BIMINI MORTGAGE MANAGEMENT INC
Form S-3
September 16, 2005

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As filed with the Securities and Exchange Commission on September 16, 2005

Registration No. 333-

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549

FORM S-3

**REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933**

Bimini Mortgage Management, Inc.

(Exact name of registrant as specified in its charter)

Maryland	**3305 Flamingo Drive Vero Beach, Florida 32963**	**72-1571637**
(State or other jurisdiction of incorporation or organization)	**(772) 231-1400**	*(I.R.S. Employer Identification No.)*
	(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)	

**Jeffrey J. Zimmer
Chief Executive Officer
3305 Flamingo Drive
Vero Beach, Florida 32963
(772) 231-1400**

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

Copies to:

**Robert E. King, Jr., Esq.
Clifford Chance US LLP
31 West 52nd Street
New York, New York 10019
(212) 878-8000**

APPROXIMATE DATE OF COMMENCEMENT OF PROPOSED SALE TO THE PUBLIC: From time to time after this registration statement becomes effective.

If the only securities being registered on this form are being offered pursuant to dividend or interest reinvestment plans, please check the following box: o

If any of the securities being registered on this form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, other than securities offered only in connection with dividend or interest reinvestment plans, check the following box. ý

If this form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act of 1933, please check the following box and list the Securities Act of 1933 registration statement number of the earlier effective registration statement for the same offering. o

If this form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act of 1933, check the following box and list the Securities Act of 1933 registration statement number of the earlier effective registration statement for the same offering. o

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

CALCULATION OF REGISTRATION FEE

Title of Each Class of Securities to be Registered(1)(2)	Amount to be Registered(3)	Proposed Maximum Offering Price Per Unit	Proposed Maximum Aggregate Offering Price(4)(5)	Amount of Registration Fee(4)
Class A Common Stock, Preferred Stock, Depositary Shares, Debt Securities and Warrants	(6)	(6)	$500,000,000	$58,850

(1) This registration statement also covers delayed delivery contracts which may be issued by the registrant under which the counterparty may be required to purchase Class A Common Stock, preferred stock, depositary shares, debt securities or warrants to purchase Class A Common Stock or preferred stock. Such contracts may be issued together with the specific securities to which they relate. In addition, securities registered hereunder may be sold separately, together or as units with other securities registered hereunder.

(2) Subject to footnote (5), there is being registered hereunder an indeterminate amount of Class A Common Stock, preferred stock, depositary shares, debt securities and warrants to purchase Class A Common Stock, preferred stock or depositary shares as may be sold, from time to time, by Bimini Mortgage Management, Inc.

(3) In U.S. dollars or the equivalent thereof denominated in one or more foreign currencies or units of two or more foreign currencies or composite currencies (such as European Currency Units).

(4) The registration fee has been calculated in accordance with Rule 457(o) under the Securities Act of 1933, as amended.

(5) Estimated solely for purposes of calculating the registration fee. No separate consideration will be received for shares of Class A Common Stock that are issued upon conversion of shares of depositary shares or preferred stock or upon exercise of Class A Common Stock warrants registered hereunder. The aggregate maximum offering price of all securities issued pursuant to this registration statement will not exceed $500,000,000.

(6) Not applicable, as provided in General Instruction II.D to Form S-3.

The registrant hereby amends this registration statement on the 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.

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 September 16, 2005

PROSPECTUS

$500,000,000

Class A Common Stock, Preferred Stock, Depositary Shares, Debt Securities and Warrants

We may from time to time offer, in one or more series or classes, separately or together, and in amounts, at prices and on terms to be set forth in one or more supplements to this prospectus, the following securities:

- shares of Class A Common Stock, par value $0.001 per share;
- shares of preferred stock, par value $0.001 per share;
- depositary shares representing entitlement to all rights and preferences of fractions of shares of preferred stock of a specified series and represented by depositary receipts;
- debt securities; or
- warrants to purchase shares of Class A Common Stock, preferred stock or depositary shares.

We refer to the Class A Common Stock, preferred stock, depositary shares, debt securities and warrants collectively as the "securities" in this prospectus. The securities will have an aggregate initial offering price of $500,000,000, or its equivalent in a foreign currency based on the exchange rate at the time of sale, in amounts, at initial prices and on terms determined at the time of the offering.

The specific terms of the securities will be set forth in the applicable prospectus supplement and will include, as applicable: (i) in the case of our Class A Common Stock, any public offering price; (ii) in the case of our preferred stock, the specific title and any dividend, liquidation, redemption, conversion, voting and other rights, and any public offering price; (iii) in the case of depositary shares, the fractional share of preferred stock represented by each such depositary share; (iv) in the case of debt securities, the interest rate, interest payment date, maturity date, rank, and redemption; and (v) in the case of warrants, the duration, offering price, exercise price and detachability. In addition, we are organized and conduct our operations so as to qualify as a real estate investment trust, or REIT, for U.S. federal income tax purposes, and such specific terms may include limitations on actual or constructive ownership and restrictions on transfer of the securities, in each case as may be appropriate to assist us in maintaining our qualification as a REIT.

The applicable prospectus supplement will also contain information, where applicable, about certain U.S. federal income tax consequences relating to, and any listing on a securities exchange of, the securities covered by such prospectus supplement. It is important that both this prospectus and the applicable prospectus supplement is read before investing.

We may offer the securities directly, through agents, or to or through underwriters. The prospectus supplement will describe the terms of the plan of distribution and set forth the names of any underwriters involved in the sale of the securities. See "Plan of Distribution" beginning on page 50 for more information on this topic. No securities may be sold without delivery of a prospectus supplement describing the method and terms of the offering of those securities.

