

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549

SCHEDULE 13D/A

Under the Securities Exchange Act of 1934

(Amendment No. 3)

Omega Healthcare Investors, Inc.

-----  
(Name of Issuer)

Common Stock, par value \$0.10 per share

-----  
(Title of Class of Securities)

681936100

-----  
(CUSIP Number)

William T. Cavanaugh, Jr.  
Explorer Holdings, L.P.  
2200 Ross Avenue  
Suite 4200 West  
Dallas, Texas 75201-6799

-----  
(Name, Address and Telephone Number of Person Authorized to  
Receive Notices and Communications)

October 29, 2001

-----  
(Date of Event which Requires Filing of this Statement)

If the reporting person has previously filed a statement on Schedule 13G to report the acquisition which is the subject of this Schedule 13D, and is filing this schedule because of Rule 13d-1(b)(3) or (4), check the following box / /.

NOTE: Schedules filed in paper format shall include a signed original and five copies of the schedule, including all exhibits. See Rule 13d-7 for other parties to whom copies are to be sent.

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1 NAME OF REPORTING PERSONS  
S.S. OR I.R.S. IDENTIFICATION NOS. OF ABOVE PERSONS

Explorer Holdings, L.P.

2 CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP\* (a) /X/  
(b) / /

3 SEC USE ONLY

4 SOURCE OF FUNDS\*  
OO

5 CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED  
PURSUANT TO ITEM 2(d) or 2(e) / /

6 CITIZENSHIP OR PLACE OF ORGANIZATION

Delaware

NUMBER OF 7 SOLE VOTING POWER  
SHARES None

BENEFICIALLY OWNED BY EACH REPORTING 8 SHARED VOTING POWER  
1,048,420\*\*

PERSON WITH	9	SOLE DISPOSITIVE POWER None
	10	SHARED DISPOSITIVE POWER 1,048,420**
11	AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON 1,048,420**	
12	CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES / /*	
13	PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11) 45.5%**	
14	TYPE OF REPORTING PERSON* PN	

\*SEE INSTRUCTIONS BEFORE FILLING OUT!

\*\*The Reporting Person beneficially owns 1,048,420 shares of Series C Convertible Preferred Stock previously reported by the Reporting Person, which shares are convertible into 16,774,720 shares of common stock of Omega. Based on the number of shares of common stock of Omega reported to be outstanding as of October 26, 2001, such shares would represent 45.5% of Omega's outstanding shares of common stock as of October 26, 2001, after giving effect to such issuance. Pursuant to the Investment Agreement described in Items 3 and 4 of this Schedule 13D/A, Explorer Holdings, L.P. has agreed to purchase additional shares of stock of Omega in an amount equal to the difference between \$50 million and the gross proceeds received by Omega from the sale of common stock in a rights offering that Omega has agreed to commence promptly after the date hereof. If the stockholders of Omega approve the issuance of common stock to Explorer prior to the closing of the transactions contemplated by the Investment Agreement, Explorer will purchase shares of common stock; otherwise, the purchased shares will consist of Series D Convertible Preferred Stock having the terms described in Item 3 of this Schedule 13D/A. The purchase price for the shares to be acquired by Explorer (or the per common share conversion price, if the purchased shares are Series D Preferred) will be the same price as the subscription price offered to Omega's stockholders in the rights offering, not to exceed \$2.92 per share. Because the number of shares to be acquired by Explorer will depend upon the number of shares subscribed for in the rights offering, it is not possible to determine at this time the number of shares that will be acquired by Explorer pursuant to the Investment Agreement.

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1	NAME OF REPORTING PERSONS S.S. OR I.R.S. IDENTIFICATION NOS. OF ABOVE PERSONS  Explorer Holdings GenPar, LLC	
2	CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP*	(a) /X/ (b) / /
3	SEC USE ONLY	
4	SOURCE OF FUNDS* OO	
5	CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEM 2(d) or 2(e) / /	
6	CITIZENSHIP OR PLACE OF ORGANIZATION Delaware	
NUMBER OF SHARES BENEFICIALLY OWNED BY EACH REPORTING PERSON WITH	7	SOLE VOTING POWER None
	8	SHARED VOTING POWER 1,048,420**
	9	SOLE DISPOSITIVE POWER None
	10	SHARED DISPOSITIVE POWER 1,048,420**
11	AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON 1,048,420**	

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12 CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN  
SHARES / /\*

-----  
13 PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)  
45.5%\*\*

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14 TYPE OF REPORTING PERSON\*  
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\*SEE INSTRUCTIONS BEFORE FILLING OUT!

\*\*See footnote \*\* on page 2 of this Schedule 13D/A.

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1 NAME OF REPORTING PERSONS  
S.S. OR I.R.S. IDENTIFICATION NOS. OF ABOVE PERSONS

Hampstead Investment Partners III, L.P.

