

BIMINI CAPITAL MANAGEMENT, INC.
Form 10-K
March 14, 2008

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

FORM 10-K

ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the fiscal year ended December 31, 2007

Commission File Number: 001-32171

BIMINI CAPITAL MANAGEMENT, INC.

(Exact name of registrant as specified in its charter)

Maryland
(State or other jurisdiction of
incorporation or organization)

72-1571637
(I.R.S. Employer
Identification No.)

3305 Flamingo Drive, Vero Beach, FL 32963
(Address of principal executive offices - Zip Code)

772-231-1400
(Registrant's telephone number, including area code)

Securities registered pursuant to Section 12(b) of the Act: None

Securities registered pursuant to Section 12(g) of the Act:

Title of Each Class
Class A Common Stock, \$0.001 par value

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act.
Yes No

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes No

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes No

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of the registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K.

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

Large accelerated filer <input type="checkbox"/>	Accelerated filer <input checked="" type="checkbox"/>	Non-accelerated filer <input type="checkbox"/>
	Smaller Reporting Company <input checked="" type="checkbox"/>	

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Act). Yes No

As of June 30, 2007, there were 24,603,560 shares of the Registrant's Class A Common Stock outstanding. The aggregate market value of the Class A Common Stock held by non-affiliates of the Registrant (22,755,539 shares) at June 30, 2007 was approximately \$61.9 million. The aggregate market value was calculated by using the last sale price of the Class A Common Stock as of that date. As of June 30, 2007, all of the Registrant's Class B Common Stock was held by affiliates of the Registrant. As of June 30, 2007, the aggregate market value of the Registrant's Class C Common Stock held by non-affiliates (319,388 shares) was \$319, which value is based on the initial purchase price of the Class C Common Stock.

DOCUMENTS INCORPORATED BY REFERENCE

Portions of the Registrant's definitive Proxy Statement for its 2008 Annual Meeting of Stockholders are incorporated by reference into Part III of this Annual Report on Form 10-K.

BIMINI CAPITAL MANAGEMENT, INC.

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PART I

ITEM 1. BUSINESS

Overview

Bimini Capital Management, Inc., a Maryland corporation (“Bimini Capital” and, collectively with its subsidiaries, the “Company,” “we” or “us”), is primarily in the business of investing in mortgage-backed securities. We are organized and operate as a real estate investment trust, or REIT, for federal income tax purposes, and our corporate structure includes a taxable REIT subsidiary (“TRS”). Bimini Capital’s website is located at <http://www.biminicapital.com>.

From November 30, 2005 to June 30, 2007 we operated a mortgage banking business through our subsidiary, Orchid Island TRS, LLC (“OITRS”). OITRS, formerly known as Opteum Financial Services, LLC, ceased originating mortgages on June 30, 2007 and is now accounted for as a discontinued operation.

History and Structure

We were originally formed in September 2003 as Bimini Mortgage Management, Inc. (“Bimini Mortgage”) for the purpose of creating and managing a leveraged investment portfolio consisting of residential mortgage backed securities (“MBS”).