Our Class A Common Stock is listed on the New York Stock Exchange, or the NYSE, under the symbol "BMM." On September 15, 2005, the closing sale price of our Class A Common Stock on the NYSE was $13.26 per share.

See "Risk Factors" beginning on page 2 of this prospectus for a description of risk factors that should be considered by purchasers of the securities.

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

The date of this prospectus is   , 2005

No person is authorized to give any information or to represent anything not contained in this prospectus or any applicable prospectus supplement. No person should 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 and any applicable prospectus supplement is current only as of their respective dates.

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ABOUT 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 earn returns on the spread between the yield on our assets and our costs, including the interest expense on the funds we borrow. We typically 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 U.S. federal income tax purposes commencing with our taxable year ended December 31, 2003. As a REIT, we generally are not subject to U.S. federal income tax on our 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 $141.7 million between December 2003 and February 2004 in private placements of our Class A Common Stock. In September 2004 we completed the initial public offering of our shares of Class A Common Stock. Our Class A Common Stock trades on the New York Stock Exchange, or NYSE, under the trading symbol "BMM". We raised approximately $75.9 million in net proceeds in our initial public offering. In December 2004, we completed a secondary public offering of our Class A Common Stock, in which we raised approximately $66.7 million in net proceeds. In May 2005, we raised approximately $48.5 million in net proceeds from our private offering of trust preferred securities of Bimini Capital Trust I, a Delaware statutory business trust sponsored by us.

As of June 30, 2005, we had a portfolio of mortgage related securities that totaled $3.9 billion and was comprised of 23.5% fixed-rate mortgage-backed securities, 1.8% floating rate collateralized mortgage obligations, 54.3% adjustable-rate mortgage-backed securities, 18.9% hybrid adjustable-rate mortgage-backed securities (securities backed by mortgages with fixed initial rates which, after a period, convert to adjustable rates) and 1.5% balloon maturity mortgage-backed securities (securities backed by mortgages where a significant portion of principal is repaid only at maturity). Of this portfolio, 64% was issued by Fannie Mae, 19% was issued by Freddie Mac and 17% was issued by Ginnie Mae.

Our portfolio had a weighted average yield of 3.81% as of June 30, 2005. Weighted average yield is the composite of the yields on our securities as determined using the Yield Book model published by Citigroup. Our net weighted average borrowing cost as of June 30, 2005 was 3.14%. The constant prepayment rate for the portfolio was 28.4% for June 2005, which reflects the annualized proportion of principal that was prepaid. The effective duration for the portfolio was 0.57 as of June 30, 2005. 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. An effective duration of 0.57 indicates that an interest rate increase of 1% would result in a 0.57% decline in the value of the securities in our portfolio.

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

RISK FACTORS

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 securities to decline and all or part of any investment in our securities may be lost. 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. Our lack of operating history provides 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 June 30, 2005, 75% of the mortgage-backed securities in our portfolio were subject to adjustable interest rates, and this percentage may increase or decrease as we modify the mix of securities in our portfolio. 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.

A significant portion of our portfolio consists of fixed-rate mortgage-backed securities, which may cause us to experience reduced net income or a loss during periods of rising interest rates.

As of June 30, 2005, 25% of our portfolio consisted of fixed-rate and balloon maturity mortgage-backed securities. Because the interest rate on a fixed-rate mortgage never changes, over time there can be a divergence between the interest rate on the loan and the current market interest rates. We fund our acquisition of fixed-rate mortgage-backed securities with short-term 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.

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 any unamortized premium that remained 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 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 June 30, 2005, the floating rate collateralized mortgage obligations in our portfolio were subject to a weighted average lifetime interest rate cap of 7.8% 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 10.6% and a weighted average periodic interest rate cap of 1.8% and the hybrid adjustable-rate mortgage-backed securities in our portfolio were subject to a weighted average lifetime interest rate cap of 10.0% and a weighted average periodic interest rate cap of 1.6%. 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 also limited by the REIT gross income requirements. See "Legal and Tax Risks" below.

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 qualification as a REIT. Losing our REIT qualification 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.

Our board of directors 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 our stockholders and without stockholder 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 securities 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. 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 stockholders.

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 U.S. 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 any investment in us. We cannot assure 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.

Legal and Tax Risks

If we fail to qualify as a REIT, we will be subject to U.S. 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 of 1986, as amended, or 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 U.S. federal income tax purposes, and a technical or inadvertent mistake could jeopardize our REIT qualification. 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 U.S. federal 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 U.S. 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 U.S. 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 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 such sales were made by a taxable REIT subsidiary. See "Material Federal Income Tax Consequences."

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 REIT provisions of the Internal Revenue Code may 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 qualification for U.S. 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 qualification 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.

The maximum U.S. federal income 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 U.S. 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 to our stockholders in a calendar year is less than a minimum amount specified under U.S. 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 net taxable income may be greater than our cash flow available for distribution to our stockholders from, among other things, original issue discount interest. 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 requirements 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 June 30, 2005, 56.3% 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.

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 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.

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

The rules dealing with U.S. 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 REITs. New legislation, or new interpretations, rulings or regulations could be adopted, any of which could adversely affect 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 U.S. 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.

A portion of our distributions may be deemed a return of capital for U.S. 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 REIT taxable income for such quarter. If distributions exceed our REIT taxable income, a portion of the distribution may be deemed a return of capital for U.S. federal income tax purposes. The amount of return of capital will not be taxable but will reduce stockholders' bases in their shares of Class A Common Stock.

