-Q) and current reports (on Form 8-K), as well as the beneficial ownership reports filed by our directors, officers and 10% stockholders (on Forms 3, 4 and 5) available free of charge through our website as soon as reasonably practicable after they are filed electronically with the SEC. We may from time to time provide important disclosures to investors by posting them in the investor relations section of our website, as allowed by SEC rules. The information on our website is not a part of this prospectus.

Materials we file with the SEC may be read and copied at the SEC's Public Reference Room at 450 Fifth Street, N.W., Washington, D.C. 20549. Information on the operation of the Public Reference Room may be obtained by calling the SEC at 1-800-SEC-0330. The SEC also maintains an Internet website at [www.sec.gov](http://www.sec.gov) that will contain our reports, proxy and information statements, and other information regarding our company that we will file electronically with the SEC.

### **Employees**

As of March 31, 2004, we had five full-time employees.

### **Facilities**

Our principal offices are located at 3305 Flamingo Drive, Suite 100, Vero Beach, Florida 32963.

### **Legal Proceedings**

We are not a party to any legal proceedings.

## QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

We believe the primary risk inherent in our investments is the effect of movements in interest rates. This arises because the changes in interest rates on our borrowings will not be perfectly coordinated with the effects of interest rate changes on the income from, or value of, our investments. We therefore follow an interest rate risk management program designed to offset the potential adverse effects resulting from the rate adjustment limitations on our mortgage related securities. We seek to minimize differences between the interest rate indices and interest rate adjustment periods of our adjustable-rate mortgage-backed securities and those of our related borrowings.

Our interest rate risk management program encompasses a number of procedures, including the following:

- monitoring and adjusting, if necessary, the interest rate sensitivity of our mortgage related securities compared with the interest rate sensitivities of our borrowings;
- attempting to structure our repurchase agreements that fund our purchases of adjustable-rate mortgage-backed securities to have a range of different maturities and interest rate adjustment periods. We attempt to structure these repurchase agreements to match the reset dates on our adjustable-rate mortgage-backed securities. At March 31, 2004, the weighted average months to reset of our adjustable-rate mortgage-backed securities was 6.5 months and the weighted average reset on the corresponding repurchase agreements was 6.5 months; and
- actively managing, on an aggregate basis, the interest rate indices and interest rate adjustment periods of our mortgage related securities compared to the interest rate indices and adjustment periods of our borrowings. Our liabilities under our repurchase agreements are all LIBOR-based, and we select our adjustable-rate mortgage-backed securities to favor LIBOR indexes. As of March 31, 2004, over 75% of our adjustable-rate mortgage-backed securities were LIBOR-based.

As a result, we expect to be able to adjust the average maturities and reset periods of our borrowings on an ongoing basis by changing the mix of maturities and interest rate adjustment periods as borrowings mature or are renewed. Through the use of these procedures, we attempt to reduce the risk of differences between interest rate adjustment periods of our adjustable-rate mortgage-backed securities and those of our related borrowings.

Because we attempt to match our assets and liabilities from an interest rate perspective and hold our assets to maturity, we expect to have limited exposure to changes in interest rates. However, we will be exposed to changes in interest rates either (i) upon refinancing borrowings that expire before the related assets are repaid or (ii) upon reinvesting (and refinancing) proceeds following the maturity of current investments, if interest rates were to rise substantially.

As a further means of protecting our portfolio against the effects of major interest rate changes we may employ a limited hedging strategy under which we purchase interest rate cap contracts (under which we would generally be entitled to payment if interest rate indices exceed the agreed rates) or rate lock or other guaranteed financing contracts (under which we would pay a fee to guarantee certain lines of borrowing at certain rates or for certain periods of time). Under these contracts we would generally only be at risk for the fees paid. These contracts are intended to protect us from significant increases in interest rates.

### **Interest Rate Risk**

We are subject to interest rate risk in connection with our investments in mortgage related securities and our related debt obligations, which are generally repurchase agreements of limited duration that are periodically refinanced at current market rates.

### ***Effect on Net Interest Income***

We fund our investments in long-term fixed-rate and hybrid adjustable-rate mortgage-backed securities with short-term borrowings under repurchase agreements. During periods of rising interest rates, the borrowing costs associated with those fixed-rate and hybrid adjustable-rate mortgage-backed securities tend to increase while the income earned on such fixed-rate mortgage-backed securities and hybrid adjustable-rate mortgage-backed securities (during the fixed-rate component of such securities) may remain substantially unchanged. This results in a narrowing of the net interest spread between the related assets and borrowings and may even result in losses. We may enter into interest rate cap contracts or forward funding agreements seeking to mitigate the negative impact of a rising interest rate environment. Hedging techniques will be based, in part, on assumed levels of prepayments of our fixed-rate and hybrid adjustable-rate mortgage-backed securities. If prepayments are slower or faster than assumed, the life of the mortgage related securities will be longer or shorter, which would reduce the effectiveness of any hedging techniques we may utilize and may result in losses on such transactions. Hedging techniques involving the use of derivative securities are highly complex and may produce volatile returns. Our hedging activity will also be limited by the asset and sources-of-income requirements applicable to us as a REIT.

### ***Extension Risk***

We invest in fixed-rate and hybrid adjustable-rate mortgage-backed securities. Hybrid adjustable-rate mortgage-backed securities have interest rates that are fixed for the first few years of the loan—typically three, five, seven or 10 years—and thereafter their interest rates reset periodically on the same basis as adjustable-rate mortgage-backed securities. As of March 31, 2004, approximately 4.8% of our investment portfolio was comprised of hybrid adjustable-rate mortgage-backed securities. We compute the projected weighted average life of our fixed-rate and hybrid adjustable-rate mortgage-backed securities based on the market's assumptions regarding the rate at which the borrowers will prepay the underlying mortgages. In general, when a fixed-rate or hybrid adjustable-rate mortgage-backed security is acquired with borrowings, we may, but are not required to, enter into interest rate cap contracts or forward funding agreements that effectively cap or fix our borrowing costs for a period close to the anticipated average life of the fixed-rate portion of the related mortgage-backed security. This strategy is designed to protect us from rising interest rates because the borrowing costs are fixed for the duration of the fixed-rate portion of the related mortgage-backed security. However, if prepayment rates decrease in a rising interest rate environment, the life of the fixed-rate portion of the related mortgage-backed security could extend beyond the term of the swap agreement or other hedging instrument. This situation could negatively impact us as borrowing costs would no longer be fixed after the end of the hedging instrument, while the income earned on the fixed-rate or hybrid adjustable-rate mortgage-backed security would remain fixed. This situation may also cause the market value of our fixed-rate and hybrid adjustable-rate mortgage-backed securities to decline with little or no offsetting gain from the related hedging transactions. In extreme situations, we may be forced to sell assets and incur losses to maintain adequate liquidity.

### ***Adjustable-Rate and Hybrid Adjustable-Rate Mortgage-Backed Security Interest Rate Cap Risk***

We also invest in adjustable-rate and hybrid adjustable-rate mortgage-backed securities, which are based on mortgages that are typically subject to periodic and lifetime interest rate caps and floors, which limit the amount by which an adjustable-rate or hybrid adjustable-rate mortgage-backed security's interest yield may change during any given period. However, our borrowing costs pursuant to our repurchase agreements will not be subject to similar restrictions. Hence, in a period of increasing interest rates, interest rate costs on our borrowings could increase without limitation by caps, while the interest-rate yields on our adjustable-rate and hybrid adjustable-rate mortgage-backed securities would effectively be limited by caps. This problem will be magnified to the extent we acquire adjustable-rate

and hybrid adjustable-rate mortgage-backed securities that are not based on mortgages which are fully-indexed. Further, the underlying mortgages may be subject to periodic payment caps that result in some portion of the interest being deferred and added to the principal outstanding. This could result in our receipt of less cash income on our adjustable-rate and hybrid adjustable-rate mortgage-backed securities than we need in order to pay the interest cost on our related borrowings. These factors could lower our net interest income or cause a net loss during periods of rising interest rates, which would negatively impact our financial condition, cash flows and results of operations.

### ***Interest Rate Mismatch Risk***

We intend to fund a substantial portion of our acquisitions of adjustable-rate and hybrid adjustable-rate mortgage-backed securities with borrowings that have interest rates based on indices and repricing terms similar to, but of somewhat shorter maturities than, the interest rate indices and repricing terms of the mortgage related securities we are financing. Thus, we anticipate that in most cases the interest rate indices and repricing terms of our mortgage related securities and our funding sources will not be identical, thereby creating an interest rate mismatch between assets and liabilities. Therefore, our cost of funds would likely rise or fall more quickly than would our earnings rate on assets. During periods of changing interest rates, such interest rate mismatches could negatively impact our financial condition, cash flows and results of operations.

### ***Prepayment Risk***

Prepayment rates for existing mortgage related securities generally increase when prevailing interest rates fall below the market rate existing when the underlying mortgages were originated. In addition, prepayment rates on adjustable-rate and hybrid adjustable-rate mortgage-backed securities generally increase when the difference between long-term and short-term interest rates declines or becomes negative. Prepayments of mortgage related securities could harm our results of operations in several ways. Some adjustable-rate mortgages underlying our adjustable-rate mortgage-backed securities may bear initial "teaser" interest rates that are lower than their "fully-indexed" rates, which refers to the applicable index rates plus a margin. In the event that such an adjustable-rate mortgage is prepaid prior to or soon after the time of adjustment to a fully-indexed rate, the holder of the related mortgage-backed security would have held such security while it was less profitable and lost the opportunity to receive interest at the fully-indexed rate over the expected life of the adjustable-rate mortgage-backed security. We currently own mortgage related securities that were purchased at a premium. The prepayment of such mortgage related securities at a rate faster than anticipated would result in a write-off of any remaining capitalized premium amount and a consequent reduction of our net interest income by such amount. Finally, in the event that we are unable to acquire new mortgage related securities to replace the prepaid mortgage related securities, our financial condition, cash flow and results of operations could be harmed.

### ***Effect on Fair Value***

Another component of interest rate risk is the effect changes in interest rates will have on the market value of our assets. We face the risk that the market value of our assets will increase or decrease at different rates than that of our liabilities, including our hedging instruments.

We primarily assess our interest rate risk by estimating the duration of our assets and the duration of our liabilities. Duration essentially measures the market price volatility of financial instruments as interest rates change. We generally calculate duration using various financial models and empirical data, and different models and methodologies can produce different duration numbers for the same securities.

The following sensitivity analysis table shows the estimated impact on the fair value of our interest rate-sensitive investments at March 31, 2004, assuming rates instantaneously fall 100 basis points, rise 100 basis points and rise 200 basis points:

	Interest Rates Fall 100 Basis Points		Interest Rates Rise 100 Basis Points		Interest Rates Rise 200 Basis Points
<b>Fixed-Rate Mortgage-Backed Securities</b>					
(Fair Value \$628,034,146)					
Change in fair value	\$	7,473,606	\$	(19,029,435)	\$ (44,653,228)
Change as a percent of fair value		1.19%		-3.03%	-7.11%
<b>CMO Floaters</b>					
(Fair Value \$520,832,823)					
Change in fair value	\$	416,666	\$	(1,093,749)	\$ (2,135,415)
Change as a percent of fair value		0.08%		-0.21%	-0.41%
<b>Adjustable-Rate Mortgage-Backed Securities</b>					
(Fair Value \$233,533,092)					
Change in fair value	\$	1,074,252	\$	(3,316,170)	\$ (8,897,611)
Change as a percent of fair value		0.46%		-1.42%	-3.81%
<b>Hybrid Adjustable-Rate Mortgage-Backed Securities</b>					
(Fair Value \$72,712,410)					
Change in fair value	\$	1,039,787	\$	(2,210,457)	\$ (4,944,444)
Change as a percent of fair value		1.43%		-3.04%	-6.80%
<b>Balloon Maturity Mortgage-Backed Securities</b>					
(Fair Value \$61,427,273)					
Change in fair value	\$	1,111,834	\$	(1,818,247)	\$ (3,992,773)
Change as a percent of fair value		1.81%		-2.96%	-6.50%
<b>Cash</b>					
(Fair Value \$72,047,697)					
<b>Portfolio Total</b>					
(Fair Value \$1,588,587,441)					
Change in fair value	\$	11,596,708	\$	(28,753,483)	\$ (67,673,942)
Change as a percent of fair value		0.73%		-1.81%	-4.26%

It is important to note that the impact of changing interest rates on fair value can change significantly when interest rates change beyond 100 basis points from current levels. Therefore, the volatility in the fair value of our assets could increase significantly when interest rates change beyond 100 basis points. In addition, other factors impact the fair value of our interest rate-sensitive investments and hedging instruments, such as the shape of the yield curve, market expectations as to future interest rate changes and other market conditions. Accordingly, in the event of changes in actual interest rates, the change in the fair value of our assets would likely differ from that shown above, and such difference might be material and adverse to our stockholders.

Our liabilities, consisting primarily of repurchase agreements, are also affected by changes in interest rates. As rates rise, the value of the underlying asset, or the collateral, declines. In certain circumstances, we could be required to post additional collateral in order to maintain the repurchase agreement position. We maintain a substantial cash position, as well as unpledged assets, to cover these types of situations. As an example, if interest rates increased 200 basis points, as shown on the prior table, our collateral as of March 31, 2004 would decline in value by approximately \$67.7 million. Our cash and unpledged assets are currently sufficient to cover such shortfall. There can be no assurance, however, that we will always have sufficient cash or unpledged assets to cover shortfalls in all situations.



## MANAGEMENT OF THE COMPANY

### Our Executive Officers and Directors

The following table sets forth certain information regarding our executive officers and directors:

Name	Age	Position
Jeffrey J. Zimmer	46	Chairman of the Board, Chief Executive Officer and President
Robert E. Cauley, CFA	45	Chief Financial Officer, Chief Investment Officer, Secretary and Director
Kevin L. Bespolka	41	Independent Director(1)(2)(3)
Maureen A. Hendricks	52	Independent Director(1)(3)
Buford H. Ortale	42	Independent Director(1)(2)

(1) Member of Audit Committee.

(2) Member of Governance and Nominating Committee.

(3) Member of Compensation Committee.

**Jeffrey J. Zimmer** is our Chairman, Chief Executive Officer, President and one of our founders. He was most recently a Managing Director in the Mortgage-Backed and Asset Backed Department at RBS/Greenwich Capital Markets. From 1990 through 2003, he held various positions in the mortgage-backed department at Greenwich Capital. While there, Mr. Zimmer worked closely with some of the nation's largest mortgage banks, hedge funds, and investment management firms on various mortgage-backed securities investments. He has sold and researched almost every type of mortgage-backed security in his 19 years in the mortgage business. He has negotiated terms on and participated in the completion of dozens of new underwritten public and privately placed mortgage-backed deals for customers of Greenwich Capital. Mr. Zimmer was employed at Drexel Burnham Lambert in the institutional mortgage-backed sales area from 1984 until 1990. He received his MBA in finance from Babson College in 1983 and a BA in economics and speech communication from Denison University in 1980.

**Robert E. Cauley** is our Chief Investment Officer, Chief Financial Officer, Secretary and one of our founders. He was most recently Vice President, Portfolio Manager at Federated Investment Management Company in Pittsburgh, Pennsylvania where from 1996 until September 2003 he was also a lead portfolio manager, co-manager, or assistant portfolio manager of \$4.25 billion (base capital, unlevered amount) in mortgage and asset backed securities funds. From 1994 to 1996, he was an associate at Lehman Brothers in the asset-backed structuring group. From 1992 to 1994 he was a credit analyst in the highly levered firms group and the aerospace group at Barclay's Bank. Mr. Cauley has invested in, researched, or structured almost every type of mortgage-backed security. Mr. Cauley, who is a CFA and a CPA, received his MBA in finance and economics from Carnegie Mellon University and his BA in accounting from California State University, Fullerton. Mr. Cauley served in the United States Marine Corps for four years.

**Kevin L. Bespolka** worked at Merrill Lynch from 1991 to 1999, first as the global head of non-dollar bond option trading and European fixed income proprietary trading, then as global head of foreign exchange options and proprietary trading and finally as the global co-head of debt proprietary trading. Before joining Merrill Lynch, he worked in the Debt Capital Markets Group at Morgan Stanley, structuring public and private placements of non-standard debt securities. He is currently the Chief Financial Officer of Kidsnet, a company that provides safe internet access for children that he co-founded in 2000. Mr. Bespolka graduated *magna cum laude* from Swarthmore College in 1984.

**Maureen A. Hendricks** was most recently a Senior Advisory Director at Salomon Smith Barney from 2001 until January 2003. She was previously the Head of Global Energy and Power at Salomon Smith Barney prior to her retirement in 2001. She was also formerly the Head of Global Capital Markets, Head of Corporate Fixed Income—Americas, Head of European Equities, Co-Head of Global Equity Derivatives, and Head of Structured Finance for JP Morgan Securities. She graduated *magna cum laude* from Smith College. She is chairman of the Management Development Compensation Committee, former chairman of the Audit Committee and a member of the board of directors of Millipore Corporation.

**Buford H. Ortale** founded and was ultimately a managing director of the high yield bond group of NationsBanc Capital Markets from 1993 to 1996. Before that, he was at Merrill Lynch in the Merchant Banking Group. Mr. Ortale has been involved in numerous private equity investments, including start-ups in which he was an original shareholder. His pre-IPO investments include iPayment, Dr. Pepper/Seven Up, Ztel, Ptek, Texas Capital Bancshares, and Healthstream. He has also served on the boards of several companies including Ztel, Ptek, and Phyve Corporation. He is currently President of Sewanee Ventures, a private equity and investment banking firm that he founded in 1996. Mr. Ortale received an MBA from Vanderbilt University.

#### **Other Officers**

**George H. Haas IV** is our Vice President and Head of Mortgage Research. He was most recently Vice President of Risk Analytics in the Servicing Asset Risk Management Department at National City Mortgage Company. While there, Mr. Haas specialized in researching the impact of mortgage prepayments on a \$155 billion mortgage servicing portfolio. He has presented his research at conferences to other fixed income and mortgage banking professionals. Prior to joining National City Mortgage Company in 2002, Mr. Haas worked at Homeside Lending Inc. where he was a member of the Capital Markets Finance Group, specializing in mortgage servicing rights, hedging and market risk oversight. Mr. Haas received his MS in Economics, with an econometric and statistical analysis emphasis, and his BS in Business Economics, from Oklahoma State University.

#### **Board Composition**

Our board of directors currently consists of five members. Directors will be elected for a term of three years and hold office until their successors are elected and qualified. Our bylaws provide that except in the case of a vacancy, the majority of the members of our board of directors and of any committee of our board of directors must at all times after the issuance of the shares of our Class A Common Stock in this offering be independent directors. A vacancy on our board of directors resulting from the removal of a director may be filled by a vote of our directors, subject, however, to the right of our stockholders to elect a successor to fill any such vacancy resulting from the removal of a director by our stockholders. Except in the case of a removal of a director by our stockholders, vacancies occurring on our board of directors among the independent directors will be filled by the vote of a majority of the remaining directors, including the independent directors. A vacancy on our board resulting from an increase in the number of directors will be filled by the vote of a majority of the entire board of directors. The term "independent directors" refers to those directors who meet the independence requirements under the rules and regulations of the New York Stock Exchange, as in effect from time to time.

Our charter provides for three classes of directors with staggered terms of three years, with one class elected every year. Mr. Bespolka is a Class I director and will hold office until 2007. Mr. Cauley and Mr. Ortale are Class II directors and will hold office until 2005. Mr. Zimmer and Ms. Hendricks are Class III directors and will hold office until 2006.

Our charter provides for the indemnification of our directors and officers to the fullest extent permitted by Maryland law. Our other employees and agents may be indemnified to such extent as shall be authorized by our board of directors or our bylaws. See "Certain Provisions of Maryland Law and of Our Charter and Bylaws—Limitation of Liability and Indemnification."

## **Board Committees**

We have established an audit committee, a compensation committee and a governance and nominating committee of our board of directors. Other committees may be established by our board of directors from time to time.

### ***Audit Committee***

The audit committee of our board of directors recommends the appointment of our independent auditors, reviews our internal accounting procedures and financial statements and consults with and reviews the services provided by our internal and independent auditors, including the results and scope of their audit. The audit committee currently consists of Ms. Hendricks (Chairperson and Audit Committee Financial Expert), Mr. Bespolka and Mr. Ortale. We believe that a majority of the members of the audit committee satisfy the audit committee membership independence requirements of the SEC and the independence and other standards of the New York Stock Exchange.

### ***Compensation Committee***

The compensation committee of our board of directors reviews and recommends to the board the compensation and benefits of all of our executive officers, administers our stock option plans and establishes and reviews general policies relating to compensation and benefits of our employees. The compensation committee currently consists of Mr. Bespolka (Chairperson) and Ms. Hendricks.

### ***Governance and Nominating Committee***

The corporate governance and nominating committee of our board of directors identifies individuals qualified to become members of our board of directors, selects, or recommends that our board of directors select, the director nominees for each annual meeting of our stockholders and develops our corporate governance principles. The corporate governance and nominating committee currently consists of Mr. Ortale (Chairperson) and Mr. Bespolka.

### ***Compensation of Directors***

Our independent directors each receive annual compensation of \$45,000. Additionally, each independent director receives \$1,000 for each board meeting attended as well as reimbursement for travel and hotel expenses associated with attending such board and committee meetings. The chairperson of each of the compensation committee and the governance and nominating committee is entitled to an additional annual fee of \$3,000. The chairperson of the audit committee is entitled to an additional annual fee of \$6,000. A minimum of one-half of the compensation payable to our independent directors is in the form of our Class A Common Stock and each of our independent directors has the right to elect to receive all or a portion of the balance of such compensation in the form of Class A Common Stock. The grants of stock will be under our stock incentive plan, and will be subject in all respects to the terms thereof. See "—Stock Incentive Plan." As of March 31, 2004, all three of our independent directors had elected to receive 100% of their compensation in shares of Class A Common Stock. Directors employed directly by us will not be separately compensated for their service as directors.

## Corporate Governance

### *Lead Independent Director*

On the recommendation of the governance and nominating committee, our independent directors meet in regularly scheduled executive sessions without management. Our board of directors has established the position of lead independent director and our independent directors have elected Maureen A. Hendricks to serve in that position. In her role as lead independent director, Mrs. Hendricks' responsibilities include:

- scheduling and chairing meetings of the independent directors and setting their agendas;
- facilitating communications between the independent directors and management; and
- acting as a point of contact for persons who wish to communicate with the independent directors.

### *Code of Business Conduct and Ethics*

Our board of directors has established a code of business conduct and ethics, which is available on our corporate website. Among other matters, the code of business conduct and ethics is designed to deter wrongdoing and to promote:

- honest and ethical conduct, including the ethical handling of actual or apparent conflicts of interest between personal and professional relationships;
- full, fair, accurate, timely and understandable disclosure in our SEC reports and other public communications;
- compliance with applicable governmental laws, rules and regulations;
- prompt internal reporting of violations of the code to appropriate persons identified in the code; and
- accountability for adherence to the code.

Waivers to the code of business conduct and ethics may be granted only by the governance and nominating committee of the board. In the event that the committee grants any waivers of the elements listed above to any of our officers, we expect to announce the waiver within five business days on the corporate governance section of our corporate website at [www.biminireit.com](http://www.biminireit.com). The information on that website is not a part of this prospectus.

### *Public Availability of Corporate Governance Documents*

Our key corporate governance documents, including our code of business conduct and the charters of our audit committee, compensation committee and governance and nominating committee are:

- available on our corporate website; and
- available in print to any stockholder who requests them from our corporate secretary.

## Compensation of Executive Officers

The following table summarizes the compensation we have awarded or paid to our Chairman, Chief Executive Officer and President and to our Chief Investment Officer, Chief Financial Officer and Secretary since our inception. We refer to the persons identified in the following table as our named executive officers.

**Summary Compensation Table**

Name and Position	Year	Annual Compensation			Long-Term Compensation			
		Salary	Bonus	Other	Stock Awards	Option Awards	Dividend Equivalent Rights	All Other Compensation
Jeffrey J. Zimmer, Chairman of the Board, Chief Executive Officer and President	2003	\$ 150,000(1)	—	—	—	—	—	—
Robert E. Cauley, Chief Investment Officer, Chief Financial Officer and Secretary	2003	\$ 150,000(1)	—	—	—	—	—	—

(1) Represents annual salary. Actual salary from commencement of operations to year end was \$4,583.

## Executive Employment Agreements

We entered into employment agreements with Mr. Zimmer and Mr. Cauley in 2003, which were amended and restated in 2004. The employment agreements provide for Mr. Zimmer to serve as our President and Chief Executive Officer and Mr. Cauley to serve as our Chief Investment Officer and Chief Financial Officer. These employment agreements require Messrs. Zimmer and Cauley to devote substantially full-time attention and time to our affairs, but also permit them to devote time to their outside business interests. The employment agreements terminate in April 2007; provided, however, that the term shall automatically be extended for one-year periods unless, not later than six months prior to the termination of the existing term, either party provides written notice to the other party of its intent not to further extend the term. The employment agreements provide for an initial annual base salary of \$150,000 to each of Messrs. Zimmer and Cauley. Upon the effectiveness of the registration statement of which this prospectus is a part, Mr. Zimmer's annual base salary will increase to \$400,000, and Mr. Cauley's annual base salary will increase to \$267,500. Additionally, the employment agreements provide for Mr. Zimmer to receive a \$250,000 cash bonus and for Mr. Cauley to receive a \$125,000 cash bonus at the time of the effectiveness of a resale shelf registration statement on Form S-11 covering the resale of the Class A Common Stock sold in our recent private placement. Messrs. Zimmer and Cauley will also be entitled to bonuses at the discretion of the compensation committee, which shall consider, among other things, whether completion of a capital raising event should result in the payment of a bonus. In addition, subject to approval by the committee, Messrs. Zimmer and Cauley may participate in our employee benefit plans, including, but not limited to, the 2003 stock incentive plan. Messrs. Zimmer and Cauley are covered by medical, vision and dental insurance at our expense.

Upon the termination of an executive officer's employment either by us for "cause" or by the executive officer without "good reason" during the term of his employment agreement, such executive officer will be entitled to receive his base salary and bonus accrued through the date of termination of the executive officer's employment. All unvested equity awards will be terminated.

Upon the termination of an executive officer's employment either by us without "cause" or by the executive officer for "good reason" or by the executive officer for any reason within three months after a "change of control", the executive officer will be entitled under his employment agreement to the

following severance payments and benefits, subject to his execution and non-revocation of a general release of claims:

- lump-sum cash payment equal to 300% of the sum of his then-current annual base salary plus average bonus over the prior three years;
- his prorated annual bonus for the year in which the termination occurs;
- all stock options held by the executive officer will become fully exercisable and will continue to be exercisable for their full terms and all restricted stock held by such executive officer will become fully vested;
- health benefits for three years following the executive officer's termination of employment at no cost to the executive officer, subject to reduction to the extent that the executive officer receives comparable benefits from a subsequent employer; and
- outplacement services at our expense.

"Cause" under the employment agreements generally includes (i) conviction of felony or certain other crimes, (ii) willful misconduct, willful or gross neglect, fraud, misappropriation or embezzlement, (iii) repeated failure to adhere to certain directions, policies and practices or to devote required time and efforts to us, (iv) certain willful and continued failures to perform properly assigned duties, (v) material breach of certain restrictive covenants, or (vi) certain other breaches of the employment agreement. "Good reason" under the employment agreements generally includes (i) the material reduction of authority, duties and responsibilities, the failure to continue as a member of our board (or as chairman of the board, as applicable), or the assignment of duties materially inconsistent with the executive's positions, (ii) a reduction in salary, (iii) the relocation of the executive's office to more than 25 miles from Vero Beach, Florida, (iv) our failure to pay certain compensation, or (v) our material and willful breach of the employment agreement. Conditions otherwise constituting cause or good reason may be subject to specified opportunities to cure. "Change of control" under the employment agreements generally includes (i) certain acquisitions of 30% or more of the voting power or our capital stock by a person or group, (ii) certain consolidations or mergers where our stockholders do not immediately thereafter own at least 50% of the voting power of the resulting company, (iii) certain sales or other transfers of substantially all of our assets to a third party or the approval by our stockholders of a plan of our liquidation or dissolution, and (iv) certain significant changes in the composition of our board of directors.

Under the employment agreements, we have agreed to make an additional tax gross-up payment to the executive officer if any amounts paid or payable to the executive officer would be subject to the excise tax imposed on certain so-called "excess parachute payments" under Section 4999 of the Internal Revenue Code. However, if a reduction in the payments and benefits of 10% or less would render the excise tax inapplicable, then the payments and benefits will be reduced by such amount, and we will not be required to make the gross-up payment.

Each employment agreement also provides that, at our expense, the executive officer or his estate will be entitled to life insurance in an amount of at least \$2,500,000 for Mr. Zimmer and \$2,000,000 for Mr. Cauley and long-term disability insurance benefits and to receive continued coverage under our group health plans for a period of three years in the event of his death or disability.

Each employment agreement also contains confidentiality provisions that apply indefinitely and non-compete provisions that include covenants not to: (i) conduct, directly or indirectly, any business involving mortgage REITs without the consent of our board of directors, whether such business is conducted by him individually or as principal, partner, officer, director, consultant, employee, stockholder or manager of any person, partnership, corporation, limited liability company or any other entity; or (ii) own interests in any entity that is competitive, directly or indirectly, with any business carried on by us or our successors, subsidiaries and affiliates.

Each of Messrs. Zimmer and Cauley is bound by his non-competition covenant for so long as he is an officer of the company and for a one-year period thereafter, unless his employment is terminated by us without "cause" or by him with "good reason" (in each case, as defined in his employment agreement) or by him for any reason after a "change in control" (as defined in his employment agreement) of our company, in which case his covenant not to compete will lapse on the date of his termination. A copy of each employment agreement is filed as an exhibit to the registration statement of which this prospectus is a part.

## **Stock Incentive Plan**

We have adopted a 2003 stock incentive plan. The purpose of the 2003 stock incentive plan is to provide us with the flexibility to use stock options and other awards as part of an overall compensation package to provide performance-based compensation to attract and retain qualified personnel. We believe that awards under the 2003 stock incentive plan may serve to broaden the equity participation of key employees and further link the long-term interests of management and stockholders. We plan to award 313,600 phantom shares to Messrs. Zimmer, Cauley and Haas under this plan.

### ***Administration***

The 2003 stock incentive plan will be administered by our board of directors or a committee of our board of directors. From and after the time of our public offering, the plan will be administered by a committee consisting of two or more non-employee directors, each of whom is intended to be, to the extent required by Rule 16b-3 under the Securities Exchange Act of 1934 and Section 162(m) of the Internal Revenue Code, a non-employee director under Rule 16b-3 and an outside director under Section 162(m), or if no committee exists, the board of directors. References below to the committee include a reference to the board for those periods in which the board is acting.

The committee has the full authority to administer and interpret the 2003 stock incentive plan, to authorize the granting of awards, to determine the eligibility of an employee, director or consultant to receive an award, to determine the number of shares of Class A Common Stock to be covered by each award (subject to the individual participant limitations provided in the 2003 stock incentive plan), to determine the terms, provisions and conditions of each award (which may not be inconsistent with the terms of the 2003 stock incentive plan), to prescribe the form of instruments evidencing awards and to take any other actions and make all other determinations that it deems necessary or appropriate in connection with the 2003 stock incentive plan or the administration or interpretation thereof. In the case of grants to directors, the grants shall, unless otherwise provided by the board, be made and administered by the board rather than the committee. In connection with this authority, the committee may establish performance goals that must be met in order for awards to be granted or to vest, or for the restrictions on any such awards to lapse. The plan also provides for the possibility of a right of first refusal and certain repurchase rights.

### ***Eligibility and Types of Awards***

Key employees, directors and consultants are eligible to be granted stock options, restricted stock, phantom shares, dividend equivalent rights and other stock-based awards under the 2003 stock incentive plan.

### ***Available Shares***

Subject to adjustment upon certain corporate transactions or events, a maximum of 4,000,000 shares of our Class A Common Stock (but not more than 10% of the Class A Common Stock outstanding on the date of grant) may be subject to stock options, shares of restricted stock, phantom shares and dividend equivalent rights under the 2003 stock incentive plan. In addition, subject to adjustment upon certain corporate transactions or events, a participant may not receive options for

more than 2,000,000 shares of our Class A Common Stock over the life of the 2003 stock incentive plan. Any Class A Common Stock withheld or surrendered by plan participants in connection with the payment of an option exercise price or in connection with tax withholding will not count towards the share limitation and will be available for issuance under the 2003 stock incentive plan. If an option or other award granted under the 2003 stock incentive plan expires or terminates, the shares subject to any portion of the award that expires or terminates without having been exercised or paid, as the case may be, will again become available for the issuance of additional awards. Unless previously terminated by our board of directors, no new award may be granted under the 2003 stock incentive plan after the tenth anniversary of the date that such plan was initially approved by our board of directors. Also, no award may be granted under our 2003 stock incentive plan to any person who, assuming exercise of all options and payment of all awards held by such person would own or be deemed to own more than 9.8% of the outstanding shares of our common stock.

#### ***Awards Under the Plan***

***Stock Options.*** The terms of specific options, including whether options shall constitute "incentive stock options" for purposes of Section 422(b) of the Internal Revenue Code, shall be determined by the committee. The exercise price of an option shall be determined by the committee and reflected in the applicable award agreement. The exercise price with respect to incentive stock options may not be lower than 100% (110% in the case of an incentive stock option granted to a 10% stockholder, if permitted under the plan) of the fair market value of our Class A Common Stock on the date of grant. Each option will be exercisable after the period or periods specified in the award agreement, which will generally not exceed ten years from the date of grant (or five years in the case of an incentive stock option granted to a 10% stockholder, if permitted under the plan). Options will be exercisable at such times and subject to such terms as determined by the committee. Unless otherwise determined by the committee at the time of grant, such stock options shall vest ratably over a five-year period beginning on the date of grant.

***Restricted Stock.*** Restricted stock will be subject to restrictions (including, without limitation, any limitation on the right to vote a share of restricted stock or the right to receive any dividend or other right or property) as the committee shall determine. Unless otherwise determined by the committee at the time of grant, restricted stock awards shall vest over a three-year period. Unless otherwise determined by the committee, provided the participant remains in our service, each award will vest in three equal annual installments and 50% of each award is subject to achieving pre-determined financial hurdles in each of those three years. Except as otherwise determined by the committee, upon a termination of employment or other service for cause or by the grantee for any reason during the applicable restriction period, all shares of restricted stock still subject to restrictions shall be forfeited to us.

***Phantom Shares.*** Phantom shares will vest as provided in the applicable award agreement. A phantom share represents a right to receive the fair market value of a share of our Class A Common Stock, or, if provided by the committee, the right to receive the fair market value of a share of our Class A Common Stock in excess of a base value established by the committee at the time of grant. Phantom shares may generally be settled in cash or by transfer of shares of Class A Common Stock (as may be elected by the participant or the committee, as may be provided by the committee at grant). The committee may, in its discretion and under certain circumstances, permit a participant to receive as settlement of the phantom shares installments over a period not to exceed ten years. In addition, the committee may establish a program under which distributions with respect to phantom shares may be deferred for additional periods as set forth in the preceding sentence. We plan to award 313,600 phantom shares under this plan, including 186,500 shares to Mr. Zimmer, 124,350 shares to Mr. Cauley and 2,750 to Mr. Haas.



*Dividend Equivalents.* A dividend equivalent is a right to receive (or have credited) the equivalent value (in cash or shares of common stock) of dividends declared on shares of common stock otherwise subject to an award. The committee may provide that amounts payable with respect to dividend equivalents shall be converted into cash or additional shares of Class A Common Stock. The committee will establish all other limitations and conditions of awards of dividend equivalents as it deems appropriate.

*Other Stock-Based Awards.* The 2003 stock incentive plan authorizes the granting of other awards based upon the Class A Common Stock (including the grant of securities convertible into Class A Common Stock and stock appreciation rights), and subject to terms and conditions established at the time of grant.

#### ***Change in Control***

Upon a change in control of us (as defined in the 2003 stock incentive plan), the committee may make such adjustments as it, in its discretion, determines are necessary or appropriate in light of the change in control, but only if the committee determines that the adjustments do not have an adverse economic impact on the participants (as determined at the time of the adjustments).

#### ***Amendment and Termination***

Our board of directors may amend the 2003 stock incentive plan as it deems advisable, except that it may not amend the 2003 stock incentive plan in any way that would adversely affect a participant with respect to an award previously granted unless the amendment is required in order to comply with applicable laws. In addition, our board of directors may not amend the 2003 stock incentive plan without shareholder approval if the amendment would cause the 2003 stock incentive plan to fail to comply with any requirement of applicable law in the absence of shareholder approval or applicable exchange or similar rule.

#### **Incentive Bonus Plan**

The committee may grant two types of bonuses: (i) an annual supplemental bonus and (ii) a formula bonus. Annual supplemental bonuses under our incentive bonus plan are awarded based on corporate factors or individual factors (or a combination of both) selected by the compensation committee. Unless otherwise provided for by the committee, the formula bonus is only awarded if our funds from operations exceed the product of (i) the 10-year Treasury Rate, as provided under the incentive bonus plan, plus 2.25% and (ii) the weighted average book value of our company. To the extent this occurs, selected employees shall receive a certain percentage of the excess. No bonus shall exceed 100% of the key employee's aggregate salary for the year, except that, in the case of any employee with an employment agreement that contemplates bonus payments, the committee may provide, in its discretion, that bonuses in excess of 100% of the key employee's aggregate salary for the year may be paid to such employee. The committee may provide for partial bonus payments at target and other levels. The committee shall decide whether to grant an annual supplemental bonus, in addition to the formula bonus, based on our performance versus our peer group and other material factors not otherwise captured in the formula bonus calculation. The committee may determine that bonuses shall be paid in cash or stock, or a combination thereof. Unless otherwise provided for by the committee, (i) (A) formula bonuses shall, at the election of the employee, be paid in cash, stock (or other equity-based compensation) or any combination thereof, and (B) supplemental annual bonuses shall be paid 60% in cash and 40% in stock (or other equity-based compensation) and may be subject to various additional limitations, (ii) formula bonuses shall be vested as they are earned and the equity portion of the annual supplemental bonus shall vest over three years, (iii) subject to the governing plan and applicable award agreement, dividends and dividend equivalents shall be payable with respect to such stock (or other equity), and (iv) stock (or other stock-based compensation) will vest upon the

occurrence of certain changes in control and certain terminations of employment. The committee may provide for programs under which the payment of bonuses may be deferred at the election of the employee. The bonuses under the plan are in addition to the capital-raising bonuses provided for under the employment agreements for the Chief Executive Officer and for the Chief Investment Officer and Chief Financial Officer. See "—Executive Employment Agreements."

## CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS

During the period from September 24, 2003 (the date of our inception) through December 19, 2003, our start-up activities were funded by our President, CEO and Chairman of our board of directors, Jeffrey J. Zimmer. On December 19, 2003, at the initial closing of our first private placement of Class A Common Stock, we reimbursed Mr. Zimmer \$247,980 for these costs, which consisted primarily of property and equipment and operating expenses.

In October 2003, we sold shares of our common stock to our founders, our initial independent directors and the lead placement agent in our private placements of Class A Common Stock. Kevin L. Bespolka, Maureen A. Hendricks and Buford H. Ortale, our initial independent directors, purchased a total of 7,500 shares of our Class A Common Stock at \$.0047 per share. In connection with this purchase, we received \$7.50 and a total of \$27.50 in the form of services to us. Mr. Zimmer and Robert E. Cauley, our Chief Financial Officer and one of our directors, purchased a total of 319,388 shares of our Class B Common Stock for \$1,500.

In connection with our private placements of Class A Common Stock, Flagstone Securities, LLC purchased a total of 319,388 shares of our Class C Common Stock for \$319.39 and a total of \$1,180.61 in the form of services to us. Flagstone is an underwriter in this offering and was the lead placement agent for our private offerings. In connection with our private placement offerings, Flagstone received a total of \$6.6 million in fees and Avondale Partners, one of the placement agents in these offerings, received a total of \$1.0 million in fees.

On December 19, 2003, we raised \$60.1 million from the private sale of 4,004,602 shares of our Class A Common Stock at a price of \$15.00 per share. We received net proceeds of \$56.6 million from the offering after commissions and expenses.

On January 30, 2004, we raised \$87.6 million from the private sale of 5,837,055 shares of our Class A Common Stock at a price of \$15.00 per share. We received net proceeds of \$82.9 million from the offering after commissions and expenses.

On February 17, 2004, we raised \$2.4 million from the private sale of 158,343 shares of our Class A Common Stock at a price of \$15.00 per share. We received net proceeds of \$2.2 million from the offering after commissions and expenses.

Buford Ortale, one of our directors, was previously a Managing Director in the Investment Banking Group at Avondale Partners, LLC, one of the placement agents for our private placement that we completed in January 2004. Mr. Ortale now has a continuing affiliation with Avondale pursuant to which he receives compensation from investment banking fees earned by Avondale on transactions referred to Avondale by Mr. Ortale. Mr. Ortale was compensated by Avondale for referring our company to Avondale in an amount equal to \$360,000.

As of March 31, 2004, our outside directors have elected to receive 100% of their directors' compensation in shares of our Class A Common Stock. Accordingly, Kevin L. Bespolka, Maureen A. Hendricks and Buford H. Ortale have received total consideration of \$64,515 as compensation for their services as directors through the issuance of a total of 4,301 shares of our Class A Common Stock. These issuances occurred on January 15, 2004 and on April 15, 2004. In both issuances, our Class A Common Stock was valued at \$15.00 per share.

## DESCRIPTION OF CAPITAL STOCK

The following summary description of our capital stock contains the material terms of our capital stock and is subject to and qualified in its entirety by reference to our charter and our bylaws and any amendments thereto, copies of which are attached as exhibits to the registration statement of which this prospectus forms a part.

### General

Our charter provides that we may issue up to 100,000,000 shares of our common stock, \$0.001 par value per share, and up to 10,000,000 shares of preferred stock, \$0.001 par value per share. Under Maryland law, stockholders generally are not liable for the corporation's debts or obligations.

### Common Stock

#### *General*

Of the 100,000,000 shares of common stock we may issue under our charter, 98,000,000 shares have been designated as Class A Common Stock, 1,000,000 shares have been designated as Class B Common Stock and 1,000,000 shares have been designated as Class C Common Stock. All shares of our Class A Common Stock offered hereby will be duly authorized and, upon our receipt of the full consideration therefor, will be fully paid and non-assessable. Holders of our shares of common stock have no sinking fund or redemption rights and have no preemptive rights to subscribe for any of our securities.

Under the MGCL, a Maryland corporation generally cannot dissolve, amend its charter, merge, sell all or substantially all of its assets, 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 fewer than a majority of all of the votes entitled to be cast by the stockholders on the matter) is set forth in the corporation's charter. Our charter provides that any such action shall be effective and valid if taken or authorized by our stockholders by the affirmative vote of a majority of all the votes entitled to be cast on the matter, except that amendments to the provisions of our charter relating to the removal of directors must be approved by our stockholders by the affirmative vote of at least two-thirds of the votes entitled to be cast on the matter.

#### *Class A Common Stock*

Each outstanding share of Class A Common Stock entitles the holder to one vote on all matters submitted to a vote of stockholders, including the election of directors. Holders of shares of our Class A Common Stock are not entitled to cumulate their votes in the election of directors.

Subject to the preferential rights of any other class or series of stock and to the provisions of our charter regarding ownership limitations, holders of shares of our Class A Common Stock are entitled to receive dividends on such stock if, as and when authorized and declared by our board of directors out of assets legally available therefor.

#### *Class B Common Stock*

Of the 1,000,000 shares of our Class B Common Stock authorized for issuance under our charter, 319,388 shares were purchased by our founders, Jeffrey J. Zimmer and Robert E. Cauley, in October 2003.

Each outstanding share of Class B Common Stock entitles the holder to one vote on all matters submitted to a vote of common stockholders, including the election of directors. Holders of our shares

of Class B Common Stock are not entitled to cumulate their votes in the election of directors. Holders of our shares of Class A Common Stock and Class B Common Stock vote together as one class in all matters, except that any matters which would adversely affect the rights and preferences of Class B Common Stock as a separate class require a separate approval by holders of a majority of the outstanding shares of our Class B Common Stock.

Holders of our shares of Class B Common Stock are entitled to receive dividends on each share of Class B Common Stock in an amount equal to the dividends declared on each share of Class A Common Stock if, as and when authorized and declared by our board of directors out of assets legally available therefor; provided that no dividends may be declared on the shares of our Class B Common Stock until cumulative dividends paid on each share of Class A Common Stock are equal to or greater than the difference between the book value per share of Class A Common Stock at the time of issuance of such share of Class A Common Stock and \$15.00 per share.

### ***Class C Common Stock***

Of the 1,000,000 shares of our Class C Common Stock authorized for issuance under our charter, 319,388 were purchased by Flagstone Securities, LLC in October 2003.

No dividends will be paid on the Class C Common Stock. Holders of shares of our Class C Common Stock are not entitled to vote on any matter submitted to a vote of stockholders, including the election of directors, except that any matters that would adversely affect the rights and privileges of the Class C Common Stock as a separate class require the approval of a majority of the Class C Common Stock.

### ***Liquidation Rights***

As used herein, "Class A Per Share Preference Amount" means \$15.00, adjusted equitably for any stock splits, stock combinations, stock dividends or the like.

In the event of any voluntary or involuntary liquidation, dissolution or winding up of our company, after payment or adequate provision for all known debts, liabilities and preference amounts payable on any preferred stock outstanding, liquidation proceeds shall be allocated as follows:

(i) first, to each share of Class A Common Stock outstanding, the Class A Per Share Preference Amount;

(ii) second, (x) to each share of Class B Common Stock outstanding, its pro rata share of \$1.9 million, less the aggregate Class A Per Share Preference Amount with respect to shares of Class A Common Stock issued on conversion of Class B Common Stock (such amount being the "Class B Per Share Preference Amount") and (y) to each share of Class C Common Stock outstanding, its pro rata share of \$1.9 million, less the aggregate Class A Per Share Preference Amount with respect to shares of Class A Common Stock issued on conversion of Class C Common Stock (such amount being the "Class C Per Share Preference Amount"); and

(iii) finally, any excess pro rata on a share for share basis to holders of our common stock outstanding.

Whenever funds are insufficient to pay in full the applicable Class A Per Share Preference Amount, the available funds shall be allocated ratably among the shares of Class A Common Stock. Whenever funds are insufficient to pay in full the applicable Class B Per Share Preference Amount and the Class C Per Share Preference Amount, the available funds shall be allocated ratably in accordance with the amount owing to the shares of Class B Common Stock and Class C Common Stock under (ii) above.

### ***Conversion of the Class B Common Stock and Class C Common Stock***

Each share of Class B Common Stock shall automatically be converted into one share of Class A Common Stock on the first day of the fiscal quarter following the fiscal quarter during which our board of directors shall have been notified that, as of the end of such fiscal quarter, the stockholders' equity attributable to the Class A Common Stock, calculated on a pro forma basis as if conversion of the Class B Common Stock (or portion thereof to be converted) had occurred, and otherwise determined in accordance with GAAP, equals no less than \$15.00 per share (adjusted equitably for any stock splits, stock combinations, stock dividends or the like); provided, that the number of shares of Class B Common Stock to be converted into Class A Common Stock in any quarter shall not exceed an amount that will cause the stockholders' equity attributable to the Class A Common Stock calculated as set forth above to be less than \$15.00 per share; provided further, that such conversions shall continue to occur until all shares of Class B Common Stock have been converted into shares of Class A Common Stock.

Each share of Class C Common Stock shall automatically be converted into one share of Class A Common Stock on the first day of the fiscal quarter following the fiscal quarter during which our board of directors shall have been notified that, as of the end of such fiscal quarter, the stockholders' equity attributable to the Class A Common Stock, calculated on a pro forma basis as if conversion of the Class C Common Stock had occurred and giving effect to the conversion of all of the shares of Class B Common Stock as of such date, and otherwise determined in accordance with GAAP, equals no less than \$15.00 per share (adjusted equitably for any stock splits, stock combinations, stock dividends or the like); provided, that the number of shares of Class C Common Stock to be converted into Class A Common Stock shall not exceed an amount that will cause the stockholders' equity attributable to the Class A Common Stock calculated as set forth above to be less than \$15.00 per share; and provided further, that such conversions shall continue to occur until all shares of Class C Common Stock have been converted into shares of Class A Common Stock.

Following such conversions, all authorized shares of Class B Common Stock and Class C Common Stock so converted shall be cancelled and become authorized but unissued shares of Class A Common Stock.