- On November 3, 2005, the Company, then known as Bimini Mortgage, acquired Opteum Financial Services, LLC. This entity was renamed Orchid Island TRS, LLC effective July 3, 2007. Hereinafter, any historical mention, discussion or references to Opteum Financial Services, LLC or to OFS (such as in previously filed documents or Exhibits) now means Orchid Island TRS, LLC or “OITRS.” Upon closing of the transaction, OITRS became a wholly-owned taxable REIT subsidiary of the Company. Under the terms of the transaction, the Company issued 3.7 million shares of Class A Common Stock and 1.2 million shares of Class A Redeemable Preferred Stock to the former members of OITRS.
- On February 10, 2006, the Company changed its name to Opteum Inc. (“Opteum”). At the Company’s 2006 Annual Meeting of Stockholders, the shares of Class A Redeemable Preferred Stock issued to the former members of OITRS were converted into shares of the Company’s Class A Common Stock on a one-for-one basis following the approval of such conversion by the Company’s stockholders.
- On December 21, 2006, the Company sold to Citigroup Global Markets Realty Corp. (“Citigroup Realty”) a Class B non-voting limited liability company membership interest in OITRS, representing 7.5% of all of OITRS’s outstanding limited liability company membership interests, for \$4.1 million. Immediately following the transaction, the Company held Class A voting limited liability company membership interests in OITRS representing 92.5% of all of OITRS’s outstanding limited liability company membership interests. In connection with the transaction, the Company also granted Citigroup Realty the option, exercisable on or before December 20, 2007, to acquire additional Class B non-voting limited liability company membership interests in OITRS representing 7.49% of all of OITRS’s outstanding limited liability company membership interests. This option was not exercised.
- On April 18, 2007, the Board of Managers of OITRS, at the recommendation of the Board of Directors of the Company, approved the closure of OITRS’ wholesale and conduit mortgage loan origination channels in the second quarter of 2007. Also, during the second and third quarters of 2007, substantially all of the other operating assets

of OITRS were sold and the proceeds were primarily used to repay secured indebtedness.

- On September 28, 2007, the Company changed its name to Bimini Capital Management, Inc.

We have elected to be taxed as a real estate investment trust (“REIT”) under Sections 856 and 859 of the Internal Revenue Code of 1986, as amended (the “Code”). Our qualification as a REIT depends upon our ability to meet, on an annual or in some cases quarterly basis, various complex requirements under the Internal Revenue Code relating to, among other things, the sources of our gross income, the composition and values of our assets, our distribution levels and the diversity of ownership of our shares. We have elected to treat OITRS as a taxable REIT subsidiary (TRS).

As used in this document, discussions related to “Bimini Capital,” the parent company, the registrant, and to real estate investment trust (“REIT”) qualifying activities or the general management of our portfolio of mortgage backed securities (“MBS”) refer to “Bimini Capital Management, Inc.” Further, discussions related to our taxable REIT subsidiary or non-REIT eligible assets refer to OITRS and its consolidated subsidiaries. Discussions relating to the “Company” refer to the consolidated entity (the combination of Bimini Capital and OITRS). The assets and activities that are not REIT eligible, such as mortgage origination, acquisition and servicing activities, were formerly conducted by OITRS and are now reported as discontinued operations.

Description of Our Business

In general, under our current business strategy, we expect to maximize the operational and tax benefits provided by our REIT structure. We seek to generate net interest income from our portfolio of mortgage-backed securities, which is the difference between (1) the interest income we receive from mortgage-backed securities and (2) the interest we pay on the debt used to finance these investments, plus certain administrative expenses.

Mortgage-Backed Securities Portfolio

Investment Strategy

Our current investment strategy, which is subject to change at any time without notice to our stockholders, is to realize net interest income from our investment in mortgage-backed securities (“MBS”). Our MBS portfolio is a leveraged investment portfolio consisting primarily of investments 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.

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

- Adjustable-Rate Mortgages. Adjustable-Rate Mortgages, or ARMs, are mortgages 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 rates reset periodically. We refer to such ARMs as "traditional" ARMs. Since 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. We classify ARMs, as those securities whose coupons reset within one year.

- **Fixed-Rate Mortgages.** Fixed-rate mortgages allow each borrower to pay 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 price sensitive to market fluctuations in interest rates. In general, the longer the remaining term on the mortgage loan, the greater the price sensitivity.
- **Hybrid Adjustable-Rate Mortgages.** 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 traditional ARMs. 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, even though hybrid ARMs usually have a short time period in which the interest rate is fixed, during such period the price sensitivity may be high.
- **Balloon Maturity Mortgages.** 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 in periodic equal installments, 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.