Risks Related to Our Organization and Structure

We have not established a minimum distribution payment level and we cannot assure 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 net taxable income in each year, subject to certain adjustments. 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, the REIT arbitration requirements and such other factors as our board of directors may deem relevant from time to time. We cannot assure that we will have the ability to make distributions to our stockholders in the future.

Our officers have not previously managed a REIT, and we cannot assure 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 requirements 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 taxes and penalties. In such event, our net income would be reduced or 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 Common Stock and Preferred Stock Common Stock Conversion Rights."

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 is 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 by 638,776 shares or 3.1% of the Class A Common Stock outstanding. The conversion of the Class C Common Stock would increase the number of shares entitled to share pro rata in our earnings and distributions by 319,388 shares, or 1.6% of the Class A Common Stock outstanding. See "Description of Common Stock and Preferred Stock Conversion Rights."

Restrictions on ownership of a controlling percentage of our capital stock might limit a stockholder's opportunity to receive a premium on our stock.

To assist us in maintaining 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.

CAUTIONARY NOTE REGARDING FORWARD-LOOKING STATEMENTS

This prospectus and the documents that are incorporated by reference herein contain forward-looking statements that are subject to risks and uncertainties. Forward-looking statements can be identified by the use of forward-looking expressions such as "may," "will," "should," "expect," "believe," "anticipate," "estimate," "intend," "plan," "project," or "continue," or any negative or other variations on such expressions. 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 prepayment rates on the mortgage loans securing mortgage-backed securities;
- changes in our industry, interest rates or general economic and business conditions;
- industry and market trends;
- availability of investment assets;
- our ability to use borrowings to finance our assets;
- the degree and nature of competition;
- changes in business strategy or development plans;
- our ability to maintain our qualification as a REIT for U.S. federal income tax purposes;
- 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.

RATIO OF EARNINGS TO FIXED CHARGES

The following table sets forth our ratio of earnings to fixed charges for the periods indicated.

	For the Period from September 24, 2003 (inception) through December 31, 2003	Year Ended 2004	Six Months Ended June 30, 2005
Ratio of Earnings to Fixed Charges	-12.30x(1)	2.03x	1.41x

(1) The dollar amount of the coverage deficiency for this period was $267,167.

We have not computed the ratio of earnings to combined fixed charges and preferred stock dividends because we have not issued any preferred stock as of the date of this prospectus, and therefore there were no preferred dividends. Earnings have been calculated by adding fixed charges to income before provision for income taxes. Fixed charges consist of interest expense. During the periods presented in the table above, no preferred stock was outstanding.

USE OF PROCEEDS

Except as may be set forth in a particular prospectus supplement, we will add the net proceeds from sales of securities to our general corporate funds, which we may use to repay indebtedness, for new investments, or for other general corporate purposes. Further details relating to the use of the net proceeds will be set forth in the applicable prospectus supplement.

DESCRIPTION OF COMMON STOCK AND PREFERRED STOCK

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. On September 15, 2005, we had 20,397,210 shares of Class A Common Stock, 319,388 shares of Class B Common Stock and 319,388 shares of Class C Common Stock outstanding.

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.

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

General

Our charter provides that we may issue up to 10,000,000 shares of preferred stock, $0.001 par value per share. On September 15, 2005, we had no outstanding shares of preferred stock.

The following description of the preferred stock sets forth general terms and provisions of the preferred stock to which any prospectus supplement may relate. The statements below describing the preferred stock are in all respects subject to and qualified in their entirety by reference to the applicable provisions of our charter and bylaws and any applicable articles supplementary to the charter designating terms of a series of preferred stock. The issuance of preferred stock could adversely affect the voting power, dividend rights and other rights of holders of common stock. Although our board of directors does not have this intention at this present time, it could establish another series of preferred stock, that could, depending on the terms of the series, delay, defer or prevent a transaction or a change in control of our company that might involve a premium price for the common stock or otherwise be in the best interest of the holders thereof. Management believes that the availability of preferred stock will provide us with increased flexibility in structuring possible future financing and acquisitions and in meeting other needs that might arise.

Terms

Subject to the limitations prescribed by our charter, our board of directors is authorized to classify any unissued shares of preferred stock and to reclassify any previously classified but unissued shares of any series of preferred stock previously authorized by our board of directors. Prior to issuance of shares of each class or series of preferred stock, our board of directors is required by the MGCL and our charter to fix the terms, preferences, conversion or other rights, voting powers, restrictions, limitations as to distributions, qualifications and terms or conditions of redemption for each class or series.

Reference is made to the prospectus supplement relating to the series of preferred stock offered thereby for the specific terms thereof, including:

- the title and stated value of the preferred stock;

- the number of shares of the preferred stock, the liquidation preference per share of the preferred stock and the offering price of the preferred stock;

the dividend rate(s), period(s) and/or payment day(s) or method(s) of calculation thereof applicable to the preferred stock;

the date from which dividends on the preferred stock shall accumulate, if applicable;

the procedures for any auction and remarketing, if any, for the preferred stock;

the provision for a sinking fund, if any, for the preferred stock;

the provision for redemption, if applicable, of the preferred stock;

any listing of the preferred stock on any securities exchange;

the terms and conditions, if applicable, upon which the preferred stock may or will be convertible into our common stock, including the conversion price or manner of calculation thereof;

the relative ranking and preferences of the preferred stock as to dividend rights and rights upon liquidation, dissolution or winding up of our affairs;

any limitations on direct or beneficial ownership and restrictions on transfer, in each case as may be appropriate to preserve the qualification of our company as a REIT;

a discussion of federal income tax considerations applicable to the preferred stock; and

any other specific terms, preferences, rights, limitations or restrictions of the preferred stock.