### **Preferred Stock**

Our charter authorizes our board of directors 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 is required by the MGCL and our charter to fix 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 such class or series. Thus, our board could authorize the issuance of shares of preferred stock with terms and conditions which could have the effect of delaying, deferring or preventing a transaction or a change of control that might involve a premium price for holders of our common stock or otherwise be in their best interest. As of the closing of the offering, no shares of our preferred stock are outstanding and we have no present plans to issue any preferred stock.

### **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 will provide us with increased flexibility in making investment acquisitions and in meeting other needs which might arise. The additional shares of our common stock and preferred stock are available for issuance without further action by our

stockholders, unless such 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.

## **Ownership Limitations**

*Restrictions under our Charter.* Our charter, subject to certain exceptions, contains certain restrictions on the number of shares of our stock that a person may own. Our charter contains a stock ownership limit that prohibits any person from acquiring or holding, directly or indirectly, applying attribution rules under the Internal Revenue Code, shares of stock in excess of 9.8% of the total number or value of our common stock, whichever is more restrictive, or our stock in the aggregate. Our charter further prohibits (i) any person from beneficially or constructively owning shares of our stock that would result in us being "closely held" under Section 856(h) of the Internal Revenue Code or otherwise cause us to fail to qualify as a REIT, and (ii) any person from transferring shares of our stock if such transfer would result in shares of our stock being owned by fewer than 100 persons. Our board of directors, in its sole discretion, may exempt a person from the stock ownership limit. However, our board of directors may not grant such an exemption to any person whose ownership, direct or indirect, of in excess of 9.8% of the number or value of the outstanding shares of our stock (whichever is more restrictive) would result in us being "closely held" within the meaning of Section 856(h) of the Internal Revenue Code or otherwise would result in us failing to qualify as a REIT. The person seeking an exemption must represent to the satisfaction of our board of directors that it will not violate the aforementioned restriction. The person also must agree that any violation or attempted violation of any of the foregoing restrictions will result in the automatic transfer of the shares of stock causing such violation to the trust (as defined below). Our board of directors may require a ruling from the IRS or an opinion of counsel, in either case in form and substance satisfactory to our board of directors in its sole discretion, to determine or ensure our status as a REIT.

Any person who acquires or attempts or intends to acquire beneficial or constructive ownership of shares of our stock that will or may violate any of the foregoing restrictions on transferability and ownership, or any person who would have owned shares of our stock that resulted in a transfer of shares to the trust in the manner described below, 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 us.

If any transfer of shares of our stock occurs which, if effective, would result in any person beneficially or constructively owning shares of our stock in excess or in violation of the above transfer or ownership limitations, then that number of shares of our stock the beneficial or constructive ownership of which otherwise would cause such person to violate such limitations (rounded to the nearest whole share) shall be automatically transferred to a trust for the exclusive benefit of one or more charitable beneficiaries, and the prohibited owner shall not acquire any rights in such shares. Such automatic transfer shall be deemed to be effective as of the close of business on the business day prior to the date of such violative transfer. Shares of stock held in the trust shall be issued and outstanding shares of our stock. The prohibited owner shall not benefit economically from ownership of any shares of stock held in the trust, shall have no rights to dividends and shall not possess any rights to vote or other rights attributable to the shares of stock held in the trust. The trustee of the trust shall have all voting rights and rights to dividends or other distributions with respect to shares of stock held in the trust, which rights shall be exercised for the exclusive benefit of the charitable beneficiary. Any dividend or other distribution paid prior to the discovery by us that shares of stock have been transferred to the trustee shall be paid by the recipient of such dividend or distribution to the trustee upon demand, and any dividend or other distribution authorized but unpaid shall be paid when due to the trustee. Any dividend or distribution so paid to the trustee shall be held in trust for the charitable beneficiary. The prohibited owner shall have no voting rights with respect to shares of stock held in the trust and, subject to Maryland law, effective as of the date that such shares of stock have been

transferred to the trust, the trustee shall have the authority (at the trustee's sole discretion) (i) to rescind as void any vote cast by a prohibited owner prior to the discovery by us that such shares have been transferred to the trust, and (ii) to recast such vote in accordance with the desires of the trustee acting for the benefit of the charitable beneficiary. However, if we have already taken irreversible corporate action, then the trustee shall not have the authority to rescind and recast such vote.

Within 20 days after receiving notice from us that shares of our stock have been transferred to the trust, the trustee shall sell the shares of stock held in the trust to a person, whose ownership of the shares will not violate any of the ownership limitations set forth in our charter. Upon such sale, the interest of the charitable beneficiary in the shares sold shall terminate and the trustee shall distribute the net proceeds of the sale to the prohibited owner and to the charitable beneficiary as follows. The prohibited owner shall receive the lesser of (i) 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 trust (e.g., a gift, devise or other such transaction), the market price, as defined in our charter, of such shares on the day of the event causing the shares to be held in the trust and (ii) the price per share received by the trustee from the sale or other disposition of the shares held in the trust, in each case reduced by the costs incurred to enforce the ownership limits as to the shares in question. Any net sale proceeds in excess of the amount payable to the prohibited owner shall be paid immediately to the charitable beneficiary. If, prior to the discovery by us that shares of our stock have been transferred to the trust, such shares are sold by a prohibited owner, then (i) such shares shall be deemed to have been sold on behalf of the trust and (ii) to the extent that the prohibited owner received an amount for such shares that exceeds the amount that such prohibited owner was entitled to receive pursuant to the aforementioned requirement, such excess shall be paid to the trustee upon demand.

In addition, shares of our stock held in the trust shall be deemed to have been offered for sale to us, or our designee, at a price per share equal to the lesser of (i) the price per share in the transaction that resulted in such transfer to the trust (or, in the case of a devise or gift, the market price at the time of such devise or gift) and (ii) the market price on the date we, or our designee, accept such offer. We shall have the right to accept such offer until the trustee has sold the shares of stock held in the trust. Upon such a sale to us, the interest of the charitable beneficiary in the shares sold shall terminate and the trustee shall distribute the net proceeds of the sale to the prohibited owner.

All certificates representing shares of our common stock and preferred stock, if issued, will bear a legend referring to the restrictions described above.

Every record holder of 0.5% or more (or such other percentage as required by the Internal Revenue Code and the related Treasury regulations) of all classes or series of our stock, including shares of our common stock on any dividend record date during each taxable year, within 30 days after the end of the taxable year, shall be required to give written notice to us stating the name and address of such record holder, the number of shares of each class and series of our stock which the record holder beneficially owns and a description of the manner in which such shares are held. Each such record holder shall provide to us such additional information as we may request in order to determine the effect, if any, of such beneficial ownership on our status as a REIT and to ensure compliance with the stock ownership limits. In addition, each record holder shall upon demand be required to provide to us such information as we may reasonably request 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. We may request such information after every sale, disposition or transfer of our common stock prior to the date a registration statement for such stock becomes effective.

As of March 31, 2004, the Wasatch Core Growth Fund, Wasatch Small Cap Value Fund and the Wasatch Micro Cap Value Fund owned in the aggregate 1,965,000 shares of our Class A Common Stock, which equaled approximately 20% of the outstanding shares of our Class A Common Stock.

Assuming that these funds do not purchase any shares of our Class A Common Stock in this offering, upon consummation of this offering, these funds will own in the aggregate approximately [ ]% of the outstanding shares of our Class A Common Stock. Wasatch Advisors, Inc. has made representations to us regarding the beneficial ownership of these funds. In reliance on these representations, our board of directors has waived the requirement that no person may acquire or hold in excess of 9.8% of our common stock for the Wasatch Funds. This waiver permits these holders to own up to 1,965,000 shares of our Class A Common Stock. We have determined that we are not "closely held" within the meaning of Section 856(h) of the Internal Revenue Code and will not otherwise fail to qualify as a REIT as a result of Wasatch's ownership of 1,965,000 shares of our Class A Common Stock.

These ownership limits could delay, defer or prevent a change in control or other transaction of us that might involve a premium price for the Class A Common Stock or otherwise be in the best interest of the stockholders. The Class A Common Stock is also subject to transfer restrictions designed to avoid having our assets be subject to certain provisions under the Employee Retirement Income Security Act of 1974, as amended. These restrictions will no longer apply upon completion of this offering.

**Transfer Agent and Registrar**

The transfer agent and registrar for our common stock is Continental Stock Transfer & Trust Company. Their mailing address is 17 Battery Place, New York, New York, 10004. Their telephone number is (212) 845-3200.



## **CERTAIN PROVISIONS OF MARYLAND LAW AND OF OUR CHARTER AND BYLAWS**

The following summary of certain provisions of Maryland law and our charter and bylaws contains the material terms of our charter and our bylaws and is subject to, and qualified in its entirety by, reference to Maryland law and to our charter and bylaws.

### **Classification of Board of Directors**

Our bylaws provide that the number of directors may be established, increased or decreased by our board of directors but may not be fewer than the minimum number required by the MGCL (which currently is one) nor more than fifteen. Any vacancy on our board may be filled by a majority of the remaining directors, even if such a majority constitutes less than a quorum, except that a vacancy resulting from an increase in the number of directors must be filled by a majority of the entire board of directors. Our stockholders may elect a successor to fill a vacancy on our board which results from the removal of a director. Our bylaws provide that a majority of our board of directors must be independent directors.

Pursuant to our charter, our board of directors is divided into three classes of directors. Beginning in 2004, directors of each class will be chosen for three-year terms upon the expiration of their current terms and every other year one class of our directors will be elected by our stockholders. We believe that classification of our board of directors will help to assure the continuity and stability of our business strategies and policies as determined by our board of directors. Holders of shares of our common stock will not have the right to cumulative voting in the election of directors. Consequently, at the applicable annual meeting of stockholders, the holders of a majority of the shares of our common stock entitled to vote will be able to elect all of the successors of the class of directors whose terms expire at that meeting.

The classified board provision could have the effect of making the replacement of incumbent directors more time consuming and difficult. Two separate meetings of stockholders, instead of one, will generally be required to effect a change in a majority of our board of directors. Thus, the classified board provision could increase the likelihood that incumbent directors will retain their positions. The staggered terms of directors may delay, defer or prevent a tender offer or an attempt to change control of us, even though a tender offer or change in control might be in the best interest of our stockholders.

### **Removal of Directors**

Our charter provides that a director may be removed only for cause (as defined in our charter) and only by the affirmative vote of at least two-thirds of the votes entitled to be cast by our stockholders generally in the election of our directors. This provision, when coupled with the provision in our bylaws authorizing our board of directors to fill vacant directorships, will preclude stockholders from removing incumbent directors and filling the vacancies created by such removal with their own nominees except upon the existence of cause for removal and a substantial affirmative vote.

### **Limitation of Liability and Indemnification**

The MGCL permits a Maryland corporation to include in its charter a provision limiting the liability of its directors and officers to the corporation and its stockholders for money damages except for liability resulting from (i) actual receipt of an improper benefit or profit in money, property or services, or (ii) active and deliberate dishonesty established by a final judgment as being material to the cause of action. Our charter contains such a provision which eliminates such liability to the maximum extent permitted by the MGCL.

Our charter obligates us, to the maximum extent permitted by Maryland law, to indemnify any person who is or was a party to, or is threatened to be made a party to, any threatened or pending proceeding by reason of the fact that such person is or was a director or officer of our company, or while a director or officer of our company is or was serving, at our request, as a director, officer, agent, partner or trustee of another corporation, partnership, joint venture, limited liability company, trust, real estate investment trust, employee benefit plan or other enterprise. To the maximum extent permitted by Maryland law, the indemnification provided for in our charter shall include expenses (including attorney's fees), judgments, fines and amounts paid in settlement and any such expenses may be paid or reimbursed by us in advance of the final disposition of any such proceeding. Our bylaws also permit us to indemnify and advance expenses to any person who served any of our predecessors in any of the capacities described above and to any employee or agent of us or a predecessor of us.

The MGCL requires a corporation (unless its charter provides otherwise, which our charter does not) to indemnify a director or officer who has been successful, on the merits or otherwise, in the defense of any proceeding to which he is made a party by reason of his service in that capacity. The MGCL permits a corporation to indemnify its present and former directors and officers, among others, against judgments, penalties, fines, settlements and reasonable expenses actually incurred by them in connection with 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 (i) the act or omission of the director or officer was material to the matter giving rise to the proceeding and (a) was committed in bad faith or (b) was the result of active and deliberate dishonesty, (ii) the director or officer actually received an improper personal benefit in money, property or services, or (iii) in the case of any criminal proceeding, the director or officer had reasonable cause to believe that the act or omission was unlawful. However, under the MGCL, a Maryland corporation may not indemnify for an adverse judgment in a suit by or in the right of the corporation or for a judgment of liability on the basis that personal benefit was improperly received, unless in either case a court orders indemnification and then only for expenses. In addition, the MGCL permits a corporation to advance reasonable expenses to a director or officer upon the corporation's receipt of (1) a written affirmation by the director or officer of his good faith belief that he has met the standard of conduct necessary for indemnification by the corporation, and (2) a written undertaking by or on his behalf to repay the amount paid or reimbursed by the corporation if it shall ultimately be determined that the standard of conduct was not met.

### **Maryland Business Combination Act**

The MGCL establishes special requirements for "business combinations" between a Maryland corporation and "interested stockholders" unless exemptions are applicable. An interested stockholder is any person who beneficially owns, directly or indirectly, 10% or more of the voting power of our then-outstanding voting stock or any affiliate or associate who beneficially owned, directly or indirectly, 10% or more of the voting power of our then-outstanding voting stock within the two year period prior to the date in question. Among other things, the law prohibits for a period of five years a merger and other similar transactions between us and an interested stockholder unless our board of directors approved the transaction prior to the party becoming an interested stockholder. The five-year period runs from the most recent date on which the interested stockholder became an interested stockholder. The law also requires a supermajority stockholder vote for these transactions after the end of the five-year period. This means that the transaction must be approved by at least:

- 80% of the votes entitled to be cast by holders of outstanding voting shares; and
- 66<sup>2</sup>/<sub>3</sub>% of the votes entitled to be cast by holders of outstanding voting shares other than shares held by the interested stockholder or an affiliate of the interested stockholder with whom the business combination is to be effected.

Our charter contains a provision exempting the company from the provisions of the MGCL relating to business combinations with interested stockholders or affiliates of interested stockholders. However, such resolution can be altered or repealed, in whole or in part, by an amendment to our charter. If such provision is repealed, the business combination statute could have the effect of discouraging offers to acquire us and of increasing the difficulty of consummating these offers, even if our acquisition would be in our stockholders' best interests.

### **Maryland Control Share Acquisitions Act**

The MGCL provides that "control shares" of a Maryland corporation acquired in a "control share acquisition" have no voting rights except to the extent approved by a vote of two-thirds of the votes entitled to be cast on the matter, excluding shares of stock owned by the acquiror, by officers or by directors who are employees of the corporation. "Control shares" are voting shares of stock which, if aggregated with all other such shares of stock previously acquired by the acquiror or in respect of which the acquiror is able to exercise or direct the exercise of voting power (except solely by virtue of a revocable proxy), would entitle the acquiror to exercise voting power in electing directors within one of the following ranges of voting power: (i) one-tenth or more, but less than one-third; (ii) one-third or more, but less than a majority; or (iii) a majority or more of all voting power. Control shares do not include shares the acquiring person is then entitled to vote as a result of having previously obtained stockholder approval. A "control share acquisition" means the acquisition of control shares, subject to certain exceptions.

A person who has made or proposes to make a control share acquisition, upon satisfaction of certain conditions (including an undertaking to pay expenses), may compel 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. If no request for a meeting is made, we may present the question at any stockholders meeting.

If voting rights are not approved at the meeting or if the acquiring person does not deliver an acquiring person statement as required by the Maryland Control Share Acquisition Act, 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 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 such shares are 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. This means that you would be able to force us to redeem your stock for fair value. Under Maryland law, the fair value of the shares as determined for purposes of such appraisal rights may not be less than the highest price per share paid by the acquiror in the control share acquisition. Furthermore, certain limitations otherwise applicable to the exercise of appraisal rights would not apply in the context of a control share acquisition.

The control share acquisition statute does not apply (i) to shares acquired in a merger, consolidation or share exchange if we are a party to the transaction, or (ii) to acquisitions approved or exempted by our charter or bylaws of the corporation.

Our bylaws contain a provision exempting from the control share acquisition statute any and all acquisitions by any person of our shares of stock. We cannot assure you that such provision will not be amended or eliminated at any time in the future. If such provision is eliminated, the control share acquisition statute could have the effect of discouraging offers to acquire us and increasing the difficulty of consummating any such offers, even if our acquisition would be in our stockholders' best interests.

**Amendment to the Charter**

Except as provided below, our charter, including its provisions on classification of our board of directors and removal of directors, may be amended only if approved by our stockholders by the affirmative vote of not less than a majority of all of the votes entitled to be cast on the matter. Amendments to the provisions of our charter relating to the removal of directors will be required to be approved by our stockholders by the affirmative vote at least two-thirds of all votes entitled to be cast on the matter.

**Dissolution**

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

**Advance Notice of Director Nominations and New Business**

Our bylaws provide that with respect to an annual meeting of stockholders, nominations of persons for election to our board of directors and the proposal of business to be considered by stockholders may be made only (i) pursuant to our notice of the meeting, (ii) at the direction of our board of directors, or (iii) by a stockholder who is entitled to vote at the meeting and has complied with the advance notice procedures set forth in our bylaws.

## CLASS A COMMON STOCK AVAILABLE FOR FUTURE SALE

Prior to this offering, there has been no public market for our Class A Common Stock. Future sales of substantial amounts of our Class A Common Stock in the public market following this offering, or the possibility of such sales occurring, could adversely affect prevailing market prices for our Class A Common Stock or could impair our ability to raise capital through further offerings of equity securities.

As of April 15, 2004, we had outstanding 10,011,801 shares of our Class A Common Stock and no options to purchase additional shares. We have reserved an additional 3,686,400 shares of our Class A Common Stock for issuance under our 2003 stock incentive plan, 313,600 shares for issuance upon exchange of phantom shares that we plan to issue under our stock incentive plan and 638,776 shares for issuance upon conversion of Class B and Class C Common Stock. Immediately after the closing of this offering, we expect to have [ ] shares of our Class A Common Stock outstanding, assuming no exercise of the underwriters' over-allotment option. All of the shares sold in this offering will be freely tradable without restriction under the Securities Act of 1933, as amended, or the Securities Act, except for shares purchased by our "affiliates" as that term is defined under the Securities Act.

The remaining 10,011,801 shares of our Class A Common Stock held by our existing stockholders and any shares issued on conversion of Class B or Class C Common Stock are or would be "restricted" shares as that term is defined in Rule 144 under the Securities Act. We issued the restricted shares in private transactions in reliance upon exemptions from the registration requirements under the Securities Act. Restricted shares may be sold in the public market only after registration under the Securities Act or qualification for an exemption from the registration requirement, such as Rule 144 under the Securities Act, which is described below. On April 16, 2004, we filed with the SEC a separate registration statement covering the resale of up to 10,011,801 shares of our existing Class A Common Stock and 638,776 shares of our Class A Common Stock issuable upon conversion of our Class B and Class C Common Stock. Once that registration statement is declared effective by the SEC, those shares may be sold by their holders without restriction under the Securities Act at any time and from time to time, except during any suspension period we may declare in accordance with the registration rights agreement.

Our directors, officers and our other stockholders have entered or will enter into lock-up agreements (some of which appear in the registration rights agreement dated December 19, 2003). These lock-up agreements provide that our directors and officers will agree not to offer, sell, contract to sell, grant any option to purchase or otherwise dispose of any of our shares until 180 days after the effective date of this offering. These transfer restrictions do not apply to shares of our Class A Common Stock purchased in the secondary market following this offering. Friedman, Billings, Ramsey & Co., Inc. may, in its sole discretion and at any time without prior notice, release all or any portion of the shares subject to these lock-up agreements.

We intend to file, after the effectiveness of this offering, a registration statement on Form S-8 under the Securities Act covering all shares of our Class A Common Stock issued, reserved for issuance or subject to outstanding options under our 2003 stock incentive plan. Shares of our Class A Common Stock issued upon exercise of options under the Form S-8 will be available for sale in the public market, subject to Rule 144 volume limitations applicable to affiliates and subject to the contractual restrictions described above.

## PRINCIPAL STOCKHOLDERS

The following table presents information known to us regarding the beneficial ownership of our common stock. In accordance with SEC rules, each listed person's beneficial ownership includes:

- all shares the investor actually owns (of record or beneficially);
- all shares over which the investor has or shares voting or dispositive control (such as in the capacity as a general partner of an investment fund); and
- all shares the investor has the right to acquire within 60 days (such as upon exercise of options that are currently vested or which are scheduled to vest within 60 days).

Except as otherwise noted, information is given as of March 31, 2004 on an actual basis and as adjusted to reflect the sale of our Class A Common Stock in this offering. The table presents information regarding:

- each of our named executive officers;
- each director of our company;
- all of our directors and executive officers as a group; and
- each stockholder known to us to own beneficially more than five percent of our common stock.

Except as otherwise noted, the beneficial owners named in the following table have sole voting and investment power with respect to all shares of our common stock shown throughout as beneficially owned by them, subject to community property laws, where applicable.

	Beneficial ownership before offering		Beneficial ownership after offering	
	Number	Percent(1)	Number	Percent(1)
<b>5% Stockholders</b>				
Wasatch(2)	1,965,000	19.02%	[       ]	[       ]
Wellington Management Company, LLP(3)	965,000	9.34	[       ]	[       ]
Gotham Asset Management LP(4)	800,000	7.74	[       ]	[       ]
Kensington(5)	655,000	6.34	[       ]	[       ]
Wallace R. Weitz & Company(6)	650,000	6.29	[       ]	[       ]
Mutual Financial Services Fund(7)	599,667	5.80	[       ]	[       ]
<b>Directors and Officers(8)</b>				
Jeffrey J. Zimmer(9)	258,900	2.51		
Robert E. Cauley, CFA(10)	118,786	1.15	[       ]	[       ]
Kevin L. Bespolka(11)	34,584	*	[       ]	[       ]
Maureen A. Hendricks(12)	20,701	*	[       ]	[       ]
Buford H. Ortale(13)	113,917	1.10	[       ]	[       ]
All directors and executives officers as a group (5 persons)	546,888	5.29	[       ]	[       ]

\* Holdings represent less than 1% of all shares outstanding.

(1) Assumes that the listed persons do not sell any shares of our common stock prior to the completion of this offering or purchase any shares in this offering. Calculated using 10,331,189 shares of Class A and Class B Common Stock outstanding as of April 15, 2004 plus, in the case of post-offering amounts, [       ] shares issued by us in this offering.

- (2) Includes shares held by Wasatch Core Growth Fund, Wasatch Small Cap Value Fund and Wasatch Micro Cap Value Fund. These are "look-through" entities for federal income tax purposes. Wasatch's address is 150 Social Hall Avenue, 4<sup>th</sup> Floor, Salt Lake City, Utah 84111.
- (3) Wellington Management Company LLP's address is 75 State Street, Boston, Massachusetts, 02109.
- (4) Gotham Asset Management LP's address is 520 Madison Avenue, 35th Floor, New York, New York, 10022.
- (5) Includes shares held by Kensington Strategic Realty Fund, Kensington Realty Income Fund LP, Condor Partners, LP and Archon Partners LP. Kensington's address is 4 Orinda Way, No. 200C, Orinda, California, 94563.
- (6) Wallace R. Weitz & Company's address is 1125 South 103<sup>rd</sup> Street, Suite 600, Omaha, Nebraska, 68124.
- (7) Mutual Financial Services' address is c/o Mutual Financial Advisors, LLC, 51 John F. Kennedy Parkway, Short Hills, New Jersey, 07078.
- (8) The address of each of our officers and directors is c/o Bimini Mortgage Management, Inc., 3305 Flamingo Drive, Suite 100, Vero Beach, Florida 32963.
- (9) Includes 5,400 shares owned by members of Mr. Zimmer's immediate family and 207,602 shares of Class B Common Stock, which votes together as a class with Class A Common Stock.
- (10) Includes 111,786 shares of Class B Common Stock, which votes together as a class with Class A Common Stock.
- (11) Includes 6,667 shares owned by members of Mr. Bespolka's immediate family and 8,000 shares held in Mr. Bespolka's IRA.
- (12) Includes 8,367 shares owned by John K. Hendricks Revocable Trust Dated July 9, 2003 and 8,367 shares owned by Maureen A. Hendricks Revocable Trust Dated July 9, 2003.
- (13) Includes 10,000 shares owned by the Ortale Family Foundation.

## MATERIAL FEDERAL INCOME TAX CONSEQUENCES

The following discussion summarizes the material federal income tax considerations regarding our qualification and taxation as a REIT and the material federal income tax consequences resulting from the acquisition, ownership and disposition of our common stock. The following discussion is not exhaustive of all possible tax considerations. This summary neither gives a detailed discussion of any state, local or foreign tax considerations nor discusses all of the aspects of federal income taxation that may be relevant to a holder of our common stock in light of the stockholder's particular circumstances or, except to the extent discussed under the headings "—Taxation of Tax-Exempt Stockholders," and "—Taxation of Non-United States Stockholders" below, to particular types of stockholders which are subject to special tax rules, including, among others, expatriates, partnerships, grantor trusts, insurance companies, tax-exempt entities, financial institutions or broker-dealers, persons who are not citizens or residents of the United States, stockholders that hold our stock as a hedge, part of a straddle, conversion transaction or other arrangement involving more than one position, or stockholders whose functional currency is not the U.S. dollar. This discussion assumes that you will hold our common stock as a "capital asset," generally property held for investment under the Internal Revenue Code.

The information in this summary is based on the Internal Revenue Code, current, temporary and proposed Treasury regulations promulgated under the Internal Revenue Code, the legislative history of the Internal Revenue Code, current administrative interpretations and practices of the IRS and court decisions, all as of the date of this prospectus. The administrative interpretations and practices of the IRS upon which this summary is based include its practices and policies as expressed in private letter rulings which are not binding on the IRS, except with respect to the taxpayers who requested and received such rulings. No assurance can be given that future legislation, Treasury regulations, administrative interpretations and practices and court decisions will not significantly change current law, or adversely affect existing interpretations of existing law, on which the information in this summary is based. Even if there is no change in applicable law, no assurance can be provided that the statements made in the following summary will not be challenged by the IRS or will be sustained by a court if so challenged, and we will not seek a ruling with respect to any part of the information discussed in this summary. This summary is qualified in its entirety by the applicable Internal Revenue Code provisions, Treasury regulations, and administrative and judicial interpretations of the Code.

**YOU ARE ADVISED TO CONSULT WITH YOUR OWN TAX ADVISOR TO DETERMINE THE IMPACT OF YOUR PERSONAL TAX SITUATION ON THE ANTICIPATED TAX CONSEQUENCES OF THE ACQUISITION, OWNERSHIP AND DISPOSITION OF OUR CLASS A COMMON STOCK. THIS INCLUDES THE U.S. FEDERAL, STATE, LOCAL, FOREIGN AND OTHER TAX CONSEQUENCES OF THE ACQUISITION, OWNERSHIP AND DISPOSITION OF OUR CLASS A COMMON STOCK AND THE POTENTIAL CHANGES IN APPLICABLE TAX LAWS.**

### General

We have elected to be taxed as a REIT under the Internal Revenue Code commencing with our taxable year ended December 31, 2003. We believe that we have been organized and have operated, and intend to continue to be organized and operate in a manner so as to, qualify as a REIT. However, no assurance can be given that we in fact qualify or will remain qualified as a REIT. In connection with this offering, we have received the opinion of our legal counsel, Clifford Chance US LLP, that commencing with our taxable year ended December 31, 2003, we have been organized and operated in conformity with the requirements for qualification and taxation as a REIT under the Internal Revenue Code, and our current and proposed method of operation will enable us to continue to meet the requirements for qualification and taxation as a REIT under the Internal Revenue Code. It must be emphasized that this opinion is not binding on the IRS or any court. In addition, the opinion of our counsel is based on various assumptions and is conditioned upon certain representations made by us as to factual matters, including factual representations concerning our business and assets as set forth in



this prospectus, and assumes that the actions described in this prospectus are completed in a timely fashion. Our qualification and taxation as a REIT depend on our ability to meet, through actual annual operating results, distribution levels, diversity of stock ownership, and the various other qualification tests imposed under the Internal Revenue Code discussed below, the results of which will not be reviewed by Clifford Chance US LLP. No assurance can be given that our actual results for any particular taxable year will satisfy these requirements. See "—Failure to Qualify as a REIT." In addition, qualification as a REIT depends on future transactions and events that cannot be known at this time.

So long as we qualify for taxation as a REIT, we generally will be permitted a deduction for dividends we currently distribute to our stockholders. As a result, we generally will not be required to pay federal income taxes on our net income that is currently distributed to our stockholders. This treatment substantially eliminates the "double taxation" that ordinarily results from investment in a corporation.

Double taxation means taxation once at the corporate level when income is earned and once again at the stockholder level when this income is distributed. Even as a REIT, however, we will be required to pay U.S. federal tax, as follows.

- We will be required to pay tax at regular corporate rates on any undistributed REIT taxable income, including undistributed net capital gain.
- We may be subject to the "alternative minimum tax" on our items of tax preference, if any.
- If we have (i) net income from the sale or other disposition of "foreclosure property" which is held primarily for sale to customers in the ordinary course of business or (ii) other non-qualifying income from foreclosure property, we will be required to pay tax at the highest corporate rate on this income. Foreclosure property is generally defined as property acquired through foreclosure or after a default on a loan secured by the property or on a lease of the property.
- We will be required to pay a 100% tax on any net income from prohibited transactions. Prohibited transactions are, in general, sales or other taxable dispositions of property, other than foreclosure property, held primarily for sale to customers in the ordinary course of business. Under existing law, whether property is held as inventory or primarily for sale to customers in the ordinary course of a trade or business depends on all the facts and circumstances surrounding the particular transaction.
- If we fail to satisfy the 75% gross income test or the 95% gross income test discussed below, but nonetheless maintain our qualification as a REIT because certain other requirements are met, we will be subject to a tax equal to the greater of (i) the amount by which 75% of our gross income exceeds the amount qualifying under the 75% gross income test described below, and (ii) the amount by which 90% of our gross income exceeds the amount qualifying under the 95% gross income test described below, multiplied by a fraction intended to reflect our profitability.
- We will be required to pay a 4% excise tax on the excess of the required distribution over the amounts actually distributed if we fail to distribute during each calendar year at least the sum of (i) 85% of our REIT ordinary income for the year; (ii) 95% of our REIT capital gain net income for the year; and (iii) any undistributed taxable income from prior periods. This distribution requirement is in addition to, and different from, the distribution requirements discussed below in the section entitled "—Annual Distribution Requirements."
- If we acquire any asset from a corporation which is or has been taxed as a C corporation under the Internal Revenue Code in a transaction in which the basis of the asset in our hands is determined by reference to the basis of the asset in the hands of the C corporation, and we subsequently recognize gain on the disposition of the asset during the 10-year period beginning

on the date on which we acquired the asset, then we will be required to pay tax at the highest regular corporate tax rate on this gain to the extent of the excess of (i) the fair market value of the asset, over (ii) our adjusted basis in the asset, in each case determined as of the date on which we acquired the asset. The results described in this paragraph with respect to the recognition of gain will apply unless an election under Treasury regulation Section 1.337(d)-7(c) is made to cause the C corporation to recognize all of the gain inherent in the property at the time of acquisition of the asset.

- We will generally be subject to tax on the portion of any excess inclusion income derived from an investment in residual interests in REMICs to the extent our stock is held by specified tax-exempt organizations not subject to tax on unrelated business taxable income.
- We could be subject to a 100% excise tax if our dealings with any taxable REIT subsidiaries are not at arm's length.

### **Requirements for Qualification as a REIT**

The Internal Revenue Code defines a REIT as a corporation, trust or association:

- (i) that is managed by one or more trustees or directors;
- (ii) that issues transferable shares or transferable certificates to evidence beneficial ownership;
- (iii) that would be taxable as a domestic corporation but for Sections 856 through 859 of the Internal Revenue Code;
- (iv) that is not a financial institution or an insurance company within the meaning of the Internal Revenue Code;
- (v) that is beneficially owned by 100 or more persons;
- (vi) not more than 50% in value of the outstanding stock of which is owned, actually or constructively, by five or fewer individuals, including specified entities, during the last half of each taxable year; and
- (vii) that meets other tests, described below, regarding the nature of its income and assets and the amount of its distributions.

The Internal Revenue Code provides that all of the first four conditions stated above must be met during the entire taxable year and that the fifth condition must be met during at least 335 days of a taxable year of 12 months, or during a proportionate part of a taxable year of less than 12 months. The fifth and sixth conditions do not apply until after the first taxable year for which an election is made to be taxed as a REIT.

Our stock must be beneficially held by at least 100 persons, the "100 stockholder rule," and no more than 50% of the value of our stock may be owned, directly or indirectly, by five or fewer individuals at any time during the last half of the taxable year, the "5/50 rule." In determining whether five or fewer individuals hold our shares, certain attribution rules of the Internal Revenue Code apply. For purposes of the 5/50 rule, pension trusts and other specific tax-exempt entities generally are treated as individuals, except that certain tax-qualified pension funds are not considered individuals and beneficiaries of such trusts are treated as holding shares of a REIT in proportion to their actuarial interests in the trust for purposes of the 5/50 rule. Our charter provides for restrictions regarding ownership and transfer of our stock. These restrictions are intended to assist us in satisfying the 100 stockholder rule and the fr 5/50 rule. These restrictions, however, may not ensure that we will, in all cases, be able to satisfy the stock ownership rules. If we fail to satisfy any of these stock ownership rules, our status as a REIT may terminate. If, however, we complied with the rules contained in the applicable Treasury regulations that require a REIT to determine the actual ownership of its stock, as discussed below, and we do not know, or would not have known through the exercise of reasonable

diligence, that we failed to meet the requirement of the 5/50 rule, we would not be disqualified as a REIT.

To monitor our compliance with the stock ownership tests, we are required to maintain records regarding the actual ownership of our shares of stock. To do so, we are required to demand written statements each year from the record holders of certain percentages of our shares of stock in which the record holders are to disclose the actual owners of the shares (i.e., the persons required to include our dividends in gross income). A list of those persons failing or refusing to comply with this demand must be maintained as part of our records. A record holder who fails or refuses to comply with the demand must submit a statement with his tax return disclosing the actual ownership of the shares of stock and certain other information.

In addition, a corporation generally may not elect to become a REIT unless its taxable year is the calendar year. Our taxable year is the calendar year.

### **Effect of Subsidiary Entities**

As of the date of this prospectus, we do not own stock in another corporation. However, we may in the future own stock in another corporation, provided that such ownership is consistent with our qualification as a REIT. If we own all of the outstanding stock of a corporation, such corporation will be treated as a "qualified REIT subsidiary" and will not be treated as a separate corporation from us. Additionally, all of such corporation's assets and liabilities as well as items of income, gain, loss, deduction and credit will be treated as our assets, liabilities and items of income, gain, loss, deduction and credit for federal income tax purposes and for the REIT gross income and asset tests.

We may make an election, together with a corporation we own stock in, to treat such corporation as our "taxable REIT subsidiary." A taxable REIT subsidiary may earn income that would be nonqualifying income if earned directly by a REIT and is generally subject to full corporate level tax. A REIT may own up to 100% of all outstanding stock of a taxable REIT subsidiary. However, no more than 20% of a REIT's assets may consist of the securities of taxable REIT subsidiaries. Any dividends that a REIT receives from a taxable REIT subsidiary will generally be eligible to be taxed at the preferential rates applicable to qualified dividend income and, for purposes of REIT gross income tests, will be qualifying income for purposes of the 95% gross income test but not the 75% gross income test. Certain restrictions imposed on taxable REIT subsidiaries are intended to ensure that such entities will be subject to appropriate levels of federal income taxation. First, a taxable REIT subsidiary may not deduct interest payments made in any year to an affiliated REIT to the extent that such payments exceed, generally, 50% of the taxable REIT subsidiary's adjusted taxable income for that year (although the taxable REIT subsidiary may carry forward to, and deduct in, a succeeding year the disallowed interest amount if the 50% test is satisfied in that year). Additionally, if a taxable REIT subsidiary pays interest, rent or another amount to a REIT that exceeds the amount that would be paid to an unrelated party in an arm's length transaction, an excise tax equal to 100% of such excess will be imposed.

An unincorporated domestic entity, such as a partnership or limited liability company, that has a single owner, generally is not treated as an entity separate from its parent for federal income tax purposes. If we own 100% of the interests of such an entity, we will be treated as owning its assets and receiving its income directly. An unincorporated domestic entity with two or more owners generally is treated as a partnership for federal income tax purposes. In the case of a REIT that is a partner in a partnership that has other partners, the REIT is treated as owning its proportionate share of the assets of the partnership and as earning its proportionate share of the gross income of the partnership, based on percentage capital interests, for the purposes of the applicable REIT qualification tests. Thus, our proportionate share, based on percentage capital interests, of the assets, liabilities and items of income of any partnership, joint venture or limited liability company that is treated as a partnership for federal

income tax purposes in which we acquire an interest directly or indirectly will be treated as our assets and gross income for purposes of applying the various REIT qualification requirements.

## Income Tests

We must satisfy two gross income requirements annually to maintain our qualification as a REIT:

- under the "75% gross income test," we must derive at least 75% of our gross income, excluding gross income from prohibited transactions, from specified real estate sources, including rental income, interest on obligations secured by mortgages on real property or on interests in real property, dividends or other distributions on, and gain from the sale of, stock in other REITs, gain from the disposition of "qualified real estate assets," i.e., interests in real property, mortgages secured by real property or interests in real property, and some other assets, and income from certain types of temporary investments; and
- under the "95% gross income test," we must derive at least 95% of our gross income, excluding gross income from prohibited transactions, from (i) the sources of income that satisfy the 75% gross income test, and (ii) dividends, interest and gain from the sale or disposition of stock or securities, including some interest rate swap and cap agreements, options, futures and forward contracts entered into to hedge debt incurred to acquire qualified real estate assets.

For purposes of the 75% and 95% gross income tests, a REIT is deemed to have earned a proportionate share of the income earned by any partnership, or any limited liability company treated as a partnership for federal income tax purposes, in which it owns an interest, which share is determined by reference to its capital interest in such entity, and is deemed to have earned the income earned by any qualified REIT subsidiary.

Any amount includible in our gross income with respect to a regular or residual interest in a REMIC generally is treated as interest on an obligation secured by a mortgage on real property. If, however, less than 95% of the assets of a REMIC consists of real estate assets (determined as if we held such assets), we will be treated as receiving directly our proportionate share of the income of the REMIC. In addition, if we receive interest income with respect to a mortgage loan that is secured by both real property and other property and the highest principal amount of the loan outstanding during a taxable year exceeds the fair market value of the real property on the date we became committed to make or purchase the mortgage loan, a portion of the interest income, equal to (i) such highest principal amount minus such value, divided by (ii) such highest principal amount, generally will not be qualifying income for purposes of the 75% gross income test. Interest income received with respect to non-REMIC pay-through bonds and pass-through debt instruments, such as collateralized mortgage obligations or CMOs, however, generally will not be qualifying income for purposes of the 75% gross income test.

Generally, interest earned by a REIT ordinarily does not qualify as income meeting the 75% or 95% gross income tests if the determination of all or some of the amount of interest depends in any way on the income or profits of any person. Interest will not be disqualified from meeting such tests, however, solely by reason of being based on a fixed percentage or percentages of receipts or sales.

We believe that the interest, original issue discount, and market discount income that we receive from our mortgage related securities generally is and will be qualifying income for purposes of both gross income tests. However, to the extent that we own non-REMIC CMOs or other debt instruments secured by mortgage loans (rather than by real property), the interest income received with respect to such securities generally will be qualifying income for purposes of the 95% gross income test, but not the 75% gross income test. In addition, the loan amount of a mortgage loan that we own may exceed the value of the real property securing the loan. In that case, a portion of the income from the loan will be qualifying income for purposes of the 95% gross income test, but not the 75% gross income test.

If we fail to satisfy one or both of the 75% or 95% gross income tests for any taxable year, we may nevertheless qualify as a REIT for such taxable year if we are entitled to relief under applicable provisions of the Internal Revenue Code. Generally, we may avail ourselves of these relief provisions if:

- our failure to meet these tests was due to reasonable cause and not due to willful neglect;
- we attach a schedule of the sources of our income to our federal income tax return; and
- any incorrect information on the schedule was not due to fraud with intent to evade tax.

If we are entitled to avail ourselves of the relief provisions, we will maintain our qualification as a REIT but will be subject to certain penalty taxes as described above. We may not, however, be entitled to the benefit of these relief provisions in all circumstances. If these relief provisions do not apply to a particular set of circumstances, we will not qualify as a REIT.

### **Foreclosure Property**

Net income realized by us from foreclosure property would generally be subject to tax at the maximum federal corporate tax rate (currently at 35%). Foreclosure property means real property and related personal property that is acquired through foreclosure following a default on a lease of such property or indebtedness secured by such property and for which an election is made to treat the property as foreclosure property.

### **Prohibited Transaction Income**

Any gain realized by us on the sale of any asset other than foreclosure property, held as inventory or otherwise held primarily for sale to customers in the ordinary course of a trade or business, will be prohibited transaction income and subject to a 100% excise tax. Prohibited transaction income may also adversely affect our ability to satisfy the gross income test for qualification as a REIT. Whether an asset is held as inventory or primarily for sale to customers in the ordinary course of a trade or business depends on all facts and circumstances surrounding the particular transaction. While the Internal Revenue Code provides a safe harbor which, if met, would not cause a sale of an asset to result in a prohibited transaction income, we may not be able to meet the requirements of such safe harbor in all circumstances. Any sales of assets made through a taxable REIT subsidiary will not be subject to the prohibited transaction tax.

### **Asset Tests**

At the close of each quarter of our taxable year, we must satisfy four tests relating to the nature and diversification of our assets:

- at least 75% of the value of our total assets must be represented by qualified real estate assets, cash, cash items and government securities;
- not more than 25% of our total assets may be represented by securities, other than those securities included in the 75% asset test;
- of the investments included in the 25% asset class, the value of any one issuer's securities may not exceed 5% of the value of our total assets, and we generally may not own more than 10% by vote or value of any one issuer's outstanding securities, in each case except with respect to securities of any qualified REIT subsidiaries or taxable REIT subsidiaries and in the case of the 10% value test except with respect to "straight debt" having specified characteristics; and
- the value of the securities we own in any taxable REIT subsidiaries, in the aggregate, may not exceed 20% of the value of our total assets.

Qualified real estate assets include interests in mortgages on real property to the extent the principal balance of a mortgage does not exceed the fair market value of the associated real property,

regular or residual interests in a REMIC (except that, if less than 95% of the assets of a REMIC consists of "real estate assets" (determined as if we held such assets), we will be treated as holding directly our proportionate share of the assets of such REMIC), and shares of other REITs. Non-REMIC CMOs, however, generally do not qualify as qualified real estate assets for this purpose.

For purposes of the 10% value test, "straight debt" means a written unconditional promise to pay on demand on a specified date a sum certain in money if (i) the debt is not convertible, directly or indirectly, into stock, (ii) the interest rate and interest payment dates are not contingent on profits, the borrower's discretion, or similar factors and (iii) the issuer is either an individual or a partnership in which we own at least a 20% profit interest or the only securities of the issuer that we hold are straight debt.

We believe that all or substantially all of the mortgage related securities that we own are and will be qualifying assets for purposes of the 75% asset test. However, to the extent that we own non-REMIC CMOs or other debt instruments secured by mortgage loans (rather than by real property) or debt securities issued by other REITs or C corporations that are not secured by mortgages on real property, those securities will not be qualifying assets for purposes of the 75% asset test. We will monitor the status of our assets for purposes of the various asset tests and will seek to manage our portfolio to comply at all times with such tests.

After initially meeting the asset tests at the close of any quarter, we will not lose our status as a REIT for failure to satisfy the asset tests at the end of a later quarter solely by reason of changes in asset values. If we fail to satisfy the asset tests because we acquire securities during a quarter, we can cure this failure by disposing of sufficient non-qualifying assets within 30 days after the close of that quarter.

### **Annual Distribution Requirements**

To maintain our qualification as a REIT, we are required to distribute dividends, other than capital gain dividends, to our stockholders in an amount at least equal to the sum of:

- 90% of our "REIT taxable income," and
- 90% of our after-tax net income, if any, from foreclosure property, less
- the excess of the sum of specified items of our non-cash income items over 5% of REIT taxable income, as described below.

For purposes of these distribution requirements, our "REIT taxable income" is computed without regard to the dividends paid deduction and net capital gain. In addition, for purposes of this test, the specified items of non-cash income include income attributable to leveled stepped rents, certain original issue discount, certain like-kind exchanges that are later determined to be taxable and income from cancellation of indebtedness.

Only distributions that qualify for the "dividends paid deduction" available to REITs under the Internal Revenue Code are counted in determining whether the distribution requirements are satisfied. We must make these distributions in the taxable year to which they relate, or in the following taxable year if they are declared before we timely file our tax return for that year, paid on or before the first regular dividend payment following the declaration and we elect on our tax return to have a specified dollar amount of such distributions treated as if paid in the prior year. For these and other purposes, dividends declared by us in October, November or December of one taxable year and payable to a stockholder of record on a specific date in any such month shall be treated as both paid by us and received by the stockholder during such taxable year, provided that the dividend is actually paid by us by January 31 of the following taxable year.

In addition, dividends distributed by us must not be preferential. If a dividend is preferential, it will not qualify for the dividends paid deduction. To avoid being preferential, every stockholder of the class of stock to which a distribution is made must be treated the same as every other stockholder of that class, and no class of stock may be treated other than according to its dividend rights as a class.

To the extent that we do not distribute all of our net capital gain, or we distribute at least 90%, but less than 100%, of our REIT taxable income, we will be required to pay tax on this undistributed income at regular ordinary and capital gain corporate tax rates. Furthermore, if we fail to distribute during each calendar year (or, in the case of distributions with declaration and record dates falling in the last three months of the calendar year, by the end of the January immediately following such year) at least the sum of (i) 85% of our REIT ordinary income for such year, (ii) 95% of our REIT capital gain income for such year, and (iii) any undistributed taxable income from prior periods, we will be subject to a 4% nondeductible excise tax on the excess of such required distribution over the amounts actually distributed. We intend to make timely distributions sufficient to satisfy the annual distribution requirements.

Because we may deduct capital losses only to the extent of our capital gains, we may have taxable income that exceeds our economic income. In addition, we will recognize taxable income in advance of the related cash flow if any of our subordinated mortgage related securities are deemed to have original issue discount. We generally must accrue original issue discount based on a constant yield method that takes into account projected prepayments. As a result of the foregoing, we may have less cash than is necessary to distribute to all of our taxable income and thereby avoid corporate income tax and the excise tax imposed on certain undistributed income. In such a situation, we may need to borrow funds or issue additional common or preferred stock.

Under certain circumstances, we may be able to rectify a failure to meet the distribution requirements for a year by paying "deficiency dividends" to its stockholders in a later year, which may be included in our deduction for dividends paid for the earlier year. Although we may be able to avoid being taxed on amounts distributed as deficiency dividends, we will be required to pay to the IRS interest based upon the amount of any deduction taken for deficiency dividends.

#### **Excess Inclusion Income**

If we acquire a residual interest in a REMIC, we may realize excess inclusion income. If we are deemed to have issued debt obligations having two or more maturities, the payments on which correspond to payments on mortgage loans owned by us, such arrangement will be treated as a taxable mortgage pool for federal income tax purposes. If all or a portion of our company is treated as a taxable mortgage pool, our status as a REIT generally should not be impaired. However, a portion of our REIT taxable income may be characterized as excess inclusion income and allocated to our stockholders, generally in a manner set forth under the applicable Treasury regulations. The Treasury Department has not yet issued regulations governing the tax treatment of stockholders of a REIT that owns an interest in a taxable mortgage pool. Excess inclusion income is an amount, with respect to any calendar quarter, equal to the excess, if any, of (i) income tax allocable to the holder of a residual interest in a REMIC during such calendar quarter over (ii) the sum of amounts allocated to each day in the calendar quarter equal to its ratable portion of the product of (a) the adjusted issue price of the interest at the beginning of the quarter multiplied by (b) 120% of the long term federal rate (determined on the basis of compounding at the close of each calendar quarter and properly adjusted for the length of such quarter). Our excess inclusion income would be allocated among our stockholders. A stockholder's share of any excess inclusion income:

- could not be offset by net operating losses of a stockholder;
- would be subject to tax as unrelated business taxable income to a tax-exempt holder;

- would be subject to the application of the federal income tax withholding (without reduction pursuant to any otherwise applicable income tax treaty) with respect to amounts allocable to non-U.S. stockholders; and
- would be taxable (at the highest corporate tax rates) to us, rather than our stockholders, to the extent allocable to our stock held by disqualified organizations (generally, tax-exempt entities not subject to unrelated business income tax, including governmental organizations).