The following table shows the breakdown of mortgage loans underlying the mortgage backed securities portfolio as of December 31, 2007 and 2006:

(\$ in thousands)

	December 31,			
	2007		2006	
	Carrying Value	% of Total	Carrying Value	% of Total
Adjustable Rate Mortgages	\$ 177,608	25.7	\$ 2,105,818	75.0
Fixed Rate Mortgages	113,989	16.5	626,428	22.3
Hybrid ARMs	398,982	57.8	76,488	2.7
Totals	\$ 690,579	100.0	\$ 2,808,734	100.0

As of December 31, 2007, 92.5% of our portfolio was issued by Fannie Mae, 6.7% was issued by Freddie Mac and 0.8% was issued by Ginnie Mae. As of December 31, 2007, our portfolio had a weighted average yield of 6.06%. The constant prepayment rate (CPR) for the portfolio, which reflects the annualized proportion of principal that was prepaid, was 16.38% for December 2007. The effective duration for the portfolio was 1.267 as of December 31, 2007. 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 the cash flows of a mortgage related security are altered when interest rates move.

We do not anticipate investing any of our MBS portfolio assets in certain other types of mortgage related securities, known as derivative securities, such as "inverse floaters," "inverse I.O.s" and "residuals". In evaluating our MBS portfolio assets and their performance, we primarily evaluate the following critical factors:

- asset performance in differing interest rate environments,
 - duration of the particular MBS asset,
 - yield to maturity,
- potential for prepayment of principal, and
 - the market price of the investment.

We seek to minimize the effects on our income caused by prepayments on the mortgage loans underlying our securities at a rate materially different than anticipated. Toward that end, we have positioned our portfolio to include securities with prepayment characteristics that we expect to result in less interest rate sensitive and, therefore, more stable prepayments. We believe that MBS collateralized by the following types of loan pools achieves this goal.

§ Borrowers with low loan balances have a lower economic incentive to refinance and have historically prepaid at lower rates than borrowers with larger loan balances. The reduced incentive to refinance has two parts: borrowers with low loan balances will have smaller interest savings because overall interest payments are smaller on their loans; and closing costs for refinancing, which are generally not proportionate to the size of a loan, make refinancing of smaller loans less attractive as it takes a longer period of time for the interest savings to cover the cost of refinancing.

§ Fannie Mae's Expanded Approval Program allows borrowers with slightly impaired credit histories or loan-to-value ratios greater than 80% to qualify for conventional conforming financing. Borrowers under this program have proportionately higher delinquency rates than typical Fannie Mae borrowers, resulting in a higher than market interest rate because of the increased default and delinquency risk. Prepayment rates on these securities are lower than average because refinancing is more difficult for delinquent or recently delinquent loans.

§ Agency pools collateralized by loans against investment properties generally result in slower prepayments because borrowers financing investment properties are required to pay an up front premium. Payment of this premium requires a larger rate movement for the borrower to achieve the same relative level of savings upon refinancing.

We have created a diversified portfolio to avoid undue geographic, loan originator, and other types of concentrations. By maintaining essentially all of our MBS portfolio in AAA rated, 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, management believes it can significantly reduce its exposure to losses from credit risk. 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 MBS. The Company currently intends to continue to invest in such securities, even if such agencies' relationships with the federal government change.

Leverage Strategy

Our mortgage-backed securities portfolio is funded through borrowings in the repurchase market. In addition, 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 and twelve times the amount of our equity, although our investment policies require no minimum or maximum leverage. For purposes of this calculation, we treat our trust preferred securities as an equity capital equivalent. We use repurchase agreements to borrow against existing mortgage related securities and use the proceeds to acquire additional mortgage related securities.

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 generally borrow at short-term rates from various lenders through various contractual agreements including, repurchase agreements. 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 the London Interbank Offered Rate or, LIBOR) plus an interest rate spread. Although structured as a sale and repurchase obligation, a repurchase agreement operates as a financing under which the initial seller effectively pledges its securities as collateral to secure a short-term loan equal in value to a specified percentage of the market value of the pledged collateral. The initial seller retains beneficial ownership of the pledged collateral, including the right to distributions. At the maturity of a repurchase agreement, the initial seller is required to repay the loan and concurrently receive its pledged collateral from the lender or, with the consent of the lender, it renews 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. At December 31, 2007, repurchase agreements outstanding totaled \$678.2 million.