Rank

Unless otherwise specified in the applicable prospectus supplement, the preferred stock will, with respect to dividend rights and rights upon liquidation, dissolution or winding up of our company, ranks:

(a) senior to all classes or series of common stock and to all equity securities issued by us the terms of which provide that the equity securities shall rank junior to the preferred stock;

(b) on a parity with all equity securities issued by us other than those referred to in clauses (a) and (c); and

(c) junior to all equity securities issued by us which the terms of the preferred stock provide will rank senior to it. The term "equity securities" does not include convertible debt securities.

Stockholder Liability

Maryland law provides that no stockholder, including holders of preferred stock, shall be personally liable for our acts and obligations and that our funds and property shall be the only recourse for these acts or obligations.

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 qualification 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 qualification 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 qualification 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.

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.

Transfer Agent and Registrar

The transfer agent and registrar for our common stock and preferred 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.

DESCRIPTION OF DEBT SECURITIES

We may offer debt securities under an indenture to be entered into between our company and a trustee to be selected. The following paragraphs describe the material terms and conditions of this type of security but is not complete. For a more detailed description of the terms of the debt securities, please refer to the indenture that may be supplemented from time to time, and the applicable prospectus supplement. Any indenture pursuant to which we issue debt securities will be qualified under and governed by the Trust Indenture Act of 1939, as amended.

General

The debt securities will be our direct, unsecured obligations and may be either senior debt securities or subordinated debt securities. The indenture will not limit the principal amount of debt securities that we may issue. We may issue debt securities in one or more series. A supplemental indenture will set forth specific terms of each series of debt securities. There will be prospectus supplements relating to particular series of debt securities. Each prospectus supplement will describe:

the title of the debt securities and whether the debt securities are senior or subordinated debt securities;

any limit upon the aggregate principal amount of a series of debt securities which we may issue;

the date or dates on which principal of the debt securities will be payable and the amount of principal which will be payable;

the rate or rates (which may be fixed or variable) at which the debt securities will bear interest, if any, as well as the dates from which interest will accrue, the dates on which interest will be payable, the persons to whom interest will be payable, if other than the registered holders on the record date, and the record date for the interest payable on any payment date;

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Preferred stock

Our Board of Directors can, without the approval of shareholders, issue one or more series of preferred shares. The Board can also determine the rights, preferences and limitations of each series including the maximum number of shares in the series, voting rights, conversion rights, redemption rights, dividend rights, liquidation rights, any preferences over the common stock with respect to dividend or liquidation distributions, and the terms and conditions of issue.

Common stock

Our outstanding shares of common stock are listed on the NYSE under the symbol “ASH.” Our transfer agent and registrar for common stock is Computershare Trust Company, N.A.

Common shareholders receive dividends only when declared by the Board of Directors. If declared, dividends may be paid in cash, stock or other forms. If and when we issue preferred stock, common shareholders may not receive dividends until we have satisfied our obligations to any preferred shareholders.

All outstanding shares of common stock are fully paid and nonassessable. There are no preemptive or other subscription rights, conversion rights or redemption or sinking fund provisions with respect to the shares of common stock.

Each share of common stock is entitled to one vote in the election of directors and other matters. In uncontested elections, directors are elected by a majority of the votes cast by the shares entitled to vote in the election at a meeting at which a quorum is present. In a contested election, directors are elected by a plurality of the votes cast by the shares entitled to vote in the election at a meeting at which a quorum is present.

Common shareholders are not entitled to cumulative voting rights. Members of our Board of Drectors serve three-year terms and such elections are staggered. Directors may be removed from office only for cause by the vote of at least 80% of the outstanding shares entitled to vote.

The quorum required at a shareholders' meeting for consideration of any matter is a majority of the shares entitled to vote on that matter, represented in person or by proxy. If a quorum is present, action on a matter is approved if the votes cast in favor of the action exceed the votes cast against the action, except for the election of directors as described above. However, approval is required by 80% of the voting power of our outstanding common stock, and 66-2/3% of the voting power other than voting stock beneficially owned by an interested shareholder or affiliate who is a party to a business combination, in the case of major corporate actions such as:

- any merger or consolidation of the company or a subsidiary with an interested shareholder or other corporation that is or will become an affiliate of an interested shareholder;
- the sale, lease, transfer or other disposition to an interested shareholder, other than in the ordinary course of business, of assets with an aggregate book value of 5% or more of the total market value of our outstanding stock or of our net worth;
- the issuance or transfer of any equity securities which have an aggregate market value of 5% or more of the total market value of our outstanding stock to an interested shareholder;
- adoption of any plan for liquidation or dissolution, in which anything other than cash will be received by an interested shareholder; or
- any reclassification of securities, including any reverse stock split, recapitalization, merger or consolidation of the company with any subsidiary or other transaction which increases by 5% or more the proportion of outstanding shares beneficially owned by an interested shareholder.