### **Hedging Transactions**

From time to time we may enter into hedging transactions with respect to one or more of our assets or liabilities. Our hedging transactions could take a variety of forms, including interest rate cap agreements, options, futures contracts, forward rate agreements, or similar financial instruments. Although it is not our current policy, we may in the future enter into other hedging transactions, including rate locks and guaranteed financial contracts. To the extent that we enter into an interest rate swap or cap contract, option, futures contract, forward rate agreement, or any similar financial instrument to reduce our interest rate risk on indebtedness incurred to acquire or carry real estate assets, any payment under or gain from the disposition of hedging transactions should be qualifying income for purposes of the 95% gross income test, but not the 75% gross income test. To the extent we hedge with other types of financial instruments or for other purposes, any payment under or gain from such transactions would not be qualifying income for purposes of the 95% or 75% gross income tests. We will monitor the income generated by any such transactions in order to ensure that such gross income, together with any other nonqualifying income received by us, will not cause us to fail to satisfy the 95% or 75% gross income tests.

### **Failure to Qualify as a REIT**

If we fail to qualify for taxation as a REIT in any taxable year, and the relief provisions of the Internal Revenue Code do not apply, we will be required to pay taxes, including any applicable alternative minimum tax, on our taxable income in that taxable year and all subsequent taxable years at regular corporate rates. Distributions to our stockholders in any year in which we fail to qualify as a REIT will not be deductible by us and we will not be required to distribute any amounts to our stockholders. As a result, we anticipate that our failure to qualify as a REIT would reduce the cash available for distribution to our stockholders. In addition, if we fail to qualify as a REIT, all distributions to our stockholders will be taxable as dividends from a C corporation to the extent of our current and accumulated earnings and profits, and United States stockholders (as defined below) may be taxable at preferential rates on such dividends, and corporate distributees may be eligible for the dividends-received deduction. Unless entitled to relief under specific statutory provisions, we will also be disqualified from taxation as a REIT for the four taxable years following the year in which we lose our qualification.

### **Taxation of Taxable United States Stockholders**

For purposes of the discussion in this prospectus, the term "United States stockholder" means a beneficial holder of our stock that is, for federal income tax purposes:

- a citizen or resident of the United States (as determined for federal income tax purposes);
- a corporation, or other entity treated as a corporation for federal income tax purposes created or organized in or under the laws of the United States or of any state thereof or in the District of Columbia, unless Treasury regulations provide otherwise;
- an estate the income of which is subject to federal income taxation regardless of its source; or



- a trust whose administration is subject to the primary supervision of a U.S. court and which has one or more U.S. persons who have the authority to control all substantial decisions of the trust.

### **Distributions Generally**

Distributions out of our current or accumulated earnings and profits, other than capital gain dividends, will be taxable to United States stockholders as ordinary income. Such REIT dividends generally are ineligible for the new reduced tax rate (with a maximum of 15%) for corporate dividends received by individuals, trusts and estates in years 2003 through 2008. However, such rate will apply to the extent that we make distributions attributable to amounts, if any, we receive as dividends from non-REIT corporations or to the extent that we make distributions attributable to the sum of (i) the excess of our REIT taxable income (excluding net capital gains) for the preceding year over the tax paid on such income, and (ii) the excess of our income subject to the built-in gain tax over the tax payable by us on such income. Provided that we qualify as a REIT, dividends paid by us will not be eligible for the dividends received deduction generally available to United States stockholders that are corporations. To the extent that we make distributions in excess of current and accumulated earnings and profits, the distributions will be treated as a tax-free return of capital to each United States stockholder, and will reduce the adjusted tax basis that each United States stockholder has in our stock by the amount of the distribution, but not below zero. Distributions in excess of a United States stockholder's adjusted tax basis in its stock will be taxable as capital gain, and will be taxable as long-term capital gain if the stock has been held for more than one year. The calculation of the amount of distributions that are applied against or exceed adjusted tax basis are made on a share-by-share basis. To the extent that we make distributions, if any, that are attributable to excess inclusion income, such amounts may not be offset by net operating losses of a United States stockholder. If we declare a dividend in October, November, or December of any calendar year which is payable to stockholders of record on a specified date in such a month and actually pay the dividend during January of the following calendar year, the dividend is deemed to be paid by us and received by the stockholder on December 31st of the year preceding the year of payment. Stockholders may not include in their own income tax returns any of our net operating losses or capital losses.

### **Capital Gain Distributions**

Distributions designated by us as capital gain dividends will be taxable to United States stockholders as capital gain income. We can designate distributions as capital gain dividends to the extent of our net capital gain for the taxable year of the distribution. For tax years prior to 2009, this capital gain income will generally be taxable to non-corporate United States stockholders at a maximum of a 15% or 25% rate based on the characteristics of the asset we sold that produced the gain. United States stockholders that are corporations may be required to treat up to 20% of certain capital gain dividends as ordinary income.

### **Retention of Net Capital Gains**

We may elect to retain, rather than distribute as a capital gain dividend, our net capital gains. If we were to make this election, we would pay tax on such retained capital gains. In such a case, our stockholders would generally:

- include their proportionate share of our undistributed net capital gains in their taxable income;
- receive a credit for their proportionate share of the tax paid by us in respect of such net capital gain; and
- increase the adjusted basis of their stock by the difference between the amount of their share of our undistributed net capital gain and their share of the tax paid by us.

## **Passive Activity Losses, Investment Interest Limitations and Other Considerations of Holding Our Stock**

Distributions we make, undistributed net capital gain includible in income and gains arising from the sale or exchange of our stock by a United States stockholder will not be treated as passive activity income. As a result, United States stockholders will not be able to apply any "passive losses" against income or gains relating to our stock. Distributions by us, to the extent they do not constitute a return of capital, and undistributed net capital gain includible in our shareholders' income, generally will be treated as investment income for purposes of computing the investment interest limitation under the Internal Revenue Code, provided the proper election is made.

If we, or a portion of our assets, were to be treated as a taxable mortgage pool, or if we were to acquire REMIC residual interests, our stockholders (other than certain thrift institutions) may not be permitted to offset certain portions of the dividend income they derive from our shares with their current deductions or net operating loss carryovers or carrybacks. The portion of a stockholder's dividends that will be subject to this limitation will equal the allocable share of our "excess inclusion income."

### **Dispositions of Stock**

A United States stockholder that sells or disposes of our stock will recognize gain or loss for federal income tax purposes in an amount equal to the difference between the amount of cash or the fair market value of any property the stockholder receives on the sale or other disposition and the stockholder's adjusted tax basis in the stock. This gain or loss generally will be capital gain or loss and will be long-term capital gain or loss if the stockholder has held the stock for more than one year. However, any loss recognized by a United States stockholder upon the sale or other disposition of our stock that the stockholder has held for six months or less will be treated as long-term capital loss to the extent the stockholder received distributions from us which were required to be treated as long-term capital gains. For tax years prior to 2009, capital gain of an individual United States stockholder is generally taxed at a maximum rate of 15% where the property is held for more than one year. The deductibility of capital loss is limited.

### **Information Reporting and Backup Withholding**

We report to our United States stockholders and the IRS the amount of dividends paid during each calendar year, along with the amount of any tax withheld. Under the backup withholding rules, a stockholder may be subject to backup withholding with respect to dividends paid and redemption proceeds unless the holder is a corporation or comes within other exempt categories and, when required, demonstrates this fact, or provides a taxpayer identification number or social security number, certifying as to no loss of exemption from backup withholding, and otherwise complies with applicable requirements of the backup withholding rules. A United States stockholder that does not provide us with its correct taxpayer identification number or social security number may also be subject to penalties imposed by the IRS. A United States stockholder can meet this requirement by providing us with a correct, properly completed and executed copy of IRS Form W-9 or a substantially similar form. Backup withholding is not an additional tax. Any amount paid as backup withholding will be creditable against the stockholder's income tax liability, if any, and otherwise be refundable, provided the proper forms are filed on a timely basis. In addition, we may be required to withhold a portion of capital gain distributions made to any stockholders who fail to certify their non-foreign status.

### **Taxation of Tax-Exempt Stockholders**

The IRS has ruled that amounts distributed as a dividend by a REIT will be treated as a dividend by the recipient and excluded from the calculation of unrelated business taxable income when received

by a tax-exempt entity. Based on that ruling, provided that a tax-exempt stockholder has not held our stock as "debt financed property" within the meaning of the Internal Revenue Code, i.e., property the acquisition or holding of which is or is treated as financed through a borrowing by the tax-exempt United States stockholder, the stock is not otherwise used in an unrelated trade or business, and we do not hold an asset that gives rise to "excess inclusion" income, as defined in Section 860E of the Internal Revenue Code, dividend income on our stock and income from the sale of our stock should not be unrelated business taxable income to a tax-exempt stockholder. However, if we were to hold residual interests in a REMIC, or if we or a pool of our assets were to be treated as a taxable mortgage pool, a portion of the dividends paid to a tax-exempt stockholder that is attributable to excess inclusion income may be subject to tax as unrelated business taxable income. Although we do not believe that we, or any portion of our assets, will be treated as a taxable mortgage pool, we cannot assure you that that the IRS might not successfully maintain that such a taxable mortgage pool exists.

For tax-exempt stockholders that are social clubs, voluntary employees' beneficiary associations, supplemental unemployment benefit trusts, and qualified group legal services plans exempt from federal income taxation under Sections 501(c)(7), (c)(9), (c)(17) and (c)(20) of the Internal Revenue Code, respectively, income from an investment in our stock will constitute unrelated business taxable income unless the organization is able to properly claim a deduction for amounts set aside or placed in reserve for certain purposes so as to offset the income generated by its investment in our stock. Any prospective investors should consult their tax advisors concerning these "set aside" and reserve requirements.

Notwithstanding the above, however, a substantial portion of the dividends received with respect to our stock may constitute unrelated business taxable income, or UBTI, if we are treated as a "pension-held REIT" and you are a pension trust which:

- is described in Section 401(a) of the Internal Revenue Code; and
- holds more than 10%, by value, of our equity interests.

Tax-exempt pension funds that are described in Section 401(a) of the Internal Revenue Code and exempt from tax under Section 501 (a) of the Internal Revenue Code are referred to below as "qualified trusts."

A REIT is a "pension-held REIT" if:

- it would not have qualified as a REIT but for the fact that Section 856(h)(3) of the Internal Revenue Code provides that stock owned by a qualified trust shall be treated, for purposes of the <sup>5</sup>/50 rule, described above, as owned by the beneficiaries of the trust, rather than by the trust itself; and
- either at least one qualified trust holds more than 25%, by value, of the interests in the REIT, or one or more qualified trusts, each of which owns more than 10%, by value, of the interests in the REIT, holds in the aggregate more than 50%, by value, of the interests in the REIT.

The percentage of any REIT dividends treated as unrelated business taxable income under these rules is equal to the ratio of:

- the unrelated business taxable income earned by the REIT, less directly related expenses, treating the REIT as if it were a qualified trust and therefore subject to tax on unrelated business taxable income, to
- the total gross income, less directly related expenses, of the REIT.

A *de minimis* exception applies where this percentage is less than 5% for any year. As a result of the limitations on the transfer and ownership of stock contained in our charter, we do not expect to be classified as a pension-held REIT.

## Taxation of Non-United States Stockholders

The rules governing federal income taxation of non-United States stockholders are complex and no attempt will be made herein to provide more than a summary of these rules. "Non-United States stockholders" means beneficial owners of shares of our stock that are not United States stockholders (as such term is defined in the discussion above under the heading entitled "—Taxation of Taxable United States Stockholders").

PROSPECTIVE NON-UNITED STATES STOCKHOLDERS SHOULD CONSULT THEIR OWN TAX ADVISORS TO DETERMINE THE IMPACT OF FOREIGN, FEDERAL, STATE, AND LOCAL INCOME TAX LAWS WITH REGARD TO AN INVESTMENT IN OUR STOCK AND OF OUR ELECTION TO BE TAXED AS A REAL ESTATE INVESTMENT TRUST, INCLUDING ANY REPORTING REQUIREMENTS.

Distributions to non-United States stockholders that are not attributable to gain from our sale or exchange of U.S. real property interests and that are not designated by us as capital gain dividends or retained capital gains will be treated as dividends of ordinary income to the extent that they are made out of our current or accumulated earnings and profits. These distributions will generally be subject to a withholding tax equal to 30% of the distribution unless an applicable tax treaty reduces or eliminates that tax. However, if income from an investment in our stock is treated as effectively connected with the non-United States stockholder's conduct of a U.S. trade or business (or, if an income tax treaty applies, is attributable to a U.S. permanent establishment of the non-United States stockholder), the non-United States stockholder generally will be subject to federal income tax at graduated rates in the same manner as United States stockholders are taxed with respect to those distributions, and also may be subject to the 30% branch profits tax in the case of a non-United States stockholder that is a corporation, unless a treaty reduces or eliminates these taxes. We expect to withhold tax at the rate of 30% on the gross amount of any distributions made to a non-United States stockholder unless:

- a lower treaty rate applies and any required form, for example IRS Form W-8BEN, evidencing eligibility for that reduced rate is filed by the non-United States stockholder with us; or
- the non-United States stockholder files an IRS Form W-8ECI with us claiming that the distribution is effectively connected income.

Any portion of the dividends paid to non-United States stockholders that are treated as excess inclusion income will not be eligible for exemption from the 30% withholding tax or a reduced treaty rate.

Distributions in excess of our current and accumulated earnings and profits that are not treated as attributable to the gain from our disposition of a U.S. real property interest will not be taxable to non-United States stockholders to the extent that these distributions do not exceed the adjusted basis of the stockholder's stock, but rather will reduce the adjusted basis of that stock. To the extent that distributions in excess of current and accumulated earnings and profits exceed the adjusted basis of a non-United States stockholder's stock, these distributions will give rise to tax liability if the non-United States stockholder would otherwise be subject to tax on any gain from the sale or disposition of its stock, as described below. Because it generally cannot be determined at the time a distribution is made whether or not such distribution may be in excess of current and accumulated earnings and profits, the entire amount of any distribution normally will be subject to withholding at the same rate as a dividend. However, amounts so withheld are creditable against U.S. tax liability, if any, or refundable by the IRS to the extent the distribution is subsequently determined to be in excess of our current and accumulated earnings and profits and the proper forms are filed with the IRS by the non-United States stockholder on a timely basis. We are also required to withhold 10% of any distribution in excess of our current and accumulated earnings and profits if our stock is a U.S. real property interest. Consequently, although we intend to withhold at a rate of 30% on the entire amount of any distribution, to the extent that we do not do so, any portion of a distribution not subject to withholding at a rate of 30% may be subject to withholding at a rate of 10% if our stock was considered to be a U.S. real property interest. We do not expect that our stock will be considered a U.S. real property interest.

Distributions attributable to our capital gains which are not attributable to gain from the sale or exchange of a U.S. real property interest generally will not be subject to income taxation, unless (1) investment in our stock is effectively connected with the non-United States stockholder's U.S. trade or business (or, if an income tax treaty applies, is attributable to a U.S. permanent establishment of the non-United States stockholder), in which case the non-United States stockholder will be subject to the same treatment as United States stockholders with respect to such gain (and a corporate non-United States stockholder may also be subject to the 30% branch profits tax), or (2) the non-United States stockholder is a non-resident alien individual who is present in the U.S. for 183 days or more during the taxable year and certain other conditions are satisfied, in which case the non-resident alien individual will be subject to a 30% withholding tax on the individual's capital gains.

For any year in which we qualify as a REIT, distributions that are attributable to gain from the sale or exchange of a U.S. real property interest, which includes some interests in real property, but generally does not include an interest solely as a creditor in mortgage loans or mortgage related securities, will be taxed to a non-United States stockholder under the provisions of the Foreign Investment in Real Property Tax Act, or FIRPTA. Under FIRPTA, distributions attributable to gain from sales of U.S. real property interests are taxed to a non-United States stockholder as if that gain were effectively connected with the stockholder's conduct of a U.S. trade or business. Non-United States stockholders thus would be taxed at the normal capital gain rates applicable to United States stockholders, subject to applicable alternative minimum tax and a special alternative minimum tax in the case of nonresident alien individuals. Distributions subject to FIRPTA also may be subject to the 30% branch profits tax in the hands of a non-U.S. corporate stockholder.

We are required to withhold 35% of any distribution paid to a non-United States stockholder that we designate (or, if greater, the amount that we could designate) as a capital gains dividend even if such distributions are not from the sale by us of U.S. real property interests, and therefore not subject to tax under FIRPTA. The amount withheld is creditable against the non-United States stockholder's FIRPTA tax liability, and to the extent it exceeds such non-United States stockholder's tax liability will be refundable provided the proper forms are filed on a timely basis.

Gains recognized by a non-United States stockholder upon a sale of our stock generally will not be taxed under FIRPTA if we are a domestically controlled REIT, which is a REIT in which at all times during a specified testing period less than 50% in value of the stock was held directly or indirectly by non-United States stockholders. Because our stock is widely held, we cannot assure our investors that we are or will remain a domestically controlled REIT. Even if we do not qualify as a domestically controlled REIT, an alternative exemption to tax under FIRPTA might be available (i) if we are not (and have not been for the five year period prior to the sale) a U.S. real property holding corporation (as defined in the Internal Revenue Code and applicable Treasury regulations to generally include a corporation, 50% or more of the assets of which consist of U.S. real property interests) or (ii) the selling non-United States stockholder owns, actually or constructively, 5% or less of our Class A Common Stock during a specified testing period to the extent such stock is regularly traded on an established securities market. We do not expect that our assets will cause us to be considered a U.S. real property holding corporation.

If gain from the sale of the stock were subject to taxation under FIRPTA, the non-United States stockholder would be subject to the same treatment as United States stockholders with respect to that gain, subject to applicable alternative minimum tax and a special alternative minimum tax in the case of nonresident alien individuals. In addition, the purchaser of the stock could be required to withhold 10% of the purchase price and remit such amount to the IRS.

Gains not subject to FIRPTA will be taxable to a non-United States stockholder if the non-United States stockholder's investment in the stock is effectively connected with a trade or business in the U.S. (or, if an income tax treaty applies, is attributable to a U.S. permanent establishment of the non-United

States stockholder), in which case the non-United States stockholder will be subject to the same treatment as United States stockholders with respect to that gain; or the non-United States stockholder is a nonresident alien individual who was present in the U.S. for 183 days or more during the taxable year and other conditions are met, in which case the nonresident alien individual will be subject to a 30% tax on the individual's capital gains.

### **Information Reporting and Backup Withholding for Non-United States Stockholders**

If the proceeds of a disposition of our stock are paid by or through a U.S. office of a broker-dealer, the payment is generally subject to information reporting and to backup withholding unless the disposing non-United States stockholder certifies as to his name, address and non-U.S. status or otherwise establishes an exemption. Generally, U.S. information reporting and backup withholding will not apply to a payment of disposition proceeds if the payment is made outside the U.S. through a foreign office of a foreign broker-dealer. If the proceeds from a disposition of our stock are paid to or through a foreign office of a U.S. broker-dealer or a non-U.S. office of a foreign broker-dealer that is (i) a "controlled foreign corporation" for federal income tax purposes, (ii) a foreign person 50% or more of whose gross income from all sources for a three-year period was effectively connected with a U.S. trade or business, (iii) a foreign partnership with one or more partners who are U.S. persons and who in the aggregate hold more than 50% of the income or capital interest in the partnership, or (iv) a foreign partnership engaged in the conduct of a trade or business in the U.S., then (i) backup withholding will not apply unless the broker-dealer has actual knowledge that the owner is not a non-United States stockholder, and (ii) information reporting will not apply if the non-United States stockholder satisfies certification requirements regarding its status as a foreign stockholder. Other information reporting rules apply to non-United States stockholders, and prospective non-United States stockholders should consult their own tax advisors regarding these requirements.

### **Possible Legislative or Other Action Affecting Tax Consequences**

You should recognize that the present federal income tax treatment of an investment in us may be modified by legislative, judicial or administrative action at any time and that any such action may affect investments and commitments previously made. The rules dealing with federal income taxation are constantly under review by persons involved in the legislative process and by the IRS and the U.S. Treasury Department, resulting in revisions of regulations and revised interpretations of established concepts as well as statutory changes. Revisions in federal tax laws and interpretations thereof could affect the tax consequences of an investment in us.

### **State, Local and Foreign Taxation**

We may be required to pay state, local and foreign taxes in various state, local and foreign jurisdictions, including those in which we transact business or make investments, and our stockholders may be required to pay state, local and foreign taxes in various state, local and foreign jurisdictions, including those in which they reside. Our state, local and foreign tax treatment may not conform to the federal income tax consequences summarized above. In addition, a stockholder's state, local and foreign tax treatment may not conform to the federal income tax consequences summarized above. Consequently, prospective investors should consult their tax advisors regarding the effect of state, local and foreign tax laws on an investment in our stock.

## ERISA CONSIDERATIONS

A fiduciary of a pension, profit sharing, retirement or other employee benefit plan ("Plan") subject to the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), should consider the fiduciary standards under ERISA in the context of the Plan's particular circumstances before authorizing an investment of a portion of such Plan's assets in the shares of common stock. Accordingly, such fiduciary should consider (i) whether the investment satisfies the diversification requirements of Section 404(a)(1)(C) of ERISA, (ii) whether the investment is in accordance with the documents and instruments governing the Plan as required by Section 404(a)(1)(D) of ERISA, and (iii) whether the investment is prudent under ERISA. In addition to the imposition of general fiduciary standards of investment prudence and diversification, ERISA, and the corresponding provisions of the Code, prohibit a wide range of transactions involving the assets of the Plan and persons who have certain specified relationships to the Plan ("parties in interest" within the meaning of ERISA, "disqualified persons" within the meaning of the Code). Thus, a Plan fiduciary considering an investment in the shares of common stock also should consider whether the acquisition or the continued holding of the shares of common stock might constitute or give rise to a direct or indirect prohibited transaction.

The Department of Labor (the "DOL") has issued final regulations (the "Regulations") as to what constitutes assets of an employee benefit plan under ERISA. Under the Regulations, if a Plan acquires an equity interest in an entity, which interest is neither a "publicly offered security" nor a security issued by an investment company registered under the Investment Company Act of 1940, as amended, the Plan's assets would include, for purposes of the fiduciary responsibility provision of ERISA, both the equity interest and an undivided interest in each of the entity's underlying assets unless certain specified exceptions apply. The Regulations define a publicly offered security as a security that is "widely held," "freely transferable," and either part of a class of securities registered under the Exchange Act, or sold pursuant to an effective registration statement under the Securities Act (provided the securities are registered under the Exchange Act within 120 days after the end of the fiscal year of the issuer during which the public offering occurred). The shares of common stock are being sold in an offering registered under the Securities Act and will be registered under the Exchange Act.

The DOL Regulations provide that a security is "widely held" only if it is part of a class of securities that is owned by 100 or more investors independent of the issuer and of one another. A security will not fail to be "widely held" because the number of independent investors falls below 100 subsequent to the initial public offering as a result of events beyond the issuer's control. The Company expects the common stock to be "widely held" upon completion of the initial public offering.

The DOL Regulations provide that whether a security is "freely transferable" is a factual question to be determined on the basis of all relevant facts and circumstances. The DOL Regulations further provide that when a security is part of an offering in which the minimum investment is \$10,000 or less, as is the case with the offering, certain restrictions ordinarily will not, alone or in combination, affect the finding that such securities are "freely transferable." The Company believes that the restrictions imposed under its articles of incorporation on the transfer of the common stock are limited to the restrictions on transfer generally permitted under the DOL Regulations and are not likely to result in the failure of the common stock to be "freely transferable." The DOL Regulations only establish a presumption in favor of the finding of free transferability, and, therefore, no assurance can be given that the DOL will not reach a contrary conclusion.

Assuming that the common stock will be "widely held" and "freely transferable," the Company believes that the common stock will be publicly offered securities for purposes of the Regulations and that the assets of the Company will not be deemed to be "plan assets" of any Plan that invests in the common stock.

**UNDERWRITING**

We are offering shares of our Class A Common Stock described in this prospectus through the underwriters set forth in the table below, for whom Friedman, Billings, Ramsey & Co., Inc. is acting as the representative. Subject to the terms and conditions contained in the underwriting agreement, we have agreed to sell to the underwriters, and each of the underwriters has severally agreed to purchase from us, on a firm commitment basis, the number of shares of Class A Common Stock listed next to its name in the following table:

Underwriters	Number of Shares
Friedman, Billings, Ramsey & Co., Inc. Flagstone Securities LLC	
Total	

The underwriters are obligated to take and pay for all of the shares of Class A Common Stock offered if any of the shares are taken.

The underwriters will initially offer the shares to the public at the price specified on the cover page of this prospectus. The underwriters may allow to selected dealers a concession of not more than \$ \_\_\_\_\_ per share. The underwriters may also allow, and any dealers may reallow, a concession of not more than \$ \_\_\_\_\_ per share to selected other dealers. If all the shares are not sold at the public offering price, the underwriters may change the public offering price and the other selling terms. Our shares of Class A Common Stock are offered subject to a number of conditions, including:

- receipt and acceptance of our shares of Class A Common Stock by the underwriters; and
- the underwriters' right to reject orders in whole or in part.

We have granted the underwriters an option, exercisable in one or more installments for 30 days after the date of this prospectus, to purchase up to \_\_\_\_\_ additional shares of Class A Common Stock to cover over-allotments, if any, at the public offering price less the underwriting discount set forth on the cover page of this prospectus.

The following table shows the amount per share and total underwriting discount we will pay to the underwriters assuming both no exercise and full exercise of the underwriters' option to purchase up to \_\_\_\_\_ additional shares to cover over-allotments.

	No Exercise	Full Exercise
Per share		
Total		

We estimate that the total expenses of this offering to be paid by us, not including the underwriting discount, will be approximately \$ \_\_\_\_\_ million.

Each of our officers and directors has agreed with the underwriters that, for a period of 180 days after the date of this prospectus, subject to certain exceptions, he or she will not sell any shares of our Class A Common Stock, or any securities convertible into or exchangeable for shares of our Class A Common Stock, owned by him or her without the prior written consent of the representative. We have also agreed with the underwriters that, for a period of 180 days after the date of this prospectus, subject to certain exceptions, we will not sell or issue any of our Class A Common Stock or any securities convertible into or exchangeable for our Class A Common Stock, or file any registration statement with the Securities and Exchange Commission (except a registration statement on Form S-8



relating to our stock incentive plan and a registration on Form S-11 relating to resale of shares held by current stockholders), without the prior written consent of the representative, except that we may make grants of options or restricted shares under our 2003 stock incentive plan and issue shares upon exercise of those options, and we may issue shares of our Class A Common Stock in connection with conversions of our Class B and Class C Common Stock. The underwriters may, however, in their sole discretion and at any time without notice, release all or any portion of the securities subject to these agreements.

We will indemnify the underwriters against various liabilities, including liabilities under the Securities Act of 1933, as amended. If we are unable to provide this indemnification, we will contribute to payments the underwriters may be required to make in respect of those liabilities.

We have applied to list our Class A Common Stock on the New York Stock Exchange under the symbol "BMM" and will use commercially reasonable efforts to have our listing application of the Class A Common Stock approved. In order to meet the requirements for listing on the NYSE, the underwriters have undertaken to sell shares to a minimum of 2,000 beneficial owners in lots of 100 or more shares.

In connection with this offering, the underwriters may engage in activities that stabilize, maintain or otherwise affect the price of our Class A Common Stock, including:

- stabilizing transactions;
- short sales;
- syndicate covering transactions;
- imposition of penalty bids; and
- purchases to cover positions created by short sales.

Stabilizing transactions consist of bids or purchases made for the purpose of preventing or retarding a decline in the market price of shares of our Class A Common Stock while this offering is in progress. Stabilizing transactions may include making short sales of shares of our Class A Common Stock, which involves the sale by the underwriters of a greater number of shares than they are required to purchase in this offering, and purchasing shares from us or in the open market to cover positions created by short sales. Short sales may be "covered" shorts, which are short positions in an amount not greater than the underwriters' over-allotment option referred to above, or may be "naked" shorts, which are short positions in excess of that amount.

The underwriters may close out any covered short position either by exercising their over-allotment option, in whole or in part, or by purchasing shares in the open market. In making this determination, the underwriters will consider, among other things, the price of shares available for purchase in the open market compared to the price at which the underwriters may purchase shares pursuant to the over-allotment option.

A naked short position is more likely to be created if the underwriters are concerned that there may be downward pressure on the price of shares of our Class A Common Stock in the open market that could adversely affect investors who purchased in this offering. To the extent that the underwriters create a naked short position, the underwriters will purchase shares in the open market to cover the position.

The underwriters also may impose a penalty bid on selling group members. This means that if the underwriters purchase shares in the open market in stabilizing transactions or to cover short sales, the underwriters can require the selling group members that sold those shares as part of this offering to repay the selling concession received by them.

As a result of these activities, the price of shares of our Class A Common Stock may be higher than the price that otherwise might exist in the open market. If the underwriters commence these activities, they may discontinue them at any time. The underwriters may carry out these transactions on the NYSE, in the over-the-counter market or otherwise.

The representative has advised us that the underwriters do not confirm sales to accounts over which they exercise discretionary authority.

Prior to this offering, there has been no public market for shares of our Class A Common Stock. The initial public offering price will be determined by negotiations among us and the underwriters. The primary factors to be considered in determining the initial public offering price include:

- our capital structure;
- our prospects for future earnings;
- an assessment of our management;
- the present state of our development;
- the prevailing conditions of the equity securities markets at the time of this offering; and
- current market valuations of publicly traded companies considered comparable to our company.

Flagstone Securities, LLC owns 319,388 shares of our Class C Common Stock and was the lead placement agent in the private placements of our Class A Common Stock that occurred from December 2003 through February 2004. The underwriters or their affiliates may provide us with certain commercial banking, financial advisory and investment banking services in the future, for which they would receive customary compensation.

A prospectus in electronic format may be available on the Internet sites or through other online services maintained by the underwriters and selling group members participating in this offering, or by their affiliates. In those cases, prospective investors may view offering terms online and, depending upon the underwriter or the selling group member, prospective investors may be allowed to place orders online. The underwriters may agree with us to allocate a specific number of shares for sale to online brokerage account holders. Any such allocation for online distributions will be made by the underwriters on the same basis as other allocations.

Other than the prospectus in electronic format, the information on the underwriters' or any selling group member's web site and any information contained in any other web site maintained by the underwriters or any selling group member is not part of the prospectus or the registration statement of which this prospectus forms a part, has not been approved or endorsed by us or the underwriters or any selling group member in its capacity as underwriter or selling group member and should not be relied upon by investors.

#### **LEGAL MATTERS**

Certain legal matters will be passed upon for us by our counsel, Clifford Chance US LLP, New York, New York. Certain legal matters relating to this offering will be passed upon for the underwriters by Hunton & Williams LLP.

#### **EXPERTS**

The financial statements of Bimini Mortgage Management, Inc. at December 31, 2003, and for the period from September 24, 2003 (date of inception) through December 31, 2003, appearing in this Prospectus and Registration Statement have been audited by Ernst & Young LLP, independent certified

public accountants, as set forth in their report appearing elsewhere herein, and are included in reliance upon such report given upon the authority of such firm as experts in accounting and auditing.

### **WHERE YOU CAN FIND MORE INFORMATION ABOUT BIMINI MORTGAGE MANAGEMENT**

We have filed with the SEC a registration statement on Form S-11, including exhibits and schedules filed with the registration statement of which this prospectus is a part, under the Securities Act with respect to the shares of our Class A Common Stock to be sold in this offering. This prospectus does not contain all of the information set forth in the registration statement and exhibits and schedules to the registration statement. For further information with respect to our company and the shares to be sold in this offering, reference is made to the registration statement, including the exhibits and schedules to the registration statement. Statements contained in this prospectus as to the contents of any contract or other document referred to in this prospectus are not necessarily complete and, where that contract is an exhibit to the registration statement, each statement is qualified in all respects by reference to the exhibit to which the reference relates. Copies of the registration statement, including the exhibits and schedules to the registration statement, may be examined without charge at the public reference room of the SEC, 450 Fifth Street, N.W. Room 1024, Washington, DC 20549. Information about the operation of the public reference room may be obtained by calling the SEC at 1-800-SEC-0300. Copies of all or a portion of the registration statement can be obtained from the public reference room of the SEC upon payment of prescribed fees. Our SEC filings, including our registration statement, are also available to you for free on the SEC's website at [www.sec.gov](http://www.sec.gov).

As a result of this offering, we will become subject to the information and reporting requirements of the Securities Exchange Act of 1934, and will file periodic reports and proxy statements. We will also make available to our stockholders annual reports containing audited financial information for each year and quarterly reports for the first three quarters of each fiscal year containing unaudited interim financial information.

**BIMINI MORTGAGE MANAGEMENT, INC.**

**INDEX TO FINANCIAL STATEMENTS**

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**REPORT OF INDEPENDENT CERTIFIED PUBLIC ACCOUNTANTS**

Board of Directors and Stockholders  
Bimini Mortgage Management, Inc.

We have audited the accompanying balance sheet of Bimini Mortgage Management, Inc. (the "Company") as of December 31, 2003, and the related statements of operations, stockholders' equity, and cash flows for the period from September 24, 2003 (date of inception) through December 31, 2003. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audit.

We conducted our audit in accordance with auditing standards generally accepted in the United States. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audit provides a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of Bimini Mortgage Management, Inc. at December 31, 2003, and the results of its operations and its cash flows for the period from September 24, 2003 (date of inception) through December 31, 2003, in conformity with accounting principles generally accepted in the United States.

/s/ ERNST & YOUNG LLP

Miami, Florida  
March 11, 2004

**BIMINI MORTGAGE MANAGEMENT, INC.**

**BALANCE SHEETS**

	March 31, 2004	December 31, 2003
	<u>(unaudited)</u>	
<b>ASSETS</b>		
MORTGAGE-BACKED SECURITIES:		
Pledged to counterparties, at fair value	\$ 1,500,087,698	\$ 197,990,559
Unpledged, at fair value	16,452,046	27,750,602
	<u>1,516,539,744</u>	<u>225,741,161</u>
<b>TOTAL MORTGAGE-BACKED SECURITIES</b>	<b>1,516,539,744</b>	<b>225,741,161</b>
CASH AND CASH EQUIVALENTS	72,047,697	18,404,130
PURCHASED INTEREST RECEIVABLE	78,232	958,569
ACCRUED INTEREST RECEIVABLE	4,434,006	71,480
PROPERTY AND EQUIPMENT, net	152,275	89,088
PREPAID AND OTHER ASSETS	391,939	21,248
	<u>1,593,643,893</u>	<u>245,285,676</u>
	<b>\$ 1,593,643,893</b>	<b>\$ 245,285,676</b>
<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>		
LIABILITIES:		
Repurchase agreements	\$ 1,442,788,000	\$ 188,841,000
Accrued interest payable	2,013,313	20,086
Cash dividend payable	3,903,569	—
Accounts payable, accrued expenses and other	270,373	109,399
	<u>1,448,975,255</u>	<u>188,970,485</u>
<b>TOTAL LIABILITIES</b>	<b>1,448,975,255</b>	<b>188,970,485</b>
COMMITMENTS AND CONTINGENCIES		
STOCKHOLDERS' EQUITY:		
Preferred stock, \$0.001 par value; 10,000,000 shares authorized, no shares issued and outstanding	—	—
Class A Common Stock, \$0.001 par value; 98,000,000 shares designated; issued and outstanding, 10,009,150 shares at March 31, 2004 and 4,012,102 shares at December 31, 2003	10,009	4,012
Class B Common Stock, \$0.001 par value; 1,000,000 shares designated, 319,388 shares issued and outstanding	319	319
Class C Common Stock, \$0.001 par value; 1,000,000 shares designated, 319,388 shares issued and outstanding	319	319
Additional paid-in capital	141,728,687	56,597,117
Accumulated other comprehensive income (loss)	3,156,878	(19,409)
Accumulated deficit	(227,574)	(267,167)
	<u>144,668,638</u>	<u>56,315,191</u>
<b>TOTAL STOCKHOLDERS' EQUITY</b>	<b>144,668,638</b>	<b>56,315,191</b>
	<u>\$ 1,593,643,893</u>	<u>\$ 245,285,676</u>
	<b>\$ 1,593,643,893</b>	<b>\$ 245,285,676</b>

See notes to financial statements.

**BIMINI MORTGAGE MANAGEMENT, INC.**

**STATEMENTS OF OPERATIONS**

	<b>Three Months ended March 31, 2004</b>	<b>September 24, 2003 (inception) through December 31, 2003</b>
	<u>(unaudited)</u>	
Interest income, net of amortization of premium and discount	\$ 7,194,033	\$ 71,480
Interest expense	(2,736,434)	(20,086)
<b>NET INTEREST INCOME</b>	<b>4,457,599</b>	<b>51,394</b>
<b>DIRECT OPERATING EXPENSES:</b>		
Trading costs, commissions, and other trading expenses	200,064	15,583
Other direct costs	25,919	29,899
<b>TOTAL DIRECT OPERATING EXPENSES</b>	<b>225,983</b>	<b>45,482</b>
<b>GENERAL AND ADMINISTRATIVE EXPENSES:</b>		
Compensation and related benefits	91,345	35,964
Start-up and organization costs	—	111,092
Occupancy costs	15,104	13,675
Audit, legal and other professional fees	33,834	85,340
Other administrative expenses	148,171	27,008
<b>TOTAL GENERAL AND ADMINISTRATIVE EXPENSES</b>	<b>288,454</b>	<b>273,079</b>
<b>NET INCOME (LOSS)</b>	<b>\$ 3,943,162</b>	<b>\$ (267,167)</b>
<b>BASIC AND DILUTED INCOME (LOSS) PER CLASS A COMMON SHARE</b>	<b>\$ 0.49</b>	<b>\$ (0.54)</b>
<b>WEIGHTED AVERAGE NUMBER OF CLASS A COMMON SHARES OUTSTANDING USED IN COMPUTING PER SHARE AMOUNTS:</b>		
BASIC AND DILUTED	8,001,052	497,859
<b>CASH DIVIDENDS DECLARED PER CLASS A COMMON SHARE</b>	<b>\$ 0.39</b>	<b>\$ —</b>

See notes to financial statements.

**BIMINI MORTGAGE MANAGEMENT, INC.**

**STATEMENTS OF STOCKHOLDERS' EQUITY**

**FOR THE THREE MONTHS ENDED MARCH 31, 2004**

**(UNAUDITED) AND THE PERIOD FROM SEPTEMBER 24, 2003**

**(inception) THROUGH DECEMBER 31, 2003**

	Common Stock, Amounts at Par Value			Additional Paid-in Capital	Accumulated Other Comprehensive Income (Loss)	Accumulated Deficit	Total
	Class A	Class B	Class C				
Initial capitalization as of September 24, 2003, sale of Class B common shares	\$ —	\$ 319	\$ —	\$ 1,181	\$ —	\$ —	\$ 1,500
Sale of Class A common shares	7	—	—	28	—	—	35
Sale of Class C common shares	—	—	319	1,181	—	—	1,500
Issuance of Class A common shares pursuant to a private offering	4,005	—	—	56,594,727	—	—	56,598,732
Net loss	—	—	—	—	—	(267,167)	(267,167)
Unrealized loss on available for sale securities, net	—	—	—	—	(19,409)	—	(19,409)
Comprehensive loss	—	—	—	—	—	—	(286,576)
Balances at December 31, 2003	\$ 4,012	\$ 319	\$ 319	\$ 56,597,117	\$ (19,409)	\$ (267,167)	\$ 56,315,191
Issuance of Class A common shares as compensation	2	—	—	24,748	—	—	24,750
Sale of Class A common shares in January 2004	5,837	—	—	82,858,509	—	—	82,864,346
Sale of Class A common shares in February 2004	158	—	—	2,248,313	—	—	2,248,471
Cash dividends declared and payable on Class A common shares	—	—	—	—	—	(3,903,569)	(3,903,569)
Net income	—	—	—	—	—	3,943,162	3,943,162
Unrealized gain on available for sale securities, net	—	—	—	—	3,176,287	—	3,176,287
Comprehensive income	—	—	—	—	—	—	7,119,449
Balances at March 31, 2004 (unaudited)	\$ 10,009	\$ 319	\$ 319	\$ 141,728,687	\$ 3,156,878	\$ (227,574)	\$ 144,668,638

See notes to financial statements.





**BIMINI MORTGAGE MANAGEMENT, INC.**

**NOTES TO FINANCIAL STATEMENTS**

**(INFORMATION PERTAINING TO THE THREE MONTHS ENDED  
MARCH 31, 2004 IS UNAUDITED)**

**NOTE 1. ORGANIZATION AND SIGNIFICANT ACCOUNTING POLICIES**

**Organization and Business Description**

Bimini Mortgage Management, Inc. (the "Company") was incorporated in Maryland on September 24, 2003, and it commenced its planned business activities on December 19, 2003, the date of the initial closing of a private issuance of its common stock.

The Company was formed to invest primarily in residential mortgage related securities issued by the Federal National Mortgage Association (more commonly known as Fannie Mae), the Federal Home Loan Mortgage Corporation (more commonly known as Freddie Mac) and the Government National Mortgage Association (more commonly known as Ginnie Mae).

The Company intends to qualify and will elect to be taxed as a real estate investment trust ("REIT") under the Internal Revenue Code of 1986, as amended. Once qualified, in order to maintain its REIT status, the Company must comply with a number of requirements under Federal tax law, including that it must distribute at least 90% of its annual taxable net income to its stockholders, subject to certain adjustments.

**Interim Financial Statements**

The interim financial statements as of and for the three-month period ended March 31, 2004 are unaudited; however, in the opinion of the Company's management, all adjustments, consisting only of normal recurring accruals, necessary for a fair presentation of the Company's financial position, results of operations and cash flows have been included. These interim financial statements have been prepared in accordance with disclosure requirements for interim financial information and accordingly, they may not include all of the information and footnotes required by generally accepted accounting principles for complete financial statements. The operating result for this interim period is not necessarily indicative of results that can be expected for a full year.

All information presented as of December 31, 2003 and for the period from September 24, 2003 (date of inception) through December 31, 2003 has been audited.

**Basis of Presentation and Use of Estimates**

The accompanying financial statements are prepared on the accrual basis of accounting in accordance with accounting principles generally accepted in the United States ("GAAP"). The preparation of financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates. Significant estimates affecting the accompanying financial statements include the fair values of mortgage-backed securities and the prepayment speeds used to calculate amortization and accretion of premiums and discounts on mortgage-backed securities.

## **Securities and Interest Income Recognition**

The Company invests primarily in residential mortgage related securities issued by Fannie Mae, Freddie Mac, and Ginnie Mae.

In accordance with GAAP, the Company classifies its investments as either trading investments, available-for-sale investments or held-to-maturity investments. Management determines the appropriate classification of the securities at the time they are acquired and evaluates the appropriateness of such classifications at each balance sheet date. The Company currently classifies all of its securities as available-for-sale, and assets so classified are carried on the balance sheet at fair value, and unrealized gains or losses arising from changes in market values are reported as other comprehensive income or loss as a component of stockholders' equity. Permanent impairment losses, if any, are reported in earnings.

Securities are recorded on the date the securities are purchased or sold, which is generally the trade date. Realized gains or losses from securities transactions are determined based on the specific identified cost of the securities.

Interest income is accrued based on the outstanding principal amount of the securities and their stated contractual terms. Premiums and discounts associated with the purchase of the securities are accreted or amortized into interest income over the estimated lives of the assets adjusted for estimated prepayments using the effective interest method. Adjustments are made using the retrospective method to the effective interest computation each reporting period based on the actual prepayment experiences to date, and the present expectation of future prepayments of the underlying mortgages.

## **Cash and Cash Equivalents**

Cash and cash equivalents include cash on hand and highly liquid investments with original maturities of three months or less. The carrying amount of cash equivalents approximates its fair value at March 31, 2004 and December 31, 2003.

## **Credit Risk**

At March 31, 2004 and December 31, 2003, the Company had limited its exposure to credit losses on its portfolio of securities by purchasing primarily securities from federal agencies or federally chartered entities, such as, but not limited to, Fannie Mae, Freddie Mac, and Ginnie Mae. The portfolio is diversified to avoid undue loan originator, geographic and other types of concentrations. The Company manages the risk of prepayments of the underlying mortgages by creating a diversified portfolio with a variety of prepayment characteristics.

The Company is engaged in various trading and brokerage activities in which counter-parties primarily include broker-dealers, banks, and other financial institutions. In the event counter-parties do not fulfill their obligations, the Company may be exposed to risk of loss. The risk of default depends on the creditworthiness of the counter-party and/or issuer of the instrument. It is the Company's policy to review, as necessary, the credit standing for each counter-party.

## Property and Equipment

Property and equipment, consisting primarily of computer equipment, office furniture and leasehold improvements, is recorded at acquisition cost and depreciated using the straight-line method over the estimated useful lives of the assets. Asset lives range from five years for computer equipment to fifteen years for leasehold improvements. Total cost at March 31, 2004 is \$161,450, and at December 31, 2003 is \$94,540. Depreciation expense for the three months ended March 31, 2004 was \$3,723. Depreciation expense for the period from September 24, 2003 (date of inception) through December 31, 2003 was \$5,452. Accumulated depreciation totaled \$9,175 at March 31, 2004 and \$5,452 at December 31, 2003.

## Repurchase Agreements

The Company finances the acquisition of its mortgage-backed securities ("MBS") through the use of repurchase agreements. Under these repurchase agreements, the Company sells securities to a lender and agrees to repurchase the same securities in the future for a price that is higher than the original sales price. The difference between the sale price that the Company receives and the repurchase price that the Company pays represents interest paid to the lender. Although structured as a sale and repurchase obligation, a repurchase agreement operates as a financing under which the Company pledges its securities as collateral to secure a loan which is equal in value to a specified percentage of the estimated fair value of the pledged collateral. The Company retains beneficial ownership of the pledged collateral. At the maturity of a repurchase agreement, the Company is required to repay the loan and concurrently receives back its pledged collateral from the lender or, with the consent with the lender, the Company may renew such agreement at the then prevailing financing rate. These repurchase agreements may require the Company to pledge additional assets to the lender in the event the estimated fair value of the existing pledged collateral declines. Through March 31, 2004 and December 31, 2003, the Company did not have any margin calls on its repurchase agreements that it was not able to satisfy with either cash or additional pledged collateral.

Original terms to maturity of the Company's repurchase agreements generally range from one month to 36 months; however, the Company is not precluded from entering into repurchase agreements with longer maturities. Should a counter-party decide not to renew a repurchase agreement at maturity, the Company must either refinance elsewhere or be in a position to satisfy this obligation. If, during the term of a repurchase agreement, a lender should file for bankruptcy, the Company might experience difficulty recovering its pledged assets and may have an unsecured claim against the lender's assets for the difference between the amount loaned to the Company and the estimated fair value of the collateral pledged to such lender. To reduce this risk, the Company enters into repurchase agreements only with investment grade institutions. At March 31, 2004, the Company had amounts outstanding under repurchase agreements with ten separate lenders with a maximum net exposure (the difference between the amount loaned to the Company and the estimated fair value of the security pledged by the Company as collateral) to any single lender of approximately \$17,430,000. At December 31, 2003, the Company had amounts outstanding under repurchase agreements with three separate lenders with a maximum net exposure to any single lender of approximately \$5,829,000.

At March 31, 2004, the Company's repurchase agreements had the following counterparties, amounts at risk and weighted average remaining maturities (unaudited):

Repurchase Agreement Counterparties	Amount Outstanding (\$000)	Amount at Risk(1) (\$000)	Weighted Average Maturity of Repurchase Agreements in Days	Percent of Total Amount outstanding
Deutsche Bank Securites, Inc.	\$ 340,691	\$ 17,430	237	24%
UBS Investment Bank, LLC	316,865	12,112	200	22
Daiwa Securities America Inc.	245,587	11,209	92	17
Bank of America Securities, LLC	190,114	10,331	227	13
Lehman Brothers	90,372	2,833	26	6
Goldman Sachs	82,883	3,602	177	6
Bear Stearns & Co. Inc.	76,887	3,871	67	5
Nomura Securities International, Inc.	59,410	3,153	275	4
JP Morgan Securities, Inc.	24,287	656	44	2
Countrywide Securities Corp.	15,692	843	223	1
<b>Total</b>	<b>\$ 1,442,788</b>	<b>\$ 66,040</b>	<b>175</b>	<b>100%</b>

(1) Equal to the fair value of securities sold, plus accrued interest income, minus the sum of repurchase agreement liabilities, plus accrued interest expense.