We have engaged AVM, L.P., a securities broker-dealer, and III Associates, a registered investment adviser affiliated with AVM, L.P., 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.

Risk Management Approach

We seek to differentiate ourselves from other mortgage portfolio managers through our approach to risk management.

- Interest Rate Risk Management

We believe the primary risk inherent in our portfolio investments is the effect of movements in interest rates. This risk arises because the effects of interest rate changes on our borrowings will not be perfectly correlated with the effects of interest rate changes on the income from, or value of, our portfolio 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 MBS 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.

§ structuring our repurchase agreements that fund our purchases of adjustable-rate MBS to have varying maturities and interest rate adjustment periods in order to match the reset dates on our adjustable-rate MBS.

§ actively managing, on an aggregate basis, the interest rate indices and interest rate adjustment periods of our mortgage related securities and comparing them 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 MBS to favor LIBOR indexes, among other considerations.

Through the use of these procedures, we attempt to reduce the risk of differences between interest rate adjustment periods of our adjustable-rate MBS and our related borrowings. However, no assurances can be given that our interest rate risk management strategies can successfully be implemented.

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, its liabilities. We may also use derivative financial instruments in an attempt to protect our MBS portfolio 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. Derivative instruments will not be used for speculative purposes.

- Credit Risk Management

We invest in a limited universe of mortgage related securities, primarily, but not limited to, 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 entity issuing the security.

- Prepayment Risk Management

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 result in fewer 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."

We seek to manage the risk of prepayments of the underlying mortgages by creating a diversified portfolio with a variety of prepayment characteristics.

- Capital Risk Management

We seek to protect our capital base through the use of 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 a capital allocation for the asset, which in turn defines an appropriate amount of leverage.

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 that we employ are primarily related to movements in interest rates. The elements relating to interest rate risk that 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 generally 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 the 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 periodic basis. Ideally, 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 this approach is to ensure that our portfolio's leverage ratio is appropriate for the level of risk inherent in the portfolio.

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 Code concerning distribution requirements and the taxability of undistributed net 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 Class A Common Stock or other equity or debt securities in exchange for property and to repurchase or otherwise reacquire 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 our stockholders and without the approval of our stockholders.

CERTAIN FEDERAL INCOME TAX CONSIDERATIONS

The following discussion summarizes the material federal income tax considerations regarding our qualification and taxation as a REIT. The information in this summary is based on the Code, current, temporary and proposed Treasury regulations promulgated under the Code, the legislative history of the Code, current administrative interpretations and practices of the Internal Revenue service (the "IRS") and court decisions, all as of the date hereof. 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 provisions of the Code, Treasury regulations, and administrative and judicial interpretations of the Code.

INVESTORS ARE URGED TO CONSULT THEIR TAX ADVISORS REGARDING THE FEDERAL, STATE, LOCAL, AND FOREIGN TAX CONSEQUENCES TO THEM OF ACQUIRING, HOLDING AND DISPOSING 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 Code commencing with our initial taxable period ended December 31, 2003. We believe that we have been organized and operated, and we intend to continue to be organized and to 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.

Our qualification and taxation as a REIT depends on our ability to meet, through actual annual operating results, income and asset requirements, distribution levels, diversity of stock ownership, and the various other qualification tests imposed under the Code discussed below. While we intend to operate so that we qualify as a REIT, given the highly complex nature of the rules governing REITs, the ongoing importance of factual determinations and the possibility of future changes in our circumstances or in the law, no assurance can be given that our actual results for any particular taxable year will satisfy these requirements. In addition, qualification as a REIT may depend 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 an income tax deduction for qualifying dividends that we distribute to our stockholders. As a result, we generally will not be required to pay federal income taxes on our net taxable income that is currently distributed to our stockholders. This treatment substantially eliminates the "double taxation"