Anti-takeover effects

Certain provisions of the Kentucky Business Corporation Act, or KBCA, and our articles of incorporation and by-laws could make it more difficult for shareholders to change the composition of the Board of Directors and may also have the effect of discouraging a change of control transaction or limiting the price that certain investors might be willing to pay in the future for our common stock. These provisions include:

- a provision found in Article IV of our articles of incorporation allowing the Board of Directors to issue preferred shares and to determine the rights and preferences of the preferred stock without any vote or action by the holders of common stock. In some cases, the issuance of preferred shares could delay a change in control of the company and make it harder to remove present management. Moreover, Article IV(b)(7) of our articles of incorporation requires the affirmative vote of at least 66-2/3% of the holders of preferred stock, voting separately as a class, to (i) create any class of stock ranking prior to the preferred stock as to dividends or upon liquidation or increase the authorized number of shares of any such class of stock; (ii) alter or change any provision of the articles of incorporation that adversely affects the relative rights and preferences of the preferred stock; or (iii) increase the authorized number of shares of preferred stock;
- provisions found in Article VI of our articles of incorporation and Article II of our by-laws, dividing the Board of Directors into three classes which means that only approximately one-third of the directors are elected each year;

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- provisions found in Article VI of our articles of incorporation and Article II of our by-laws, allowing the removal of directors at a meeting of shareholders called expressly for that purpose. The removal of a director without cause requires the affirmative vote of the holders of at least 80% of the voting power of our then outstanding voting stock, voting together as a single class. These provisions narrowly define "cause" as the willful and continuous failure of a director to substantially perform his or her director's duties (other than any failure resulting from incapacity due to physical or mental illness) or the willful engagement by a director in gross misconduct materially and demonstrably injurious to us. Additionally, Section 271B.8-080(4) of the KBCA also provides that a director may be removed by the shareholders only at a meeting called for that purpose. The meeting notice must state that removal is the purpose, or one of the purposes, of the meeting;
- provisions found in Articles VIII and IX of our articles of incorporation, requiring the affirmative vote of shares representing not less than 80% of the votes entitled to be cast by the voting stock to alter, amend, repeal or adopt any provision inconsistent with or repeal the provisions regarding (i) this 80% voting requirement (Article IX), (ii) the Board size, vacancies and the terms of office and the removal of directors (Article VI) and (iii) the procedures for adopting, amending, altering or repealing the by-laws (Article VII); and requiring the affirmative vote of shares representing (1) not less than 80% of the votes entitled to be cast by the voting stock voting together as a single class and (2) not less than 66-2/3% of the votes entitled to be cast by the voting stock not beneficially owned, directly or indirectly, by any interested shareholder to amend, repeal, or adopt any provisions inconsistent with the provisions restricting certain business combinations with interested shareholders (Article VIII);
- provisions found in Article VII of our articles of incorporation and Article IX of our by-laws, authorizing the Board of Directors (i) to adopt by-laws concerning the conduct of our affairs and the conduct of, and matters considered at, meetings of shareholders, including special meetings and (ii) to alter, amend or repeal the by-laws; and requiring the affirmative vote of the holders of at least 80% of the voting power of our then outstanding voting stock, voting as a single class for shareholders to alter, amend or repeal the by-laws;
- Section 271B.11-030 of the KBCA requiring a majority vote of all votes entitled to be cast for a merger or share exchange transaction by each voting group entitled to vote separately on that transaction, unless the KBCA, articles of incorporation or the Board of Directors require a greater vote;
- provisions set forth in Articles I and II of our by-laws, requiring that shareholders provide advance written notice when nominating directors or submitting other shareholder proposals;
- a provision in Article I, Section 3 of our by-laws limiting the people who can call a special shareholders' meeting to the chairman of the board, the president, a majority of the Board of Directors or, by written request to the secretary, holders of not less than one-third of all the shares entitled to vote at such meeting; and
- Sections 271B.12-200 to 271B.12-230 of the KBCA governing "business combinations," which generally (i) prohibit the company and its subsidiaries from entering into certain business combinations with an interested shareholder who beneficially owns 10% or more of the outstanding voting stock for a period of five years after the 10% or greater owner first reached that level of stock ownership, unless approved by the independent members of the Board of Directors prior to the date the 10% ownership threshold was reached, and (ii) thereafter restrict such business combinations, unless certain conditions are met. Notably, under the restrictions applicable after the initial five-year prohibition, such business combinations must either (i) be approved by a majority of continuing independent members of the Board of Directors, or (ii) be approved by the affirmative vote of at least 80% of the votes entitled to be cast by all outstanding shares of voting stock and two-thirds of the votes entitled to be cast by holders of voting stock other than those beneficially owned by the interested shareholder who is (or whose affiliate is) a party to the transaction, or by an affiliate or associate of such interested shareholder. Further, Article VIII of our articles of incorporation expressly

provides that such Sections 271B.12-200 through 271B.12-230 of the KBCA shall apply to any of our business combinations.

Article VIII of our articles of incorporation also requires that certain business combinations involving an interested shareholder (including, among others, mergers and consolidations with an interested shareholder, or with any other corporation, whether or not itself an interested shareholder, which is, or after a merger or consolidation would be, an affiliate of an interested shareholder who was an interested shareholder prior to the transaction, and sales, leases and transfers of at least 5% of our total market value), must be recommended by the Board of Directors, and approved by at least (1) 80% of the voting power of the then outstanding voting stock and (2) two-thirds of the voting power of the then outstanding voting stock other than voting stock owned by the interested shareholder, its affiliates or associates. These supermajority voting provisions do not apply (and thus, only a majority vote is required) if: (i) a majority of the directors who are not affiliates or associates of the interested shareholder and who were in office before the interested shareholder became an interested shareholder (or were recommended or elected by a majority of such directors) approve the transaction; or (ii) the shareholders in the business combination receive a “fair price” based on market value and/or prices previously paid by the interested shareholder, as measured on certain designated dates; there has been no reduction in or failure to pay dividends after the interested shareholder became an interested shareholder and prior to the business combination; and after becoming an interested shareholder, such shareholder did not receive the benefit of any loans or other financial assistance from us.