### Stock-Based Compensation

Stock-based compensation is accounted for using the fair value based method prescribed by Statement of Financial Accounting Standards ("SFAS") No. 123, "Accounting for Stock-Based Compensation." For stock and options issued to employees, a compensation charge is recorded against earnings at the date of grant based on the fair value of the award. For transactions with non-employees in which services are performed in exchange for the Company's common stock or other equity instruments, the transactions are recorded on the basis of the fair value of the service received or the fair value of the equity instruments issued, whichever is more readily measurable at the date of issuance. The Company's stock-based compensation transactions resulted in an aggregate of \$24,750 of compensation expense for the three months ended March 31, 2004, and \$1,209 of compensation expense for the period from September 24, 2003 (date of inception) to December 31, 2003.

### Earnings Per Share

The Company follows the provisions of SFAS No. 128, "Earnings per Share," which requires companies with complex capital structures or common stock equivalents to present both basic and diluted earnings per share ("EPS") on the face of the income statement. Basic EPS is calculated as income available to common stockholders divided by the weighted average number of common shares outstanding during the period. Diluted EPS is calculated using the "if converted" method for common

stock equivalents. The Company, as of March 31, 2004 and December 31, 2003, has no common stock equivalents.

Class B shares of common stock are not included in the basic EPS computation as the conditions to participate in earnings were not met as of March 31, 2004 and December 31, 2003. As of March 31, 2004 and December 31, 2003, the Class B shares totaling 319,388 are not included in the computation of diluted EPS as the conditions for conversion were not met (see note 5).

The Class C common shares are not included in the basic EPS computation as these shares do not have participation rights. At March 31, 2004 and December 31, 2003, the Class C common shares totaling 319,388 are not included in the computation of diluted EPS as the conditions for conversion were not met (see note 5).

The table below reconciles the numerators and denominators of the basic and diluted EPS. All stock issued during the initial organization of the Company in 2003 is weighted as if it was issued on the date of incorporation.

	Three months ended March 31, 2004	September 24, 2003 (inception) through Dec. 31, 2003
	(unaudited)	
<i>Basic and diluted EPS per Class A common share:</i>		
Numerator: net income (loss)	\$ 3,943,162	\$ (267,167)
Denominator:		
Class A shares outstanding at the balance sheet date	10,009,150	4,012,102
Effect of weighting	(2,008,098)	(3,514,243)
Weighted-average shares	8,001,052	497,859
Basic and diluted EPS per Class A common share for the period	\$ 0.49	\$ (0.54)

### Comprehensive Income

In accordance with SFAS No. 130, "Reporting Comprehensive Income," the Company is required to separately report its comprehensive income. Other comprehensive income refers to revenue, expenses, gains, and losses that under GAAP are included in comprehensive income but are excluded from net income, as these amounts are recorded directly as an adjustment to stockholders' equity. Other comprehensive income arises from unrealized gains or losses generated from changes in market values of its securities held as available-for-sale.

## **Organization Costs and Start-up Expenses**

In accordance with Statement of Position 98-5, "Reporting on the Costs of Start-up Activities," organization costs and start-up expenditures were expensed as incurred during the period from September 24, 2003 (date of inception) to December 31, 2003.

## **Income Taxes**

The Company intends to qualify and will elect to be taxed as a real estate investment trust, or REIT, under the Internal Revenue Code. Provided the Company qualifies as a REIT, the Company will routinely distribute substantially all of its taxable income generated from operations to its stockholders. The Company will generally not be subject to Federal income tax to the extent that it distributes its net income to the stockholders, and satisfies the ongoing REIT requirements including meeting certain asset, income and stock ownership tests.

The deferred tax asset generated by the net operating loss for the period from September 24, 2003 (date of inception) to December 31, 2003 has been offset by a full valuation allowance, as management believes, pursuant to the REIT status of the Company, that it is not likely that the loss will be utilized in the future to offset taxes payable. There is no tax provision included for the period ended March 31, 2004, as the Company believes it will satisfy the REIT taxation requirements for 2004.

## **Recent Accounting Pronouncements**

In January 2003, the Financial Accounting Standards Board ("FASB") issued Interpretation No. 46, "Consolidation of Variable Interest Entities, an Interpretation of Accounting Research Bulletin No. 51" (the "Interpretation"). The Interpretation requires the consolidation of variable interest entities in which an enterprise absorbs a majority of the entity's expected losses, receives a majority of the entity's expected residual returns, or both, as a result of ownership, contractual or other financial interests in the entity. Currently, entities are generally consolidated by an enterprise that has a controlling financial interest through ownership of a majority voting interest in the entity. The Interpretation is generally effective for any variable interest entities created after January 31, 2003, with transition rules for those created prior to February 1, 2003. The Interpretation's adoption did not have any impact on the Company's financial position or results of operations.

In April 2003, the FASB issued SFAS No. 149, "Amendment of Statement 133 on Derivative Instruments and Hedging Activities." SFAS No. 149 amends SFAS No. 133 to provide clarification on the financial accounting and reporting of derivative instruments and hedging activities and requires that contracts with similar characteristics be accounted for on a comparable basis. The standard is effective for contracts entered into or modified after June 30, 2003. The Company's adoption of SFAS No. 149 did not have a material impact on its financial position or results of operations.

In May 2003, the FASB issued SFAS No. 150, "Accounting for Certain Instruments with Characteristics of Both Liabilities and Equity." SFAS No. 150 establishes how an issuer classifies and measures certain freestanding financial instruments with characteristics of liabilities and equity and requires that such instruments be classified as liabilities. The standard is effective for financial

instruments entered into or modified after May 31, 2003. The Company's adoption of SFAS No. 150 did not have any impact on its financial position or results of operations.

At its November 2003 meeting, the Emerging Issues Task Force ("EITF") of the FASB reached a consensus in EITF Issue No. 03-01 regarding disclosures to be made when held-to-maturity or available-for-sale investments are impaired at the balance sheet date but for which an "other-than-temporary" loss has not been recognized. At the March 2004 meeting, the EITF expanded their guidance in this area. The Company has adopted these disclosure requirements.

## NOTE 2. SECURITIES

At March 31, 2004 and December 31, 2003, all of the Company's securities were classified as available-for-sale and, as such, are reported at their estimated fair value. Estimated fair value was determined based on the average of third-party broker quotes received and/or independent pricing sources when available.

The following are the carrying values of the Company's securities at March 31, 2004 and December 31, 2003:

	March 31, 2004	Dec. 31, 2003
	(unaudited)	
Floating Rate CMO's	\$ 520,832,823	\$ 56,887,052
Hybrid Arms and Balloons	134,139,683	65,218,850
Adjustable Rate Mortgages	233,533,092	20,024,916
Fixed Rate Mortgages	628,034,146	83,610,343
	<u>\$ 1,516,539,744</u>	<u>\$ 225,741,161</u>

The following table presents the components of the carrying value of the Company's mortgage-backed securities portfolio at March 31, 2004 and December 31, 2003:

	March 31, 2004	Dec. 31, 2003
	(unaudited)	
Principal balance	\$ 1,470,044,852	\$ 220,674,223
Unamortized premium	43,629,827	5,120,342
Unaccreted discount	(291,813)	(33,995)
Gross unrealized gains	4,168,650	97,935
Gross unrealized losses	(1,011,772)	(117,344)
Carrying value/estimated fair value	<u>\$ 1,516,539,744</u>	<u>\$ 225,741,161</u>



The following table presents for the Company's investments with gross unrealized losses, the estimated fair value and gross unrealized losses aggregated by investment category, at March 31, 2004:

	Estimated Fair Value	Unrealized Losses
	(unaudited)	
Floating Rate CMO's	\$ 237,027,832	\$ 245,022
Hybrid Arms and Balloons	24,843,295	98,795
Adjustable Rate Mortgages	80,419,827	183,395
Fixed Rate Mortgages	133,075,457	484,560
<b>Total temporarily impaired securities</b>	<b>\$ 475,366,411</b>	<b>\$ 1,011,772</b>

The following table presents for the Company's investments with gross unrealized losses, the estimated fair value and gross unrealized losses aggregated by investment category, at December 31, 2003:

	Estimated Fair Value	Unrealized Losses
	(unaudited)	
Floating Rate CMO's	\$ 35,326,753	\$ 46,324
Hybrid Arms and Balloons	40,246,359	28,127
Adjustable Rate Mortgages	12,997,971	13,230
Fixed Rate Mortgages	53,771,978	29,663
<b>Total temporarily impaired securities</b>	<b>\$ 142,343,061</b>	<b>\$ 117,344</b>

All of the Company's investments have contractual maturities greater than 10 years. Actual maturities of mortgage-backed securities are generally shorter than stated contractual maturities. Actual maturities of the Company's mortgage-backed securities are affected by the contractual lives of the underlying mortgages, periodic payments of principal, and prepayments of principal.

The unrealized losses on the investments are considered temporary, and are therefore not written-down as being permanently impaired. The factors considered in making this determination included: the expected cash flow from the investment, the general quality of the MBS owned, any credit protection available, current market conditions, and the magnitude and duration of the historical decline in market prices.

### NOTE 3. REPURCHASE AGREEMENTS

The Company has entered into repurchase agreements to finance most of its security purchases. The repurchase agreements are short-term borrowings that bear interest rates that have historically moved in close relationship to LIBOR (London Interbank Offered Rate). At March 31, 2004, the Company had an outstanding amount of \$1,442,788,000 with a weighted average borrowing rate of 1.189%, and these agreements were collateralized by mortgage-backed securities with a fair value of \$1,500,087,698. At December 31, 2003, the Company had an outstanding amount of \$188,841,000 with a

weighted average borrowing rate of 1.107% and these agreements were collateralized by mortgage-backed securities with a fair value of \$197,990,559.

At March 31, 2004, the Company's repurchase agreements had remaining maturities as summarized below (unaudited):

	OVERNIGHT (1 DAY OR LESS)	BETWEEN 2 AND 30 DAYS	BETWEEN 31 AND 90 DAYS	GREATER THAN 90 DAYS	TOTAL
<b>Agency-Backed Mortgage-Backed Securities:</b>					
Amortized cost of securities sold, including accrued interest receivable	\$ —	\$ 129,207,384	\$ 280,899,061	\$ 1,085,841,919	\$ 1,495,948,364
Fair market value of securities sold, including accrued interest receivable	\$ —	\$ 132,949,445	\$ 288,044,302	\$ 1,093,905,742	\$ 1,514,899,489
Repurchase agreement liabilities associated with these securities	\$ —	\$ 125,683,000	\$ 249,984,000	\$ 1,067,121,000	\$ 1,442,788,000
Average interest rate of repurchase agreement liabilities	0%	1.10%	1.12%	1.21%	1.19%

#### NOTE 4. FAIR VALUE OF FINANCIAL INSTRUMENTS

SFAS No. 107, "Disclosures about Fair Value of Financial Instruments," defines the fair value of a financial instrument as the amount at which the instrument could be exchanged in a current transaction between willing parties. All securities are reflected in the financial statements at their estimated fair value as of March 31, 2004 and December 31, 2003. Estimated fair values for mortgage-backed securities are based on the average of third-party broker quotes received and/or independent pricing sources when available. However, the fair values reported reflect estimates and may not necessarily be indicative of the amounts the Company could realize in a current market exchange. Cash and cash equivalents, accrued interest receivable, repurchase agreements and accrued interest payable are reflected in the financial statements at their costs, which approximates their fair value because of the short-term nature of these instruments.

#### NOTE 5. CAPITAL STOCK

##### Authorized Shares

The total number of shares of capital stock which the Company has the authority to issue is 110,000,000 shares, consisting of 100,000,000 shares of common stock having a par value of \$0.001 per share and 10,000,000 shares of preferred stock having a par value of \$0.001 per share. The Board of Directors has the authority to classify any unissued shares by setting or changing in any one or more

respects the preferences, conversion or other rights, voting powers, restrictions, limitations as to dividends, qualifications or terms or conditions of redemption of such shares.

### **Common Stock**

Of the 100,000,000 authorized shares of common stock, 98,000,000 shares were designated as Class A Common Stock, 1,000,000 shares were designated as Class B Common Stock and 1,000,000 shares were designated as Class C Common Stock. Holders of shares of common stock have no sinking fund or redemption rights and have no preemptive rights to subscribe for any of our securities.

#### ***Class A Common Stock***

Each outstanding share of Class A Common Stock entitles the holder to one vote on all matters submitted to a vote of stockholders, including the election of directors. Holders of shares of Class A Common Stock are not entitled to cumulate their votes in the election of directors.

Subject to the preferential rights of any other class or series of stock and to the provisions of the Company's charter regarding the restrictions on transfer of stock, holders of shares of Class A Common Stock are entitled to receive dividends on such stock if, as and when authorized and declared by the Board of Directors.

#### ***Class B Common Stock***

Each outstanding share of Class B Common Stock entitles the holder to one vote on all matters submitted to a vote of common stockholders, including the election of directors. Holders of shares of Class B Common Stock are not entitled to cumulate their votes in the election of directors. Holders of shares of Class A Common Stock and Class B Common Stock shall vote together as one class in all matters except that any matters which would adversely affect the rights and preferences of Class B Common Stock as a separate class shall require a separate approval by holders of a majority of the outstanding shares of our Class B Common Stock.

Holders of shares of Class B Common Stock are entitled to receive dividends on each share of Class B Common Stock in an amount equal to the dividends declared on each share of Class A Common Stock if, as and when authorized and declared by the Board of Directors. No dividends may be declared on the shares of Class B Common Stock until after the most recent dividend payment date for the Class A Common Stock for which cumulative dividends paid on each share of Class A Common Stock are equal to or greater than the difference between the book value per share of Class A Common Stock at the time of issuance of such share of Class A Common Stock and \$15.00 per share; provided further that aggregate dividends declared on the Class B Common Stock shall not exceed 3% of total dividends declared on the Class A and Class B Common Stock, and any reduction pursuant to this provision shall be allocated pro rata across all shares of Class B Common Stock.

Each share of Class B Common Stock shall automatically be converted into one share of Class A Common Stock on the first day of the fiscal quarter following the fiscal quarter during which the Company's Board of Directors were notified that, as of the end of such fiscal quarter, the stockholders' equity attributable to the Class A Common Stock, calculated on a pro forma basis as if conversion of the Class B Common Stock (or portion thereof to be converted) had occurred, and otherwise determined in accordance with GAAP, equals no less than \$15.00 per share (adjusted equitably for any stock splits, stock

combinations, stock dividends or the like); provided, that the number of shares of Class B Common Stock to be converted into Class A Common Stock in any quarter shall not exceed an amount that will cause the stockholders' equity attributable to the Class A Common Stock calculated as set forth above to be less than \$15.00 per share; provided further, that such conversions shall continue to occur until all shares of Class B Common Stock have been converted into shares of Class A Common Stock; and provided further, that the total number of shares of Class A Common Stock issuable upon conversion of the Class B Common Stock shall not exceed 3% of the total shares of common stock outstanding prior to completion of an initial public offering of the Company's Class A Common Stock. The Company's Class A Common Stock has a book value per share of \$14.45 at March 31, 2004 and \$14.04 at December 31, 2003.

### **Class C Common Stock**

No dividends will be paid on the Class C Common Stock. Holders of shares of Class C Common Stock are not entitled to vote on any matter submitted to a vote of stockholders, including the election of directors, except that any matters that would adversely affect the rights and privileges of the Class C Common Stock as a separate class shall require the approval of a majority of the Class C Common Stock.

Each share of Class C Common Stock shall automatically be converted into one share of Class A Common Stock on the first day of the fiscal quarter following the fiscal quarter during which the Company's Board of Directors were notified that, as of the end of such fiscal quarter, the stockholders' equity attributable to the Class A Common Stock, calculated on a pro forma basis as if conversion of the Class C Common Stock had occurred and giving effect to the conversion of all of the shares of Class B Common Stock as of such date, and otherwise determined in accordance with GAAP, equals no less than \$15.00 per share (adjusted equitably for any stock splits, stock combinations, stock dividends or the like); provided, that the number of shares of Class C Common Stock to be converted into Class A Common Stock shall not exceed an amount that will cause the stockholders' equity attributable to the Class A Common Stock calculated as set forth above to be less than \$15.00 per share; and provided further, that such conversions shall continue to occur until all shares of Class C Common Stock have been converted into shares of Class A Common Stock and provided further, that the total number of shares of Class A Common Stock issuable upon conversion of the Class C Common Stock shall not exceed 3% of the total shares of common stock outstanding prior to completion of an initial public offering of the Company's Class A Common Stock. The Company's Class A Common Stock has a book value per share of \$14.45 at March 31, 2004 and \$14.04 at December 31, 2003.

### **Preferred Stock**

The Company's Board of Directors has the authority 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. Prior to issuance of shares of each class or series of preferred stock, the Board of Directors is required to fix 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 such class or series. As of March 31, 2004 and December 31, 2003, no shares of preferred stock are outstanding, and the Company has no present plans to issue any preferred stock.

### **Initial Capitalization**

The three initial independent directors of the Company's Board of Directors subscribed for a total of 7,500 shares of Class A Common Stock in October 2003 at par value, or a price of \$0.001 per share. Compensation totaling \$28 was recorded as a result of this issuance. See below for a description of additional Class A Common Stock issuances.

Of the 1,000,000 shares of Class B Common Stock authorized for issuance, 319,388 shares were issued to the Company's initial officers, Jeffrey J. Zimmer and Robert E. Cauley, in October 2003 for a

total price of \$1,500. Of the 1,000,000 shares of Class C Common Stock authorized for issuance, 319,388 shares were subscribed to by Flagstone Securities, LLC in October 2003 at par value, or a price of \$0.001 per share. Compensation totaling \$1,181 was recorded as a result of this issuance and is included in start-up and organization costs in the accompanying statement of operations for the period from September 24, 2003 (date of inception) to December 31, 2003.

#### **Private Placements of Common Stock**

On December 11, 2003, the Company began a private placement offering (the "Offering") of up to 10,000,000 shares of Class A Common Stock at a price to the investors of \$15.00 per share. On December 19, 2003, the Company completed a first closing, in which the Company issued 4,004,602 shares and received proceeds of \$56,598,732, which is net of placement agency fees and expenses totaling \$3,350,297. On January 30, 2004, the Offering was closed, and the Company issued an additional 5,837,055 shares and received proceeds of \$82,864,346, which is net of placement agency fees and expenses totaling \$4,691,479.

On February 17, 2004, the Company issued a total of 158,343 shares of Class A Common Stock in a private offering and received proceeds of \$2,248,471, which is net of placement agency fees and expenses totaling \$126,674. After the completion of the Offering, the February 17, 2004 issuance, and the payment of directors' fees in January 2004 with 1,650 shares, the Company has 10,009,150 shares of Class A Common Stock issued and outstanding.

#### **Dividends**

On March 10, 2004, the Company's Board of Directors declared a \$0.39 per share cash distribution to holders of its Class A Common Stock, totaling \$3,903,569. The distribution was paid on April 23, 2004.

#### **NOTE 6. TRANSACTIONS WITH RELATED PARTIES**

##### **Transactions with Shareholders**

During the period from September 24, 2003 (date of inception) through December 19, 2003, the Company's start-up activities were being fully paid for and supported by the Company's President and CEO, Jeffrey J. Zimmer. Mr. Zimmer was also a Class B shareholder during this period of time. On December 19, 2003, at the initial closing of the Offering, the Company reimbursed the CEO \$247,980 for these costs, which were recorded primarily as property and equipment and operating expenses.

The entire issuance of Class C Common Stock was purchased by Flagstone Securities, LLC. Flagstone was the placement agent for the Company's Class A Common Stock private placement offerings, and pursuant to the terms of the offerings, received fees for its services. Through December 31, 2003, Flagstone had received \$2,943,042 in fees from the Offering, and Flagstone received an additional \$4,747,517 from the proceeds of the Offering that closed in January and February 2004.

## Employment Agreements

The Company entered into employment agreements with the Company's initial officers, Jeffrey J. Zimmer and Robert E. Cauley, in 2003. The employment agreements provide for Mr. Zimmer to serve as our President and Chief Executive Officer and Mr. Cauley to serve as Chief Investment Officer and Chief Financial Officer. The employment agreements terminate in December 2006; provided, however, that the term shall automatically be extended for one-year periods unless, not later than six months prior to the termination of the existing term, either party provides written notice to the other party of its intent not to further extend the term. The employment agreements provide for an initial annual base salary of \$150,000 to each of Messrs. Zimmer and Cauley and for Mr. Zimmer to receive a \$250,000 cash bonus and for Mr. Cauley to receive a \$125,000 cash bonus at the time of the effectiveness of a resale shelf registration statement on Form S-11 covering the resale of the Class A Common Stock sold in the Company's Offering. Messrs. Zimmer and Cauley will also be entitled to bonuses at the discretion of the compensation committee.

Upon the termination of an executive officer's employment either by the Company without "cause" or by the executive officer for "good reason" or by the executive officer for any reason within three months after a "change of control," the executive officer will be entitled to the following severance payments and benefits, subject to his execution and non-revocation of a general release of claims: lump-sum cash payment equal to 300% of the sum of his then-current annual base salary plus average bonus over the prior three years; his prorated annual bonus for the year in which the termination occurs; all stock options held by the executive officer will become fully exercisable and will continue to be exercisable for their full terms and all restricted stock held by such executive officer will become fully vested; health benefits for three years following the executive officer's termination of employment at no cost to the executive officer, subject to reduction to the extent that the executive officer receives comparable benefits from a subsequent employer; and outplacement services at Company expense.

Each of Messrs. Zimmer and Cauley is bound by a non-competition covenant for so long as he is an officer of the Company and for a one-year period thereafter, unless his employment is terminated by the Company without "cause" or by him with "good reason" (in each case, as defined in his employment agreement) or by him for any reason after a "change in control" (as defined in his employment agreement) of the Company, in which case his covenant not to compete will lapse on the date of his termination.

Messrs. Zimmer and Cauley's employment agreements were amended and restated in 2004. The amended and restated agreements extend the term of the agreements to April 2007 and provide that upon the effectiveness of a registration statement for the Company's Class A common shares that Mr. Zimmer's annual base salary will increase to \$400,000 and Mr. Cauley's annual base salary will increase to \$267,500.

## Other Transactions

In January 2004, the three independent directors received a total of 1,650 shares of Class A common stock, valued at \$24,750, as compensation for their activities as directors.

One of the Company's directors, Mr. Buford Ortale, was previously a Managing Director in the Investment Banking Group at Avondale Partners, LLC ("Avondale"), one of the placement agents for the Company's Offering that was completed in January 2004. Mr. Ortale has a continuing affiliation with Avondale pursuant to which he receives compensation from investment banking fees earned by Avondale on transactions referred to Avondale by Mr. Ortale. Mr. Ortale has been paid \$360,000 from Avondale for referring the Company to Avondale.

#### **NOTE 7. STOCK INCENTIVE PLAN**

On December 1, 2003, the Company adopted the 2003 Long Term Incentive Compensation Plan (the "2003 Plan") to provide the Company with the flexibility to use stock options and other awards as part of an overall compensation package to provide a means of performance-based compensation to attract and retain qualified personnel. Key employees, directors and consultants are eligible to be granted stock options, restricted stock, phantom shares, dividend equivalent rights and other stock-based awards under the 2003 Plan. The 2003 Plan is administered by the Board of Directors or a committee of the Board of Directors, which has the full authority to administer and interpret the 2003 Plan, to authorize the granting of awards, to determine the eligibility of an employee, director or consultant to receive an award, to determine the number of shares of common stock to be covered by each award (subject to the individual participant limitations provided in the 2003 Plan), and to determine the terms, provisions and conditions of each award (which may not be inconsistent with the terms of the 2003 Plan).

The Committee may prescribe the form of instruments evidencing awards and to take any other actions and make all other determinations that it deems necessary or appropriate in connection with the 2003 Plan or the administration or interpretation thereof. In connection with this authority, the committee may establish performance goals that must be met in order for awards to be granted or to vest, or for the restrictions on any such awards to lapse.

Subject to adjustment upon certain corporate transactions or events, a maximum of 4,000,000 shares of the Class A Common Stock (but not more than 10% of the Class A Common Stock outstanding on the date of grant) may be subject to stock options, shares of restricted stock, phantom shares and dividend equivalent rights under the 2003 Plan. As of March 31, 2004 and December 31, 2003, no awards have been granted under the 2003 Plan.

#### **NOTE 8. COMMITMENTS AND CONTINGENCIES**

##### **Operating Lease**

The Company leases its office space under an operating lease agreement that has an initial expiration date of October 14, 2004. The lease also contains the following additional options: two one year renewals with increases in rent based on the consumer price index; and the ability of the Company to secure a five year lease at any time with a re-negotiated rate. Total rental expense for the three months ended March 31, 2004 was \$13,699, and for the period from September 24, 2003 (date of inception) through December 31, 2003 it was \$12,264. Future fiscal year minimum lease payments



subsequent to December 31, 2003, assuming management's intended exercise of the two one year renewals, are as follows: \$54,797 during the year ended December 31, 2004, \$54,797 during 2005, and \$43,381 during 2006.

**Litigation, Claims, and Assessments**

In the ordinary course of business, the Company is exposed to various claims, threats, and legal proceedings. In management's opinion, the outcome of such matters, if any, will not have a material impact upon the Company's financial position and results of operations.

\* \* \* \* \*

No person is authorized to give any information or to represent anything not contained in this prospectus. You must not rely on any unauthorized representations or information. This prospectus is an offer to sell only the shares offered hereby, and only under circumstances and in jurisdictions where it is lawful to do so. The information contained in this prospectus is current only as of the date hereof.

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Until [            ], 2004 (25 days after the date of this prospectus), all dealers that effect transactions in these securities, whether or not participating in the offering, may be required to deliver a prospectus. This is in addition to the dealers' obligation to deliver a prospectus when acting as underwriters and with respect to their unsold allotments or subscriptions.



[            ] Shares

**Class A Common Stock**

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**PROSPECTUS**

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**FRIEDMAN BILLINGS RAMSEY  
FLAGSTONE SECURITIES**

[            ], 2004

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PART II

INFORMATION NOT REQUIRED IN PROSPECTUS

**Item 31. Other Expenses of Issuance and Distribution.**

The following table itemizes the expenses incurred by us in connection with the issuance and registration of the securities being registered hereunder. All amounts shown are estimates except the Securities and Exchange Commission registration fee.

Securities and Exchange Commission registration fee	\$	21,855.75
NASD filing fee	\$	17,750.00
NYSE listing fee		[.]*
Printing and engraving fees		[.]*
Legal fees and expenses		[.]*
Accounting fees and expenses		[.]*
Blue sky fees and expenses		[.]*
Transfer Agent and Registrar fees		[.]*
Federal and state taxes		[.]*
Miscellaneous expenses		[.]*
<b>Total</b>	<b>\$</b>	<b>[.]*</b>

\* To be filed by amendment.

**Item 32. Sales to Special Parties.**

See item 33.

**Item 33. Recent Sales of Unregistered Securities.**

In October 2003, our three initial independent directors (Kevin L. Bespolka, Maureen A. Hendricks and Buford H. Ortale) purchased a total of 7,500 shares of our Class A Common Stock at par value, or a total purchase price of \$7.50. These shares were valued at \$.0047 per share. The \$27.50 difference between the value of the shares and the purchase price was contributed by the independent directors in the form of services to us.

In October 2003, Jeffrey J. Zimmer (our President, CEO and Chairman of our Board of Directors) and Robert E. Cauley (our Chief Financial Officer and one of our directors) purchased a total of 319,388 shares of our Class B Common Stock at \$.0047 per share for a total purchase price of \$1,500.

In October 2003, Flagstone Securities, LLC purchased a total of 319,388 shares of our Class C Common Stock at par value, or a total purchase price of \$319.39. These shares were valued at \$.0047 per share. The \$1,180.61 difference between the value of the shares and the purchase price was contributed by Flagstone Securities, LLC in the form of services to us in connection with our private placements.

On December 19, 2003, we sold 4,004,602 shares of our Class A Common Stock at \$15.00 per share in a private placement to accredited investors and qualified institutional buyers. We received net proceeds of \$56,598,732 from this offering after commissions and expenses, including \$3,063,042 in placement agency fees to Flagstone Securities LLC and Avondale Partners, the placement agents in this offering.

On January 15, 2004, we issued a total of 1,650 shares of our Class A Common Stock to our three independent directors (Kevin L. Bespolka, Maureen A. Hendricks and Buford H. Ortale) as compensation for their services as directors. These shares were valued at \$15.00 per share.

On January 30, 2004, we sold 5,837,055 shares of our Class A Common Stock at \$15.00 per share in a private placement to accredited investors and qualified institutional buyers. We received net proceeds of \$82,864,346 from this offering after commissions and expenses, including \$4,626,176 in placement agency fees to Flagstone Securities LLC and Avondale Partners, the placement agents in this offering.

On February 17, 2004, we sold 158,343 shares of our Class A Common Stock at \$15.00 per share in a private placement to an accredited investor. We received net proceeds of \$2,248,471 from this offering after commissions and expenses, including \$126,674 in placement agency fees to Flagstone Securities LLC and Avondale Partners, the placement agents in this offering.

On April 15, 2004, we issued a total of 2,651 shares of our Class A Common Stock to our three independent directors (Kevin L. Bespolka, Maureen A. Hendricks and Buford H. Ortale) as compensation for their services as directors. These shares were valued at \$15.00 per share.

Each of the recipients of our common stock has represented to us that they are either an accredited investor or a qualified institutional buyer. Based upon these representations, we believe that the issuances of our Class A, Class B and Class C Common Stock were exempt from registration pursuant to Section 4(2) of the Securities Act of 1933.

#### **Item 34. Indemnification of Directors and Officers.**

Our charter contains a provision that, to the maximum extent permitted under the Maryland General Corporation Law, requires us to indemnify our directors and officers and pay or reimburse reasonable expenses in advance of final disposition of a proceeding if such director or officer is made a party to the proceeding by reason of his or her service in that capacity. These rights are contract rights fully enforceable by each beneficiary of those rights and are in addition to, and not exclusive of, any other right to indemnification. We also have separate indemnification agreements with each of our directors and officers that require us to indemnify such persons to the fullest extent permitted by law and generally provide the same scope of indemnification provided by the Maryland General Corporation Law. Our officers and directors are indemnified against specified liabilities by the underwriters, and the underwriters are indemnified against certain liabilities by us, under the underwriting agreement relating to the offering. See "Underwriting."

#### **Item 35. Treatment of Proceeds from Stock Being Registered.**

None.

#### **Item 36. Financial Statements and Exhibits.**

(A) Financial Statements. See page F-1 for an index to the financial statements included in the registration statement.

(B) Exhibits. The following is a complete list of exhibits filed as part of the registration statement, which are incorporated herein:

##### **Exhibit**

***1.1	Form of Underwriting Agreement by and among Bimini Mortgage Management, Inc. and the underwriters named therein
**3.1	Articles of Incorporation of Bimini Mortgage Management, Inc.

- \*\*3.2 Bylaws of Bimini Mortgage Management, Inc.
  - \*\*5.1 Opinion of Clifford Chance US LLP, with respect to the legality of the shares being registered
  - \*\*8.1 Opinion of Clifford Chance US LLP with respect to tax matters
  - \*\*10.1 Registration Rights Agreement dated December 19, 2003 among Bimini Mortgage Management, Inc. and the initial Holders (as defined therein)
  - \*\*\*10.2 2003 Long-Term Incentive Compensation Plan
  - \*\*10.3 Employment Agreement dated April 12, 2004 between Bimini Mortgage Management, Inc. and Jeffrey J. Zimmer
  - \*\*10.4 Employment Agreement dated April 12, 2004 between Bimini Mortgage Management, Inc. and Robert E. Cauley
  - \*\*23.1 Consent of Ernst & Young, LLP
  - \*\*23.2 Consent of Clifford Chance US LLP (included in Exhibit 8.1)
  - \*24.1 Power of Attorney (included on the Signature Page)
- 

\* Previously filed.

\*\* Filed herewith.

\*\*\* To be filed by amendment.

### **Item 37. Undertakings.**

(a) The undersigned registrant hereby undertakes to provide to the underwriters at the closing specified in the underwriting agreements certificates in such denominations and registered in such names as required by the underwriters to permit prompt delivery to each purchaser.

(b) Insofar as indemnification for liabilities arising under the Securities Act of 1933, as amended, may be permitted to directors, officers or controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Securities Act of 1933, as amended, and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act of 1933, as amended, and will be governed by the final adjudication of such issue.

(c) The undersigned Registrant hereby further undertakes that:

(1) For purposes of determining any liability under the Securities Act of 1933, as amended, the information omitted from the form of prospectus filed as part of this registration statement in reliance under Rule 430A and contained in a form of prospectus filed by the Registrant pursuant to Rule 424(b)(1) or (4), or 497(h) under the Securities Act shall be deemed to part of this registration statement as of the time it was declared effective.

(2) For the purpose of determining any liability under the Securities Act of 1933, as amended, each post-effective amendment that contains a form of prospectus shall be deemed to be a new registration statement relating to the securities offered herein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

**SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, as amended, the registrant certifies that it has reasonable grounds to believe that the registrant meets all of the requirements for filing on Form S-11 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Vero Beach, in the State of Florida, on this 28th day of April, 2004.

BIMINI MORTGAGE MANAGEMENT, INC.

By: /s/ JEFFREY J. ZIMMER

Name: Jeffrey J. Zimmer  
Title: Chairman and Chief Executive Officer

Pursuant to the requirements of the Securities Act of 1933, as amended, this Registration Statement has been signed by the following persons in the capacities indicated on the 28th day of April, 2004.

Name	Title
/s/ JEFFREY J. ZIMMER	Chairman and Chief Executive Officer (Principal Executive Officer)
Jeffrey J. Zimmer	
/s/ ROBERT E. CAULEY	Chief Financial Officer and Director (Principal Financial Officer and Principal Accounting Officer)
Robert E. Cauley	
*	
Kevin L. Bespolka	Director
*	
Maureen A. Hendricks	Director
*	
Buford H. Ortale	Director
*By: /s/ JEFFREY J. ZIMMER	
Jeffrey J. Zimmer <i>Attorney-in-fact for each of the persons indicated</i>	

## EXHIBIT INDEX

- \*\*\*1.1 Form of Underwriting Agreement by and among Bimini Mortgage Management, Inc. and the underwriters named therein
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\* Previously filed.

\*\* Filed herewith.

\*\*\* To be filed by amendment.

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[BIMINI MORTGAGE MANAGEMENT, INC. STATEMENTS OF STOCKHOLDERS' EQUITY FOR THE THREE MONTHS ENDED MARCH 31, 2004 \(UNAUDITED\) AND THE PERIOD FROM SEPTEMBER 24, 2003 \(inception\) THROUGH DECEMBER 31, 2003](#)

[BIMINI MORTGAGE MANAGEMENT, INC. STATEMENTS OF CASH FLOWS](#)

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**FORM OF  
ARTICLES OF AMENDMENT AND RESTATEMENT  
OF BIMINI MORTGAGE MANAGEMENT, INC.**

BIMINI MORTGAGE MANAGEMENT, INC., a Maryland corporation, having its principal office in Vero Beach, Florida (which is hereinafter referred to as the "Corporation"), hereby certifies to the State Department of Assessments and Taxation of Maryland that:

First: The Corporation desires to amend and restate its Articles of Incorporation;

Second: The provisions of the Articles of Incorporation which are now in effect, dated as of May 14, 2004 and as amended hereby in accordance with the Maryland General Corporation Law, are as follows:

ARTICLE I

NAME

The name of the Corporation is Bimini Mortgage Management, Inc. (the "Corporation").

ARTICLE II

PURPOSE

The purposes for which the Corporation is formed are to engage in any lawful act or activity (including, without limitation or obligation, engaging in business as a real estate investment trust under the Internal Revenue Code of 1986, as amended, or any successor statute (the "Code")) for which corporations may be organized under the Maryland General Corporation Law as now or hereafter in force. "REIT" means a real estate investment trust within the meaning of Section 856 through 860 of the Code.

The foregoing enumerated purposes and objects shall be in no way limited or restricted by reference to, or inference from, the terms of any other clause of this or any other article of the Articles of Incorporation of the Corporation, as amended from time to time (the "Charter") and each shall be regarded as independent; and they are intended to be and shall be construed as powers as well as purposes and objects of the Corporation and shall be in addition to and not in limitation of the general powers of corporations under the General Laws of the State of Maryland.

ARTICLE III

PRINCIPAL OFFICE IN MARYLAND

The street address of the principal office of the Corporation in Maryland is c/o CSC - Lawyers Incorporation Service Company, 11 East Chase Street, Baltimore, MD, 21202.

ARTICLE IV

RESIDENT AGENT

The name of the resident agent of the Corporation in Maryland is CSC - Lawyers Incorporating Service Company, whose address is 11 East Chase Street, Baltimore, MD 21202. Said resident agent is a Maryland corporation.

ARTICLE V

STOCK

Section 1. **CAPITAL STOCK.** The total number of shares of capital stock the Corporation has authority to issue is 110,000,000 shares, par value \$.001 per share, of which 100,000,000 shares are initially classified as "Common Stock," and 10,000,000 shares are initially classified as "Preferred Stock." The aggregate par value of all shares of capital stock is \$110,000. The Board of Directors of the Corporation (the "Board of Directors") may classify and reclassify any unissued shares of capital stock by setting or changing in any one or more respects the preferences, conversion or other rights, voting powers, restrictions, limitations as to dividends, qualifications or terms or conditions of redemption of such shares of capital stock. Of the 100,000,000 shares of Common Stock authorized, 98,000,000 shares shall be designated as "Class A Common Stock," 1,000,000 shares shall be designated as "Class B Common Stock" and 1,000,000 shares shall be designated as "Class C Common Stock."

Section 2. **PREFERENCES, VOTING POWERS, RESTRICTIONS, AND LIMITATIONS AS TO DIVIDENDS OF THE CLASS A COMMON STOCK OF THE CORPORATION.**

(a) **Voting** — Each outstanding share of Class A Common Stock shall have one vote on all matters submitted to a vote of stockholders, including the election of directors. Holders of shares of Class A Common Stock shall vote together with holders of shares of Class B Common Stock as one class in all matters, except that any matters that would adversely affect the rights and preferences of Class B Common Stock as a separate class shall require a separate approval by holders of a majority of the outstanding shares of Class B Common Stock.

(b) **Dividends** — Subject to the provisions of law and any preferences of any classes of stock hereafter classified or reclassified, dividends, including dividends payable in shares of another class of the Corporation's stock, shall be paid ratably on the Class A Common Stock at such time and in such amounts as the Board of Directors may deem advisable.

(c) **Liquidation** — In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation, after payment of or adequate provision for all known debts, liabilities and preference amounts payable on any preferred stock outstanding:

(i) liquidation proceeds shall be allocated, on each share of Class A Common Stock outstanding, in an amount equal to the Class A Per Share Preference Amount. For purposes of this Charter, the “Class A Per Share Preference Amount” means \$15.00, adjusted equitably for any stock splits, stock combinations, stock dividends or the like;

(ii) whenever funds are insufficient to pay in full the Class A Per Share Preference Amount on all shares of Class A Common Stock, the available funds shall be allocated ratably among the outstanding shares of Class A Common Stock;

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(iii) after a payment in full of the Class A Per Share Preference Amount and of any liquidation preference to the holders of shares of any other class of the Corporation’s Common Stock that is entitled to liquidation preferences, holders of all classes of Common Stock shall share ratably in the Corporation’s assets legally available for distribution to the Corporation’s stockholders.

Section 3. PREFERENCES, VOTING POWERS, RESTRICTIONS, AND LIMITATIONS AS TO DIVIDENDS OF THE CLASS B COMMON STOCK OF THE CORPORATION.

(a) **Voting** — Each outstanding share of Class B Common Stock shall have one vote on all matters submitted to a vote of stockholders, including the election of directors. Holders of shares of Class B Common Stock shall vote together with holders of shares of Class A Common Stock as one class in all matters, except that any matters that would adversely affect the rights and preferences of Class B Common Stock as a separate class shall require a separate approval by holders of a majority of the outstanding shares of Class B Common Stock.

(b) **Dividends** — Subject to the provisions of law and any preferences of any classes of stock hereafter classified or reclassified, dividends, including dividends payable in shares of another class of the Corporation’s stock, shall be paid ratably on Class B Common Stock in an amount equal to the dividends paid on shares of Class A Common Stock if, as and when authorized and declared by the Board of Directors out of assets legally available therefor; provided that no dividends may be declared on the shares of Class B Common Stock until such time as cumulative dividends have been paid on shares of Class A Common Stock issued prior to an initial public offering which equal or exceed the difference between \$14.13 (which is the agreed book value per share of such Class A Common Stock at the time of issuance of such share of Class A Common Stock) and \$15.00 per share.

(c) **Liquidation** — In the event of any liquidation, dissolution or winding up of the Corporation, after payment of or adequate provision for all known debts, liabilities and preference amounts payable on any preferred stock outstanding and after payment in full for the holders of shares of Class A Common Stock of the liquidation proceeds pursuant to Section 2(c) of this Article V:

(i) liquidation proceeds shall be allocated, on each share of Class B Common Stock outstanding, in an amount equal to the Class B Per Share Preference Amount. For purposes of this Charter, “Class B Per Share Preference Amount” means, as to each share of Class B Common Stock outstanding, its pro rata share of \$1.9 million, less the aggregate Class A Per Share Preference Amount with respect to shares of Class A Common Stock issued on conversion of Class B Common Stock;

(ii) whenever funds are insufficient to pay in full the applicable Class B Per Share Preference Amount and Class C Per Share Preference Amount (as defined below) on all shares of Class B Common Stock and Class C Common Stock, the available funds shall be allocated ratably in accordance with the amount owing to the shares of Class B Common Stock under clause (i) (above) and the amount owing to the shares of Class C Common Stock under Section 4(c)(i) of this Article V;

(iii) after a payment in full of the Class B Per Share Preference Amount, the Class C Per Share Preference Amount and of any liquidation preference to the holders of shares of any other class of the Corporation’s Common Stock that is entitled to liquidation preferences, holders of all classes of Common Stock shall share ratably in the Corporation’s assets legally available for distribution to the Corporation’s stockholders.

(d) **Conversion** — Each share of Class B Common Stock shall automatically be converted into one share of Class A Common Stock on the first day of the fiscal quarter following the

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fiscal quarter during which as of the end of such fiscal quarter, the stockholders’ equity attributable to the Class A Common Stock, calculated on a pro forma basis as if conversion of the Class B Common Stock (or portion thereof to be converted) had occurred, and otherwise determined in accordance with generally accepted accounting principles (as computed by the Company’s auditors and accountants and reported to the Board of Directors within 30 days after the end of such quarter), equals no less than \$15.00 per share (adjusted equitably for any stock splits, stock combinations, stock dividends or the like); provided, that the number of shares of Class B Common Stock to be converted into Class A Common Stock in any quarter shall not exceed that number which would cause the pro forma stockholders’ equity attributable to the Class A Common Stock calculated as set forth above to be less than \$15.00 per share; and provided further, that such conversions shall continue to occur until all shares of Class B Common Stock shall have been converted into shares of Class A Common Stock. Following such conversion, all authorized shares of Class C Common Stock shall be cancelled and shall become authorized but unissued shares of Class A Common Stock.

Section 4. PREFERENCES, VOTING POWERS, RESTRICTIONS, AND LIMITATIONS AS TO DIVIDENDS OF THE CLASS C COMMON STOCK OF THE CORPORATION.

(a) **Voting** — Holders of shares of Class C Common Stock shall not be entitled to vote on any matter submitted to a vote of stockholders, including the election of directors, except that any matters that would materially adversely affect the rights and preferences of Class C Common Stock as a separate class shall require a separate approval by holders of a majority of the outstanding shares of Class C Common Stock.

(b) **Dividends** — No dividends shall be payable on shares of Class C Common Stock.

(c) **Liquidation** — In the event of any liquidation, dissolution or winding up of the Corporation, after payment of or adequate provision for all known debts, liabilities and preference amounts payable on any preferred stock outstanding and after payment in full for the holders of shares of Class A Common Stock of the liquidation proceeds pursuant to Section 2(c) of this Article V:

(i) liquidation proceeds shall be allocated, on each share of Class C Common Stock outstanding, in an amount equal to the Class C Per Share Preference Amount. For purposes of this Charter, “Class C Per Shares Preference Amount” means, as to each share of Class C Common Stock outstanding, its pro rata share of \$1.9 million, less the aggregate Class A Per Share Preference Amount with respect to shares of Class A Common Stock issued on conversion of Class C Common Stock;

(ii) whenever funds are insufficient to pay in full the applicable Class B Per Share Preference Amount and Class C Per Share Preference Amount on all shares of Class B Common Stock and Class C Common Stock, the available funds shall be allocated ratably in accordance with the amount owing to the shares of Class B Common Stock under Section 3(c)(i) of this Article V and the amount owing to the shares of Class C Common Stock under clause (i) (above);

(iii) after a payment in full of the Class B Per Share Preference Amount, the Class C Per Share Preference Amount and of any liquidation preference to the holders of shares of any other class of the Corporation’s Common Stock that is entitled to liquidation preferences, holders of all classes of Common Stock shall share ratably in the Corporation’s assets legally available for distribution to the Corporation’s stockholders.

(d) **Conversion** — Each share of Class C Common Stock shall automatically be converted into one share of Class A Common Stock on the first day of the fiscal quarter following the

fiscal quarter during which the stockholders’ equity attributable to the Class A Common Stock, calculated on a pro forma basis as if conversion of the Class C Common Stock had occurred and giving effect to the conversion of all of the shares of Class B Common Stock as of such date, and otherwise determined in accordance with generally accepted accounting principles (as computed by the Company’s auditors and accountants and reported to the Board of Directors within 30 days after the end of such quarter), equals no less than \$15.00 per share (adjusted equitably for any stock splits, stock combinations, stock dividends or the like); provided, that the number of shares of Class C Common Stock to be converted into Class A Common Stock in any quarter shall not exceed that number which would cause the pro forma stockholders’ equity attributable to the Class A Common Stock calculated as set forth above to be less than \$15.00 per share; and provided further, that such conversions shall continue to occur until all shares of Class C Common Stock shall have been converted into shares of Class A Common Stock.

Section 5. CLASSIFICATION OF STOCK. Subject to the foregoing, the power of the Board of Directors to classify and reclassify any of the shares of capital stock shall include, without limitation, subject to the provisions of the Charter, authority to classify or reclassify any unissued shares of such stock into a class or classes of preferred stock, preference stock, special stock or other stock, and to divide and classify shares of any class into one or more series of such class, by determining, fixing or altering one or more of the following:

(i) The distinctive designation of such class or series and the number of shares to constitute such class or series; provided, that, unless otherwise prohibited by the terms of such or any other class or series, the number of shares of any class or series may be decreased by the Board of Directors in connection with any classification or reclassification of unissued shares and the number of shares of such class or series may be increased by the Board of Directors in connection with any such classification or reclassification, and any shares of any class or series which have been redeemed, purchased, otherwise acquired or converted into shares of Common Stock or any other class or series shall become part of the authorized capital stock and be subject to classification and reclassification as provided in this subparagraph.

(ii) Whether or not and, if so, the rates, amounts and times at which, and the conditions under which, dividends shall be payable on shares of such class or series, whether any such dividends shall rank senior or junior to or on a parity with the dividends payable on any other class or series of stock, and the status of any such dividends as cumulative, cumulative to a limited extent or non-cumulative and as participating or non-participating.

(iii) Whether or not shares of such class or series shall have voting rights, in addition to any voting rights provided by law and, if so, the terms of such voting rights.

(iv) Whether or not shares of such class or series shall have conversion or exchange privileges and, if so, the terms and conditions thereof, including provision for adjustment of the conversion or exchange rate in such events or at such times as the Board of Directors shall determine.

(v) Whether or not shares of such class or series shall be subject to redemption and, if so, the terms and conditions of such redemption, including the date or dates upon or after which they shall be redeemable and the amount per share payable in case of redemption, which amount may vary under different conditions and at different redemption dates; and whether or not there shall be any sinking fund or purchase account in respect thereof, and if so, the terms thereof.

(vi) The rights of the holders of shares of such class or series upon the liquidation, dissolution or winding up of the affairs of, or upon any distribution of the assets of, the Corporation, which rights may vary depending upon whether such liquidation, dissolution or winding up

is voluntary or involuntary and, if voluntary, may vary at different dates, and whether such rights shall rank senior or junior to or on a parity with such rights of any other class or series of stock.

(vii) Whether or not there shall be any limitations applicable, while shares of such class or series are outstanding, upon the payment of dividends or making of distributions on, or the acquisition of, or the use of moneys for purchase or redemption of, any stock of the Corporation, or upon any other action of the Corporation, including action under this subparagraph, and, if so, the terms and conditions thereof.

(viii) Any other preferences, rights, restrictions, including restrictions on transferability, and qualifications of shares of such class or series, not inconsistent with law and the Charter.

Section 6. RANK OF STOCK. For the purposes hereof and of any articles supplementary to the Charter providing for the classification or reclassification of any shares of capital stock or of any other charter document of the Corporation (unless otherwise provided in any such articles or document), any class or series of stock of the Corporation shall be deemed to rank:

(i) prior to another class or series either as to dividends or upon liquidation, if the holders of such class or series shall be entitled to the receipt of dividends or of amounts distributable on liquidation, dissolution or winding up, as the case may be, in preference or priority to holders of such other class or series;

(ii) on a parity with another class or series either as to dividends or upon liquidation, whether or not the dividend rates, dividend payment dates or redemption or liquidation price per share thereof be different from those of such others, if the holders of such class or series of stock shall be entitled to receipt of dividends or amounts distributable upon liquidation, dissolution or winding up, as the case may be, in proportion to their respective dividend rates or redemption or liquidation prices, without preference or priority over the holders of such other class or series; and

(iii) junior to another class or series either as to dividends or upon liquidation, if the rights of the holders of such class or series shall be subject or subordinate to the rights of the holders of such other class or series in respect of the receipt of dividends or the amounts distributable upon liquidation, dissolution or winding up, as the case may be.

Section 7. CHARTER AND BYLAWS. All persons who shall acquire stock in the Corporation shall acquire such stock subject to the provisions of the Charter and the Bylaws.

ARTICLE VI

DIRECTORS AND OFFICERS

The number of directors of the Corporation shall be five, which number may be increased or decreased pursuant to the by-laws of the Corporation, but which shall never be less than the minimum number permitted by the General Laws of the State of Maryland now or hereafter in force. The names of the directors who shall act until the first meeting or until their successors are duly chosen and qualified are:

Kevin L. Bespolka  
Robert E. Cauley  
Maureen A. Hendricks

Buford H. Ortale  
Jeffrey J. Zimmer

The number, titles and duties of the officers of the Corporation shall be as set forth in the by-laws of the Corporation. The names and titles of the officers who shall act until their successors are duly chosen and qualified are:

<u>Name</u>	<u>Title</u>
Jeffrey J. Zimmer	Chief Executive Officer and President
Robert E. Cauley	Chief Investment Officer, Chief Financial Officer and Secretary;

ARTICLE VII

CLASSIFIED BOARD OF DIRECTORS

The directors shall be divided into three classes, designated Class I, Class II and Class III. Each class shall consist, as nearly as may be possible, of one-third of the total number of directors constituting the entire Board of Directors. The term of the initial Class I director (Kevin L. Bespolka) shall terminate on the date of the 2004 annual meeting of stockholders, the term of the initial Class II directors (Robert E. Cauley and Buford H. Ortale) shall terminate on the date of the 2005 annual meeting of stockholders and the term of the initial Class III directors (Maureen A. Hendricks and Jeffrey J. Zimmer) shall terminate on the date of the 2006 annual meeting of stockholders. At every annual meeting of stockholders, beginning in 2004, successors to the class of directors whose term expires at that annual meeting shall be elected for a three-year term. If the number of directors is changed, any increase or decrease shall be apportioned among the classes so as to maintain the number of directors in each class as nearly equal as possible, but in no case will a decrease in the number of directors shorten the term of any incumbent director. A director shall hold office until the annual meeting for the year in which his or her term expires and until his or her successor shall be elected and shall qualify, subject, however, to prior death, resignation or removal from office. Holders of shares of the common stock of the Corporation shall not have the right to cumulative voting in the election of directors.

## ARTICLE VIII

### PROVISIONS DEFINING THE POWERS OF THE CORPORATION, DIRECTORS AND STOCKHOLDERS

The following provisions are hereby adopted for the purpose of defining, limiting, and regulating the powers of the Corporation and of the directors and the stockholders:

Section 1. **ISSUANCE OF STOCK.** The Board of Directors is hereby empowered to authorize the issuance from time to time of shares of its stock of any class, whether now or hereafter authorized, or securities convertible into shares of its stock of any class or classes, whether now or hereafter authorized, for such consideration as may be deemed by the Board of Directors and without any action by the stockholders. Prior to issuance of shares of each class or series of preferred stock, the Board of Directors shall fix 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 such class or series.

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Section 2. **PREEMPTIVE RIGHTS.** No holder of any stock or any other securities of the Corporation, whether now or hereafter authorized, shall have any preemptive or preferential right to subscribe for, purchase or otherwise acquire any stock or any other securities of the Corporation other than such, if any, as the Board of Directors, in its sole discretion, may determine and at such price or prices and upon such other terms as the Board of Directors, in its sole discretion, may fix; and any stock or other securities which the Board of Directors may determine to offer for subscription may, as the Board of Directors in its sole discretion shall determine, be offered to the holders of any class, series or type of stock or other securities at the time outstanding to the exclusion of the holders of any or all other classes, series or types of stock or other securities at the time outstanding.

Section 3. **REMOVAL OF DIRECTORS.** Any director may be removed for cause (as defined herein) and only by the affirmative vote of at least two-thirds of the votes entitled to be cast by the stockholders of the Corporation in the election of the Corporation's directors. For the purposes of this Section 3, the term "for cause" shall mean, with respect to any particular director, a final judgment of a court of competent jurisdiction holding that such director caused demonstrable, material harm to the Corporation through bad faith or active and deliberate dishonesty. Any amendment to this Section 3 must be approved by the stockholders of the Corporation by the affirmative vote of not less than two-thirds of the votes entitled to be cast on the matter.

Section 4. **REIT QUALIFICATION.** If the Corporation elects to qualify for federal income tax treatment as a REIT, the Board of Directors shall use its reasonable best efforts to take such actions as are necessary or appropriate to preserve the status of the Corporation as a REIT; however, if the Board of Directors determines that it is no longer in the best interests of the Corporation to continue to be qualified as a REIT, the Board of Directors may revoke or otherwise terminate the Corporation's REIT election pursuant to Section 856(g) of the Code. The Board of Directors also may determine that compliance with any restriction on stock ownership and transfers set forth in Article XIII is no longer required for REIT qualification.

## ARTICLE IX

### RESERVED POWERS OF THE BOARD OF DIRECTORS

The enumeration and definition of particular powers of the Board of Directors included in this Charter shall in no way be limited or restricted by reference to or inference from the terms of any other article of the Charter, or construed as or deemed by inference or otherwise in any manner to exclude or limit any powers conferred upon the Board of Directors under the General Laws of the State of Maryland now or hereafter in force.

## ARTICLE X

### VOTE REQUIRED

Notwithstanding any provision of law requiring the authorization of any action by a greater proportion than a majority of the total number of shares of all classes of capital stock or of the total number of shares of any class of capital stock, such action shall be valid and effective if authorized by the affirmative vote of the holders of a majority of the total number of shares of all classes outstanding and entitled to vote thereon, except as otherwise provided in this Charter.

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## ARTICLE XI

### INDEMNIFICATION

The Corporation shall indemnify, in the manner and to the fullest extent permitted by law, any person (or the estate of any person) who is or was a party to, or is threatened to be made a party to, any threatened, pending or completed action, suit or proceeding, whether or not by or in the right of the Corporation, and whether civil, criminal, administrative, investigative or otherwise, by reason of the fact that such person is or was a director or officer of the Corporation, while a director or officer is or was serving at the request of the Corporation as a director, officer, agent, trustee, partner, member or employee of another corporation, partnership, joint venture, limited liability company, trust, real estate investment trust, employee benefit plan or other enterprise. To the fullest extent permitted by law, the indemnification provided herein shall include expenses (including attorneys' fees), judgments, fines and amounts paid in settlement and any such expenses may be paid by the Corporation in advance of the final disposition of such action, suit or proceeding. Any repeal or modification of this Article XI shall not result in any liability for a director with respect to any action or omission occurring prior to such repeal or modification.

The Corporation may, to the fullest extent permitted by law, purchase and maintain insurance on behalf of any such person against any liability which may be asserted against such person.

The indemnification provided herein shall not be deemed to limit the right of the Corporation to indemnify any other person for any such expenses to the fullest extent permitted by law, nor shall it be deemed exclusive of any other rights to which any person seeking indemnification from the Corporation may be entitled under any agreement, vote of stockholders or disinterested directors, or otherwise, both as to action in such person's official capacity and as to action in another capacity while holding such office.

## ARTICLE XII

### LIABILITY

To the fullest extent permitted by Maryland statutory or decisional law, as amended or interpreted, no director or officer of the Corporation shall be personally liable to the Corporation or its stockholders for money damages. No amendment of the Charter or repeal of any of its provisions shall limit or eliminate the limitation on liability provided to directors and officers hereunder with respect to any act or omission occurring prior to such amendment or repeal.

## ARTICLE XIII

### RESTRICTION ON TRANSFER, ACQUISITION AND REDEMPTION OF SHARES

Section 1. DEFINITIONS. For purposes of this Article XIII, the following terms shall have the following meanings:

"Beneficial Ownership" shall mean ownership of Equity Stock by a Person who is or would be an actual owner, for federal income tax purposes, of such shares of Equity Stock or who is or would be treated as a constructive owner of such shares of Equity Stock under Section 542(a)(2) of the Code either

directly or constructively through the application of Section 544 of the Code, as modified by Section 856(h) of the Code. The terms "Beneficial Owner," "Beneficially Owns," "Beneficially Own" and "Beneficially Owned" shall have the correlative meanings.

"Charitable Beneficiary" shall mean a beneficiary of the Trust as determined pursuant to Section 13 of this Article XIII.

"Effective Date" shall mean the date upon which the Articles of Incorporation containing this Article XIII are accepted for record by SDAT.

"Equity Stock" shall mean all outstanding shares of stock of all classes or series of the Corporation, including, without limitation, Common Stock or Preferred Stock.

"Excepted Holder" shall mean a stockholder of the Corporation for whom an Excepted Holder Ownership Limit is created by the Charter or by the Board of Directors pursuant to Section 10 of this Article XIII.

"Excepted Holder Ownership Limit" shall mean, provided that the affected Excepted Holder agrees to comply with the requirements established by the Board of Directors pursuant to Section 10 of this Article XIII, the percentage limit established by the Board of Directors pursuant to Section 10 of this Article XIII.

"Excess Stock" shall have the meaning set forth in Section 3 of this Article XIII.

"Excess Share Trust" shall mean the trust created pursuant to Section 13 of this Article XIII.

"Market Price" on any date shall mean, with respect to any class or series of outstanding shares of capital stock, the Closing Price for such capital stock on such date. The "Closing Price" on any date shall mean the last sale price for such shares, regular way, or, in case no such sale takes place on such day, the average of the closing bid and asked prices, regular way, for such shares, in either case as reported in the principal consolidated transaction reporting

system with respect to securities listed or admitted to trading on the NYSE or, if such shares are not listed or admitted to trading on the NYSE, as reported on the principal consolidated transaction reporting system with respect to securities listed on the principal national securities exchange on which such shares are listed or admitted to trading or, if such shares are not listed or admitted to trading on any national securities exchange, the last quoted price, or, if not so quoted, the average of the high bid and low asked prices in the over-the-counter market, as reported by the National Association of Securities Dealers, Inc., Automated Quotation System, or, if such system is no longer in use, the principal other automated quotation system that may then be in use or, if such shares are not quoted by any such organization, the average of the closing bid and asked prices as furnished by a professional market maker making a market in such shares selected by the Board of Directors or, in the event that no trading price is available for such shares, the fair market value of the shares, as determined in good faith by the Board of Directors.

“NYSE” shall mean the New York Stock Exchange, Inc.

“Ownership Limit” shall initially mean, with respect to Common Stock, 9.8% of the more restrictive of the aggregate number or value of the outstanding shares of Common Stock of the Corporation and, with respect to Equity Stock, 9.8% of the more restrictive of the aggregate number or value of the outstanding shares of Equity Stock of the Company, in each case, after any adjustment as set forth in Section 9 of this Article XIII, shall mean such percentage as so adjusted. The Corporation may, in articles supplementary, determine a limit on the ownership of one or more classes or series of its

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Preferred Stock (the “Preferred Stock Limit”). From and after such determination, references to the Ownership Limit herein will include the Preferred Stock Limit, as applicable. The number and value of shares of the Equity Stock of the Corporation shall be determined by the Board of Directors in good faith, which determination shall be conclusive for all purposes hereof.

“Person” shall mean an individual, corporation, partnership, estate, trust (including a trust qualified under Section 401(a) or 501(c)(17) of the Code), a portion of a trust permanently set aside for or to be used exclusively for the purposes described in Section 642(c) of the Code, association, private foundation within the meaning of Section 509(a) of the Code, joint stock company or other entity and also includes a group as that term is used for purposes of Section 13(d)(3) of the Securities Exchange Act of 1934, as amended; but does not include an underwriter which participated in a public offering of the Equity Stock for a period of 30 days following the purchase by such underwriter of shares of the Equity Stock.

“Purported Beneficial Transferee” shall mean, with respect to any purported Transfer which results in Excess Stock as described below in Section 3 of this Article XIII, the purported beneficial transferee for whom the Purported Record Transferee would have acquired shares of Equity Stock, if such Transfer had not been void under Section 2 of this Article XIII.

“Purported Record Transferee” shall mean, with respect to any purported Transfer which results in Excess Stock as described below in Section 3 of this Article XIII, the record holder of the Equity Stock if such Transfer had not been void under Section 2 of this Article XIII.

“Restriction Termination Date” shall mean the first day after the Effective Date on which the Board of Directors determines that it is no longer in the best interests of the Corporation to attempt to, or continue to, qualify as a REIT.

“SDAT” shall mean the State Department of Assessments and Taxation of Maryland.

“Transfer” shall mean any issuance, sale, transfer, gift, assignment, devise or other disposition of Equity Stock, whether direct or indirect, as well as any other event that causes any Person to acquire Beneficial Ownership of Equity Stock (including (i) the granting of any option or entering into any agreement for the sale, transfer or other disposition of Equity Stock or (ii) the sale, transfer, assignment or other disposition of any securities or rights convertible into or exchangeable for Equity Stock), whether voluntary or involuntary, whether of record or beneficially and whether by operation of law or otherwise. The terms “Transfers” and “Transferred” shall have the correlative meanings.

“Trust” shall mean the trust created pursuant to Section 13 of this Article XIII.

“Trustee” shall mean the Person that is appointed by the Corporation pursuant to Section 13 of this Article XIII to serve as trustee of the Trust, and any successor thereto.

Section 2. OWNERSHIP LIMITATION. (i) Except as provided in Section 10 of this Article XIII, from the Effective Date until the Restriction Termination Date, no Person, other than an Excepted Holder, shall Beneficially Own shares of Equity Stock in excess of the Ownership Limit, and no Excepted Holder shall Beneficially Own shares of Equity Stock in excess of the Excepted Holder Ownership Limit for such Excepted Holder.

(ii) Except as provided in Section 10 of this Article XIII, from the Effective Date until the Restriction Termination Date, any Transfer that, if effective, would result in any Person other than an Excepted Holder Beneficially Owning Equity Stock in excess of the Ownership Limit shall

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be void *ab initio* as to the Transfer of such shares of Equity Stock which would be otherwise Beneficially Owned by such Person in excess of the Ownership Limit; and the intended transferee shall acquire no rights in such shares of Equity Stock.

(iii) From the Effective Date until the Restriction Termination Date, any Transfer that, if effective, would result in any Existing Holder Beneficially Owning Equity Stock in excess of the applicable Existing Holder Limit shall be void *ab initio* as to the Transfer of Equity Stock which would be otherwise Beneficially Owned by such Existing Holder in excess of the applicable Existing Holder Limit; and such Existing Holder shall acquire no rights in such Equity Stock.

(iv) From the Effective Date and prior to the Restriction Termination Date, any Transfer that, if effective, would result in the Equity Stock being beneficially owned by less than 100 Persons (determined without reference to any rules of attribution) shall be void *ab initio* as to the Transfer of such shares of Equity Stock which would be otherwise beneficially owned (within the meaning of Section 856(a) of the Code) by the transferee; and the intended transferee shall acquire no rights in such shares of Equity Stock.

(v) From the Effective Date until the Restriction Termination Date, any Transfer that, if effective, would result in the Corporation being “closely held” within the meaning of Section 856(h) of the Code or otherwise failing to qualify as a REIT (including, but not limited to, beneficial ownership that would result in the Corporation owning (actually or constructively within the meaning of Section 318(a) of the Code, as modified by Section 856(d)(5) of the Code) an interest in a tenant described in Section 856(d)(2)(ii) of the Code if the income derived by the Corporation from such tenant would cause the Corporation to fail to satisfy any of the gross income requirements of Section 856), shall be void *ab initio* as to the Transfer of the shares of Equity Stock which would cause the Corporation to be “closely held” within the meaning of Section 856(h) of the Code or would cause the Corporation to fail to qualify as a REIT; and the intended transferee shall acquire no rights in such shares of Equity Stock.

(vi) Nothing contained in this Article XIII shall preclude the settlement of any transaction entered into through the facilities of the NYSE. The fact that the settlement of any transaction is permitted shall not negate the effect of any other provision of this Article XIII and any transferee in such a transaction shall be subject to all of the provisions and limitations set forth in this Article XIII.

Section 3. EXCESS STOCK. (i) If, notwithstanding the other provisions contained in this Article XIII, from the date of the Effective Date until the Restriction Termination Date, there is a purported Transfer or other change in the capital structure of the Corporation such that any Person would Beneficially Own Equity Stock in excess of the applicable Ownership Limit or Existing Holder Limit (as applicable), then, except as otherwise provided in Section 10 of this Article XIII, such shares of Equity Stock in excess of such Ownership Limit or Existing Holder Limit (rounded up to the nearest whole share) shall be converted into Excess Stock and be treated as provided in this Article XIII. Such conversion and treatment shall be effective as of the close of business on the business day prior to the date of the purported Transfer or change in capital structure.

(ii) If, notwithstanding the other provisions contained in this Article XIII, at any time from the Effective Date until the Restriction Termination Date, there is a purported Transfer or other change in the capital structure of the Corporation which, if effective, would cause the Corporation to become “closely held” within the meaning of Section 856(h) of the Code or otherwise fail to qualify as REIT, then the shares of Equity Stock being Transferred which would cause the Corporation to be “closely held” within the meaning of Section 856(h) of the Code or otherwise fail to qualify as a REIT

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(rounded up to the nearest whole share) shall be converted into Excess Stock and be treated as provided in this Article XIII. Such conversion and treatment shall be effective as of the close of business on the business day prior to the date of the purported Transfer or change in capital structure.

Section 4. PREVENTION OF TRANSFER. If the Board of Directors or its designee shall at any time determine in good faith that a Transfer has taken place in violation of Section 2 of this Article XIII or that a Person intends to acquire or has attempted to acquire beneficial ownership (determined without reference to any rules of attribution) or Beneficial Ownership of any shares of stock of the Corporation in violation of Section 2 of this Article XIII, the Board of Directors or its designee shall take such action as it deems advisable to refuse to give effect to or to prevent such Transfer, including, but not limited to, refusing to give effect to such Transfer on the books of the Corporation or instituting proceedings to enjoin or rescind such Transfer; provided, however, that any Transfers or attempted Transfers in violation of subparagraphs Sections 2(iv) and (v) of this Article XIII shall automatically result in the conversion and treatment described in Section 3, irrespective of any action (or non-action) by the Board of Directors.

Section 5. NOTICE TO CORPORATION. Any Person who acquires or attempts to acquire shares in violation of Section 2 of this Article XIII, or any Person who is or attempts to become a transferee such that Excess Stock results under Section 3 of this Article XIII, shall immediately give written notice or, in the event of a proposed or attempted Transfer, give at least 15 days prior written notice to the Corporation of such event and shall provide to the Corporation such other information as the Corporation may request in order to determine the effect, if any, of such Transfer or attempted Transfer on the Corporation’s status as a REIT.

Section 6. INFORMATION FOR CORPORATION. From the Effective Date until the Restriction Termination Date, each Person who is a Beneficial Owner of Equity Stock and each Person (including the stockholder of record) who is holding Equity Stock for a Beneficial Owner shall upon demand provide in writing to the Corporation any information with respect to the direct, indirect and constructive ownership of Equity Stock of the Corporation as the Board of Directors deems necessary to comply with the provisions of the Code applicable to REITs, to comply with the requirements of any taxing authority or governmental agency or to determine any such compliance.

Section 7. OTHER ACTION BY BOARD. Subject to the provisions of Section 19 of this Article XIII, nothing contained in this Article XIII shall limit the authority of the Board of Directors to take such other action as it deems necessary or advisable to protect the Corporation and the interests of its stockholders by preservation of the Corporation’s status as a REIT or to ensure compliance with the Ownership Limit and the Excepted Holder Ownership Limit.

Section 8. AMBIGUITIES. In the case of an ambiguity in the application of any of the provisions of this Article XIII, including any definition contained in Section 1 of this Article XIII, the Board of Directors shall have the power to determine the application of the provisions of this Article XIII with respect to any situation based on the facts known to it.

Section 9. CHANGE IN OWNERSHIP LIMIT.



(i) Subject to the limitations provided below, the Board of Directors may from time to time increase or decrease the Ownership Limit and increase or decrease an Excepted Holder Ownership Limit; provided, however, that any decrease may only be made prospectively as to subsequent stockholders (other than a decrease as a result of a retroactive change in existing law that would require a decrease to retain REIT status, in which case such decrease shall be effective immediately).

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(ii) The Ownership Limit for a class or series of Equity Stock may not be increased if, after giving effect to such increase, five or fewer Beneficial Owners of Equity Stock would Beneficially Own, in the aggregate, more than 49.5% in value of the outstanding shares of Equity Stock.

(iii) Prior to any modification of the Ownership Limit or Existing Holder Limit pursuant to Section 9 of this Article XIII, the Board of Directors may require such opinions of counsel, affidavits, undertakings or agreements as it may deem necessary or advisable in order to determine or ensure the Corporation's status as a REIT.

Section 10. EXEMPTIONS BY BOARD. The Board of Directors may, in its sole discretion, waive the Ownership Limit or Existing Holder Ownership Limit, as the case may be with respect to any particular Person or Persons and may establish or increase an Excepted Holder Ownership Limit for such Person or Persons if evidence satisfactory to the Board of Directors and the Corporation's tax counsel is presented that the changes in ownership pursuant to such waiver will not cause the Corporation not to continue to be qualified as a REIT and are not reasonably likely to cause the Corporation not to continue to be qualified as a REIT in the future and the Board of Directors otherwise decides that such action is in the best interest of the Corporation. Such evidence may include a ruling from the Internal Revenue Service or an opinion of counsel or other evidence satisfactory to the Board of Directors to the effect that such exemption will not result in the Corporation being "closely held" within Section 856(h) of the Code, and upon such other conditions as the Board of Directors may direct (including, without limitation, representations, warranties and undertaking by the intended transferee).

Section 11. LEGEND. (i) In addition to any other legend required by applicable law or by other provisions hereof, each certificate for shares of Common Stock and other class of Equity Stock shall bear substantially the following legend:

THIS SECURITY HAS NOT BEEN REGISTERED UNDER THE U.S. SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND MAY NOT BE OFFERED OR SOLD EXCEPT AS SET FORTH BELOW. BY ITS ACQUISITION HEREOF, THE HOLDER (1) REPRESENTS THAT (A) IT IS A "QUALIFIED INSTITUTIONAL BUYER" (AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT), (B) IT IS AN INSTITUTIONAL "ACCREDITED INVESTOR" (AS DEFINED IN RULE 501 (a) (1), (2), (3) OR (7) UNDER THE SECURITIES ACT), OR (C) HE OR SHE IS AN INDIVIDUAL "ACCREDITED INVESTOR" (AS DEFINED IN RULE 501 (a) (4), (5), OR (6) UNDER THE SECURITIES ACT); (2) AGREES THAT HE, SHE OR IT WILL NOT WITHIN TWO YEARS AFTER THE ORIGINAL ISSUANCE OF THIS SECURITY RESELL OR OTHERWISE TRANSFER THIS SECURITY EXCEPT (A) TO THE ISSUER THEREOF OR ANY SUBSIDIARY THEREOF, (B) TO A QUALIFIED INSTITUTIONAL BUYER IN COMPLIANCE WITH RULE 144A UNDER THE SECURITIES ACT, (C) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT, (D) TO AN INSTITUTIONAL ACCREDITED INVESTOR OR AN INDIVIDUAL ACCREDITED INVESTOR THAT IS ACQUIRING THIS SECURITY FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF AN INSTITUTIONAL ACCREDITED INVESTOR OR INDIVIDUAL ACCREDITED INVESTOR FOR INVESTMENT PURPOSES AND NOT WITH A VIEW TO, OR FOR OFFER OR SALE IN CONNECTION WITH, ANY DISTRIBUTION

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OF THE COMMON STOCK, OR (E) IN A TRANSACTION EXEMPT FROM, OR NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT (AND BASED UPON AN OPINION OF COUNSEL SATISFACTORY TO US AND THE PLACEMENT AGENTS); AND (3) AGREES THAT IT WILL GIVE TO EACH PERSON TO WHOM THIS SECURITY IS TRANSFERRED A NOTICE SUBSTANTIALLY TO THE EFFECT OF THIS LEGEND.

THE SECURITIES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO RESTRICTIONS ON OWNERSHIP AND TRANSFER FOR THE PURPOSE OF THE CORPORATION'S MAINTENANCE OF ITS STATUS AS A REAL ESTATE INVESTMENT TRUST (A "REIT") UNDER THE INTERNAL REVENUE CODE OF 1986, AS AMENDED (THE "CODE"). EXCEPT AS OTHERWISE PROVIDED PURSUANT TO THE CHARTER, AMONG OTHER RESTRICTIONS, NO PERSON MAY BENEFICIALLY OWN SHARES OF COMMON STOCK OR EQUITY STOCK IN EXCESS OF 9.8% (OR SUCH GREATER PERCENTAGE AS MAY BE DETERMINED BY THE BOARD OF DIRECTORS OF THE CORPORATION) OF THE AGGREGATE NUMBER OR VALUE OF THE OUTSTANDING SHARES OF COMMON STOCK OR EQUITY STOCK OF THE CORPORATION. ANY PERSON WHO ACQUIRES OR ATTEMPTS TO ACQUIRE SHARES OF COMMON STOCK OR EQUITY STOCK IN EXCESS OF THE AFOREMENTIONED LIMITATION, OR ANY PERSON WHO IS OR ATTEMPTS TO BECOME A TRANSFEREE SUCH THAT EXCESS STOCK RESULTS UNDER THE PROVISIONS OF THE CHARTER, SHALL IMMEDIATELY GIVE WRITTEN NOTICE OR, IN THE EVENT OF A PROPOSED OR ATTEMPTED TRANSFER, GIVE AT LEAST 15 DAYS PRIOR WRITTEN NOTICE TO THE CORPORATION OF SUCH EVENT AND SHALL

PROVIDE TO THE CORPORATION SUCH OTHER INFORMATION AS IT MAY REQUEST IN ORDER TO DETERMINE THE EFFECT ON ANY SUCH TRANSFER ON THE CORPORATION'S STATUS AS A REIT. ALL CAPITALIZED TERMS IN THIS LEGEND HAVE THE MEANINGS DEFINED IN THE CHARTER, A COPY OF WHICH, INCLUDING THE RESTRICTIONS ON TRANSFER, WILL BE SENT TO ANY STOCKHOLDER ON REQUEST AND WITHOUT CHARGE. IF THE RESTRICTIONS ON TRANSFER ARE VIOLATED, THE SECURITIES REPRESENTED HEREBY WILL BE CONVERTED INTO AND TREATED AS SHARES OF EXCESS STOCK THAT WILL BE TRANSFERRED, BY OPERATION OF LAW, TO THE TRUSTEE OF A TRUST FOR THE EXCLUSIVE BENEFIT OF ONE OR MORE CHARITABLE ORGANIZATIONS.

(ii) In addition to any other legend required by applicable law, each certificate for shares of Preferred Stock shall bear such legend as may be set forth in the articles supplementary with respect to the transferability of such Preferred Stock.

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Section 12. SEVERABILITY. If any provision of this Article XIII or any application of any such provision is determined to be void, invalid or unenforceable by virtue of any legal decision, statute, rule or regulation, then the Purported Record Transferee may be deemed, at the option of the Corporation, to have acted as an agent of the Corporation in acquiring such shares of Excess Stock and to hold such shares of Excess Stock on behalf of the Corporation and the validity and enforceability of the remaining provisions shall not be affected and other applications of such provision shall be affected only to the extent necessary to comply with the determination of such court.

Section 13. TRUST FOR EXCESS STOCK. Upon any purported Transfer that results in Excess Stock pursuant to Section 3 of this Article XIII, such Excess Stock shall be deemed to have been transferred by operation of law to the Trustee of a trust (the "Trust") for the exclusive benefit of one or more Charitable Beneficiaries. The Trustee shall be appointed by the Corporation, and shall be a Person unaffiliated with the Corporation, any Purported Beneficial Transferee or any Purported Record Transferee. By written notice to the Trustee, the Corporation shall designate one or more non-profit organizations to be the Charitable Beneficiary(ies) of the interest in the Trust representing the Excess Stock such that (a) the shares of Equity Stock, from which the shares of Excess Stock held in the Trust were so converted, would not violate the restrictions set forth in Section 2 of this Article XIII in the hands of such Charitable Beneficiary and (b) each Charitable Beneficiary is an organization described in Sections 170(b)(1)(a), 170(c)(2) and 501(c)(3) of the Code. The Trustee of the Trust will be deemed to own the Excess Stock for the benefit of the Charitable Beneficiary on the date of the purported Transfer that results in Excess Stock pursuant to Section 3 of this Article XIII. Shares of Excess Stock so held in trust shall be issued and outstanding stock of the Corporation. The Purported Record Transferee shall have no rights in such Excess Stock except as expressly provided for in this Article XIII.

Section 14. DIVIDENDS ON EXCESS STOCK. Shares of Excess Stock will be entitled to dividends and distributions authorized and declared with respect to the class or series of Equity Stock from which the Excess Stock was converted and will be payable to the Trustee of the Trust in which such Excess Stock is held, for the benefit of the Charitable Beneficiary. Dividends and distributions will be authorized and declared with respect to each share of Excess Stock in an amount equal to the dividends and distributions authorized and declared on each share of stock of the class or series of Equity Stock from which the Excess Stock was converted. Any dividend or distribution paid to a Purported Record Transferee of Excess Stock prior to the discovery by the Corporation that Equity Stock has been transferred in violation of the provisions of the Charter shall be repaid by the Purported Record Transferee to the Trustee upon demand. The Corporation shall rescind any dividend or distribution authorized and declared but unpaid as void *ab initio* with respect to the Purported Record Transferee, and the Corporation shall pay such dividend or distribution when due to the Trustee of the trust for the benefit of the Charitable Beneficiary.

Section 15. DISTRIBUTIONS. Subject to the preferential rights of the Preferred Stock, if any, as may be determined by the Board of Directors, in the event of any voluntary or involuntary liquidation, dissolution or winding up of, or any other distribution of all or substantially all of the assets of the Corporation, each holder of shares of Excess Stock shall be entitled to receive, in the case of Excess Stock converted from Preferred Stock, ratably with each other holder of Preferred Stock and Excess Stock converted from Preferred Stock and having the same rights to payment upon liquidation, dissolution or winding up as such Preferred Stock and, in the case of Excess Stock converted from Common Stock, ratably with each other holder of Common Stock and Excess Stock converted from Common Stock, that portion of the assets of the Corporation available for distribution to its stockholders as the number of shares of the Excess Stock held by such holder bears to the total number of shares of (i) Preferred Stock and Excess Stock then outstanding (in the case of Excess Stock converted from Preferred Stock) and (ii) Common Stock and Excess Stock then outstanding (in the case of Excess Stock converted from Common Stock).

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Any liquidation distributions to be distributed with respect to Excess Stock shall be distributed in the same manner as proceeds from the sale of Excess Stock are distributed as set forth in Section 17 of this Article XIII.

Section 16. VOTING RIGHTS FOR EXCESS STOCK. Any vote cast by a Purported Record Transferee of Excess Stock prior to the discovery by the Corporation that Equity Stock has been transferred in violation of the provisions of the Charter shall be void *ab initio*. While the Excess Stock is held in Trust, the Purported Record Transferee will be deemed to have given an irrevocable proxy to the Trustee to vote the shares of Equity Stock which have been converted into shares of Excess Stock for the benefit of the Charitable Beneficiary.

Section 17. NON-TRANSFERABILITY OF EXCESS STOCK. Excess Stock shall be transferable only as provided in this Section 17. The Trustee shall transfer the Excess Stock to any Person whose ownership of the Excess Stock will not result in the violation of any provision of Section 2 of this Article XIII. Such transfer shall be made within 60 days after the later of (i) the date of the Transfer which resulted in the Excess Shares, and (ii) the date the

Board determines in good faith that a Transfer resulting in Excess Shares has occurred, if the Corporation does not receive a notice of such Transfer pursuant to Section 5 of this Article XIII. If such transfer is made, the interest of the Charitable Beneficiary in the Excess Stock shall terminate and the proceeds of the sale shall be payable by the Trustee to the Purported Record Transferee and to the Charitable Beneficiary as herein set forth. The Purported Record Transferee shall receive from the Trustee the lesser of (i) the price paid by the Purported Record Transferee for its shares of Equity Stock that were converted into Excess Stock or, if the Purported Record Transferee did not give value for such shares (e.g., the stock was received through a gift, devise or other transaction), the average closing price for the class of shares from which such shares of Excess Stock were converted for the ten trading days immediately preceding such sale or gift, and (ii) the price received by the Trustee from the sale or other disposition of the Excess Stock held in trust. The Trustee may reduce the amount payable to the Purported Record Transferee by the amount of dividends and distributions which have been paid to the Purported Record Transferee and are owed by the Purported Record Transferee to the Trustee pursuant to Section 15 of this Article XIII. Any proceeds in excess of the amount payable to the Purported Record Transferee shall be paid by the Trustee to the Charitable Beneficiary. Upon such transfer of an interest in the Trust, the corresponding shares of Excess Stock in the Trust shall be automatically exchanged for an equal number of shares of Equity Stock, as applicable, and such shares of Equity Stock, as applicable, shall be transferred of record to the transferee of the interest in the Trust if such shares of Equity Stock, as applicable, would not be Excess Stock in the hands of such transferee. Prior to any transfer of any interest in the Trust, the Corporation must have waived in writing its purchase rights under Section 18 of this Article XIII.

Section 18. **CALL BY CORPORATION ON EXCESS STOCK.** Shares of Excess Stock shall be deemed to have been offered for sale to the Corporation, or its designee, at a price per share payable to the Purported Record Transferee equal to the lesser of (i) the price per share in the transaction that created such Excess Stock (or, in the case of a devise or gift, the Market Price at the time of such devise or gift) and (ii) the Market Price of the Common Stock or Preferred Stock from which such Excess Stock was converted on the date the Corporation, or its designee, accepts such offer. The Corporation may reduce the amount payable to the Purported Record Transferee by the amount of dividends and distributions which have been paid to the Purported Record Transferee and are owed by the Purported Record Transferee to the Trustee pursuant to Section 15 of this Article XIII. The Corporation may pay the amount of such reductions to the Trustee for the benefit of the Charitable Beneficiary. The Corporation shall have the right to accept such offer for a period of 90 days after the later of (i) the date of the Corporation's receipt of notice pursuant to Section 5 of this Article XIII and (ii) if the Corporation does not receive a notice of such Transfer pursuant to Section 5 of this Article XIII, the date that the Board of Directors determines in good faith that a Transfer resulting in Excess Stock has occurred, but in no event

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later than a permitted Transfer pursuant to and in compliance with the terms of Section 17 of this Article XIII.

Section 19. **ENFORCEMENT.** The Corporation is authorized specifically to seek equitable relief, including injunctive relief, to enforce the provisions of this Article XIII.

Section 20. **NON-WAIVER.** No delay or failure on the part of the Corporation or the Board of Directors in exercising any right hereunder shall operate as a waiver of any right of the Corporation or the Board of Directors, as the case may be, except to the extent specifically waived in writing.

#### ARTICLE XIV

##### ERISA RESTRICTIONS ON TRANSFER AND OWNERSHIP OF CAPITAL STOCK

Section 1. **DEFINITIONS.** For purposes of this Article XIV the following terms shall have the following meanings:

“Benefit Plan Investor” shall mean (i) an employee benefit plan (as defined by Section 3(3) of ERISA), whether or not it is subject to Title I of ERISA; (ii) a plan described in Section 4975(e) (1) of the Code; (iii) an entity whose underlying assets include (or are deemed for purposes of ERISA or Section 4975 of the Code to include) the assets of any plan described in clause (i) or (ii) above by reason of the plan's investment in such entity; or (iv) an entity that otherwise constitutes a “benefit plan investor” within the meaning of the Plan Asset Regulation.

“Business Day” shall mean any day, other than a Saturday or Sunday, that is neither a legal holiday nor a day on which banking institutions in New York City are authorized or required by law, regulation or executive order to close.

“ERISA” shall mean the Employee Retirement Income Security Act of 1974, as amended, or any successor statute.

“Fair Market Value” shall mean the fair market value as determined at the sole discretion of the Chief Executive Officer or the Board of Directors of the Corporation.

“Plan Asset Regulation” shall mean the plan asset regulation promulgated by the Department of Labor under ERISA at 29 C.F.R. Section 2510.3-101.

“25% Limit” shall mean ownership by Benefit Plan Investors, in the aggregate, of 25% or more of the value of any class of equity interest in the Corporation (calculated by excluding the value of any interest held by any person, other than a Benefit Plan Investor, who has discretionary authority or control with respect to the assets of the Corporation or any person who provides investment advice to the Corporation for a fee (direct or indirect) with respect to such assets, or any affiliate of such person).

Section 2. **OWNERSHIP LIMITATIONS.** Commencing on the Initial Date and terminating as provided in Section 5 below, no Benefit Plan Investor may acquire shares of capital stock if aggregate Benefit Plan Investor ownership of capital stock would meet or exceed the 25% Limit. Prior to shares of capital stock qualifying as a class of “publicly-offered securities” or the availability of another exception to the “look-through” rule (i.e., the provisions of paragraph (a)(2) of the Plan Asset Regulation), transfers of shares of capital stock to Benefit Plan Investors that would increase aggregate Benefit Plan Investor ownership of shares of capital stock to a level that would meet or exceed the 25% Limit will be void *ab initio* as to the purported transfer of such number of shares of capital stock that would cause aggregate

Benefit Plan Investor ownership to meet or exceed the 25% Limit, and the purported transferee shall acquire no rights in such shares of capital stock.

Section 3. CERTAIN PROCEDURES FOR PROVISION AND DELIVERY OF ERISA RELATED TRANSFEREE INFORMATION. From and after the Initial Date and prior to the date provided in Section 5 below, (i) each transferor shall cause each prospective transferee to provide and each prospective transferee shall provide, assurances as to (A) the prospective transferee's then-present and future status as a Benefit Plan Investor and (B) the prospective transferee's then-present and future status as a person (other than a Benefit Plan Investor) who has discretionary authority or control with respect to the assets of the Corporation or a person who provides investment advice to the Corporation for a fee (direct or indirect) with respect to such assets, or any affiliate of such a person, (ii) no transfer shall be effected in the absence of the receipt of such assurances, and, without limiting any other provision of this Article XIV, any purported transfer in the absence of the receipt by the Company of such assurances shall be *void ab initio*, and (iii) no transfer shall be effected unless the Corporation or its agent first determines that the 25% Limit would not be exceeded (determined separately for each class of equity securities (including any class with substantial equity features)), based on assurances received from investors, if the proposed transfer were consummated.

Section 4. NONCOMPLYING TRANSFERS. Without limiting the consequences of a violation of Sections 2 and 3 above, and otherwise without limiting Sections 2 and 3 above, if there is a purported transfer of shares of capital stock that does not comply with Sections 2 and 3 above, (i) shares of capital stock held by the purported transferee shall be deemed to be stock held in a Trust and, in furtherance of the foregoing, the purportedly transferred shares of capital stock shall be transferred automatically and by operation of law to a Trust (as described in Section 13 of Article XIII above) to be held in accordance with the applicable provisions of Article XIII relating to Trusts, and (iii) the transferee purportedly owning such shares of capital stock shall submit the shares for registration in the name of the Trust. Such transfer to a Trust and the designation of shares of capital stock as Stock-in-Trust shall be effective as of the close of business on the Business Day prior to the date of the purported transfer.

Section 5. TERMINATION. This Section 5 shall cease to apply at such time as shares of capital stock qualify as a class of "publicly-offered securities" or if another exception to the "look-through" rule under the Plan Asset Regulation applies.

Section 6. LEGEND. For so long as the Board of Directors deems appropriate, each certificate for shares of capital stock shall bear substantially the following legend:

UNLESS AND UNTIL THIS SECURITY IS PUBLICLY OFFERED AND OTHER CONDITIONS ARE SATISFIED, OR ANOTHER EXCEPTION APPLIES FOR PURPOSES OF THE "PLAN ASSETS" RULES UNDER THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974, AS AMENDED ("ERISA"), THIS SECURITY MAY NOT BE HELD BY OR TRANSFERRED TO ANY PERSON UNLESS THAT PERSON HAS FIRST PROVIDED EXPRESS ADVANCE ASSURANCES AS MAY BE REQUIRED BY THE ISSUER REGARDING CERTAIN ERISA MATTERS. IN ADDITION, WITHOUT LIMITING THE FOREGOING, THE SHARES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO RESTRICTIONS ON OWNERSHIP AND TRANSFER TO PREVENT THE CORPORATION'S ASSETS FROM BEING TREATED AS PLAN ASSETS UNDER ERISA. THUS, SUBJECT TO FURTHER RESTRICTIONS AND EXCEPT AS EXPRESSLY

PROVIDED IN THE CHARTER, PRIOR TO THE DATE THE COMMON STOCK QUALIFIES AS A CLASS OF "PUBLICLY-OFFERED SECURITIES," OR THE CORPORATION COMPLIES WITH ANOTHER AVAILABLE EXCEPTION UNDER THE 29 C.F.R. § 2510.3-101 ISSUED BY THE U.S. DEPARTMENT OF LABOR (THE "PLAN ASSET REGULATIONS"), THE CORPORATION WILL NOT ALLOW THE SALE, TRANSFER OR DISPOSITION OF THE COMMON STOCK, OTHER EQUITY SECURITIES OR INTERESTS THEREIN UNLESS, FOLLOWING SUCH SALE, TRANSFER OR DISPOSITION, BASED ON ASSURANCES RECEIVED FROM INVESTORS, LESS THAN 25% OF THE VALUE OF THE COMMON STOCK AND ANY OTHER CLASS OF SECURITY THAT IS TREATED AS AN EQUITY INTEREST IN THE CORPORATION FOR PURPOSES OF THE PLAN ASSET REGULATIONS IS HELD BY (A) EMPLOYEE BENEFIT PLANS (AS DEFINED IN SECTION 3(3) OF ERISA), WHETHER OR NOT SUBJECT TO TITLE I OF ERISA), (B) PLANS DESCRIBED IN SECTION 4975(e)(1) OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED, (C) ENTITIES WHOSE UNDERLYING ASSETS INCLUDE PLAN ASSETS BY REASON OF A PLAN'S INVESTMENT IN SUCH ENTITIES, OR (D) ENTITIES THAT OTHERWISE CONSTITUTE "BENEFIT PLAN INVESTORS" WITHIN THE MEANING OF THE PLAN ASSET REGULATIONS, WITH SUCH PERCENTAGE DETERMINED WITHOUT REGARD TO THE VALUE OF ANY SUCH INTERESTS HELD BY OTHER PERSONS WITH AUTHORITY OR CONTROL WITH RESPECT TO THE ASSETS OF THE CORPORATION OR THEIR AFFILIATES (OTHER THAN BENEFIT PLANS INVESTORS). ANY PERSON WHO PURPORTS BENEFICIALLY OR CONSTRUCTIVELY TO OWN OR ATTEMPTS TO BENEFICIALLY OR CONSTRUCTIVELY OWN SHARES OF CAPITAL STOCK OTHER THAN IN COMPLIANCE WITH ALL OF THE FOREGOING PROCEDURES AND OTHER RESTRICTIONS MUST IMMEDIATELY NOTIFY THE CORPORATION. IF ANY OF THE PROCEDURAL REQUIREMENTS OR OTHER RESTRICTIONS ON TRANSFER OR OWNERSHIP ARE VIOLATED, THE ATTEMPTED TRANSFERS WILL BE VOID AB INITIO, AND THE SHARES OF CAPITAL STOCK REPRESENTED HEREBY WILL BE AUTOMATICALLY TRANSFERRED TO A TRUSTEE OF A TRUST FOR THE BENEFIT OF ONE OR MORE CHARITABLE BENEFICIARIES.

ARTICLE XV

OPT-OUT OF MARYLAND BUSINESS COMBINATION ACT PROVISION

The Corporation hereby expressly elects not to be governed by the provisions of Section 3-602 of the Maryland General Corporation Law.

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ARTICLE XVI

AMENDMENT

The Corporation reserves the right from time to time to make any amendments of the Charter which may now or hereafter be authorized by law, including any amendments changing the terms or contract rights, as expressly set forth in the Charter, of any of its outstanding stock by classification, reclassification or otherwise, but no such amendment which changes such terms or contract rights shall be valid unless such amendment shall have been authorized by not less than a majority of the aggregate number of the votes entitled to be cast thereon, by vote at a meeting or in writing with or without a meeting; provided, however, that any amendment to, repeal of or adoption of any provision inconsistent with Article VIII, Section 3 shall have been authorized by not less than two-thirds of the aggregate votes entitled to be cast thereon (considered for this purpose as a single class), by vote at a meeting or in writing with or without a meeting.

ARTICLE XVII

DURATION

The duration of the Corporation shall be perpetual.

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Third: These Amended and Restated Articles of Incorporation of the Corporation have been approved by a majority of the Board of Directors and approved by the stockholders of the Corporation as required by law.

IN WITNESS WHEREOF, these Amended and Restated Articles of Incorporation have been signed on this 14<sup>th</sup> day of May, 2004 by the undersigned, each of whom acknowledges, under penalty of perjury, that this document is his free act and deed, that to the best of his knowledge, information and belief, the matters and facts set forth herein are true in all material respects.

I hereby consent to my designation in this document as resident agent for this corporation.

**SIGNATURE OF RESIDENT AGENT LISTED IN ARTICLE IV:**

CSC — Lawyers Incorporating Service Company

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CSC — Lawyers Incorporating Service Company

By: \_\_\_\_\_  
Name:  
Title: President

ATTEST:

By: \_\_\_\_\_  
Name:  
Title: Secretary

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**FORM OF  
AMENDED AND RESTATED  
BYLAWS OF  
BIMINI MORTGAGE MANAGEMENT, INC.**

ARTICLE I

STOCKHOLDERS

SECTION 1.1 ANNUAL MEETINGS. Bimini Mortgage Management, Inc. (the "Corporation") shall hold an annual meeting of its stockholders to elect directors and transact any other business within its powers at such time on such day as shall be set by the Board of Directors. Except as the Corporation's Articles of Incorporation, as amended and supplemented (the "Charter"), or statute provides otherwise, any business may be considered at an annual meeting without the purpose of the meeting having been specified in the notice. Failure to hold an annual meeting does not invalidate the Corporation's existence or affect any otherwise valid corporate acts. The Corporation shall hold its first annual meeting of stockholders beginning with the year 2004.

SECTION 1.2 SPECIAL MEETING. At any time in the interval between annual meetings, a special meeting of the stockholders may be called by the Chairman of the Board or the President or by a majority of the Board of Directors by vote at a meeting or in writing (addressed to the Secretary of the Corporation) with or without a meeting. Special meetings of the stockholders shall be called by the Secretary at the request of stockholders only on the written request of stockholders entitled to cast at least a majority of all the votes entitled to be cast at the meeting. A request for a special meeting shall state the purpose of the meeting and the matters proposed to be acted on at it. The Secretary shall inform the stockholders who make the request of the reasonably estimated costs of preparing and mailing a notice of the meeting and, on payment of these costs to the Corporation, notify each stockholder entitled to notice of the meeting. Unless requested by stockholders entitled to cast a majority of all the votes entitled to be cast at the meeting, a special meeting need not be called to consider any matter which is substantially the same as a matter voted on at any special meeting of stockholders held in the preceding 12 months.