LEGAL MATTERS

The legality of the common stock offered by this prospectus and any prospectus supplement has been passed upon by Linda L. Foss, our Assistant General Counsel and Corporate Secretary. Ms. Foss owns shares and holds options to purchase additional shares of our common stock.

EXPERTS

Our consolidated financial statements as of September 30, 2007 and 2008 and for each of the three fiscal years in the period ended September 30, 2008 (including the schedule appearing therein) and the effectiveness of our internal control over financial reporting as of September 30, 2008, incorporated by reference in this prospectus, have been audited by Ernst & Young LLP, an independent registered public accounting firm, as stated in its reports incorporated by reference in this prospectus, and are incorporated herein in reliance upon such reports given upon the authority of said firm as experts in auditing and accounting.

PART II

INFORMATION NOT REQUIRED IN PROSPECTUS

Item 14. Other Expenses of Issuance and Distribution.

Set forth below is an estimate (except for the registration fee) of the fees and expenses anticipated to be paid by the registrant with respect to the offer and sale of the securities being registered hereby.

SEC registration fee	$5,655
NYSE listing fee	11,500
Legal fees and expenses	17,000
Accounting fees and expenses	25,000
Miscellaneous	5,000
Total	$64,155

Item 15. Indemnification of Directors and Officers.

(a) Kentucky General Corporation Law

Sections 271B.8-500 through 580 of the KBCA provide for indemnification of directors, officers, employees and agents of Kentucky corporations, subject to certain limitations. Although the below discussion is specific to directors, Section 271B.8-560 permits a corporation to indemnify and advance expenses to officers, employees and agents to the same extent as a director and gives an officer who is not a director the same statutory right to mandatory indemnification and to apply for court-ordered indemnification as afforded a director. A corporation may also indemnify and advance expenses to an officer, employee, or agent who is not a director to the extent, consistent with public policy, that may be provided by its articles of incorporation, bylaws, general or specific action by its board of directors, or contract.

Section 271B.8-520 of the KBCA provides that, unless limited by the articles of incorporation, a corporation shall indemnify against reasonable expenses incurred in connection with a proceeding any director who entirely prevails in the defense of any proceeding to which the individual was a party because he or she is or was a director of the corporation. The term "proceeding" includes any threatened, pending, or completed action, suit or proceeding, whether civil, criminal, administrative, arbitrative, or investigative and whether formal or informal.

Section 271B.8-510 of the KBCA permits a corporation to indemnify an individual who is made a party to a proceeding because the individual is or was a director, as long as the individual (i) conducted himself or herself in good faith, (ii) reasonably believed, in the case of conduct in his or her official capacity with the corporation, that the conduct was in the best interests of the corporation or, in all other cases, was at least not opposed to its best interests, and (iii) in a criminal proceeding, had no reasonable cause to believe that the conduct was unlawful. The termination of a proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere shall not be, alone, determinative that the director did not meet the applicable standard of care. Indemnification may be made against the obligation to pay a judgment, settlement, penalty, fine or reasonable expenses (including counsel fees) incurred with respect to a proceeding, except that if the proceeding was by or in the right of the corporation, indemnification may be made only against reasonable expenses.

Section 271B.8-510 of the KBCA specifically prohibits indemnification in (i) a proceeding by or in the right of the corporation in which the director is adjudged liable to the corporation or (ii) in connection with any other proceeding charging improper personal benefit to the director, whether or not involving action in the director's official capacity, where the director is adjudged liable on the basis of having received an improper personal benefit.

Pursuant to Section 271B.8-550, a determination that indemnification is permissible because the individual met the applicable standard of conduct must first be made before a director can be indemnified. This determination can be made (i) by majority vote of a quorum of disinterested directors or, if a quorum cannot be obtained, by majority vote of a committee made up solely of two or more disinterested directors, (ii) by special legal counsel selected by the majority vote of a quorum of disinterested directors or, if a quorum cannot be obtained, by majority vote of a committee made up solely of two or more disinterested directors; provided, however, if there are not two

disinterested directors, then legal counsel can be selected by a majority vote of the full board of directors, or (iii) by the shareholders, but shares owned by any interested director cannot be voted.

Under Section 271B.8-530, Ashland may advance expenses incurred by a director who is party to a proceeding prior to the final disposition if (i) the director furnishes the corporation a written affirmation of his or her good faith belief that he or she has met the KBCA standards of director conduct, (ii) the director furnishes the corporation with a written undertaking, executed personally or on his or her behalf, to repay the advance if it is ultimately determined that he or she did not meet the standard of conduct, and (iii) a determination is made that the facts known to those making the determination would not preclude indemnification under the KBCA's director indemnification provisions.

The indemnification and advancement of expenses provided by, or granted pursuant to, KBCA Sections 271B.8-500 – 271B.8-580 is not exclusive of any other rights to which those seeking indemnification or advancement of expenses may otherwise be entitled under any bylaw, agreement, vote of shareholders or disinterested directors, or otherwise.

(b) Articles of Incorporation and By-Laws of Ashland Inc.

In general, Article X of Ashland's articles of incorporation and Article IX, Section 1 of Ashland's by-laws provide for indemnification of any individual who was or is a party to any threatened, pending or completed claim, action, suit or proceeding by reason of his or her status as a director, officer or employee of Ashland or of another entity at Ashland's request (collectively referred to as a "covered person") against any reasonable costs and expenses (including attorneys' fees) and any liabilities (including judgments, fines, penalties or reasonable settlements) reasonably paid by or imposed against the individual if the individual:

- has been successful on the merits or otherwise with respect to such claim, action, suit or proceeding; or
- acted in good faith, in what the person reasonably believed to be the best interests of Ashland or such other entity, as the case may be, and in addition, in any criminal action or proceeding, had no reasonable cause to believe that his or her conduct was unlawful.

Pursuant to Article IX, Sections 2-4 of Ashland's by-laws, indemnification based on good faith and reasonable belief shall be made unless it is determined by any of the following that the covered person has not met the standard of conduct required for good faith indemnification (as described above):

- the Board of Directors, acting by a quorum consisting of directors who were not parties to (or who were determined to have been successful with respect to) the claim, action, suit or proceeding;
- a committee of the Board of Directors consisting of directors who were not parties to (or who were determined to have been successful with respect to) the claim, action, suit or proceeding;
- any officer or group of officers who, by resolution adopted by the Board of Directors, has been given authority to make such determinations; or
- either of the following selected by the Board of Directors if a disinterested committee of the Board cannot be obtained:

(i) independent legal counsel (who may be the regular counsel of Ashland) who has delivered to Ashland a written determination; or

(ii) an arbitrator or a panel of arbitrators (which panel may include directors, officers, employees or agents of Ashland) who has delivered to Ashland a written determination.

Article IX, Section 5 of Ashland's by-laws requires Ashland to advance expenses to a director, officer or employee prior to the final disposition of the claim, action, suit or proceeding, but the individual shall be obligated to repay the advances if it is ultimately determined that the individual is not entitled to indemnification. In addition, the by-laws provide that Ashland may, as a condition to advance the expenses, require the director, officer or employee to sign a written instrument acknowledging such obligation to repay expenses if it is ultimately determined that the person is not entitled to indemnity. Ashland also may refuse to advance expenses or discontinue advancing expenses if it is determined by Ashland, in its sole and exclusive discretion, not to be in the best interest of Ashland.

Notwithstanding the other provisions of Article IX, pursuant to Article IX, Section 6 of Ashland's by-laws, no person shall be indemnified in respect of any claim, action, suit or proceeding, initiated by such person or such person's representative, or which involved the voluntary solicitation or intervention of such person or such person's representative. Article IX, Section 7 of the by-laws provides that the rights of indemnification provided under Article IX shall be in addition to any other rights to which the director, officer or employee may otherwise be entitled. Further, in the event of any such person's death, then their indemnification rights extend to their heirs and legal representatives.

(c) Contracts

Article X of the articles of incorporation of Ashland provide that Ashland may take such steps as may be deemed appropriate by the Board of Directors to provide indemnification to any such person, including entering into indemnification contracts between Ashland and individual directors, officers, employees or agents which might provide rights to indemnification which are broader or otherwise different than those authorized by the articles of incorporation.

Ashland has entered into indemnification agreements with each of its directors and executive change in control agreements with certain of its executive officers that require indemnification to the fullest extent permitted by law (as described above), subject to certain exceptions and limitations.

Subject to certain exclusions (as discussed below), the director indemnification agreements require Ashland to provide indemnity to a director for reasonable costs and expenses (including attorneys' fees) and liabilities (including judgments, fines, penalties and reasonable settlements) incurred by such director in connection with any lawsuit or proceeding in which such director is, was or is threatened to be involved as a party, witness or otherwise by reason of the director's position with Ashland. Such indemnification agreements also provide that Ashland must advance the expenses of a director in connection with a lawsuit or proceeding potentially covered by the provisions of the indemnification agreement upon the written request of the director. Such advancements are to be made with the understanding that the director may be required to repay them if it is determined that he or she is not entitled to indemnity in accordance with the indemnification agreements.

Under the indemnification agreements, indemnity is excluded if a court of competent jurisdiction in a lawsuit or proceeding to which the director is a party finally adjudicates that indemnity is prohibited by law, or to the extent that, prior to a change in control, a majority of Ashland's directors (or a duly designated committee thereof) determines that the amount of expenses and/or settlements for which indemnification is sought is unreasonable.

Such indemnification agreements are in effect during the service as a director and continue after termination of service as to lawsuits or proceedings arising as a result of acts or omissions during the director's service to Ashland. A director must notify Ashland in writing within 20 days after actual notice that he or she will be a party, witness or otherwise involved in a lawsuit or proceeding.

(d) Insurance

Section 271B.8-570 permits a corporation to purchase and maintain insurance on behalf of directors, officers, employees or agents of the corporation, who is or was serving in that capacity, against liability asserted against or incurred in that capacity or arising from that status, whether or not the corporation would have power to indemnify against the same liability.

Article X of the articles of incorporation of Ashland provide that Ashland may take such steps, as may be deemed appropriate by the Board of Directors and subject to the occurrence of such terms and conditions as may be deemed appropriate by the Board of Directors, to secure payment of such amounts as are required to effect any indemnification permitted or authorized by Article X, including purchasing and maintaining insurance, creating a trust fund, granting security interests or using other means (including, without limitation, irrevocable letters of credit).

Ashland has purchased insurance that insures (subject to certain terms and conditions, exclusions and deductibles) Ashland against certain costs that it might be required to pay by way of indemnification to directors or officers under its articles of incorporation or by-laws, indemnification agreements or otherwise, and protects individual directors and officers from certain losses for which they might not be indemnified by Ashland. In addition, Ashland has purchased insurance that provides liability coverage (subject to certain terms and conditions, exclusion and deductibles) for amounts that Ashland or the fiduciaries under their employee benefit plans, which may include its respective directors, officers and employees, might be required to pay as a result of a breach of fiduciary duty.

Item 16. Exhibits.