SECTION 1.3 PLACE OF MEETINGS. Meetings of stockholders shall be held at such place in the United States as is set from time to time by the Board of Directors.

SECTION 1.4 NOTICE OF MEETINGS; WAIVER OF NOTICE. Not less than ten nor more than 90 days before each stockholders' meeting, the Secretary shall give written notice of the meeting to each stockholder entitled to vote at the meeting and each other stockholder entitled to notice of the meeting. The notice shall state the time and place of the meeting and, if the meeting is a special meeting or notice of the purpose is required by statute, the purpose of the meeting. Notice is given to a stockholder when it is personally delivered to him, left at his residence or usual place of business, mailed to him at his address as it appears on the records of the Corporation or transmitted to him by electronic mail to any electronic mail address of the stockholder or by any other electronic means. Notwithstanding the foregoing provisions, each person who is entitled to notice waives notice if before or after the meeting he signs a waiver of the notice which is filed with the records of stockholders' meetings or is present at the meeting in person or by proxy.

SECTION 1.5 QUORUM; VOTING. Unless the Charter or statute provides otherwise, at a meeting of stockholders, the presence in person or by proxy of stockholders entitled to cast a majority of all the votes entitled to be cast at the meeting constitutes a quorum and a majority of all the votes cast at a meeting at which a quorum is present is sufficient to approve any matter which properly comes before the

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meeting, except that a plurality of all the votes cast at a meeting at which a quorum is present is sufficient to elect a director.

SECTION 1.6 ADJOURNMENTS. Whether or not a quorum is present, a meeting of stockholders convened on the date for which it was called may be adjourned from time to time without further notice by a majority vote of the stockholders, present in person or by proxy, to a date not more than 120 days after the original record date. Any business which might have been transacted at the meeting as originally notified may be deferred and transacted at any such adjourned meeting at which a quorum shall be present.

SECTION 1.7 GENERAL RIGHT TO VOTE; PROXIES. Unless the Charter provides for a greater or lesser number of votes per share or limits or denies voting rights, each outstanding share of stock, regardless of class, is entitled to one vote on each matter submitted to a vote at a meeting of stockholders. In all elections for directors, each share of stock may be voted for as many individuals as there are directors to be elected and for whose election the share is entitled to be voted. A stockholder may vote the stock he owns of record either in person or by written proxy signed by the stockholder or by his duly authorized attorney in fact. Unless a proxy provides otherwise, it is not valid more than 11 months after its date. A proxy is revocable by a stockholder at any time without condition or qualification unless the proxy states that it is irrevocable and the proxy is coupled with an interest. A proxy may be made irrevocable for so long as it is coupled with an interest. The interest with which a proxy may be coupled includes an interest in the stock to be voted under the proxy or another general interest in the Corporation or its assets or liabilities.

SECTION 1.8 LIST OF STOCKHOLDERS. At each meeting of stockholders, a full, true and complete list of all stockholders entitled to vote at such meeting, showing the number and class of shares held by each and certified by the transfer agent for such class or by the Secretary, shall be furnished by the Secretary.

SECTION 1.9 CONDUCT OF BUSINESS AND VOTING. At all meetings of stockholders, unless the voting is conducted by inspectors, the proxies and ballots shall be received, and all questions touching the qualification of voters and the validity of proxies, the acceptance or rejection of votes and procedures for the conduct of business not otherwise specified by these Bylaws, the Charter or law, shall be decided or determined by the chairman of the meeting. If demanded by stockholders, present in person or by proxy, entitled to cast 10% in number of votes entitled to be cast or if ordered by the chairman of the meeting, the vote upon any election or question shall be taken by ballot and, upon like demand or order, the voting shall be conducted by two inspectors, in which event the proxies and ballots shall be received, and all questions touching the qualification of voters and the validity of proxies and the acceptance or rejection of votes shall be decided, by such inspectors. Unless so demanded or ordered, no vote need be by ballot and voting need not be

conducted by inspector or inspectors to act at such meeting, and in default of such election the chairman of the meeting may appoint an inspector or inspectors. No candidate for election as a director at a meeting shall serve as an inspector thereat.

SECTION 1.10 INFORMAL ACTION BY STOCKHOLDERS. Any action required or permitted to be taken at a meeting of stockholders may be taken without a meeting if there is filed with the records of stockholders meetings a unanimous written consent which sets forth the action and is signed by each stockholder entitled to vote on the matter and a written waiver of any right to dissent signed by each stockholder entitled to notice of the meeting but not entitled to vote at it.

SECTION 1.11 STOCKHOLDER PROPOSALS. For any stockholder proposal to be presented in connection with an annual meeting of stockholders of the Corporation, including any proposal relating to the nomination of a director to be elected to the Board of Directors of the Corporation, the stockholders

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must have given timely written notice thereof in writing to the Secretary of the Corporation. In order for such notice to be timely, such notice must be received by the Corporation not less than 60 nor more than 90 days prior to the first anniversary of the previous year's annual meeting.

## ARTICLE II

### BOARD OF DIRECTORS

SECTION 2.1 FUNCTION OF DIRECTORS. The business and affairs of the Corporation shall be managed under the direction of its Board of Directors. All powers of the Corporation may be exercised by or under authority of the Board of Directors, except as conferred on or reserved to the stockholders by statute or by the Charter or Bylaws.

SECTION 2.2 NUMBER OF DIRECTORS. The Corporation shall have six directors, which shall be the number of directors until changed as herein provided, but in no event shall the number of directors be fewer than the minimum number required by the Maryland General Corporation Law. Except as the Charter provides otherwise, a majority of the entire Board of Directors may alter the number of directors set by the Charter to not exceeding 15 nor less than the minimum number then permitted herein, but the action may not affect the tenure of office of any director.

At all times subsequent to the consummation of an Initial Offering (as defined below), except in the case of a vacancy, a majority of the Board of Directors shall be Independent Directors (as defined below). For the purposes of these Bylaws, (i) "Initial Offering" shall mean an offering of shares of stock of the Corporation resulting in proceeds to the Corporation of not less than \$50,000,000, whether or not such offering is pursuant to a registration statement under the Securities Act of 1933, as amended, and (ii) "Independent Director" shall mean a director of the Corporation who meets the independence requirements under the rules and regulations of the New York Stock Exchange as in effect from time to time.

SECTION 2.3 ELECTION AND TENURE OF DIRECTORS. The Corporation shall have three classes of directors with staggered terms of three years, with one class elected every year. Subject to the rights of the holders of any class of stock separately entitled to elect one or more directors, at each annual meeting, the stockholders shall elect directors to hold office until the annual meeting three years following such election and until their successors are elected and qualify.

SECTION 2.4 REMOVAL OF DIRECTOR. Any director or the entire Board of Directors may be removed only in accordance with the provisions of the Charter.

SECTION 2.5 VACANCY ON BOARD. Subject to the rights of the holders of any class of stock separately entitled to elect one or more directors, the stockholders may elect a successor to fill a vacancy on the Board of Directors which results from the removal of a director. A director elected by the stockholders to fill a vacancy which results from the removal of a director serves for the balance of the term of the removed director. Subject to the rights of the holders of any class of stock separately entitled to elect one or more directors, a majority of the remaining directors, whether or not sufficient to constitute a quorum, may fill a vacancy on the Board of Directors which results from any cause except an increase in the number of directors and a majority of the entire Board of Directors may fill a vacancy which results from an increase in the number of directors. A director elected by the Board of Directors to fill a vacancy serves until the next annual meeting of stockholders and until his successor is elected and qualifies.

SECTION 2.6 REGULAR MEETINGS. After each meeting of stockholders at which directors shall have been elected, the Board of Directors shall meet as soon thereafter as practicable for the purpose

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of organization and the transaction of other business. In the event that no other time and place are specified by resolution of the Board of Directors or announced by the President or the chairman at such stockholders meeting, the Board of Directors shall meet immediately following the close of, and at the place of, such stockholders meeting. Any other regular meeting of the Board of Directors shall be held on such date and time and at such place as may be designated from time to time by the Board of Directors. No notice of such meeting following a stockholders meeting or any other regular meeting shall be necessary if held as hereinabove provided.

SECTION 2.7 SPECIAL MEETINGS. Special meetings of the Board of Directors may be called at any time by the Chairman of the Board or the President or by a majority of the Board of Directors by vote at a meeting or in writing with or without a meeting. A special meeting of the Board of Directors shall be held on such date and at any place as may be designated from time to time by the Board of Directors. In the absence of designation such meeting shall be held at such place as may be designated in the call.

SECTION 2.8 NOTICE OF MEETING. Except as provided in Section 2.6, the Secretary shall give notice to each director of each regular and special meeting of the Board of Directors. The notice shall state the time and place of the meeting. Notice is given to a director when it is delivered personally to him, left at his residence or usual place of business, or sent by telegraph, facsimile transmission or telephone, at least 24 hours before the time of the meeting or, in the alternative by mail to his address as it shall appear on the records of the Corporation, at least 72 hours before the time of the meeting. Unless the Bylaws or a resolution of the Board of Directors provides otherwise, the notice need not state the business to be transacted at or the purposes of any regular or special meeting of the Board of Directors. No notice of any meeting of the Board of Directors need be given to any director who attends except where a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened or to any director who, in writing executed and filed with the records of the meeting either before or after the holding thereof, waives such notice. Any meeting of the Board of Directors, regular or special, may adjourn from time to time to reconvene at the same or some other place, and no notice need be given of any such adjourned meeting other than by announcement.

SECTION 2.9 QUORUM; ACTION BY DIRECTORS. A majority of the entire Board of Directors shall constitute a quorum for the transaction of business. In the absence of a quorum, the directors present by majority vote and without notice other than by announcement may adjourn the meeting from time to time until a quorum shall attend. At any such adjourned meeting at which a quorum shall be present, any business may be transacted which might have been transacted at the meeting as originally notified. Unless statute or the Charter or Bylaws requires a greater proportion, the action of a majority of the directors present at a meeting at which a quorum is present is action of the Board of Directors. Any action required or permitted to be taken at a meeting of the Board of Directors may be taken without a meeting, if a unanimous written consent which sets forth the action is signed by each member of the Board of Directors and filed with the minutes of proceedings of the Board of Directors.

SECTION 2.10 MEETING BY CONFERENCE TELEPHONE. Members of the Board of Directors may participate in a meeting by means of a conference telephone or similar communications equipment if all persons participating in the meeting can hear each other at the same time. Participation in a meeting by these means constitutes presence in person at a meeting.

SECTION 2.11 COMPENSATION. By resolution of the Board of Directors a fixed sum and expenses, if any, for attendance at each regular or special meeting of the Board of Directors or of committees thereof, and other compensation for their services as such or on committees of the Board of Directors, may be paid to directors. Directors who are full-time employees of the Corporation are not

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entitled to be paid for attendance at meetings of the board or committees thereof for which fees are paid to other directors. A director who serves the Corporation in any other capacity also may receive compensation for such other services, pursuant to a resolution of the directors.

### ARTICLE III

#### COMMITTEES

SECTION 3.1 COMMITTEES. The Board of Directors may appoint from among its members an Audit Committee, Compensation Committee, Governance and Nominating Committee, and other committees composed of one or more directors and delegate to these committees any of the powers of the Board of Directors, except the power to declare dividends or other distributions on stock, elect directors, issue stock other than as provided in the next sentence, recommend to the stockholders any action which requires stockholder approval, amend the Bylaws or approve any merger or share exchange which does not require stockholder approval. At all times subsequent to the consummation of an Initial Offering, except in the case of a vacancy, a majority of the directors serving on any committee of the Board of Directors shall be Independent Directors. If the Board of Directors has given general authorization for the issuance of stock providing for or establishing a method or procedure for determining the maximum number of shares to be issued, a committee of the Board of Directors, in accordance with that general authorization or any stock option or other plan or program adopted by the Board of Directors, may authorize or fix the terms of stock subject to classification or reclassification and the terms on which any stock may be issued, including all terms and conditions required or permitted to be established or authorized by the Board of Directors.

SECTION 3.2 COMMITTEE PROCEDURE. Each committee may fix rules of procedure for its business. A majority of the members of a committee shall constitute a quorum for the transaction of business and the act of a majority of those present at a meeting at which a quorum is present shall be the act of the committee. The members of a committee present at any meeting, whether or not they constitute a quorum, may appoint a director to act in the place of an absent member. Any action required or permitted to be taken at a meeting of a committee may be taken without a meeting, if a unanimous written consent which sets forth the action is signed by each member of the committee and filed with the minutes of the committee. The members of a committee may conduct any meeting thereof by conference telephone in accordance with the provisions of Section 2.10.

### ARTICLE IV

#### OFFICERS

SECTION 4.1 EXECUTIVE AND OTHER OFFICERS. The Corporation shall have a President, a Secretary and a Treasurer. It may also have a Chairman of the Board. The Board of Directors shall designate who shall serve as chief executive officer, who shall have general supervision of the business and affairs of the Corporation, and may designate a chief operating officer, who shall have supervision of the operations of the Corporation. In the absence of any designation, the Chairman of the Board, if there be one, shall serve as chief executive officer and the President shall serve as chief operating officer. The same person may hold both offices. The Corporation may also have one or more Vice-Presidents, assistant officers and subordinate officers as may be established by the Board of Directors. A person may hold more than one office in the Corporation except that no person may serve concurrently as both President and Vice-President of the Corporation. The Chairman of the Board shall be a director; the other officers may be directors.



SECTION 4.2 CHAIRMAN OF THE BOARD. The Chairman of the Board, if one be elected, shall preside at all meetings of the Board of Directors and of the stockholders at which he or she shall be present. Unless otherwise specified by the Board of Directors, he or she shall be the chief executive officer of the Corporation. In general, he or she shall perform such duties as are customarily performed by the chief executive officer of a corporation and may perform any duties of the President and shall perform such other duties as are from time to time assigned to him or her by the Board of Directors.

SECTION 4.3 PRESIDENT. Unless otherwise provided by resolution of the Board of Directors, the President, in the absence of the Chairman of the Board, shall preside at all meetings of the Board of Directors and of the stockholders at which he or she shall be present. Unless otherwise specified by the Board of Directors, the President shall be the chief operating officer of the Corporation and perform the duties customarily performed by chief operating officers. He or she may sign and execute, in the name of the Corporation, all authorized deeds, mortgages, bonds, contracts or other instruments, except in cases in which the signing and execution thereof shall have been expressly delegated to some other officer or agent of the Corporation. In general, he or she shall perform such other duties customarily performed by a president of a corporation and shall perform such other duties and have such other powers as are from time to time assigned to him by the Board of Directors or the chief executive officer of the Corporation.

SECTION 4.4 VICE-PRESIDENTS. The Vice-President or Vice-Presidents, at the request of the chief executive officer or the President, or in the President's absence or during his or her inability to act, shall perform the duties and exercise the functions of the President, and when so acting shall have the powers of the President. If there be more than one Vice-President, the Board of Directors may determine which one or more of the Vice-Presidents shall perform any of such duties or exercise any of such functions, or if such determination is not made by the Board of Directors, the chief executive officer or the President may make such determination; otherwise any of the Vice-Presidents may perform any of such duties or exercise any of such functions. The Vice-President or Vice-Presidents shall have such other powers and perform such other duties, and have such additional descriptive designations in their titles (if any), as are from time to time assigned to them by the Board of Directors, the chief executive officer or the President.

SECTION 4.5 SECRETARY. The Secretary shall keep the minutes of the meetings of the stockholders and the meetings of the Board of Directors and any committees thereof, in books provided for the purpose; the Secretary shall see that all notices are duly given in accordance with the provisions of these Bylaws or as required by law; he or she shall be custodian of the records of the Corporation; he or she may witness any document on behalf of the Corporation, the execution of which is duly authorized, see that the Corporation's seal is affixed where such document is required or desired to be under its seal, and, when so affixed, may attest the same. In general, he or she shall perform such other duties customarily performed by a secretary of a corporation and shall perform such other duties and have such other powers as are from time to time assigned to him or her by the Board of Directors, the chief executive officer or the President.

SECTION 4.6 TREASURER. the Treasurer shall have charge of, and be responsible for, all funds, securities, receipts and disbursements of the Corporation and shall deposit, or cause to be deposited, in the name of the Corporation, all moneys or other valuable effects in such banks, trust companies or other depositories as shall, from time to time, be selected by the Board of Directors; he shall render to the President and to the Board of Directors, whenever requested, an account of the financial condition of the Corporation; and, in general, he shall perform all the duties incident to the office of a treasurer of a corporation, and such other duties as are from time to time assigned to him by the Board of Directors, the chief executive officer or the President.

SECTION 4.7 ASSISTANT AND SUBORDINATE OFFICERS. The assistant and subordinate officers of the Corporation are all officers below the office of Vice-President, Secretary or Treasurer. The assistant or subordinate officers shall have such duties as are from time to time assigned to them by the Board of Directors, the chief executive officer or the President.

SECTION 4.8 ELECTION, TENURE AND REMOVAL OF OFFICERS. The Board of Directors shall elect the officers. The Board of Directors may from time to time authorize any committee or officer to appoint assistant and subordinate officers. Election or appointment of an officer, employee or agent shall not of itself create contract rights. All officers shall be appointed to hold their offices, respectively, at the pleasure of the Board of Directors. The Board of Directors (or, as to any assistant or subordinate officer, any committee or officer authorized by the Board of Directors) may fill a vacancy which occurs in any office for the unexpired portion of the term.

SECTION 4.9 COMPENSATION. The Board of Directors or the Compensation Committee thereof shall have power to fix the salaries and other compensation and remuneration, of whatever kind, of all officers of the Corporation. No officer shall be prevented from receiving such salary by reason of the fact that he is also a director of the Corporation. The Board of Directors may authorize any committee or officer, upon whom the power of appointing assistant and subordinate officers may have been conferred, to fix the salaries, compensation and remuneration of such assistant and subordinate officers.

## ARTICLE V

### STOCK

SECTION 5.1 CERTIFICATES FOR STOCK. The Board of Directors may determine to issue certificated or uncertificated shares of capital stock and other securities of the Corporation. For certificated stock, each stockholder is entitled to certificates which represent and certify the shares of stock he or she holds in the Corporation. Each stock certificate shall include on its face the name of the Corporation, the name of the stockholder or other person to whom it is issued, and the class of stock and number of shares it represents. It shall also include on its face or back (a) a statement of any restrictions on

transferability and (b) a statement which provides in substance that the Corporation will furnish to any stockholder on request and without charge a full statement of the designations and any preferences, conversion and other rights, voting powers, restrictions, limitations as to dividends, qualifications, and terms and conditions of redemption of the stock of each class which the Corporation is authorized to issue, of the differences in the relative rights and preferences between the shares of each series of a preferred or special class in series which the Corporation is authorized to issue, to the extent they have been set, and of the authority of the Board of Directors to set the relative rights and preferences of subsequent series of a preferred or special class of stock and any restrictions on transferability. Such request may be made to the Secretary or to its transfer agent. Upon the issuance of uncertificated shares of capital stock, the Corporation shall send the stockholder a written statement of the same information required above on the certificate and by the Maryland Uniform Commercial Code — Investment Securities. It shall be in such form, not inconsistent with law or with the Charter, as shall be approved by the Board of Directors or any officer or officers designated for such purpose by resolution of the Board of Directors. Each stock certificate shall be signed by the Chairman of the Board, the President, or a Vice-President, and countersigned by the Secretary, an Assistant Secretary, the Treasurer, or an Assistant Treasurer. Each certificate may be sealed with the actual corporate seal or a facsimile of it or in any other form and the signatures may be either manual or facsimile signatures. A certificate is valid and may be issued whether or not an officer who signed it is still an officer when it is issued. A certificate may not be issued until the stock represented by it is fully paid.

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**SECTION 5.2 TRANSFERS.** The Board of Directors shall have power and authority to make such rules and regulations as it may deem expedient concerning the issue, transfer and registration of certificates of stock; and may appoint transfer agents and registrars thereof. The duties of transfer agent and registrar may be combined.

**SECTION 5.3 RECORD DATES AND CLOSING OF TRANSFER BOOKS.** The Board of Directors may set a record date or direct that the stock transfer books be closed for a stated period for the purpose of making any proper determination with respect to stockholders, including which stockholders are entitled to notice of a meeting, vote at a meeting, receive a dividend or be allotted other rights. The record date may not be prior to the close of business on the day the record date is fixed nor, subject to Section 1.6, more than 90 days before the date on which the action requiring the determination will be taken; the transfer books may not be closed for a period longer than 20 days; and, in the case of a meeting of stockholders, the record date or the closing of the transfer books shall be at least ten days before the date of the meeting.

**SECTION 5.4 STOCK LEDGER.** The Corporation shall maintain a stock ledger which contains the name and address of each stockholder and the number of shares of stock of each class which the stockholder holds. The stock ledger may be in written form or in any other form which can be converted within a reasonable time into written form for visual inspection. The original or a duplicate of the stock ledger shall be kept at the offices of a transfer agent for the particular class of stock, or, if none, at the principal office in the State of Maryland or the principal executive offices of the Corporation.

**SECTION 5.5 CERTIFICATION OF BENEFICIAL OWNERS.** The Board of Directors may adopt by resolution a procedure by which a stockholder of the Corporation may certify in writing to the Corporation that any shares of stock registered in the name of the stockholder are held for the account of a specified person other than the stockholder. The resolution shall set forth the class of stockholders who may certify; the purpose for which the certification may be made; the form of certification and the information to be contained in it; if the certification is with respect to a record date or closing of the stock transfer books, the time after the record date or closing of the stock transfer books within which the certification must be received by the Corporation; and any other provisions with respect to the procedure which the Board of Directors considers necessary or desirable. On receipt of a certification which complies with the procedure adopted by the Board of Directors in accordance with this Section, the person specified in the certification is, for the purpose set forth in the certification, the holder of record of the specified stock in place of the stockholder who makes the certification.

**SECTION 5.6 LOST STOCK CERTIFICATIONS.** The Board of Directors of the Corporation may determine the conditions for issuing a new stock certificate in place of one which is alleged to have been lost, stolen or destroyed, or the Board of Directors may delegate such power to any officer or officers of the Corporation. In their discretion, the Board of Directors or such officer or officers may require the owner of the certificate to give bond, with sufficient surety, to indemnify the Corporation against any loss or claim arising as a result of the issuance of a new certificate. In their discretion, the Board of Directors or such officer or officers may refuse to issue such new certificate save upon the order of some court having jurisdiction in the premises.

**SECTION 5.7 EXEMPTION FROM CONTROL SHARE ACQUISITION STATUTE.** The provisions of Sections 3-701 to 3-710 of the Maryland General Corporation Law shall not apply to any share of the capital stock of the Corporation. Such shares of capital stock are exempted from such Sections to the fullest extent permitted by Maryland law.

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## ARTICLE VI

### FINANCE

**SECTION 6.1 CHECKS, DRAFTS, ETC.** All checks, drafts and orders for the payment of money, notes and other evidences of indebtedness, issued in the name of the Corporation, shall, unless otherwise provided by resolution of the Board of Directors, be signed by the President, a Vice-President or an Assistant Vice-President and countersigned by the Treasurer, an Assistant Treasurer, the Secretary or an Assistant Secretary.

**SECTION 6.2 ANNUAL STATEMENT OF AFFAIRS.** The President or chief accounting officer shall prepare annually a full and correct statement of the affairs of the Corporation, to include a balance sheet and a financial statement of operations for the preceding fiscal year. The statement of affairs shall be submitted at the annual meeting of the stockholders and, within 20 days after the meeting, placed on file at the Corporation's principal office.

SECTION 6.3 FISCAL YEAR. The fiscal year of the Corporation shall be the twelve calendar months period ending December 31 in each year, unless otherwise provided by the Board of Directors.

SECTION 6.4 DIVIDENDS. If declared by the Board of Directors at any meeting thereof, the Corporation may pay dividends on its shares in cash, property or in shares of the capital stock of the Corporation, unless such dividend is contrary to law or to a restriction contained in the Charter.

SECTION 6.5 CONTRACTS. To the extent permitted by applicable law, and except as otherwise prescribed by the Charter or these Bylaws with respect to certificates for shares, the Board of Directors may authorize any officer, employee or agent of the Corporation to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Corporation. Such authority may be general or confined to specific instances.

## ARTICLE VII

### SUNDRY PROVISIONS

SECTION 7.1 BOOKS AND RECORDS. The Corporation shall keep correct and complete books and records of its accounts and transactions and minutes of the proceedings of its stockholders and Board of Directors and of any executive or other committee when exercising any of the powers of the Board of Directors. The books and records of a Corporation may be in written form or in any other form which can be converted within a reasonable time into written form for visual inspection. Minutes shall be recorded in written form but may be maintained in the form of a reproduction. The original or a certified copy of the Bylaws shall be kept at the principal office of the Corporation.

SECTION 7.2 CORPORATE SEAL. The Board of Directors shall provide a suitable seal, bearing the name of the Corporation, which shall be in the charge of the Secretary. The Board of Directors may authorize one or more duplicate seals and provide for the custody thereof. If the Corporation is required to place its corporation seal to a document, it is sufficient to meet the requirement of any law, rule or regulation relating to a corporate seal to place the word "Seal" adjacent to the signature of the person authorized to sign the document on behalf of the Corporation.

SECTION 7.3 BONDS. The Board of Directors may require any officer, agent or employee of the Corporation to give a bond to the Corporation, conditioned upon the faithful discharge of his duties, with one or more sureties and in such amount as may be satisfactory to the Board of Directors.

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SECTION 7.4 VOTING UPON SHARES IN OTHER CORPORATIONS. Stock of other corporations or associations, registered in the name of the Corporation, may be voted by the President, a Vice-President or a proxy appointed by either of them. The Board of Directors, however, may by resolution appoint some other person to vote such shares, in which case such person shall be entitled to vote such shares upon the production of a certified copy of such resolution.

SECTION 7.5 MAIL. Any notice or other document which is required by these Bylaws to be mailed shall be deposited in the United States mails, postage prepaid.

SECTION 7.6 EXECUTION OF DOCUMENTS. A person who holds more than one office in the Corporation may not act in more than one capacity to execute, acknowledge or verify an instrument required by law to be executed, acknowledged or verified by more than one officer.

SECTION 7.7 AMENDMENTS. Subject to the special provisions of Section 2.2, in accordance with the Charter, these Bylaws may be repealed, altered, amended or rescinded (a) by the stockholders of the Corporation only by vote of not less than a majority of the outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors (considered for this purpose as one class) cast at any meeting of the stockholders called for that purpose (provided that notice of such proposed repeal, alteration, amendment or rescission is included in the notice of such meeting) or (b) by vote of a majority of the Board of Directors at a meeting held in accordance with the provisions of these Bylaws.

## ARTICLE VIII

### INDEMNIFICATION

SECTION 8.1 PROCEDURE. Any indemnification, or payment of expenses in advance of the final disposition of any proceeding, shall be made promptly, and in any event within 60 days, upon the written request of the director or officer entitled to seek indemnification (the "Indemnified Party"). The right to indemnification and advances hereunder shall be enforceable by the Indemnified Party in any court of competent jurisdiction, if (i) the Corporation denies such request, in whole or in part or (ii) no disposition thereof is made within 60 days. The Indemnified Party's costs and expenses incurred in connection with successfully establishing his right to indemnification, in whole or in part, in any such action shall also be reimbursed by the Corporation. It shall be a defense to any action for advance of expenses that (a) a determination has been made that the facts then known to those making the determination would preclude indemnification or (b) the Corporation has not received either (i) an undertaking as required by law to repay such advances in the event it shall ultimately be determined that the standard of conduct has not been met or (ii) a written affirmation by the Indemnified Party of such Indemnified Party's good faith belief that the standard of conduct necessary for indemnification by the Corporation has been met.

SECTION 8.2 EXCLUSIVITY, ETC. The indemnification and advance of expenses provided by the Charter and these Bylaws shall not be deemed exclusive of any other rights to which a person seeking indemnification or advance of expenses may be entitled under any law (common or statutory) or any agreement, vote of stockholders or disinterested directors or other provision that is consistent with law, both as to action in his official capacity and as to action in another capacity while holding office or while employed by or acting as agent for the Corporation, shall continue in respect of all events occurring while a person was a director or officer after such person has ceased to be a director or officer, and shall inure to the benefit of the estate, heirs, executors and administrators of such person. The Corporation shall not be liable for any payment under this Bylaw in connection with a claim made by a director or officer to the extent such director or officer has otherwise actually received payment under insurance policy, agreement, vote or otherwise, of the amounts otherwise indemnifiable hereunder. All rights to

indemnification and advance of expenses under the Charter of the Corporation and hereunder shall be deemed to be a contract between the Corporation and each director or officer of the Corporation who serves or served in such capacity at any time while this Bylaw is in effect. Nothing herein shall prevent the amendment of this Bylaw, provided that no such amendment shall diminish the rights of any person hereunder with respect to events occurring or claims made before its adoption or as to claims made after its adoption in respect of events occurring before its adoption. Any repeal or modification of this Bylaw shall not in any way diminish any rights to indemnification or advance of expenses of such director or officer or the obligations of the Corporation arising hereunder with respect to events occurring, or claims made, while this Bylaw or any provisions hereof is in force.

SECTION 8.3 SEVERABILITY; DEFINITIONS. The invalidity or unenforceability of any provision of this Article VIII shall not affect the validity or enforceability of any other provisions hereof. The phrase "this Bylaw" in this Article VIII means this Article VIII in its entirety.

April 28, 2004

Bimini Mortgage Management, Inc.  
3305 Flamingo Drive, Suite 100  
Vero Beach, Florida 32963

Ladies and Gentlemen:

We have acted as counsel to Bimini Mortgage Management, Inc. (the "Company") in connection with the offer and sale by the Company of shares of its Class A common stock, par value \$.001 per share (the "Class A Common Stock"). The Class A Common Stock is being sold pursuant to the Company's Registration Statement on Form S-11 (File No. 333-113715) under the Securities Act of 1933, as amended (together with any amendments thereto, the "Registration Statement").

We have reviewed the Registration Statement and such other documents, corporate records, certificates and instruments as we have deemed necessary.

Based on the foregoing, and such other examination of law and fact as we have deemed necessary, we are of the opinion that the Class A Common Stock has been duly and validly authorized and, when issued and sold in the manner contemplated by the prospectus for the offering of shares of Class A Common Stock included in the Registration Statement, such shares of Class A Common Stock will be legally issued, fully paid and non-assessable.

We consent to the filing of this opinion as an exhibit to the Registration Statement and to the reference to us under the caption "Legal Matters" in the prospectus, which is a part of the Registration Statement.

Very truly yours,

/s/ Clifford Chance US LLP

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## Form of Tax Opinion

April , 2004

Bimini Mortgage Management, Inc.  
3305 Flamingo Drive, Suite 100  
Vero Beach, Florida 32963

Re: REIT Status of Bimini Mortgage Management, Inc.

Ladies and Gentlemen:

We have acted as special counsel to Bimini Mortgage Management, Inc., a Maryland corporation (the "Company"), in connection with the offer and sale by the Company of shares of its Class A common stock, par value \$0.001 per share (the "Class A Common Stock"). The Class A Common Stock is being sold pursuant to the Company's Registration Statement on Form S-11 (File No. 333-113715) under the Securities Act of 1933, as amended (together with any amendments thereto, the "Registration Statement"). Capitalized terms not otherwise defined herein shall have the meanings given in the Registration Statement.

The opinions set forth in this letter are based on relevant provisions of the Internal Revenue Code of 1986, as amended (the "Code"), Treasury Regulations promulgated thereunder, interpretations of the foregoing as expressed in court decisions, legislative history, and existing administrative rulings and practices of the Internal Revenue Service ("IRS") (including its practices and policies in issuing private letter rulings, which are not binding on the IRS except with respect to a taxpayer that receives such a ruling), all as of the date hereof. These provisions and interpretations are subject to change, which may or may not be retroactive in effect, and which may result in modifications of our opinions. Our opinions do not foreclose the possibility of a contrary determination by the IRS or a court of competent jurisdiction, or of a contrary determination by the IRS or the Treasury Department in regulations or rulings issued in the future. In this regard, an opinion of counsel with respect to an issue represents counsel's best professional judgment with respect to the outcome on the merits with respect to such issue, if such issue were to be litigated, but an opinion is not binding on the IRS or the courts and is not a guarantee that the IRS will not assert a contrary position with respect to such issue or that a court will not sustain such a position asserted by the IRS.

In rendering the opinions expressed herein, we have examined and relied on the following items:

1. the Articles of Amendment and Restatement of the Company as filed with the Maryland State Department of Assessments and Taxation on December 22, 2003;
2. the bylaws of the Company;
3. the Certificate of Representations dated as of the date hereof, provided to us by the Company (the "Certificate of Representations");
4. the Registration Statement; and
5. such other documents, records and instruments as we have deemed necessary in order to enable us to render the opinions referred to in this letter.

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In our examination of the foregoing documents, we have assumed, with your consent, that (i) all documents reviewed by us are original documents, or true and accurate copies of original documents and have not been subsequently amended; (ii) the signatures of each original document are genuine, (iii) each party who executed the document had proper authority and capacity, (iv) all representations and statements set forth in such documents are true and correct, (v) all obligations imposed by any such documents on the parties thereto have been performed or satisfied in accordance with their terms and (vi) the Company at all times will operate in accordance with the method of operation described in its organizational documents and the Registration Statement.

For purposes of rendering the opinions stated below, we have also assumed, with your consent, (i) the accuracy of the representations contained in the Certificate of Representations, dated as of the date hereof, provided to us by the Company and that each representation contained in such Certificate of Representations to the best of the Company's knowledge is accurate and complete without regard to such qualification as to the best of the Company's knowledge and (ii) no action will be taken following the sale that is inconsistent with the Company's status as a real estate investment trust ("REIT") for any period prior or subsequent to the sale. As of the date hereof, no facts have come to our attention which would lead us to believe that we are not justified in relying upon the Certificate of Representations.

Based upon, subject to, and limited by the assumptions and qualifications set forth herein, we are of the opinion that:

- (1) commencing with its taxable year ended December 31, 2003, the Company has been organized and operated in conformity with the requirements for qualification and taxation as a REIT under the Code and its current and proposed method of operation will continue to enable the Company to meet the requirements for qualification and taxation as a REIT under the Code; and
- (2) the statements in the Registration Statements under the captions "Risk Factors – Legal and Tax Risks," with respect to discussions relating to the Company's qualification and taxation as a REIT and the tax treatment of its stockholders, and "Certain Federal Income Tax Consequences," to the extent they constitute matters of law or legal conclusions with respect thereto, are correct in all material respects.

The opinions set forth above represent our conclusion based upon the documents, facts, representations and assumptions referred to above. Any material amendments to such documents, changes in any significant facts or inaccuracy of such representations or assumptions could affect the opinions referred to herein. Moreover, the Company's qualification as a REIT depends upon the ability of the Company to meet for each taxable year, through actual annual operating results, requirements under the Code regarding gross income, assets, distributions and diversity of stock ownership. We have not undertaken, and will not undertake, to review the Company's compliance with these requirements on a continuing basis. Accordingly, no assurance can be given that the

actual results of the Company's operations for any single taxable year have satisfied or will satisfy the tests necessary to qualify as a REIT under the Code. Although we have made such inquiries and performed such investigations as we have deemed necessary to fulfill our professional responsibilities as counsel, we have not undertaken an independent investigation of all of the facts referred to in this letter or the Certificate of Representations.

The opinions set forth in this letter are (i) limited to those matters expressly covered and no opinion is expressed in respect of any other matter, (ii) as of the date hereof, and (iii) rendered by us at the request of the Company solely for your benefit and may not be relied upon by any person or entity other than you without our express permission.

Very truly yours,

## REGISTRATION RIGHTS AGREEMENT

**THIS REGISTRATION RIGHTS AGREEMENT** (this "Agreement") is made and entered into as of December 19, 2003, by and among Bimini Mortgage Management, Inc., a Maryland corporation (the "Company") and the initial Holders (as defined herein) listed on Schedule A hereto.

**THIS AGREEMENT** is made in connection with the Subscription Agreements for the purchase of the Company's Class A Common Stock, par value \$0.001 per share (the "Common Stock") between the Company and each initial Holder (the "Subscription Agreements") and the Placement Agreement (the "Placement Agreement"), dated as of December 11, 2003, among the Company, Flagstone Securities, LLC ("Flagstone") and Avondale Partners, LLC ("Avondale") made in connection with the offering and sale (the "Offering") of up to 10,000,000 shares of Common Stock. In order to induce the initial Holders to purchase Common Stock and to induce Flagstone and Avondale to enter into the Placement Agreement, the Company agrees to provide the registration rights provided for in this Agreement to the initial Holders and their respective direct and indirect transferees.

**NOW, THEREFORE**, in consideration of the premises and the mutual covenants of the parties hereto, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. Definitions.

As used in this Agreement, the following terms shall have the following meanings:

*Additional Shares:* Shares or other securities issued in respect of the Shares by reason of or in connection with any stock dividend, stock distribution, stock split, or similar issuance.

*Agreement:* As defined in the Introductory Paragraph of this Agreement.

*Affiliate:* As to any specified Person, (i) any Person that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the specified Person, (ii) any executive officer, director, trustee or general partner of the specified Person, (iii) any Person who is an immediate family member of the Specified Person and (iii) any legal entity for which the specified Person acts as an executive officer, director, trustee or general partner. For purposes of this definition, "control" (including the correlative meanings of the terms "controlled by" and "under common control with"), as used with respect to any Person, shall mean the possession, directly, or indirectly through one or more intermediaries, of the power to direct or cause the direction of the management and policies of such Person, whether by contract, through the ownership of voting securities, partnership interests or other equity interests or otherwise.

*Business Day:* With respect to any act to be performed hereunder, each Monday, Tuesday, Wednesday, Thursday and Friday that is not a day on which banking institutions in New York, New York are authorized or obligated by applicable law, regulation or executive order to close.

*Closing Time:* December 19, 2003.

*Commission:* The Securities and Exchange Commission.

*Common Stock:* As defined in Recital A hereof.

*Company:* As defined in the Introductory Paragraph of this Agreement, and any successor thereto.

*Controlling Person:* As defined in Section 6(a) hereof.

*End of Suspension Notice:* As defined in Section 5(b) hereof.

*Exchange Act:* The Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated by the Commission pursuant thereto.

*Flagstone:* As defined in the Introductory Paragraph of this Agreement, and any successor thereto.

*Holder:* Each record owner of any Registrable Shares from time to time.

*Indemnified Party:* As defined in Section 6(c) hereof.

*Indemnifying Party:* As defined in Section 6(c) hereof.

*IPO Registration Statement:* As defined in Section 2(b) hereof.

*Liabilities:* As defined in Section 6(a) hereof.

*Mandatory Shelf Registration Statement:* As defined in Section 2(a) hereof.

*NASD:* The National Association of Securities Dealers, Inc.

*Offering:* As defined in Recital A hereof.



*Person:* An individual, partnership, corporation, trust, unincorporated organization, government or agency or political subdivision thereof, or any other legal entity.

*Proceeding:* An action, claim, suit or proceeding (including without limitation, an investigation or partial proceeding, such as a deposition), whether commenced or, to the knowledge of the Person subject thereto, threatened.

*Prospectus:* The prospectus included in any Registration Statement, including any preliminary prospectus, and all other amendments and supplements to any such prospectus, including post-effective amendments, and all material incorporated by reference or deemed to be incorporated by reference, if any, in such prospectus.

*Placement Agreement:* As defined in Recitals of this Agreement, as amended from time to time.

*Purchaser Indemnitee:* As defined in Section 6(a) hereof.

*Registrable Shares:* Each of the Shares and any Additional Shares, upon original issuance thereof, and at all times subsequent thereto, including upon the transfer thereof by the original holder or any subsequent holder, until, in the case of any such Shares or Additional Shares, as applicable, the earliest to occur of:

- (i) the second anniversary of the initial effective date of the Mandatory Shelf Registration Statement;
- (ii) the date on which such Share or Additional Share has been sold pursuant to a Registration Statement or distributed to the public pursuant to Rule 144;
- (iii) the date on which, in the opinion of counsel to the Company, such Shares or Additional Shares not held by Affiliates of the Company are eligible for purchase without registration under the Securities Act pursuant to subparagraph (k) of Rule 144 (or any successor or analogous rule) and the restrictive legend on such certificate has been removed; or
- (iv) the date on which such Shares or Additional Shares are sold to the Company or any of its subsidiaries.

*Registration Expenses:* Any and all expenses incident to the performance of or compliance with this Agreement, including, without limitation: (i) all Commission, securities exchange, NASD registration, listing, inclusion and filing fees, (ii) all fees and expenses incurred in connection with compliance with international, federal or state securities or blue sky laws (including, without limitation, any registration, listing and filing fees and reasonable fees and disbursements of counsel in connection with blue sky qualification of any of the Registrable Shares and the preparation of a blue sky memorandum and compliance with the rules of the NASD), (iii) all expenses of any Persons in preparing or assisting in preparing, word processing, duplicating, printing, delivering and distributing any Registration Statement, any Prospectus, any amendments or supplements thereto, any underwriting agreements, securities sales agreements, certificates and any other documents relating to the performance under and compliance with this Agreement, (iv) all fees and expenses incurred in connection with the listing or inclusion of any of the Registrable Shares on any securities exchange or the Nasdaq Stock Market pursuant to Section 4(m) of this Agreement, (v) the fees and disbursements of counsel for the Company and of the independent public accountants of the Company (including, without limitation, the expenses of any special audit and "cold comfort"

letters required by or incident to such performance), and reasonable fees and disbursements of one counsel for the selling Holders to review the Mandatory Shelf Registration Statement, any Subsequent Shelf Registration Statement, and, if the Company notifies the Holders pursuant to Section 2(b) hereof of its intent to file an IPO Registration Statement within one year of the date of this Agreement, the IPO Registration Statement, provided that such fees and disbursements of counsel for the selling Holders do not exceed an aggregate of \$20,000, and (vi) any fees and disbursements customarily paid by issuers in issues and sales of securities (including the fees and expenses of any experts retained by the Company in connection with any Registration Statement), *provided, however*, that Registration Expenses shall exclude brokers' or underwriters' discounts and commissions and transfer taxes, if any, relating to the sale or disposition of Registrable Shares by a Holder and the fees and disbursements of any counsel to the Holders other than as provided for in subparagraph (v) above.

*Registration Statement:* Any Shelf Registration Statement or the IPO Registration Statement (that covers the resale of any Registrable Shares), including the Prospectus, amendments and supplements to such registration statement or Prospectus, including pre-and post-effective amendments, all exhibits thereto and all material incorporated by reference or deemed to be incorporated by reference, if any, in such registration statement.

*Regulation D:* Regulation D (Rules 501-508) promulgated by the Commission under the Securities Act, as such rules may be amended from time to time, or any similar rule or regulation hereafter adopted by the Commission as a replacement thereto having substantially the same effect as such regulation.

*Rule 144:* Rule 144 promulgated by the Commission pursuant to the Securities Act, as such rule may be amended from time to time, or any similar rule or regulation hereafter adopted by the Commission as a replacement thereto having substantially the same effect as such rule.

*Rule 144A:* Rule 144A promulgated by the Commission pursuant to the Securities Act, as such rule may be amended from time to time, or any similar rule or regulation hereafter adopted by the Commission as a replacement thereto having substantially the same effect as such rule.

*Rule 158:* Rule 158 promulgated by the Commission pursuant to the Securities Act, as such rule may be amended from time to time, or any similar rule or regulation hereafter adopted by the Commission as a replacement thereto having substantially the same effect as such rule.

*Rule 424:* Rule 424 promulgated by the Commission pursuant to the Securities Act, as such rule may be amended from time to time, or any similar rule or regulation hereafter adopted by the Commission as a replacement thereto having substantially the same effect as such rule.

*Rule 429:* Rule 429 promulgated by the Commission pursuant to the Securities Act, as such rule may be amended from time to time, or any similar rule or regulation hereafter adopted by the Commission as a replacement thereto having substantially the same effect as such rule.

*Securities Act:* The Securities Act of 1933, as amended, and the rules and regulations promulgated by the Commission thereunder.

*Shares:* As defined in the Placement Agreement.

*Shelf Registration Statement:* The Mandatory Shelf Registration Statement or any Subsequent Shelf Registration Statement.

*Subsequent Shelf Registration Statement:* As defined in Section 2(c) hereof.

*Suspension Event:* As defined in Section 5(b) hereof.

*Suspension Notice:* As defined in Section 5(b) hereof.

*Underwritten Offering:* A sale of securities of the Company to an underwriter or underwriters for reoffering to the public.

2. Registration Rights.

(a) *Mandatory Shelf Registration.* As set forth in Section 4 hereof, the Company agrees to file with the Commission as soon as reasonably practicable, but in no event later than one hundred twenty (120) days from the date hereof, a shelf Registration Statement on Form S-11 or such other form under the Securities Act then available to the Company providing for the resale pursuant to Rule 415 from time to time by the Holders of any and all Registrable Shares (including for the avoidance of doubt any Additional Shares that are issued prior to the effectiveness of such shelf registration statement) (including the Prospectus, amendments and supplements to such registration statement or Prospectus, including pre- and post-effective amendments, all exhibits thereto and all material incorporated by reference or deemed to be incorporated by reference, if any, in such registration statement, the "Mandatory Shelf Registration Statement"). The Company shall use its best efforts to cause such Shelf Registration Statement to be declared effective by the Commission as promptly as practicable following such filing. Any Shelf Registration Statement shall provide for the resale from time to time, and pursuant to any method or combination of methods legally available (including, without limitation, an Underwritten Offering, a direct sale to purchasers, a sale through brokers or agents, or a sale over the internet) by the Holders of any and all Registrable Shares.

(b) *IPO Registration.* If prior to the Mandatory Shelf Registration Statement being declared effective by the Commission, the Company proposes to file a registration statement on

Form S-11 or such other form under the Securities Act providing for the initial public offering by the Company of shares of Common Stock (including the Prospectus, amendments and supplements to such registration statement or Prospectus, including pre- and post-effective amendments, all exhibits thereto and all material incorporated by reference or deemed to be incorporated by reference, if any, in such registration statement, the "IPO Registration Statement"), the Company will notify each Holder of the proposed filing and afford each Holder an opportunity to include in such IPO Registration Statement all or any part of the Registrable Shares then held by such Holder. Each Holder desiring to include in any such IPO Registration Statement all or part of the Registrable Shares held by such Holder shall, within twenty (20) days after delivery of the above-described notice by the Company, so notify the Company in writing, and in such notice shall inform the Company of the number of Registrable Shares such Holder wishes to include in such IPO Registration Statement. Any election by any Holder to include any Registrable Shares in such IPO Registration Statement will not affect the inclusion of such Registrable Shares in the Shelf Registration Statement until such Registrable Shares have been sold under the IPO Registration Statement; *provided, however*, that at such time, the Company shall have the right to remove from the Shelf Registration Statement the Registrable Shares sold pursuant to the IPO Registration Statement.

(i) *Right to Terminate IPO Registration.* At any time, the Company shall have the right to terminate or withdraw any IPO Registration Statement referred to in this Section 2(b) whether or not any Holder has elected to include Registrable Shares in such registration.

(ii) *Underwriting.* The Company shall advise the Holders of the managing underwriters for the Underwritten Offering proposed under the IPO Registration Statement. The right of any such Holder's Registrable Shares to be included in any IPO Registration Statement pursuant to this Section 2(b) shall be conditioned upon such Holder's participation in such Underwritten Offering and the inclusion of such Holder's Registrable Shares in the Underwritten Offering to the extent provided herein. All Holders proposing to distribute their Registrable Shares through such Underwritten Offering shall enter into an underwriting agreement in customary form with the managing underwriters selected for such underwriting and complete and execute any questionnaires, powers of attorney, indemnities, securities escrow agreements and other documents reasonably required under the terms of such underwriting, and furnish to the Company such information in writing as the Company may reasonably request for inclusion in the Registration Statement; *provided, however*, that no Holder shall be required to make any representations or warranties to or agreements with the Company or the underwriters other than representations, warranties or agreements as are customary and reasonably requested by the underwriters. Notwithstanding any other provision of this Agreement, if the managing underwriters determine in good faith that marketing factors require a limitation on the number of shares to be included, then the managing underwriters may exclude shares (including Registrable Shares) from the IPO Registration Statement and the Underwritten Offering and any Shares included in the IPO Registration Statement and the Underwritten Offering shall be allocated, first, to the Company, and second, to each of the Holders requesting inclusion of their Registrable Shares in such IPO

Registration Statement on a *pro rata* basis based on the total number of Registrable Shares then held by each such Holder which is requesting inclusion. If any Holder disapproves of the terms of any Underwritten Offering, such Holder may elect to withdraw therefrom by written notice to the Company and the underwriter, delivered at least ten (10) Business Days prior to the effective date of the IPO Registration Statement. Any Registrable Shares excluded or withdrawn from such Underwritten Offering shall be excluded and withdrawn from the IPO Registration Statement.