Exhibit Number	Description of Document
4.1	Third Restated Articles of Incorporation of Ashland effective May 17, 2006 and amendment thereto effective February 3, 2009 (filed as Exhibit 3.1 to Ashland’s Form 10-Q for the quarter ended December 31, 2008, and incorporated herein by reference)
4.2	By-laws of Ashland, effective as of June 30, 2005 (filed as Exhibit 3(ii) to Ashland’s Form 10-Q for the quarter ended June 30, 2005, and incorporated herein by reference)
5	Opinion of Linda L. Foss as to legality of securities being registered
23.1	Consent of Ernst & Young LLP
23.2	Consent of Linda L. Foss (included in Exhibit 5)
24	Powers of Attorney

Item 17. Undertakings.

(a) The registrant hereby undertakes:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement:

(i) To include any prospectus required by Section 10(a)(3) of the Securities Act of 1933;

(ii) To reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than a 20% change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective registration statement;

(iii) To include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement;

Provided, however, that paragraphs (a)(1)(i), (a)(1)(ii) and (a)(1)(iii) do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in reports filed with or furnished to the Commission by the registrant pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 that are incorporated by reference in the registration statement.

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

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

(4) That, for the purpose of determining liability under the Securities Act to any purchaser:

- (i) Each prospectus filed by the registrant pursuant to Rule 424(b)(3) shall be deemed to be part of the registration statement as of the date the filed prospectus was deemed part of and included in the registration statement; and
- (ii) Each prospectus required to be filed pursuant to Rule 424(b)(2), (b)(5), or (b)(7) as part of a registration statement in reliance on Rule 430B relating to an offering made pursuant to Rule 415(a)(1)(i), (vii), or (x) for the purpose of providing the information required by section 10(a) of the Securities Act shall be deemed to be part of and included in the registration statement as of the earlier of the date such form of prospectus is first used after effectiveness or the date of the first contract of sale of securities in the offering described in the prospectus. As provided in Rule 430B, for liability purposes of the issuer and any person that is at that date an underwriter, such date shall be deemed to be a new effective date of the registration statement relating to the securities in the registration statement to which that prospectus relates, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof. Provided, however, that no statement made in a registration statement or prospectus that is part of the registration statement or made in a document incorporated or deemed incorporated by reference into the registration statement or prospectus that is part of the registration statement will, as to a purchaser with a time of contract of sale prior to such effective date, supersede or modify any statement that was made in the registration statement or prospectus that was part of the registration statement or made in any such document immediately prior to such effective date.

(5) That, for the purpose of determining liability of the registrant under the Securities Act to any purchaser in the initial distribution of the securities, the undersigned registrant undertakes that in a primary offering of securities of the undersigned registrant pursuant to this registration statement, regardless of the underwriting method used to sell the securities to the purchaser, if the securities are offered or sold to such purchaser by means of any of the following communications, the undersigned registrant will be a seller to the purchaser and will be considered to offer or sell such securities to such purchaser:

- (i) Any preliminary prospectus or prospectus of the undersigned registrant relating to the offering required to be filed pursuant to Rule 424;
- (ii) Any free writing prospectus relating to the offering prepared by or on behalf of the undersigned registrant or used or referred to by the undersigned registrant;
- (iii) The portion of any other free writing prospectus relating to the offering containing material information about the undersigned registrant or its securities provided by or on behalf of the undersigned registrant; and
- (iv) Any other communication that is an offer in the offering made by the undersigned registrant to the purchaser.

(b) The undersigned registrant hereby undertakes that, for purposes of determining any liability under the Securities Act of 1933, each filing of the registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934 (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Securities Exchange Act of 1934) that is incorporated by reference in the registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(c) Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers, and controlling persons of the registrant pursuant to the provisions described in Item 15 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 Act 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 and will be governed by the final adjudication of such issue.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-3 and has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Covington, Commonwealth of Kentucky, on November 3, 2009.

ASHLAND INC.

By: /s/ Lamar M. Chambers
Lamar M. Chambers
Senior Vice President and Chief Financial Officer

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated.

Name	Capacity	Date
* James J. O'Brien	Chairman, Chief Executive Officer and Director	November 3, 2009
/s/ Lamar M. Chambers Lamar M. Chambers	Senior Vice President and Chief Financial Officer	November 3, 2009
* J. William Heitman	Vice President and Controller	November 3, 2009
* Roger W. Hale	Director	November 3, 2009
* Bernadine P. Healy	Director	November 3, 2009
* Kathleen Ligocki	Director	November 3, 2009
* Vado O. Manager	Director	November 3, 2009
* Barry W. Perry	Director	November 3, 2009
* Mark C. Rohr	Director	November 3, 2009
* George A. Schaefer, Jr.	Director	November 3, 2009
* Theodore M. Solso	Director	November 3, 2009

* John F. Turner	Director	November 3, 2009
* Michael J. Ward	Director	November 3, 2009

*By:	/s/ David L. Hausrath
Name:	David L. Hausrath
Title:	Attorney-in-Fact

EXHIBIT INDEX

Exhibit Number	Description of Document
4.1	Third Restated Articles of Incorporation of Ashland effective May 17, 2006 and amendment thereto effective February 3, 2009 (filed as Exhibit 3.1 to Ashland's Form 10-Q for the quarter ended December 31, 2008, and incorporated herein by reference)
4.2	By-laws of Ashland, effective as of June 30, 2005 (filed as Exhibit 3(ii) to Ashland's Form 10-Q for the quarter ended June 30, 2005, and incorporated herein by reference)
5	Opinion of Linda L. Foss as to legality of securities being registered
23.1	Consent of Ernst & Young LLP
23.2	Consent of Linda L. Foss (included in Exhibit 5)
24	Powers of Attorney