(iii) *Hold-Back Agreement.* Each Holder agrees not to effect (except through the offering) any sale or distribution of securities of the Company of the same or similar class or classes of the securities included in the Registration Statement or any securities convertible into or exchangeable or exercisable for such securities, including a sale pursuant to Rule 144 or Rule 144A under the Securities Act, during such periods as reasonably requested (but in no event for a period longer than ninety (90) days following the effective date of the IPO Registration Statement, provided each of the executive officers and directors of the Company that hold shares of Common Stock of the Company or securities convertible into or exchangeable or exercisable for shares of Common Stock of the Company are subject to the same restriction for the entire time period required of the Holders hereunder) by the representatives of the underwriters, if an Underwritten Offering.

(iv) *Shelf Registration not Impacted by IPO Registration Statement.* The Company's obligation to file any Shelf Registration Statement shall not be affected by the filing or effectiveness of the IPO Registration Statement unless and to the extent Registrable Shares are sold in the Underwritten Offering.

(c) *Subsequent Shelf Registration for Additional Shares Issued after Effectiveness of the Mandatory Shelf Registration Statement.* If any Additional Shares are issued or distributed to Holders after the effectiveness of the Mandatory Shelf Registration Statement, or such Additional Shares were otherwise not included in a prior Shelf Registration Statement, then the Company shall as soon as practicable file an additional shelf registration statement (including the Prospectus, amendments and supplements to such registration statement or Prospectus, including pre- and post-effective amendments, all exhibits thereto and all material incorporated by reference or deemed to be incorporated by reference, if any, in such registration statement, a "Subsequent Shelf Registration Statement") covering such Additional Shares on behalf of the Holders thereof in the same manner, and subject to the same provisions in this Agreement as the Mandatory Shelf Registration Statement, provided that the provisions of Section 2(a) or 2(b) hereof will not apply to any such Subsequent Shelf Registration Statement.

(d) *Expenses.* The Company shall pay all Registration Expenses in connection with the registration of the Registrable Shares pursuant to this Agreement. Each Holder participating in a registration pursuant to this Section 2 shall bear such Holder's proportionate share (based on the total number of Registrable Shares sold in such registration) of all discounts and commissions payable to underwriters or brokers and all transfer taxes in connection with a registration of Registrable Shares pursuant to this Agreement and any other expense of the

Holders not specifically allocated to the Company pursuant to this Agreement relating to the sale or disposition of such Holder's Registrable Shares pursuant to any Registration Statement.

### 3. Rules 144 and 144A Reporting.

With a view to making available the benefits of certain rules and regulations of the Commission that may permit the sale of the Registrable Shares to the public without registration, the Company agrees to, so long as any Holder owns any Registrable Shares:

(a) at all times after the effective date of the first registration under the Securities Act filed by the Company for an offering of its securities to the general public make and keep public information available, as those terms are understood and defined in Rule 144(c) under the Securities Act;

(b) use its best efforts to file with the Commission in a timely manner all reports and other documents required to be filed by the Company under the Securities Act and the Exchange Act (at any time after it has become subject to such reporting requirements);

(c) if the Company is not required to file reports and other documents under the Securities Act and the Exchange Act, it will make available other information as required by, and so long as necessary to permit sales of Registrable Shares pursuant to, Rule 144A; and

(d) to furnish to any Holder promptly upon request a written statement by the Company as to its compliance in all material respects with the reporting requirements of Rule 144 (at any time after ninety (90) days after the effective date of the first registration statement filed by the Company for an offering of its securities to the general public), and of the Securities Act and the Exchange Act (at any time after it has become subject to the reporting requirements of the Exchange Act), a copy of the most recent annual or quarterly report of the Company as filed under the Exchange Act, and such other reports and documents of the Company, and take such reasonable further actions consistent with this Section, as a Holder may reasonably request in availing itself of any rule or regulation of the Commission allowing a Holder to sell any such Registrable Shares without registration.

### 4. Registration Procedures.

In connection with the obligations of the Company with respect to any registration pursuant to this Agreement, the Company shall use its commercially reasonable efforts to effect or cause to be effected the registration of the Registrable Shares under the Securities Act to permit the resale of such Registrable Shares by the Holder or Holders in accordance with the Holders' intended method or methods of resale and distribution (which methods shall be commercially reasonable), and the Company shall:

(a) prepare and file with the Commission, as specified in this Agreement, a Shelf Registration Statement, which Shelf Registration Statement shall comply as to form with the requirements of the applicable form and include all financial statements required by the Commission to be filed therewith,

and use its best efforts to cause such Registration Statement to become effective as soon as practicable after filing and to remain effective, subject to Section 5 hereof, until the date on which no Holders hold Registrable Shares, *provided, however*, that the

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Company shall not be required to cause any IPO Registration Statement to become effective; *provided, further*, that if the Company has an effective Shelf Registration Statement on Form S-11 under the Securities Act and becomes eligible to use Form S-3 or such other short-form registration statement under the Securities Act, the Company may, upon thirty (30) Business Days' prior written notice to all Holders of Registrable Shares, register any Registrable Shares registered but not yet distributed under the effective Shelf Registration Statement on such a short-form Shelf Registration Statement and, once the short-form Shelf Registration Statement is declared effective, de-register such shares under the previous Registration Statement or transfer filing fees from the previous Registration Statement (such transfer pursuant to Rule 429) unless any Holder of Registrable Shares registered under the initial Shelf Registration Statement notifies the Company within twenty (20) Business Days of receipt of the Company notice that such a registration under a new Registration Statement and de-registration of the initial Shelf Registration Statement would materially interfere with its distribution of Registrable Shares already in progress, in which case the Company shall delay the implementation of the short-form Shelf Registration Statement and de-registration until not later than forty (40) Business Days from the date that the Company provides the notice referenced above to the Holder(s);

(b) subject to Section 4(i) hereof, (i) prepare and file with the Commission such amendments and post-effective amendments to each such Shelf Registration Statement as may be necessary to keep such Shelf Registration Statement effective for the period described in Section 4(a) hereof, (ii) cause each Prospectus contained therein to be supplemented by any required Prospectus supplement, and as so supplemented to be filed pursuant to Rule 424 or any similar rule that may be adopted under the Securities Act, and (iii) comply with the provisions of the Securities Act with respect to the disposition of all securities covered by each Shelf Registration Statement during the applicable period in accordance with the intended method or methods of distribution by the selling Holders thereof;

(c) furnish to the Holders, without charge, as many copies of each Prospectus, including each preliminary Prospectus, and any amendment or supplement thereto and such other documents as such Holder may reasonably request, in order to facilitate the public sale or other disposition of the Registrable Shares; the Company consents to the use of such Prospectus, including each preliminary Prospectus, by the Holders, if any, in connection with the offering and sale of the Registrable Shares covered by any such Prospectus;

(d) use its commercially reasonable efforts to register or qualify, or obtain exemption from registration or qualification for, all Registrable Shares by the time the applicable Registration Statement is declared effective by the Commission under all applicable state securities or "blue sky" laws of such domestic jurisdictions as any Holder covered by a Registration Statement shall reasonably request in writing, keep each such registration or qualification or exemption effective during the period such Registration Statement is required to be kept effective pursuant to Section 4(a) and do any and all other acts and things that may be reasonably necessary or advisable to enable such Holder to consummate the disposition in each such jurisdiction of such Registrable Shares owned by such Holder; *provided, however*, that the Company shall not be required to (i) qualify generally to do business in any jurisdiction or to register as a broker or dealer in such jurisdiction where it would not otherwise be required to qualify but for this Section 4(d) and except as may be required by the Securities Act, (ii) subject

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itself to taxation in any such jurisdiction, or (iii) submit to the general service of process in any such jurisdiction;

(e) use its commercially reasonable efforts to cause all Registrable Shares covered by such Registration Statement to be registered and approved by such other domestic governmental agencies or authorities, if any, as may be necessary to enable the Holders thereof to consummate the disposition of such Registrable Shares;

(f) notify each Holder with Registrable Shares covered by a Registration Statement promptly and, if requested by any such Holder, confirm such advice in writing (i) when such Registration Statement has become effective and when any post-effective amendments and supplements thereto become effective, (ii) of the issuance by the Commission or any state securities authority of any stop order suspending the effectiveness of such Registration Statement or the initiation of any proceedings for that purpose, (iii) of any request by the Commission or any other federal or state governmental authority for amendments or supplements to such Registration Statement or related Prospectus or for additional information, and (iv) of the happening of any event during the period such Registration Statement is effective as a result of which such Registration Statement or the related Prospectus or any document incorporated by reference therein contains any untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements therein not misleading (which information shall be accompanied by an instruction to suspend the use of the Registration Statement and the Prospectus until the requisite changes have been made);

(g) during the period of time referred to in Section 4(a) above, use its best efforts to avoid the issuance of, or if issued, to obtain the withdrawal of, any order enjoining or suspending the use or effectiveness of a Shelf Registration Statement or suspending the qualification (or exemption from qualification) of any of the Registrable Shares for sale in any jurisdiction, as promptly as practicable;

(h) upon request, furnish to each requesting Holder with Registrable Shares covered by a Registration Statement, without charge, at least one (1) conformed copy of such Registration Statement and any post-effective amendment or supplement thereto (without documents incorporated therein by reference or exhibits thereto, unless requested);

(i) except as provided in Section 5, upon the occurrence of any event contemplated by Section 4(f)(iv) hereof, use its best efforts to promptly prepare a supplement or post-effective amendment to a Shelf Registration Statement or the related Prospectus or any document incorporated therein by reference or file any other required document so that, as thereafter delivered to the purchasers of the Registrable Shares, such Prospectus will not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, and, upon request, promptly furnish to each requesting Holder a reasonable number of copies of each such supplement or post-effective amendment;

(j) if requested by the representative of the underwriters, if any, or any Holders of Registrable Shares being sold in connection with an Underwritten Offering, (i) promptly incorporate in a Prospectus supplement or post-effective amendment such material information

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as the representative of the underwriters, if any, or such Holders indicate relates to them or otherwise reasonably request be included therein and (ii) make all required filings of such Prospectus supplement or such post-effective amendment as soon as practicable after the Company has received notification of the matters to be incorporated in such Prospectus supplement or post-effective amendment;

(k) in the case of an Underwritten Offering, use its commercially reasonable efforts to furnish or caused to be furnished to each Holder of Registrable Shares covered by such Registration Statement and the underwriters a signed counterpart, addressed to each such Holder and the underwriters, of: (i) an opinion of counsel for the Company, dated the date of each closing under the underwriting agreement, in customary form; and (ii) a "comfort" letter, dated the effective date of such Registration Statement and the date of each closing under the underwriting agreement, signed by the independent public accountants who have certified the Company's financial statements included in such Registration Statement, covering substantially the same matters with respect to such Registration Statement (and the Prospectus included therein) and with respect to events subsequent to the date of such financial statements, as are customarily covered in accountants' letters delivered to underwriters in underwritten public offerings of securities and such other financial matters as such Holder and the underwriters may reasonably request and customarily obtained by underwriters in underwritten offerings;

(l) enter into customary agreements (including in the case of an Underwritten Offering, an underwriting agreement in customary form) and take all other action in connection therewith in order to expedite or facilitate the distribution of the Registrable Shares included in such Registration Statement and, in the case of an Underwritten Offering, make representations and warranties to the Holders of Registrable Shares covered by such Registration Statement and to the underwriters in such form and scope as are customarily made by issuers to underwriters in underwritten offerings and confirm the same to the extent customary if and when requested;

(m) in connection with an Underwritten Offering, use its commercially reasonable efforts to make available for inspection by representatives of the Holders of the Registrable Shares and the representative of any underwriters participating in any disposition pursuant to a Shelf Registration Statement and any special counsel or accountants retained by such Holders or underwriters, all financial and other records, pertinent corporate documents and properties of the Company and cause the respective officers, directors and employees of the Company to supply all information reasonably requested by any such representatives, the representative of the underwriters, counsel thereto or accountants in connection with a Shelf Registration Statement; *provided, however*, that such records, documents or information that the Company determines, in good faith, to be confidential and notifies such representatives, representative of the underwriters, counsel thereto or accountants are confidential shall not be disclosed by the holders, their representatives, representative of the underwriters, counsel thereto or accountants unless the release of such records, documents or information is ordered pursuant to a subpoena or other order from a court of competent jurisdiction, or such records, documents or information have been generally made available to the public; *provided further*, that to the extent practicable, the foregoing inspection and information gathering shall be coordinated on behalf of the Holders and the other parties entitled thereto by one counsel designated by and on behalf of the Holders and the other parties, which counsel the Company determines in good faith is reasonably acceptable.

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(n) As soon as practicable after the Registrable Shares have become eligible for such listing, use its commercially reasonable efforts (including, without limitation, seeking to cure in the Company's listing or inclusion application any deficiencies cited by the exchange or market) to list or include all Registrable Shares on the New York Stock Exchange or the Nasdaq Stock Market;

(o) prepare and file in a timely manner all documents and reports required by the Exchange Act and, to the extent the Company's obligation to file such reports pursuant to Section 15(d) of the Exchange Act expires prior to the expiration of the effectiveness period of the Registration Statement as required by Section 4(a) hereof, the Company shall register the Registrable Shares under the Exchange Act and shall maintain such registration through the effectiveness period required by Section 4(a) hereof;

(p) provide a CUSIP number for all Registrable Shares, not later than the effective date of the Registration Statement;

(q) (i) otherwise use its commercially reasonable efforts to comply with all applicable rules and regulations of the Commission, (ii) make generally available to its stockholders, as soon as reasonably practicable, earnings statements covering at least twelve (12) months that satisfy the provisions of Section 11(a) of the Securities Act and Rule 158 (or any similar rule promulgated under the Securities Act ) thereunder, no later than forty-five (45) days after the end of each fiscal year of the Company and (iii) delay filing any Registration Statement or Prospectus or amendment or supplement to such Registration Statement or Prospectus to which any Holder of Registrable Shares covered by any Registration Statement shall have reasonably objected on the grounds that such Registration Statement or Prospectus or amendment or supplement does not comply in all material respects with the requirements of the Securities Act, such Holder having been furnished with a copy thereof at least two (2) Business Days prior to the filing thereof, provided that the Company may file such Registration Statement or Prospectus or amendment or supplement following such time as the Company shall have made a good faith effort to resolve any such issue with the objecting Holder and shall have advised the Holder in writing of its reasonable belief that such filing complies with the requirements of the Securities Act;

(r) provide and cause to be maintained a registrar and transfer agent for all Registrable Shares covered by any Registration Statement from and after a date not later than the effective date of such Registration Statement;

(s) in connection with any sale or transfer of the Registrable Shares (whether or not pursuant to a Registration Statement) that will result in the security being delivered no longer being Registrable Shares, cooperate with the Holders and the representative of the underwriters, if any, to facilitate the timely preparation and delivery of certificates representing the Registrable Shares to be sold, which certificates shall not bear any transfer restrictive legends (other than as required by the Company's charter) and to enable such Registrable Shares to be in such denominations and registered in such names as the representative of the underwriters, if any, or the Holders may request at least three (3) Business Days prior to any sale of the Registrable Shares; and

(t) upon effectiveness of the first registration statement filed by the Company, the Company will take such actions and make such filings as are necessary to effect the registration of the Common Stock under the Exchange Act simultaneously with or immediately following the effectiveness of the Registration Statement.

The Company may require the Holders to furnish to the Company such information regarding the proposed distribution by such Holder as the Company may from time to time reasonably request in writing or as shall be required to effect the registration of the Registrable Shares and no Holder shall be entitled to be named as a selling stockholder in any Registration Statement and no Holder shall be entitled to use the Prospectus forming a part thereof if such Holder does not provide such information to the Company. Any Holder that sells Registrable Shares pursuant to a Registration Statement or as a selling stockholder pursuant to an Underwritten Offering shall be required to be named as a selling stockholder in the related prospectus and to deliver a prospectus to purchasers. Each Holder further agrees to furnish promptly to the Company in writing all information required from time to time to make the information previously furnished by such Holder not misleading.

Each Holder agrees that, upon receipt of any notice from the Company of the happening of any event of the kind described in Section 4(f)(iii) or 4(f)(iv) hereof, such Holder will immediately discontinue disposition of Registrable Shares pursuant to a Registration Statement until such Holder's receipt of copies of the supplemented or amended Prospectus. If so directed by the Company, such Holder will deliver to the Company (at the reasonable expense of the Company) all copies in its possession, other than permanent file copies then in such Holder's possession, of the Prospectus covering such Registrable Shares current at the time of receipt of such notice.

## 5. Black-Out Period.

(a) Subject to the provisions of this Section 5 and a good faith determination by a majority of the Board of Directors of the Company that it is in the best interests of the Company to suspend the use of the Registration Statement, following the effectiveness of a Registration Statement (and the filings with any international, federal or state securities commissions), the Company, by written notice to the Holders, may direct the Holders to suspend sales of the Registrable Shares pursuant to a Registration Statement for such times as the Company reasonably may determine is necessary and advisable (but in no event for more than an aggregate of ninety (90) days in any twelve (12)-month period commencing on the Closing Time), if any of the following events shall occur: (i) an Underwritten Offering of primary shares by the Company where the Company is advised by the representative of the underwriters for such Underwritten Offering that the sale of Registrable Shares pursuant to the Registration Statement would have a material adverse effect on the Company's primary offering; (ii) pending negotiations relating to, or the consummation of, a transaction or the occurrence of an event (x) that would require additional disclosure of material information by the Company in the Registration Statement (or such filings) and which has not been so disclosed, (y) as to which the Company has a bona fide business purpose for preserving confidentiality, or (z) that renders the Company unable to comply with Commission requirements, in each case under circumstances that would make it impractical or inadvisable to cause the Registration Statement (or such filings) to become effective or to promptly amend or supplement the Registration Statement on a

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post-effective basis, as applicable; or (iii) the Board of Directors of the Company shall have determined in good faith that it is in the best interests of the Company and its stockholders to suspend the use of the Registration Statement for reasons other than as set forth in subparagraphs (i) and (ii) above. Upon the occurrence of any such suspension, the Company shall use its commercially reasonable efforts to cause the Registration Statement to become effective or to promptly amend or supplement the Registration Statement on a post-effective basis or to take such action as is necessary to make resumed use of the Registration Statement compatible with the Company's best interests, as applicable, so as to permit the Holders to resume sales of the Registrable Shares as soon as possible.

(b) In the case of an event that causes the Company to suspend the effectiveness of a Registration Statement (a "Suspension Event"), the Company shall give written notice (a "Suspension Notice") to the Holders to suspend sales of the Registrable Shares and such notice shall state that such suspension shall continue only for so long as the Suspension Event or its effect is continuing and the Company is taking all reasonable steps to terminate suspension of the effectiveness of the Registration Statement as promptly as possible. The Holders shall not effect any sales of the Registrable Shares pursuant to such Registration Statement (or such filings) at any time after it has received a Suspension Notice from the Company and prior to receipt of an End of Suspension Notice (as defined below). If so directed by the Company, each Holder will deliver to the Company (at the expense of the Company) all copies other than permanent file copies then in such Holder's possession of the Prospectus covering the Registrable Shares at the time of receipt of the Suspension Notice. The Holders may recommence effecting sales of the Registrable Shares pursuant to the Registration Statement (or such filings) following further notice to such effect (an "End of Suspension Notice") from the Company, which End of Suspension Notice shall be given by the Company to the Holders in the manner described above promptly following the conclusion of any Suspension Event and its effect.

(c) Notwithstanding any provision herein to the contrary, if the Company shall give a Suspension Notice pursuant to this Section 5, the Company agrees that it shall extend the period of time during which the applicable Registration Statement shall be maintained effective pursuant to this Agreement by the number of days during the period from the date of the giving of the Suspension Notice to and including the date when Holders shall have received the End of Suspension Notice and copies of the supplemented or amended Prospectus necessary to resume sales.

## 6. Indemnification and Contribution.

(a) The Company agrees to indemnify and hold harmless (i) each Holder, (ii) each Person, if any, who controls (within the meaning of Section 15 of the Securities Act or Section 20(a) of the Exchange Act), any of the foregoing (any of the Persons referred to in this clause (ii) being hereinafter referred to as a "Controlling Person"), and (iii) the respective officers, directors, partners, employees, representatives and agents of each Holder or any Controlling Person (any Person referred to in clause (i), (ii) or (iii) may hereinafter be referred to as a "Purchaser Indemnitee") from and against any and all losses, claims, damages, judgments, actions, reasonable out-of-pocket expenses, and other liabilities (the "Liabilities"), including, without limitation and as incurred, reimbursement of all reasonable costs of investigating, preparing, pursuing or defending any claim or action, or any investigation or proceeding by any

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governmental agency or body, commenced or threatened, including the reasonable fees and expenses of outside counsel to any Purchaser Indemnitee, joint or several, directly or indirectly related to, based upon, arising out of or in connection with any untrue statement or alleged untrue statement of a material fact

contained in any Registration Statement or Prospectus (as amended or supplemented if the Company shall have furnished to such Purchaser Indemnitee any amendments or supplements thereto), or any preliminary Prospectus or any other document prepared by the Company used to sell the Registrable Shares, or any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading, except insofar as such Liabilities arise out of or are based upon (i) any untrue statement or omission or alleged untrue statement or omission made in reliance upon and in conformity with information relating to any Purchaser Indemnitee furnished to the Company or any underwriter in writing by such Purchaser Indemnitee expressly for use therein, or (ii) any untrue statement contained in or omission from a preliminary Prospectus if a copy of the Prospectus (as then amended or supplemented, if the Company shall have furnished to or on behalf of the Holder participating in the distribution relating to the relevant Registration Statement any amendments or supplements thereto) was not sent or given by or on behalf of such Holder to the Person asserting any such Liabilities who purchased Shares, if the untrue statement contained in or omitted from such preliminary Prospectus was corrected in the Prospectus (or the Prospectus as amended or supplemented). The indemnity provided for herein shall remain in full force and effect regardless of any investigation made by or on behalf of any Purchaser Indemnitee.

(b) In connection with any Registration Statement in which a Holder is participating, such Holder agrees, severally and not jointly, to indemnify and hold harmless the Company, each Person who controls the Company within the meaning of Section 15 of the Securities Act or Section 20(a) of the Exchange Act and the respective partners, directors, officers, members, representatives, employees and agents of such Person or Controlling Person to the same extent as the foregoing indemnity from the Company to each Purchaser Indemnitee, but only with reference to untrue statements or omissions or alleged untrue statements or omissions made in reliance upon and in strict conformity with information relating to such Purchaser Indemnitee furnished to the Company in writing by such Purchaser Indemnitee expressly for use in any Registration Statement or Prospectus, any amendment or supplement thereto, or any preliminary Prospectus. The liability of any Purchaser Indemnitee pursuant to this paragraph shall in no event exceed the net proceeds received by such Purchaser Indemnitee from sales of Registrable Shares giving rise to such obligations. If the Holder elects to include Registrable Shares in an Underwritten Offering, the Holder shall be required to agree to such customary indemnification provisions as may reasonably be required by the underwriter in connection with such Underwritten Offering.

(c) If any suit, action, proceeding (including any governmental or regulatory investigation), claim or demand shall be brought or asserted against any Person in respect of which indemnity may be sought pursuant to paragraph (a) or (b) above, such Person (the "Indemnified Party"), shall promptly notify the Person against whom such indemnity may be sought (the "Indemnifying Party"), in writing of the commencement thereof (but the failure to so notify an Indemnifying Party shall not relieve it from any liability which it may have under this Section 6, except to the extent the Indemnifying Party is materially prejudiced by the failure to give notice), and the Indemnifying Party, upon request of the Indemnified Party, shall retain

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counsel reasonably satisfactory to the Indemnified Party to represent the Indemnified Party and any others the Indemnifying Party may reasonably designate in such proceeding and shall assume the defense of such proceeding and pay the reasonable fees and expenses actually incurred by such counsel related to such proceeding. Notwithstanding the foregoing, in any such proceeding, any Indemnified Party shall have the right to retain its own counsel, but the fees and expenses of such counsel shall be at the expense of such Indemnified Party, unless (i) the Indemnifying Party and the Indemnified Party shall have mutually agreed in writing to the contrary, (ii) the Indemnifying Party failed within a reasonable time after notice of commencement of the action to assume the defense and employ counsel reasonably satisfactory to the Indemnified Party, (iii) the Indemnifying Party and its counsel do not pursue in a reasonable manner the defense of such action or (iv) the named parties to any such action (including any impleaded parties), include both such Indemnified Party and the Indemnifying Party, or any affiliate of the Indemnifying Party, and such Indemnified Party shall have been reasonably advised by counsel that, either (x) there may be one or more legal defenses available to it which are different from or additional to those available to the Indemnifying Party or such affiliate of the Indemnifying Party or (y) a conflict may exist between such Indemnified Party and the Indemnifying Party or such affiliate of the Indemnifying Party, then the Indemnifying Party shall not have the right to assume nor direct the defense of such action on behalf of such Indemnified Party, it being understood, however, that the Indemnifying Party shall not, in connection with any one such action or separate but substantially similar or related actions arising out of the same general allegations or circumstances, be liable for the fees and expenses of more than one (1) separate firm of attorneys (in addition to any local counsel), for all such indemnified parties, which firm shall be designated in writing by those indemnified parties who sold a majority of the Registrable Shares sold by all such indemnified parties and any such separate firm for the Company, the directors, the officers and such control Persons of the Company as shall be designated in writing by the Company. The Indemnifying Party shall not be liable for any settlement of any proceeding effected without its written consent, which consent shall not be unreasonably withheld or delayed, but if settled with such consent or if there be a final judgment for the plaintiff, the Indemnifying Party agrees to indemnify any Indemnified Party from and against any loss or liability by reason of such settlement or judgment. No Indemnifying Party shall, without the prior written consent of the Indemnified Party, effect any settlement of any pending or threatened proceeding in respect of which any Indemnified Party is or could have been a party and indemnity could have been sought hereunder by such Indemnified Party, unless such settlement includes an unconditional release of such Indemnified Party from all liability on claims that are the subject matter of such proceeding.

(d) If the indemnification provided for in paragraphs (a) and (b) of this Section 6 is for any reason held to be unavailable to an Indemnified Party in respect of any Liabilities referred to therein (other than by reason of the exceptions provided therein) or is insufficient to hold harmless a party indemnified thereunder, then each Indemnifying Party under such paragraphs, in lieu of indemnifying such Indemnified Party thereunder, shall contribute to the amount paid or payable by such Indemnified Party as a result of such Liabilities (i) in such proportion as is appropriate to reflect the relative benefits of the Indemnified Party on the one hand and the Indemnifying Parties on the other in connection with the statements or omissions that resulted in such Liabilities, or (ii) if the allocation provided by clause (i) above is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause (i) above but also the relative fault of the Indemnifying Parties and

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the Indemnified Party, as well as any other relevant equitable considerations. The relative fault of the Company, on the one hand, and any Purchaser Indemnitees, on the other, shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the Company or by such Purchaser Indemnitees and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission.

(e) The parties agree that it would not be just and equitable if contribution pursuant to this Section 6 were determined by *pro rata* allocation (even if such indemnified parties were treated as one entity for such purpose), or by any other method of allocation that does not take account of the equitable considerations referred to in paragraph 6(d) above. The amount paid or payable by an Indemnified Party as a result of any Liabilities referred to paragraph 6(d) shall be deemed to include, subject to the limitations set forth above, any reasonable legal or other expenses actually incurred by such Indemnified Party

in connection with investigating or defending any such action or claim. Notwithstanding the provisions of this Section 6, in no event shall a Purchaser Indemnitee be required to contribute any amount in excess of the amount by which proceeds received by such Purchaser Indemnitee from sales of Registrable Shares exceeds the amount of any damages that such Purchaser Indemnitee has otherwise been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission. For purposes of this Section 6, each Person, if any, who controls (within the meaning of Section 15 of the Act or Section 20(a) of the Exchange Act) a Holder shall have the same rights to contribution as such Holder, as the case may be, and each Person, if any, who controls (within the meaning of Section 15 of the Act or Section 20(a) of the Exchange Act) the Company, and each officer, director, partner, employee, representative, agent or manager of the Company shall have the same rights to contribution as the Company. Any party entitled to contribution will, promptly after receipt of notice of commencement of any action, suit or proceeding against such party in respect of which a claim for contribution may be made against another party or parties, notify each party or parties from whom contribution may be sought, but the omission to so notify such party or parties shall not relieve the party or parties from whom contribution may be sought from any obligation it or they may have under this Section 6 or otherwise, except to the extent that any party is materially prejudiced by the failure to give notice. No Person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act), shall be entitled to contribution from any Person who was not guilty of such fraudulent misrepresentation.

(f) The indemnity and contribution agreements contained in this Section 6 will be in addition to any liability which the indemnifying parties may otherwise have to the indemnified parties referred to above. The Purchaser Indemnitee's obligations to contribute pursuant to this Section 6 are several in proportion to the respective number of Shares sold by each of the Purchaser Indemnitees hereunder and not joint.

7. Market Stand-off Agreement.

Each Holder hereby agrees that it shall not, to the extent requested by the Company or an underwriter of securities of the Company, directly or indirectly sell, offer to sell (including without limitation any short sale), grant any option or otherwise transfer or dispose of any

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Registrable Shares or other shares of Common Stock of the Company or any securities convertible into or exchangeable or exercisable for shares of Common Stock of the Company then owned by such Holder (other than to donees or partners of the Holder who agree to be similarly bound) for a period of up to ninety (90) days in connection with (i) the effective date of the IPO Registration Statement of the Company filed under the Securities Act or (ii) the date of an Underwritten Offering by the Company pursuant to a shelf registration statement of the Company filed under the Securities Act; *provided, however*, that:

(a) with respect to the up to 90-day restriction in connection with the effective date of the IPO Registration Statement, such agreement shall not be applicable to Registrable Shares sold pursuant to such IPO Registration Statement;

(b) all executive officers and directors of the Company then holding shares of Common Stock or securities convertible into or exchangeable or exercisable for shares of Common Stock of the Company shall enter into similar agreements for not less than the entire time period required of the Holders hereunder; and

(c) the Holders shall be allowed any concession or proportionate release allowed to any executive officer or director that entered into similar agreements.

In order to enforce the foregoing covenant, the Company shall have the right to place restrictive legends on the certificates representing the securities subject to this Section 7 and to impose stop transfer instructions with respect to the Registrable Shares and such other securities of each Holder (and the securities of every other Person subject to the foregoing restriction) until the end of such period.

8. Termination of the Company's Obligations.

The Company shall have no further obligations pursuant to this Agreement at such time as no Registrable Shares are outstanding, provided, however, that the Company's obligations under Sections 3, 6 and 9 through and including 19 of this Agreement shall remain in full force and effect following such time.

9. Amendments and Waivers.

The provisions of this Agreement, including the provisions of this sentence, may not be amended, modified or supplemented, and waivers or consents to or departures from the provisions hereof may not be given, without the written consent of the Company and Holders beneficially owning not less than fifty percent (50%) of the then outstanding Registrable Shares. Notwithstanding the foregoing, a waiver or consent to or departure from the provisions hereof with respect to a matter that relates exclusively to the rights of a Holder whose securities are being sold pursuant to a Registration Statement and that does not directly or indirectly affect, impair, limit or compromise the rights of other Holders may be given by such Holder; *provided* that the provisions of this sentence may not be amended, modified or supplemented except in accordance with the provisions of the immediately preceding sentence.

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10. Notices.

All notices and other communications, provided for or permitted hereunder shall be made in writing by delivered by facsimile (with receipt confirmed), overnight courier or registered or certified mail, return receipt requested, or by telegram

(a) if to a Holder, at the most current address given by the transfer agent and registrar of the Shares to the Company; and

(b) if to the Company, at the offices of the Company at 3305 Flamingo Drive, Suite 100, Vero Beach, Florida 32963, Attention: Chief Executive Officer.

11. Successors and Assigns.



This Agreement shall inure to the benefit of and be binding upon the successors and assigns of each of the parties hereto.

12. Counterparts.

This Agreement may be executed in any number of counterparts and by the parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

13. Governing Law.

**THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, AS APPLIED TO CONTRACTS MADE AND PERFORMED WITHIN THE STATE OF NEW YORK, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF ANY STATE COURT IN THE STATE OF NEW YORK ANY FEDERAL COURT SITTING IN NEW YORK IN RESPECT OF ANY SUIT, ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT, AND IRREVOCABLY ACCEPTS FOR ITSELF AND IN RESPECT OF ITS PROPERTY, GENERALLY AND UNCONDITIONALLY, THE JURISDICTION OF THE AFORESAID COURTS. EACH OF THE PARTIES HERETO IRREVOCABLY WAIVES, TO THE FULLEST EXTENT IT MAY EFFECTIVELY DO SO UNDER APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF THE VENUE OF ANY SUCH SUIT, ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT AND ANY CLAIM THAT ANY SUCH SUIT, ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.**

14. Severability.

If any term, provision, covenant or restriction of this Agreement is held by a court of competent jurisdiction to be invalid, illegal, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions set forth herein shall remain in full force and effect and shall in no way be affected, impaired or invalidated, and the parties hereto shall use their

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commercially reasonable efforts to find and employ an alternative means to achieve the same or substantially the same result as that contemplated by such term, provision, covenant or restriction. It is hereby stipulated and declared to be the intention of the parties hereto that they would have executed the remaining terms, provisions, covenants and restrictions without including any of such that may be hereafter declared invalid, illegal, void or unenforceable.

15. Entire Agreement.

This Agreement, together with the Placement Agreement and Subscription Agreements, is intended by the parties hereto as a final expression of their agreement, and is intended to be a complete and exclusive statement of the agreement and understanding of the parties hereto in respect of the subject matter contained herein and therein.

16. Registrable Shares Held by the Company or its Affiliates.

Whenever the consent or approval of Holders of a specified percentage of Registrable Shares is required hereunder, Registrable Shares held by the Company or its Affiliates shall not be counted in determining whether such consent or approval was given by the Holders of such required percentage.

17. Survival.

This Agreement is intended to survive the consummation of the transactions contemplated by the Placement Agreement and Subscription Agreements. The indemnification and contribution obligations under Section 6 of this Agreement shall survive the termination of the Company's obligations under Section 2 of this Agreement.

18. Headings.

The headings in this Agreement are for convenience of reference only and shall not limit or otherwise affect the provisions of this Agreement. All references made in this Agreement to "Section" refer to such Section of this Agreement, unless expressly stated otherwise.

19. Attorneys' Fees.

In any action or proceeding brought to enforce any provision of this Agreement, or where any provision hereof is validly asserted as a defense, the prevailing party, as determined by the court, shall be entitled to recover its reasonable attorneys' fees in addition to any other available remedy.

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IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

**BIMINI MORTGAGE MANAGEMENT, INC.**

By:           /s/ JEFFREY J. ZIMMER  
Name: Jeffrey J. Zimmer  
Title: President & CEO

**FLAGSTONE SECURITIES, LLC** (as attorney-in-fact pursuant to Paragraph 4 of the Subscription Agreement for each of the Initial Holders listed on Schedule A hereto)

By:           /s/ W. COLEMAN BITTING          

Name: W. Coleman Bitting

Title: Managing Director

**SCHEDULE A**

**INITIAL HOLDERS**

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EMPLOYMENT AGREEMENT

EMPLOYMENT AGREEMENT dated as of April 12, 2004, by and between Bimini Mortgage Management Inc. with its principal place of business at 3305 Flamingo Drive, Suite 100, Vero Beach, Florida 32963 (the "Company"), and Jeffrey J. Zimmer, residing at the address set forth on the signature page hereof (the "Executive").

WHEREAS, the parties have previously entered into an employment agreement as of December 18, 2003, and wish to amend and completely restate such agreement as forth herein; and

WHEREAS, the Company wishes to employ the Executive, and the Executive wishes to accept such offer, on the terms set forth below:

Accordingly, the parties hereto agree as follows:

1. Term. The Company hereby employs the Executive, and the Executive hereby accepts such employment, for an initial term commencing as of the date hereof and continuing for a three-year period, unless sooner terminated in accordance with the provisions of Section 4 or Section 5; with such employment to continue for successive one-year periods in accordance with the terms of this Agreement (subject to termination as aforesaid) unless either party notifies the other party of non-renewal in writing prior to six months before the expiration of the initial term and each annual renewal, as applicable (the period during which the Executive is employed hereunder being hereinafter referred to as the "Term").

2. Duties. During the Term, the Executive shall be employed by the Company as President of the Company and Chief Executive Officer of the Company, and, for so long as he

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continues to be appointed as such, shall serve as Chairman of the Board of Directors of the Company (the "Board"), and, as such, the Executive shall faithfully perform for the Company the duties of said offices and shall perform such other duties of an executive, managerial or administrative nature as shall be specified and designated from time to time by the Board. The Executive shall devote substantially all of his business time and effort to the performance of his duties hereunder; provided that in no event shall this sentence prohibit the Executive from performing personal and charitable activities, and any other business interests as may be approved by the Board. It is expressly acknowledged and understood that the Executive may in the future seek to form and operate other companies, which may include mortgage "REITs" which are not directly competitive with the Company, and it is agreed that the Board will consider promptly and in good faith whether (i) any such proposed venture is competitive and (ii) to permit the Executive to pursue such venture provided that all of the Executive's duties and obligations hereunder shall be capable, in the reasonable judgment of the Board, of being fully and satisfactorily performed during the remaining Term.

3. Compensation.

3.1 Salary. The Company shall pay the Executive during the Term a salary at a minimum rate of \$150,000 per annum (the "Annual Salary"), in accordance with the customary payroll practices of the Company applicable to senior executives. At such time as a registration statement on Form S-11 covering the initial public offering of the Company's Class A Common Stock has been declared effective by the U.S. Securities and Exchange Commission (the "SEC"), the Executive's Annual Salary shall be increased to \$400,000. At least annually, the Board shall review the Executive's Annual Salary and may provide for such increases therein as it may in its discretion deem appropriate. The Board shall also consider increases to the Executive's Annual

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Salary following the completion of each capital raising event and following such time as a registration statement on Form S-11 covering the resale of the Company's Class A Common Stock has been declared effective by the SEC. (Any such increased salary shall constitute the "Annual Salary" as of the time of the increase.)

3.2 Bonus. During the Term, in addition to the Annual Salary, for each fiscal year of the Company ending during the Term, the Executive shall have the opportunity to receive an annual bonus under the Company's bonus plans or arrangements as in effect from time to time. In providing for bonuses, the Board shall consider, among other things, whether the completion of a capital raising event should result in the payment of a bonus. In addition, the Executive shall receive a \$250,000 cash bonus at the time a registration statement on Form S-11 covering resale of the Company's Class A Common Stock issued in November 2003 has been declared effective by the SEC.

3.3 Benefits - In General. Except with respect to benefits of a type otherwise provided for under Section 3.4, the Executive shall be permitted during the Term to participate in any group life, hospitalization or disability insurance plans, health programs, retirement plans, fringe benefit programs and similar benefits that may be available to other senior executives of the Company generally, on the same terms as such other executives, in each case to the extent that the Executive is eligible under the terms of such plans or programs.

3.4 Certain Specific Benefits.

(a) The Executive, shall be covered by reasonable medical, vision and dental insurance, to be provided at no cost to the Executive. The Executive shall be covered by life insurance in an amount no less than \$2,500,000, at no cost to the Executive, to the extent such insurance may be obtained at reasonable rates; provided that the Executive cooperates as

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reasonably requested by the Company in the Company's efforts to obtain such insurance. The Executive shall be covered by long-term disability insurance, to provide replacement income in an amount no less than 100% of Annual Salary, at no cost to the Executive, to the extent such insurance may be obtained at reasonable rates; provided that the Executive cooperates as reasonably requested by the Company in the Company's efforts to obtain such insurance.

(b) The Executive shall be entitled to vacation of no less than 25 days per year, personal days of no less than five days per year and holidays of no less than 14 days per year, to be credited in accordance with regular Company policies.

All of the foregoing shall be implemented within a reasonable time after the date hereof.

3.5 Expenses - In General. The Company shall pay or reimburse the Executive for all ordinary and reasonable out-of-pocket expenses actually incurred (and, in the case of reimbursement, paid) by the Executive during the Term in the performance of the Executive's services under this Agreement; provided that the Executive submits proof of such expenses, with the properly completed forms as prescribed from time to time by the Company. Expense reimbursement reports should generally be submitted to the Company within 60 days of the payment by the Executive of the out-of-pocket expense; provided that no report for reimbursement will be accepted after more than six months' time, other than in the case of unusual circumstances as may be determined by the Board.

3.6 Certain Legal Expenses. The Company shall pay directly or reimburse the Executive for all reasonable legal fees and expenses incurred by the Executive in connection with the review, negotiation and execution of this Agreement.

3.7 Automobile. During the Term, the Executive shall be permitted the use of an automobile reasonably commensurate with the Executive's positions with the Company.

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4. Termination upon Death or Disability. If the Executive dies during the Term, the Term shall terminate as of the date of death, and the obligations of the Company to or with respect to the Executive shall terminate in their entirety upon such date except as otherwise provided under this Section 4. If the Executive by virtue of ill health or other disability is unable to perform substantially and continuously the duties assigned to him for more than 180 consecutive or non-consecutive days out of any consecutive 12-month period, the Company shall have the right, to the extent permitted by law, to terminate the employment of the Executive upon notice in writing to the Executive. Upon termination of employment due to death or disability, (i) the Executive (or the Executive's estate or beneficiaries in the case of the death of the Executive) shall be entitled to receive any Annual Salary and other benefits earned and accrued under this Agreement prior to the date of termination (and reimbursement under this Agreement for expenses incurred prior to the date of termination); (ii) subject to Section 5.2(c), for a period of three years after termination of employment, the Executive (if applicable), and in the event of his death, his spouse (or life partner) and his dependents, shall receive such continuing coverage under the group health plans they would have received under this Agreement (but at such costs no higher than as in effect immediately preceding such termination) as would have applied in the absence of such termination; (iii) without duplication of any amounts due under clause (i), the Executive shall receive an amount equal to the annual bonus that, in the absence of such termination, would have been payable for the fiscal year in which termination occurs, payable at such time as would have applied in the absence of such termination, with such amount to be multiplied by a fraction (x) the numerator of which is the number of days in the fiscal year preceding the termination and (y) the denominator of which is 365; (iv) all outstanding unvested equity-based awards (including stock options and restricted

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stock) held by the Executive shall fully vest and become immediately exercisable, as applicable, and, in the case of options, shall continue to be exercisable for their full terms; and (v) the Executive (or the Executive's estate or beneficiaries in the case of the death of the Executive) shall have no further rights to any other compensation or benefits hereunder, or any other rights hereunder (but, for the avoidance of doubt, shall receive such disability and death benefits as may be provided under the Company's plans and arrangements in accordance with their terms).

5. Certain Terminations of Employment; Certain Benefits.

5.1 Termination by the Company for Cause; Termination by the Executive without Good Reason.

(a) For purposes of this Agreement, "Cause" shall mean the Executive's:

- (i) conviction of (or pleading nolo contendere to) a felony (but in no event including a traffic or similar violation), a crime of moral turpitude, dishonesty, breach of trust or unethical business conduct, or any crime involving the Company;
- (ii) engagement in the performance of his duties hereunder, in willful misconduct, willful or gross neglect, fraud, misappropriation or embezzlement;
- (iii) repeated failure to adhere to the directions of the Board, to adhere to the Company's policies and practices or to devote his business time and efforts to the Company as required by Section 2;
- (iv) willful and continued failure to substantially perform his duties properly assigned to him (other than any such failure resulting from his Disability) after demand for substantial performance is delivered by the Company specifically identifying the manner in which the Company believes the Executive has not substantially performed such duties;
- (v) material breach of any of the provisions of Section 6; or
- (vi) breach in any material respect of the terms and provisions of this Agreement and failure to cure such breach within 21 days following written notice from the Company specifying such breach;

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provided that the Company shall not be permitted to terminate the Executive for Cause except on written notice given to the Executive at any time following the occurrence of any of the events described in clauses (i), (ii) or (v) above and on written notice given to the Executive at any time not more than 30 days following the occurrence of any of the events described in clause (iii), (iv) or (vi) above (or, if later, the Company's knowledge thereof). No termination for Cause shall be effective unless the Board makes a Cause determination after notice to the Executive and the Executive has been provided with the opportunity (with counsel of his choice) to contest the determination at a meeting of the Board.

(b) The Company may terminate the Executive's employment hereunder for Cause, and the Executive may terminate his employment on at least 30 days' and not more than 60 days' written notice given to the Company. If the Company terminates the Executive for Cause, or the Executive terminates his employment and the termination by the Executive is not for Good Reason in accordance with Section 5.2, (i) the Executive shall receive Annual Salary and other benefits (including any bonus for a fiscal year completed before termination and awarded but not yet paid, but not any other bonus) earned and accrued under this Agreement prior to the termination of employment (and reimbursement under this Agreement for expenses incurred prior to the termination of employment); (ii) in the case of such a termination by the Executive, he shall receive an amount equal to the annual bonus that, in the absence of such termination, would have been payable for the fiscal year in which termination occurs, payable at such time as would have applied in the absence of such termination, with such amount to be multiplied by a fraction (x) the numerator of which is the number of days in the fiscal year preceding the termination and (y) the denominator of which is 365; and (iii) the Executive shall

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have no further rights to any other compensation or benefits hereunder on or after the termination of employment, or any other rights hereunder.

5.2 Termination by the Company without Cause; Termination by the Executive for Good Reason.

- (a) For purposes of this Agreement, "Good Reason" shall mean, unless otherwise consented to by the Executive,
- (i) the material reduction of the Executive's authority, duties and responsibilities, the failure to continue the Executive's appointment as Chairman of the Board, or the assignment to the Executive of duties materially inconsistent with the Executive's position or positions with the Company;
  - (ii) a reduction in Annual Salary of the Executive;
  - (iii) the relocation of the Executive's office to more than 25 miles from Vero Beach, Florida;
  - (iv) the Company's failure to pay the Executive any amounts otherwise due hereunder or under any plan, policy, program, agreement, arrangement or other commitment of the Company; or
  - (v) the Company's material and willful breach of this Agreement.

Notwithstanding the foregoing, (i) Good Reason shall not be deemed to exist unless notice of termination on account thereof (specifying a termination date no later than 30 days from the date of such notice) is given no later than 30 days after the time at which the event or condition purportedly giving rise to Good Reason first occurs or arises; and (ii) if there exists (without regard to this clause (ii)) an event or condition that constitutes Good Reason, the Company shall have ten days from the date notice of such a termination is given to cure such event or condition and, if the Company does so, such event or condition shall not constitute Good Reason hereunder.

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(b) The Company may terminate the Executive's employment at any time for any reason or no reason and the Executive may terminate the Executive's employment with the Company for Good Reason. If the Company terminates the Executive's employment and the termination is not covered by Section 4 or 5.1, or the Executive terminates his employment for Good Reason:

- (i) the Executive shall receive Annual Salary and other benefits (including any bonus for a fiscal year completed before termination, but not any other bonus) earned and accrued under this Agreement prior to the termination of employment (and reimbursement under this Agreement for expenses incurred prior to the termination of employment);
- (ii) if (and only if) the Executive provides a general release in a form reasonably acceptable to the Company which is or has become irrevocable,
  - (A) the Executive shall receive (I) a single-sum cash payment equal to 300% of the sum of (x) the Executive's Annual Salary (as in effect immediately before such termination) plus (y) the average bonus to the Executive for the three fiscal years ending coincident with or immediately preceding such termination (such amount to be deemed to be \$500,000 if termination occurs before the end of the first year, and, in addition, such amount in all events to include for the first year any \$250,000 bonus payable in accordance with the last sentence of Section 3.2), payable no later than ten days after such termination (but subject to the release provided for above having become irrevocable), (II) subject to Section 5.2(c), for a period of three years after termination of employment, such continuing coverage under the group health plans the Executive would have received under this Agreement (but at such costs (if any) to the Executive no higher than as in effect immediately preceding such termination) as would have applied in the absence of such termination; (III) an amount equal to the annual bonus that, in the absence of such termination, would have been payable for the fiscal year in which termination occurs, payable at such time as would have applied in the absence of such termination, with such amount to be multiplied by a fraction (x) the numerator of which is the number of days in the fiscal year preceding the termination and (y) the denominator of which is 365; and

- (IV) at the Company's cost (not to exceed \$7,500), outplacement services reasonably selected by the Company; and
- (B) all outstanding unvested equity-based awards (including stock options and restricted stock) held by the Executive shall fully vest and become immediately exercisable, as applicable, and, in the case of options, shall continue to be exercisable for their full terms; and
- (iii) the Executive shall have no further rights to any other compensation or benefits hereunder on or after the termination of employment, or any other rights hereunder.

(c) Notwithstanding clause (ii) of the third sentence of Section 4 or clause (ii)(A)(II) of the second sentence of Section 5.2(b), (i) nothing herein shall restrict the ability of the Company to amend or terminate with general application the plans and programs referred to in such clauses from time to time in its sole discretion, and (ii) the Company shall in no event be required to provide any benefits otherwise required by such clauses after such time as the Executive becomes entitled to receive benefits of the same type from another employer or recipient of the Executive's services.

### 5.3 Change of Control.

(a) Without duplication of the foregoing, upon a "Change of Control" (as defined below) while the Executive is employed, all outstanding unvested equity-based awards (including stock options and restricted stock) shall fully vest and become immediately exercisable, as applicable. In addition, if, after a Change of Control, the Executive terminates his employment with the Company as of the three-month anniversary of the Change of Control, such termination shall be deemed a termination by the Executive for Good Reason covered by Section 5.2.

(b) For purposes of this Agreement, "Change in Control" shall mean the happening of any of the following:

- (i) any "person," including a "group" (as such terms are used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), but excluding the Company, any entity controlling, controlled by or under common control with the Company, any employee benefit plan of the Company or any such entity, and Executive and any "group" (as such term is used in Section 13(d)(3) of the Exchange Act) of which the Executive is a member) is or becomes the "beneficial owner" (as defined in Rule 13(d)(3) under the Exchange Act), directly or indirectly, of securities of the Company representing 30% or more of either (A) the combined voting power of the Company's then outstanding securities or (B) the then outstanding Common Stock of the Company (in either such case other than as a result of an acquisition of securities directly from the Company); provided, however, that, in no event shall a Change in Control be deemed to have occurred upon an initial public offering or a subsequent public offering of the Common Stock under the Securities Act of 1933, as amended; or
- (ii) any consolidation or merger of the Company where the stockholders of the Company, immediately prior to the consolidation or merger, would not, immediately after the consolidation or merger, beneficially own (as such term is defined in Rule 13d-3 under the Exchange Act), directly or indirectly, shares representing in the aggregate 50% or more of the combined voting power of the securities of the corporation issuing cash or securities in the consolidation or merger (or of its ultimate parent corporation, if any); or
- (iii) there shall occur (A) any sale, lease, exchange or other transfer (in one transaction or a series of transactions contemplated or arranged by any party as a single plan) of all or substantially all of the assets of the Company, other than a sale or disposition by the Company of all or substantially all of the Company's assets to an entity, at least 50% of the combined voting power of the voting securities of which are owned by "persons" (as defined above) in substantially the same proportion as their ownership of the Company immediately prior to such sale or (B) the approval by stockholders of the Company of any plan or proposal for the liquidation or dissolution of the Company; or
- (iv) the members of the Board at the beginning of any consecutive 24-calendar-month period (the "Incumbent Directors") cease for any reason other than due to death to constitute at least a majority of the members of the Board; provided that any director whose election, or nomination for election by the Company's stockholders, was approved by a vote of at least a majority of the

members of the Board then still in office who were members of the Board at the beginning of such 24-calendar-month period, shall be deemed to be an Incumbent Director.

### 6. Covenants of the Executive.

6.1 Covenant Against Competition; Other Covenants. The Executive acknowledges that (i) the principal business of the Company (which expressly includes for purposes of this Section 6 (and any related enforcement provisions hereof), its successors and assigns) is the acquiring, owning and selling residential mortgage-related securities and/or debt securities issued or guaranteed by the U.S. government, U.S. government sponsored or chartered enterprises or U.S. government agencies (such business herein being referred to as the "Business"); (ii) the Company is one of the limited number of persons who have developed such a business; (iii) the Company's Business is, in part, national in scope; (iv) the Executive's work for the Company has given and will continue to give him access to the confidential affairs and proprietary information of the Company; (v) the covenants and agreements of the Executive contained in this Section 6 are essential to the business and goodwill of the Company; and (vi) the Company would not have entered into this Agreement but for the covenants and agreements set forth in this Section 6. Accordingly, the Executive covenants and agrees that:

(a) By and in consideration of the salary and benefits to be provided by the Company hereunder, including the severance arrangements set forth herein, and further in consideration of the Executive's exposure to the proprietary information of the Company, the Executive covenants and agrees that, during the period commencing on the date hereof and ending one year following the date upon which the Executive shall cease to be an employee of the Company and its affiliates, he shall not in the United States, directly or indirectly, except with the prior approval of the Board, (i) engage in the Business (other than for the Company or its affiliates) or otherwise compete with the Company or its affiliates, (ii) render any services to

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any person, corporation, partnership or other entity (other than the Company or its affiliates) engaged in the elements of the Business, or (iii) become interested in any person, corporation, partnership or other entity (other than the Company or its affiliates) engaged in the elements of the Business, as a partner, shareholder, principal, agent, employee, consultant or in any other relationship or capacity; provided, however, that, notwithstanding the foregoing, the Executive may invest in securities of any entity, solely for investment purposes and without participating in the business thereof, if (A) such securities are traded on any national securities exchange or the National Association of Securities Dealers, Inc. Automated Quotation System, (B) the Executive is not a controlling person of, or a member of a group which controls, such entity and (C) the Executive does not, directly or indirectly, own 5% or more of any class of securities of such entity. Notwithstanding the foregoing, the restrictions in this Section 6(a) shall not apply upon and after (i) a termination covered by Section 5.2 or (ii) a termination by the Executive after a Change in Control. In addition, the restrictions of this Section 6(a) shall not apply to any existing investments or other activities of the Executive which have been disclosed in writing to the Board prior to the date hereof.

(b) During and after the period of the Executive's employment with the Company and its affiliates, the Executive shall keep secret and retain in strictest confidence, and shall not use for his benefit or the benefit of others, except in connection with the business and affairs of the Company and its affiliates, all confidential matters relating to the Company's Business and the business of any of its affiliates and to the Company and any of its affiliates, learned by the Executive heretofore or hereafter directly or indirectly from the Company or any of its affiliates (the "Confidential Company Information"); and shall not disclose such Confidential Company Information to anyone outside of the Company except with the

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Company's express written consent and except for Confidential Company Information which is at the time of receipt or thereafter becomes publicly known through no wrongful act of the Executive or is received from a third party not under an obligation to keep such information confidential and without breach of this Agreement.

(c) During the period commencing on the date hereof and ending one year following the date upon which the Executive shall cease to be an employee of the Company and its affiliates, (i) the Executive shall not, without the Company's prior written consent, directly or indirectly, knowingly (i) solicit or encourage to leave the employment or other service of the Company, or any of its affiliates, any employee or independent contractor thereof or (ii) hire (on behalf of the Executive or any other person or entity) any employee or independent contractor who has left the employment or other service of the Company or any of its affiliates within the one-year period which follows the termination of such employee's or independent contractor's employment or other service with the Company and its affiliates, and (ii) the Executive will not, whether for his own account or for the account of any other person, firm, corporation or other business organization, intentionally interfere with the Company's or any of its affiliates' relationship with, or endeavor to entice away from the Company or any of its affiliates, any person who during the Term is or was a customer or client of the Company or any of its affiliates.

(d) All memoranda, notes, lists, records, property and any other tangible product and documents (and all copies thereof), whether visually perceptible, machine-readable or otherwise, made, produced or compiled by the Executive or made available to the Executive concerning the business of the Company or its affiliates, (i) shall at all times be the property of the Company (and, as applicable, any affiliates) and shall be delivered to the Company at any

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time upon its request, and (ii) upon the Executive's termination of employment, shall be immediately returned to the Company (except that in all events the Executive may retain a copy of his contacts list).

6.2 Rights and Remedies upon Breach. The Executive acknowledges and agrees that any breach by him of any of the provisions of Section 6.1 (the "Restrictive Covenants") would result in irreparable injury and damage for which money damages would not provide an adequate remedy. Therefore, if the Executive breaches, or threatens to commit a breach of, any of the provisions of Section 6.1, the Company and its affiliates, in addition to, and not in lieu of, any other rights and remedies available to the Company and its affiliates under law or in equity (including, without limitation, the recovery of damages), shall have the right and remedy to have the Restrictive Covenants specifically enforced by any court having equity jurisdiction, including, without limitation, the right to an entry against the Executive of restraining orders and injunctions (preliminary, mandatory, temporary and permanent) against violations, threatened or actual, and whether or not then continuing, of such covenants.

## 7. Other Provisions.

7.1 Severability. The Executive acknowledges and agrees that (i) he has had an opportunity to seek advice of counsel in connection with this Agreement and (ii) the Restrictive Covenants are reasonable in geographical and temporal scope and in all other respects. If it is determined that any of the provisions of this Agreement, including, without limitation, any of the Restrictive Covenants, or any part thereof, is invalid or unenforceable, the remainder of the provisions of this Agreement shall not thereby be affected and shall be given full effect, without regard to the invalid portions.

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7.2 Duration and Scope of Covenants. If any court or other decision-maker of competent jurisdiction determines that any of the Executive's covenants contained in this Agreement, including, without limitation, any of the Restrictive Covenants, or any part thereof, is unenforceable because of the

duration or geographical scope of such provision, then, after such determination has become final and unappealable, the duration or scope of such provision, as the case may be, shall be reduced so that such provision becomes enforceable and, in its reduced form, such provision shall then be enforceable and shall be enforced.

7.3 Enforceability; Jurisdiction; Arbitration.

(a) The Company and the Executive intend to and hereby confer jurisdiction to enforce the Restrictive Covenants set forth in Section 6 upon the courts of any jurisdiction within the geographical scope of the Restrictive Covenants. If the courts of any one or more of such jurisdictions hold the Restrictive Covenants wholly unenforceable by reason of breadth of scope or otherwise it is the intention of the Company and the Executive that such determination not bar or in any way affect the Company's right, or the right of any of its affiliates, to the relief provided above in the courts of any other jurisdiction within the geographical scope of such Restrictive Covenants, as to breaches of such Restrictive Covenants in such other respective jurisdictions, such Restrictive Covenants as they relate to each jurisdiction's being, for this purpose, severable, diverse and independent covenants, subject, where appropriate, to the doctrine of res judicata.

(b) Any controversy or claim arising out of or relating to this Agreement or the breach of this Agreement (other than a controversy or claim arising under Section 6, to the extent necessary for the Company (or its

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affiliates, where applicable) to avail itself of the rights and remedies referred to in Section 6.2) that is not resolved by the Executive and the Company (or its affiliates, where applicable) shall be submitted to arbitration in Vero Beach or Palm Beach, Florida in accordance with Florida law and the procedures of the American Arbitration Association. The determination of the arbitrator(s) shall be conclusive and binding on the Company (or its affiliates, where applicable) and the Executive and judgment may be entered on the arbitrator(s)' award in any court having jurisdiction. In any action in which the Executive is the prevailing party, the Company shall pay the Executive's legal fees.

7.4 Indemnification and Insurance. The Company agrees to indemnify (in addition to any other indemnification provided to the Executive under any separate agreement or the by-laws of the Company) the Executive to the fullest extent permitted by applicable law, as the same exists and may hereafter be amended, from and against any and all losses, damages, claims, liabilities and expenses asserted against, or incurred or suffered by, the Executive (including the costs and expenses of legal counsel retained by the Company to defend the Executive and judgments, fines and amounts paid in settlement actually and reasonably incurred by or imposed on such indemnified party) with respect to any action, suit or proceeding, whether civil, criminal, administrative or investigative in which the Executive is made a party or threatened to be made a party, either with regard to his entering into this Agreement or in his capacity as an officer or director, or former officer or director, of the Company or any affiliate thereof for which he may serve in such capacity. Such indemnification shall continue after the Executive is no longer employed by the Company and shall inure to the benefit of his heirs, executors, and administrators. The Company also agrees to attempt to secure and maintain reasonable officers and directors liability insurance at reasonable rates, within a reasonable time after the date hereof, providing coverage for Executive, which coverage would continue after termination of

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employment for a reasonable time (but in no event for a shorter time than is applicable to any other senior executive of the Company).

7.5 Notices. Any notice or other communication required or permitted hereunder shall be in writing and shall be delivered personally, telegraphed, telexed, sent by facsimile transmission or sent by certified, registered or express mail, postage prepaid. Any such notice shall be deemed given when so delivered personally, telegraphed, telexed or sent by facsimile transmission or, if mailed, five days after the date of deposit in the United States mails as follows:

- (i) If to the Company, to:

Bimini Mortgage Management Inc.  
3305 Flamingo Drive, Suite 100  
Vero Beach, Florida 32963  
Attention: Chairman of the Compensation Committee of the Board of  
Directors

and

Bimini Mortgage Management Inc.  
3305 Flamingo Drive, Suite 100  
Vero Beach, Florida 32963  
Attention: Chief Financial Officer

with a copy to:

Clifford Chance US LLP  
200 Park Avenue  
New York, New York 10166  
Attention: Robert E. King, Jr.

- (ii) If to the Executive, to the address set forth on the signature page hereof.

Any such person may by notice given in accordance with this Section 7.4 to the other parties hereto designate another address or person for receipt by such person of notices hereunder.



7.6 **Entire Agreement.** This Agreement contains the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements, written or oral, with respect thereto.

7.7 **Waivers and Amendments.** This Agreement may be amended, superseded, canceled, renewed or extended, and the terms hereof may be waived, only by a written instrument signed by the parties or, in the case of a waiver, by the party waiving compliance. No delay on the part of any party in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any waiver on the part of any party of any such right, power or privilege nor any single or partial exercise of any such right, power or privilege, preclude any other or further exercise thereof or the exercise of any other such right, power or privilege.

7.8 **GOVERNING LAW.** THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF FLORIDA WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW.

7.9 **Assignment.** This Agreement, and the Executive's rights and obligations hereunder, may not be assigned by the Executive; any purported assignment by the Executive in violation hereof shall be null and void. In the event of any sale, transfer or other disposition of all or substantially all of the Company's assets or business, whether by merger, consolidation or otherwise, the Company may assign this Agreement and its rights hereunder.

7.10 **Withholding.** The Company shall be entitled to withhold from any payments or deemed payments any amount of tax withholding it determines to be required by law.

7.11 **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors, permitted assigns, heirs, executors and legal representatives.

7.12 **Counterparts.** This Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original but all such counterparts together shall constitute one and the same instrument. Each counterpart may consist of two copies hereof each signed by one of the parties hereto.

7.13 **Survival.** Anything contained in this Agreement to the contrary notwithstanding, the provisions of Sections 6, 7.3, 7.4 and 7.10, and the other provisions of this Section 7 (to the extent necessary to effectuate the survival of Sections 6, 7.3, 7.4 and 7.10), shall survive termination of this Agreement and any termination of the Executive's employment hereunder.

7.14 **Existing Agreements.** The Executive represents to the Company that he is not subject or a party to any employment or consulting agreement, non-competition covenant or other agreement, covenant or understanding which might prohibit him from executing this Agreement or limit his ability to fulfill his responsibilities hereunder, except that, as previously disclosed to the Board, the Executive may have certain non-solicitation and non-interference obligations to a former employer.

7.15 **Headings.** The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

7.16 **Parachutes.** If any amount payable to or other benefit receivable by the Executive pursuant to this Agreement is deemed to constitute a Parachute Payment (as defined below), alone or when added to any other amount payable or paid to or other benefit receivable or received by the Executive which is deemed to constitute a Parachute Payment (whether or not under an existing plan, arrangement or other agreement), and would result in the imposition on the Executive of an excise tax under Section 4999 of the Internal Revenue Code of 1986, as amended (the "Code"), then, in addition to any other benefits to which the Executive is entitled

under this Agreement, the Executive shall be paid by the Company an amount in cash equal to the sum of the excise taxes payable by the Executive by reason of receiving Parachute Payments plus the amount necessary to put the Executive in the same after-tax position (taking into account any and all applicable federal, state and local excise, income or other taxes at the highest applicable rates on such Parachute Payments and on any payments under this Section 7.16) as if no excise taxes had been imposed with respect to Parachute Payments. "Parachute Payment" shall mean a "parachute payment" as defined in Section 280G of the Code. The amount of any payment under this Section 7.16 shall be computed by a certified public accounting firm selected by the Company and reasonably acceptable to the Executive, subject to the last sentence of this Section 7.16. Notwithstanding any other provision of this Section 7.16, if a reduction in Parachute Payments by 10% or less would cause there not to be excise taxes imposed upon the Executive under Section 4999 of the Code (as determined by the accounting firm referred to above, but subject to the last sentence of this Section 7.16), then (i) no payments shall be made to the Executive under the foregoing provisions of this Section 7.16, and (ii) the payments and benefits provided under this Agreement shall be reduced to the extent necessary so that no excise taxes would be imposed upon the Executive. In the event that the Internal Revenue Service or a court, as applicable, finally and in a decision that has become unappealable, decides that the determinations by the accounting firm under this Section 7.16 are incorrect, then the parties shall within five business days take such corrective actions as are necessary to conform to such final decision; provided that (i) the Executive shall not initiate any proceeding or other contests regarding these matters, other than at the direction of the Company, and shall provide notice to the Company of any proceeding or other contest regarding these matters initiated by the Internal Revenue Service, and (ii) the Company shall be entitled to direct and control all such proceeding

and other contests, if it commits to and does pay all costs (including without limitation legal and other professional fees) associated therewith.



EMPLOYMENT AGREEMENT

EMPLOYMENT AGREEMENT dated as of April 12, 2004, by and between Bimini Mortgage Management Inc. with its principal place of business at 3305 Flamingo Drive, Suite 100, Vero Beach, Florida 32963 (the "Company"), and Robert E. Cauley, residing at the address set forth on the signature page hereof (the "Executive").

WHEREAS, the parties have previously entered into an employment agreement as of December 18, 2003, and wish to amend and completely restate such agreement as forth herein; and

WHEREAS, the Company wishes to employ the Executive, and the Executive wishes to accept such offer, on the terms set forth below:

Accordingly, the parties hereto agree as follows:

1. Term. The Company hereby employs the Executive, and the Executive hereby accepts such employment, for an initial term commencing as of the date hereof and continuing for a three-year period, unless sooner terminated in accordance with the provisions of Section 4 or Section 5; with such employment to continue for successive one-year periods in accordance with the terms of this Agreement (subject to termination as aforesaid) unless either party notifies the other party of non-renewal in writing prior to six months before the expiration of the initial term and each annual renewal, as applicable (the period during which the Executive is employed hereunder being hereinafter referred to as the "Term").

2. Duties. During the Term, the Executive shall be employed by the Company as Secretary of the Company, Chief Financial Officer of the Company and Chief Investment Officer

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of the Company and, and, for so long as he continues to be appointed as such, shall serve as a member of the Board of Directors of the Company (the "Board"), and, as such, the Executive shall faithfully perform for the Company the duties of said offices and shall perform such other duties of an executive, managerial or administrative nature as shall be specified and designated from time to time by the Chief Executive Officer of the Company, the President of the Company or the Board. The Executive shall devote substantially all of his business time and effort to the performance of his duties hereunder; provided that in no event shall this sentence prohibit the Executive from performing personal and charitable activities, and any other business interests as may be approved by the Board. It is expressly acknowledged and understood that the Executive may in the future seek to form and operate other companies, which may include mortgage "REITs" which are not directly competitive with the Company, and it is agreed that the Board will consider promptly and in good faith whether (i) any such proposed venture is competitive and (ii) to permit the Executive to pursue such venture provided that all of the Executive's duties and obligations hereunder shall be capable, in the reasonable judgment of the Board, of being fully and satisfactorily performed during the remaining Term.

3. Compensation.

3.1 Salary. The Company shall pay the Executive during the Term a salary at a minimum rate of \$150,000 per annum (the "Annual Salary"), in accordance with the customary payroll practices of the Company applicable to senior executives. At such time as a registration statement on Form S-11 covering the initial public offering of the Company's Class A Common Stock has been declared effective by the U.S. Securities and Exchange Commission (the "SEC"), the Executive's Annual Salary shall be increased to \$267,500. At least annually, the Board shall review the Executive's Annual Salary and may provide for such increases therein as it may in its

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discretion deem appropriate. The Board shall also consider increases to the Executive's Annual Salary following the completion of each capital raising event and following such time as a registration statement on Form S-11 covering the resale of the Company's Class A Common Stock has been declared effective by the SEC. (Any such increased salary shall constitute the "Annual Salary" as of the time of the increase.)

3.2 Bonus. During the Term, in addition to the Annual Salary, for each fiscal year of the Company ending during the Term, the Executive shall have the opportunity to receive an annual bonus under the Company's bonus plans or arrangements as in effect from time to time. In providing for bonuses, the Board shall consider, among other things, whether the completion of a capital raising event should result in the payment of a bonus. In addition, the Executive shall receive a \$125,000 cash bonus at the time a registration statement on Form S-11 covering resale of the Company's Class A Common Stock issued in November 2003 has been declared effective by the SEC.

3.3 Benefits - In General. Except with respect to benefits of a type otherwise provided for under Section 3.4, the Executive shall be permitted during the Term to participate in any group life, hospitalization or disability insurance plans, health programs, retirement plans, fringe benefit programs and similar benefits that may be available to other senior executives of the Company generally, on the same terms as such other executives, in each case to the extent that the Executive is eligible under the terms of such plans or programs.

3.4 Certain Specific Benefits.

(a) The Executive, shall be covered by reasonable medical, vision and dental insurance, to be provided at no cost to the Executive. The Executive shall be covered by life insurance in an amount no less than \$2,000,000, at no cost to the Executive, to the extent such

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insurance may be obtained at reasonable rates; provided that the Executive cooperates as reasonably requested by the Company in the Company's efforts to obtain such insurance. The Executive shall be covered by long-term disability insurance, to provide replacement income in an amount no less than 100% of Annual Salary, at no cost to the Executive, to the extent such insurance may be obtained at reasonable rates; provided that the Executive cooperates as reasonably requested by the Company in the Company's efforts to obtain such insurance.

(b) The Executive shall be entitled to vacation of no less than 25 days per year, personal days of no less than five days per year and holidays of no less than 14 days per year, to be credited in accordance with regular Company policies.

All of the foregoing shall be implemented within a reasonable time after the date hereof.

3.5 Expenses - In General. The Company shall pay or reimburse the Executive for all ordinary and reasonable out-of-pocket expenses actually incurred (and, in the case of reimbursement, paid) by the Executive during the Term in the performance of the Executive's services under this Agreement; provided that the Executive submits proof of such expenses, with the properly completed forms as prescribed from time to time by the Company. Expense reimbursement reports should generally be submitted to the Company within 60 days of the payment by the Executive of the out-of-pocket expense; provided that no report for reimbursement will be accepted after more than six months' time, other than in the case of unusual circumstances as may be determined by the Board.

3.6 Certain Legal Expenses. The Company shall pay directly or reimburse the Executive for all reasonable legal fees and expenses incurred by the Executive in connection with the review, negotiation and execution of this Agreement.

3.7 Automobile. During the Term, the Executive shall be permitted the use of an automobile reasonably commensurate with the Executive's positions with the Company.

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4. Termination upon Death or Disability. If the Executive dies during the Term, the Term shall terminate as of the date of death, and the obligations of the Company to or with respect to the Executive shall terminate in their entirety upon such date except as otherwise provided under this Section 4. If the Executive by virtue of ill health or other disability is unable to perform substantially and continuously the duties assigned to him for more than 180 consecutive or non-consecutive days out of any consecutive 12-month period, the Company shall have the right, to the extent permitted by law, to terminate the employment of the Executive upon notice in writing to the Executive. Upon termination of employment due to death or disability, (i) the Executive (or the Executive's estate or beneficiaries in the case of the death of the Executive) shall be entitled to receive any Annual Salary and other benefits earned and accrued under this Agreement prior to the date of termination (and reimbursement under this Agreement for expenses incurred prior to the date of termination); (ii) subject to Section 5.2(c), for a period of three years after termination of employment, the Executive (if applicable), and in the event of his death, his spouse (or life partner) and his dependents, shall receive such continuing coverage under the group health plans they would have received under this Agreement (but at such costs no higher than as in effect immediately preceding such termination) as would have applied in the absence of such termination; (iii) without duplication of any amounts due under clause (i), the Executive shall receive an amount equal to the annual bonus that, in the absence of such termination, would have been payable for the fiscal year in which termination occurs, payable at such time as would have applied in the absence of such termination, with such amount to be multiplied by a fraction (x) the numerator of which is the number of days in the fiscal year preceding the termination and (y) the denominator of which is 365; (iv) all outstanding unvested equity-based awards (including stock options and restricted

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stock) held by the Executive shall fully vest and become immediately exercisable, as applicable, and, in the case of options, shall continue to be exercisable for their full terms; and (v) the Executive (or the Executive's estate or beneficiaries in the case of the death of the Executive) shall have no further rights to any other compensation or benefits hereunder, or any other rights hereunder (but, for the avoidance of doubt, shall receive such disability and death benefits as may be provided under the Company's plans and arrangements in accordance with their terms).

5. Certain Terminations of Employment; Certain Benefits.

5.1 Termination by the Company for Cause; Termination by the Executive without Good Reason.

(a) For purposes of this Agreement, "Cause" shall mean the Executive's:

- (i) conviction of (or pleading nolo contendere to) a felony (but in no event including a traffic or similar violation), a crime of moral turpitude, dishonesty, breach of trust or unethical business conduct, or any crime involving the Company;
- (ii) engagement in the performance of his duties hereunder, in willful misconduct, willful or gross neglect, fraud, misappropriation or embezzlement;
- (iii) repeated failure to adhere to the directions of the Board, to adhere to the Company's policies and practices or to devote his business time and efforts to the Company as required by Section 2;
- (iv) willful and continued failure to substantially perform his duties properly assigned to him (other than any such failure resulting from his Disability) after demand for substantial performance is delivered by the Company specifically identifying the manner in which the Company believes the Executive has not substantially performed such duties;
- (v) material breach of any of the provisions of Section 6; or
- (vi) breach in any material respect of the terms and provisions of this Agreement and failure to cure such breach within 21 days following written notice from the Company specifying such breach;

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provided that the Company shall not be permitted to terminate the Executive for Cause except on written notice given to the Executive at any time following the occurrence of any of the events described in clauses (i), (ii) or (v) above and on written notice given to the Executive at any time not more than 30 days following the occurrence of any of the events described in clause (iii), (iv) or (vi) above (or, if later, the Company's knowledge thereof). No termination for Cause shall be effective unless the Board makes a Cause determination after notice to the Executive and the Executive has been provided with the opportunity (with counsel of his choice) to contest the determination at a meeting of the Board.

(b) The Company may terminate the Executive's employment hereunder for Cause, and the Executive may terminate his employment on at least 30 days' and not more than 60 days' written notice given to the Company. If the Company terminates the Executive for Cause, or the Executive terminates his employment and the termination by the Executive is not for Good Reason in accordance with Section 5.2, (i) the Executive shall receive Annual Salary and other benefits (including any bonus for a fiscal year completed before termination and awarded but not yet paid, but not any other bonus) earned and accrued under this Agreement prior to the termination of employment (and reimbursement under this Agreement for expenses incurred prior to the termination of employment); (ii) in the case of such a termination by the Executive, he shall receive an amount equal to the annual bonus that, in the absence of such termination, would have been payable for the fiscal year in which termination occurs, payable at such time as would have applied in the absence of such termination, with such amount to be multiplied by a fraction (x) the numerator of which is the number of days in the fiscal year preceding the termination and (y) the denominator of which is 365; and (iii) the Executive shall

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have no further rights to any other compensation or benefits hereunder on or after the termination of employment, or any other rights hereunder.

5.2 Termination by the Company without Cause; Termination by the Executive for Good Reason.

- (a) For purposes of this Agreement, "Good Reason" shall mean, unless otherwise consented to by the Executive,
- (i) the material reduction of the Executive's authority, duties and responsibilities, the failure to continue the Executive's appointment as a member of the Board, or the assignment to the Executive of duties materially inconsistent with the Executive's position or positions with the Company;
  - (ii) a reduction in Annual Salary of the Executive;
  - (iii) the relocation of the Executive's office to more than 25 miles from Vero Beach, Florida;
  - (iv) the Company's failure to pay the Executive any amounts otherwise due hereunder or under any plan, policy, program, agreement, arrangement or other commitment of the Company; or
  - (v) the Company's material and willful breach of this Agreement.

Notwithstanding the foregoing, (i) Good Reason shall not be deemed to exist unless notice of termination on account thereof (specifying a termination date no later than 30 days from the date of such notice) is given no later than 30 days after the time at which the event or condition purportedly giving rise to Good Reason first occurs or arises; and (ii) if there exists (without regard to this clause (ii)) an event or condition that constitutes Good Reason, the Company shall have ten days from the date notice of such a termination is given to cure such event or condition and, if the Company does so, such event or condition shall not constitute Good Reason hereunder.

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(b) The Company may terminate the Executive's employment at any time for any reason or no reason and the Executive may terminate the Executive's employment with the Company for Good Reason. If the Company terminates the Executive's employment and the termination is not covered by Section 4 or 5.1, or the Executive terminates his employment for Good Reason:

- (i) the Executive shall receive Annual Salary and other benefits (including any bonus for a fiscal year completed before termination, but not any other bonus) earned and accrued under this Agreement prior to the termination of employment (and reimbursement under this Agreement for expenses incurred prior to the termination of employment);
- (ii) if (and only if) the Executive provides a general release in a form reasonably acceptable to the Company which is or has become irrevocable,
  - (A) the Executive shall receive (I) a single-sum cash payment equal to 300% of the sum of (x) the Executive's Annual Salary (as in effect immediately before such termination) plus (y) the average bonus to the Executive for the three fiscal years ending coincident with or immediately preceding such termination (such amount to be deemed to be \$350,000 if termination occurs before the end of the first year, and, in addition, such amount in all events to include for the first year any \$125,000 bonus payable in accordance with the last sentence of Section 3.2), payable no later than ten days after such termination (but subject to the release provided for above having become irrevocable), (II) subject to Section 5.2(c), for a period of three years after termination of employment, such continuing coverage under the group health plans the Executive would have received under this Agreement (but at such costs (if any) to the Executive no higher than as in effect immediately preceding such termination) as would have applied in the absence of such termination; (III) an amount equal to the annual bonus that, in the absence of such termination, would have been payable for the fiscal year in which termination occurs, payable at such time as would have applied in the absence of such termination, with such amount to be multiplied by a fraction (x) the numerator of which is the number of days in the fiscal year preceding the termination and (y) the denominator of which is 365; and

- (IV) at the Company's cost (not to exceed \$7,500), outplacement services reasonably selected by the Company; and
- (B) all outstanding unvested equity-based awards (including stock options and restricted stock) held by the Executive shall fully vest and become immediately exercisable, as applicable, and, in the case of options, shall continue to be exercisable for their full terms; and
- (iii) the Executive shall have no further rights to any other compensation or benefits hereunder on or after the termination of employment, or any other rights hereunder.

(c) Notwithstanding clause (ii) of the third sentence of Section 4 or clause (ii)(A)(II) of the second sentence of Section 5.2(b), (i) nothing herein shall restrict the ability of the Company to amend or terminate with general application the plans and programs referred to in such clauses from time to time in its sole discretion, and (ii) the Company shall in no event be required to provide any benefits otherwise required by such clauses after such time as the Executive becomes entitled to receive benefits of the same type from another employer or recipient of the Executive's services.

### 5.3 Change of Control.

(a) Without duplication of the foregoing, upon a "Change of Control" (as defined below) while the Executive is employed, all outstanding unvested equity-based awards (including stock options and restricted stock) shall fully vest and become immediately exercisable, as applicable. In addition, if, after a Change of Control, the Executive terminates his employment with the Company as of the three-month anniversary of the Change of Control, such termination shall be deemed a termination by the Executive for Good Reason covered by Section 5.2.

(b) For purposes of this Agreement, "Change in Control" shall mean the happening of any of the following:

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- (i) any "person," including a "group" (as such terms are used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), but excluding the Company, any entity controlling, controlled by or under common control with the Company, any employee benefit plan of the Company or any such entity, and Executive and any "group" (as such term is used in Section 13(d)(3) of the Exchange Act) of which the Executive is a member) is or becomes the "beneficial owner" (as defined in Rule 13(d)(3) under the Exchange Act), directly or indirectly, of securities of the Company representing 30% or more of either (A) the combined voting power of the Company's then outstanding securities or (B) the then outstanding Common Stock of the Company (in either such case other than as a result of an acquisition of securities directly from the Company); provided, however, that, in no event shall a Change in Control be deemed to have occurred upon an initial public offering or a subsequent public offering of the Common Stock under the Securities Act of 1933, as amended; or
- (ii) any consolidation or merger of the Company where the stockholders of the Company, immediately prior to the consolidation or merger, would not, immediately after the consolidation or merger, beneficially own (as such term is defined in Rule 13d-3 under the Exchange Act), directly or indirectly, shares representing in the aggregate 50% or more of the combined voting power of the securities of the corporation issuing cash or securities in the consolidation or merger (or of its ultimate parent corporation, if any); or
- (iii) there shall occur (A) any sale, lease, exchange or other transfer (in one transaction or a series of transactions contemplated or arranged by any party as a single plan) of all or substantially all of the assets of the Company, other than a sale or disposition by the Company of all or substantially all of the Company's assets to an entity, at least 50% of the combined voting power of the voting securities of which are owned by "persons" (as defined above) in substantially the same proportion as their ownership of the Company immediately prior to such sale or (B) the approval by stockholders of the Company of any plan or proposal for the liquidation or dissolution of the Company; or
- (iv) the members of the Board at the beginning of any consecutive 24-calendar-month period (the "Incumbent Directors") cease for any reason other than due to death to constitute at least a majority of the members of the Board; provided that any director whose election, or nomination for election by the Company's stockholders, was approved by a vote of at least a majority of the

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members of the Board then still in office who were members of the Board at the beginning of such 24-calendar-month period, shall be deemed to be an Incumbent Director.

### 6. Covenants of the Executive.

6.1 Covenant Against Competition; Other Covenants. The Executive acknowledges that (i) the principal business of the Company (which expressly includes for purposes of this Section 6 (and any related enforcement provisions hereof), its successors and assigns) is the acquiring, owning and selling residential mortgage-related securities and/or debt securities issued or guaranteed by the U.S. government, U.S. government sponsored or chartered enterprises or U.S. government agencies (such business herein being referred to as the "Business"); (ii) the Company is one of the limited number of persons who have developed such a business; (iii) the Company's Business is, in part, national in scope; (iv) the Executive's work for the Company has given and will continue to give him access to the confidential affairs and proprietary information of the Company; (v) the covenants and agreements of the Executive contained in this Section 6 are essential to the business and goodwill of the Company; and (vi) the Company would not have entered into this Agreement but for the covenants and agreements set forth in this Section 6. Accordingly, the Executive covenants and agrees that:

(a) By and in consideration of the salary and benefits to be provided by the Company hereunder, including the severance arrangements set forth herein, and further in consideration of the Executive's exposure to the proprietary information of the Company, the Executive covenants and agrees that, during the period commencing on the date hereof and ending one year following the date upon which the Executive shall cease to be an employee of the Company and its affiliates, he shall not in the United States, directly or indirectly, except with the prior approval of the Board, (i) engage in the Business (other than for the Company or its affiliates) or otherwise compete with the Company or its affiliates, (ii) render any services to

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any person, corporation, partnership or other entity (other than the Company or its affiliates) engaged in the elements of the Business, or (iii) become interested in any person, corporation, partnership or other entity (other than the Company or its affiliates) engaged in the elements of the Business, as a partner, shareholder, principal, agent, employee, consultant or in any other relationship or capacity; provided, however, that, notwithstanding the foregoing, the Executive may invest in securities of any entity, solely for investment purposes and without participating in the business thereof, if (A) such securities are traded on any national securities exchange or the National Association of Securities Dealers, Inc. Automated Quotation System, (B) the Executive is not a controlling person of, or a member of a group which controls, such entity and (C) the Executive does not, directly or indirectly, own 5% or more of any class of securities of such entity. Notwithstanding the foregoing, the restrictions in this Section 6(a) shall not apply upon and after (i) a termination covered by Section 5.2 or (ii) a termination by the Executive after a Change in Control. In addition, the restrictions of this Section 6(a) shall not apply to any existing investments or other activities of the Executive which have been disclosed in writing to the Board prior to the date hereof.

(b) During and after the period of the Executive's employment with the Company and its affiliates, the Executive shall keep secret and retain in strictest confidence, and shall not use for his benefit or the benefit of others, except in connection with the business and affairs of the Company and its affiliates, all confidential matters relating to the Company's Business and the business of any of its affiliates and to the Company and any of its affiliates, learned by the Executive heretofore or hereafter directly or indirectly from the Company or any of its affiliates (the "Confidential Company Information"); and shall not disclose such Confidential Company Information to anyone outside of the Company except with the

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Company's express written consent and except for Confidential Company Information which is at the time of receipt or thereafter becomes publicly known through no wrongful act of the Executive or is received from a third party not under an obligation to keep such information confidential and without breach of this Agreement.

(c) During the period commencing on the date hereof and ending one year following the date upon which the Executive shall cease to be an employee of the Company and its affiliates, (i) the Executive shall not, without the Company's prior written consent, directly or indirectly, knowingly (i) solicit or encourage to leave the employment or other service of the Company, or any of its affiliates, any employee or independent contractor thereof or (ii) hire (on behalf of the Executive or any other person or entity) any employee or independent contractor who has left the employment or other service of the Company or any of its affiliates within the one-year period which follows the termination of such employee's or independent contractor's employment or other service with the Company and its affiliates, and (ii) the Executive will not, whether for his own account or for the account of any other person, firm, corporation or other business organization, intentionally interfere with the Company's or any of its affiliates' relationship with, or endeavor to entice away from the Company or any of its affiliates, any person who during the Term is or was a customer or client of the Company or any of its affiliates.

(d) All memoranda, notes, lists, records, property and any other tangible product and documents (and all copies thereof), whether visually perceptible, machine-readable or otherwise, made, produced or compiled by the Executive or made available to the Executive concerning the business of the Company or its affiliates, (i) shall at all times be the property of the Company (and, as applicable, any affiliates) and shall be delivered to the Company at any

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time upon its request, and (ii) upon the Executive's termination of employment, shall be immediately returned to the Company (except that in all events the Executive may retain a copy of his contacts list).

6.2 Rights and Remedies upon Breach. The Executive acknowledges and agrees that any breach by him of any of the provisions of Section 6.1 (the "Restrictive Covenants") would result in irreparable injury and damage for which money damages would not provide an adequate remedy. Therefore, if the Executive breaches, or threatens to commit a breach of, any of the provisions of Section 6.1, the Company and its affiliates, in addition to, and not in lieu of, any other rights and remedies available to the Company and its affiliates under law or in equity (including, without limitation, the recovery of damages), shall have the right and remedy to have the Restrictive Covenants specifically enforced by any court having equity jurisdiction, including, without limitation, the right to an entry against the Executive of restraining orders and injunctions (preliminary, mandatory, temporary and permanent) against violations, threatened or actual, and whether or not then continuing, of such covenants.

## 7. Other Provisions.

7.1 Severability. The Executive acknowledges and agrees that (i) he has had an opportunity to seek advice of counsel in connection with this Agreement and (ii) the Restrictive Covenants are reasonable in geographical and temporal scope and in all other respects. If it is determined that any of the provisions of this Agreement, including, without limitation, any of the Restrictive Covenants, or any part thereof, is invalid or unenforceable, the remainder of the provisions of this Agreement shall not thereby be affected and shall be given full effect, without regard to the invalid portions.

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7.2 Duration and Scope of Covenants. If any court or other decision-maker of competent jurisdiction determines that any of the Executive's covenants contained in this Agreement, including, without limitation, any of the Restrictive Covenants, or any part thereof, is unenforceable because of the

duration or geographical scope of such provision, then, after such determination has become final and unappealable, the duration or scope of such provision, as the case may be, shall be reduced so that such provision becomes enforceable and, in its reduced form, such provision shall then be enforceable and shall be enforced.

7.3 Enforceability; Jurisdiction; Arbitration.

(a) The Company and the Executive intend to and hereby confer jurisdiction to enforce the Restrictive Covenants set forth in Section 6 upon the courts of any jurisdiction within the geographical scope of the Restrictive Covenants. If the courts of any one or more of such jurisdictions hold the Restrictive Covenants wholly unenforceable by reason of breadth of scope or otherwise it is the intention of the Company and the Executive that such determination not bar or in any way affect the Company's right, or the right of any of its affiliates, to the relief provided above in the courts of any other jurisdiction within the geographical scope of such Restrictive Covenants, as to breaches of such Restrictive Covenants in such other respective jurisdictions, such Restrictive Covenants as they relate to each jurisdiction's being, for this purpose, severable, diverse and independent covenants, subject, where appropriate, to the doctrine of res judicata.

(b) Any controversy or claim arising out of or relating to this Agreement or the breach of this Agreement (other than a controversy or claim arising under Section 6, to the extent necessary for the Company (or its

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affiliates, where applicable) to avail itself of the rights and remedies referred to in Section 6.2) that is not resolved by the Executive and the Company (or its affiliates, where applicable) shall be submitted to arbitration in Vero Beach or Palm Beach, Florida in accordance with Florida law and the procedures of the American Arbitration Association. The determination of the arbitrator(s) shall be conclusive and binding on the Company (or its affiliates, where applicable) and the Executive and judgment may be entered on the arbitrator(s)' award in any court having jurisdiction. In any action in which the Executive is the prevailing party, the Company shall pay the Executive's legal fees.

7.4 Indemnification and Insurance. The Company agrees to indemnify (in addition to any other indemnification provided to the Executive under any separate agreement or the by-laws of the Company) the Executive to the fullest extent permitted by applicable law, as the same exists and may hereafter be amended, from and against any and all losses, damages, claims, liabilities and expenses asserted against, or incurred or suffered by, the Executive (including the costs and expenses of legal counsel retained by the Company to defend the Executive and judgments, fines and amounts paid in settlement actually and reasonably incurred by or imposed on such indemnified party) with respect to any action, suit or proceeding, whether civil, criminal, administrative or investigative in which the Executive is made a party or threatened to be made a party, either with regard to his entering into this Agreement or in his capacity as an officer or director, or former officer or director, of the Company or any affiliate thereof for which he may serve in such capacity. Such indemnification shall continue after the Executive is no longer employed by the Company and shall inure to the benefit of his heirs, executors, and administrators. The Company also agrees to attempt to secure and maintain reasonable officers and directors liability insurance at reasonable rates, within a reasonable time after the date hereof, providing coverage for Executive, which coverage would continue after termination of

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employment for a reasonable time (but in no event for a shorter time than is applicable to any other senior executive of the Company).

7.5 Notices. Any notice or other communication required or permitted hereunder shall be in writing and shall be delivered personally, telegraphed, telexed, sent by facsimile transmission or sent by certified, registered or express mail, postage prepaid. Any such notice shall be deemed given when so delivered personally, telegraphed, telexed or sent by facsimile transmission or, if mailed, five days after the date of deposit in the United States mails as follows:

- (i) If to the Company, to:

Bimini Mortgage Management Inc.  
3305 Flamingo Drive, Suite 100  
Vero Beach, Florida 32963  
Attention: Chief Executive Officer

with a copy to:

Clifford Chance US LLP  
200 Park Avenue  
New York, New York 10166  
Attention: Robert E. King, Jr.

- (ii) If to the Executive, to the address set forth on the signature page hereof.

Any such person may by notice given in accordance with this Section 7.4 to the other parties hereto designate another address or person for receipt by such person of notices hereunder.

7.6 Entire Agreement. This Agreement contains the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements, written or oral, with respect thereto.

7.7 Waivers and Amendments. This Agreement may be amended, superseded, canceled, renewed or extended, and the terms hereof may be waived, only by a written instrument signed by the parties or, in the case of a waiver, by the party waiving compliance. No

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delay on the part of any party in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any waiver on the part of any party of any such right, power or privilege nor any single or partial exercise of any such right, power or privilege, preclude any other or further exercise thereof or the exercise of any other such right, power or privilege.

7.8 GOVERNING LAW. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF FLORIDA WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW.

7.9 Assignment. This Agreement, and the Executive's rights and obligations hereunder, may not be assigned by the Executive; any purported assignment by the Executive in violation hereof shall be null and void. In the event of any sale, transfer or other disposition of all or substantially all of the Company's assets or business, whether by merger, consolidation or otherwise, the Company may assign this Agreement and its rights hereunder.

7.10 Withholding. The Company shall be entitled to withhold from any payments or deemed payments any amount of tax withholding it determines to be required by law.

7.11 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors, permitted assigns, heirs, executors and legal representatives.

7.12 Counterparts. This Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original but all such counterparts together shall constitute one and the same instrument. Each counterpart may consist of two copies hereof each signed by one of the parties hereto.

7.13 Survival. Anything contained in this Agreement to the contrary notwithstanding, the provisions of Sections 6, 7.3, 7.4 and 7.10, and the other provisions of this Section 7 (to the

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extent necessary to effectuate the survival of Sections 6, 7.3, 7.4 and 7.10), shall survive termination of this Agreement and any termination of the Executive's employment hereunder.

7.14 Existing Agreements. The Executive represents to the Company that he is not subject or a party to any employment or consulting agreement, non-competition covenant or other agreement, covenant or understanding which might prohibit him from executing this Agreement or limit his ability to fulfill his responsibilities hereunder, except that, as previously disclosed to the Board, the Executive may have certain non-solicitation and non-interference obligations to a former employer.

7.15 Headings. The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

7.16 Parachutes. If any amount payable to or other benefit receivable by the Executive pursuant to this Agreement is deemed to constitute a Parachute Payment (as defined below), alone or when added to any other amount payable or paid to or other benefit receivable or received by the Executive which is deemed to constitute a Parachute Payment (whether or not under an existing plan, arrangement or other agreement), and would result in the imposition on the Executive of an excise tax under Section 4999 of the Internal Revenue Code of 1986, as amended (the "Code"), then, in addition to any other benefits to which the Executive is entitled under this Agreement, the Executive shall be paid by the Company an amount in cash equal to the sum of the excise taxes payable by the Executive by reason of receiving Parachute Payments plus the amount necessary to put the Executive in the same after-tax position (taking into account any and all applicable federal, state and local excise, income or other taxes at the highest applicable rates on such Parachute Payments and on any payments under this Section 7.16) as if no excise taxes had been imposed with respect to Parachute Payments. "Parachute Payment"

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shall mean a "parachute payment" as defined in Section 280G of the Code. The amount of any payment under this Section 7.16 shall be computed by a certified public accounting firm selected by the Company and reasonably acceptable to the Executive, subject to the last sentence of this Section 7.16. Notwithstanding any other provision of this Section 7.16, if a reduction in Parachute Payments by 10% or less would cause there not to be excise taxes imposed upon the Executive under Section 4999 of the Code (as determined by the accounting firm referred to above, but subject to the last sentence of this Section 7.16), then (i) no payments shall be made to the Executive under the foregoing provisions of this Section 7.16, and (ii) the payments and benefits provided under this Agreement shall be reduced to the extent necessary so that no excise taxes would be imposed upon the Executive. In the event that the Internal Revenue Service or a court, as applicable, finally and in a decision that has become unappealable, decides that the determinations by the accounting firm under this Section 7.16 are incorrect, then the parties shall within five business days take such corrective actions as are necessary to conform to such final decision; provided that (i) the Executive shall not initiate any proceeding or other contests regarding these matters, other than at the direction of the Company, and shall provide notice to the Company of any proceeding or other contest regarding these matters initiated by the Internal Revenue Service, and (ii) the Company shall be entitled to direct and control all such proceeding and other contests, if it commits to and does pay all costs (including without limitation legal and other professional fees) associated therewith.

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IN WITNESS WHEREOF, the parties hereto have signed their names as of the day and year first above written.

BIMINI MORTGAGE MANAGEMENT INC.

By: /s/ Jeffrey J. Zimmer

Name: Jeffrey J. Zimmer

Title: President

/s/ Robert E. Cauley

Robert E. Cauley

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**CONSENT OF INDEPENDENT CERTIFIED PUBLIC ACCOUNTANTS**

We consent to the reference to our firm under the caption "Experts" and to the use of our report dated March 11, 2004, in Amendment No. 1 to the Registration Statement (Form S-11 No. 333-113715) and related Prospectus of Bimini Mortgage Management, Inc. for the registration of \_\_\_\_\_ shares of its common stock.

/s/ ERNST & YOUNG LLP

Miami, Florida  
April 23, 2004

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