-----  
2 CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP\* (a) /X/  
(b) / /

-----  
3 SEC USE ONLY

-----  
4 SOURCE OF FUNDS\*  
00

-----  
5 CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED  
PURSUANT TO ITEM 2(d) or 2(e) / /

-----  
6 CITIZENSHIP OR PLACE OF ORGANIZATION  
Texas

-----  
NUMBER OF 7 SOLE VOTING POWER  
SHARES None

BENEFICIALLY 8 SHARED VOTING POWER  
OWNED BY 1,048,420\*\*

EACH REPORTING 9 SOLE DISPOSITIVE POWER  
PERSON WITH None

-----  
10 SHARED DISPOSITIVE POWER  
1,048,420\*\*

-----  
11 AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON  
1,048,420\*\*

-----  
12 CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN  
SHARES\* / /

-----  
13 PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)  
45.5%\*\*

-----  
14 TYPE OF REPORTING PERSON\*  
PN

-----  
\*SEE INSTRUCTIONS BEFORE FILLING OUT!

\*\*See footnote \*\* on page 2 of this Schedule 13D/A.

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1 NAME OF REPORTING PERSONS  
S.S. OR I.R.S. IDENTIFICATION NOS. OF ABOVE PERSONS

Donald J. McNamara

-----  
2 CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP\* (a) /X/

-----

3 SEC USE ONLY

-----

4 SOURCE OF FUNDS\*  
OO

-----

5 CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED  
PURSUANT TO ITEM 2(d) or 2(e) / /

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6 CITIZENSHIP OR PLACE OF ORGANIZATION

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NUMBER OF SHARES BENEFICIALLY OWNED BY EACH REPORTING PERSON WITH	7	SOLE VOTING POWER None
	8	SHARED VOTING POWER 1,048,420**
	9	SOLE DISPOSITIVE POWER None
	10	SHARED DISPOSITIVE POWER 1,048,420**

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11 AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON  
1,048,420\*\*

-----

12 CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN  
SHARES / /\*

-----

13 PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)  
45.5%\*\*

-----

14 TYPE OF REPORTING PERSON\*  
IN

-----

\*SEE INSTRUCTIONS BEFORE FILLING OUT!

\*\*See footnote \*\* on page 2 of this Schedule 13D/A.

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1 NAME OF REPORTING PERSONS  
S.S. OR I.R.S. IDENTIFICATION NOS. OF ABOVE PERSONS  
  
Daniel A. Decker

-----

2 CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP\* (a) /X/  
(b) / /

-----

3 SEC USE ONLY

-----

4 SOURCE OF FUNDS\*  
OO

-----

5 CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED  
PURSUANT TO ITEM 2(d) or 2(e) / /

-----

6 CITIZENSHIP OR PLACE OF ORGANIZATION

-----

NUMBER OF SHARES BENEFICIALLY OWNED BY EACH REPORTING PERSON WITH	7	SOLE VOTING POWER None
	8	SHARED VOTING POWER 1,048,420**
	9	SOLE DISPOSITIVE POWER None
	10	SHARED DISPOSITIVE POWER 1,048,420**

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11 AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON  
1,048,420\*\*

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-----  
12 CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN  
SHARES / /\*  
-----

13 PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)  
45.5%\*\*  
-----

14 TYPE OF REPORTING PERSON\*  
IN  
-----

\*SEE INSTRUCTIONS BEFORE FILLING OUT!

\*\*See footnote \*\* on page 2 of this Schedule 13D/A.

This amendment amends and supplements the information set forth in the Statement on Schedule 13D filed on May 25, 2000, as amended on April 19, 2001 and amended further on September 20, 2001 (as amended, the "STATEMENT") by the Reporting Persons.

ITEM 1. SECURITY AND ISSUER.

This amendment relates to the common stock, par value \$0.10 (the "COMMON STOCK"), of Omega Healthcare Investors, Inc. (the "COMPANY"), the Series C Convertible Preferred Stock, par value \$1.00, of the Company (the "SERIES C PREFERRED"), and the Series D Convertible Preferred Stock, par value \$1.00, of the Company (the "SERIES D PREFERRED") that may be issued by the Company.

ITEM 3. SOURCE AND AMOUNT OF FUNDS OR OTHER CONSIDERATION.

On October 30, 2001, the Company announced a plan to raise \$50 million in new equity capital from its current stockholders. The purpose of such offering is to facilitate the Company's reaching an agreement with its senior secured bank lenders regarding the modification of their credit facilities and to enhance the Company's ability to repay approximately \$108 million in debt maturing during the first half of 2002. The Company expects to use the proceeds from the offering to repay a portion of the maturing debt and for working capital and other general corporate purposes.

The Company's plan to raise \$50 million of new common equity consists of two components: a \$27.24 million rights offering to its common stockholders and a private placement of at least \$22.76 million to Explorer Holdings, L.P. ("EXPLORER"). In the rights offering, the Company plans to distribute one non-transferable right to purchase one share of Common Stock for every 2.15 shares of Common Stock held by stockholders at the close of business on November 8, 2001 or such later date as the registration statement relating to the rights offering is declared effective by the SEC. The number of rights that each common stockholder will receive represents the stockholder's pro rata portion of the \$50 million the Company proposes to raise, thereby allowing stockholders who fully participate in the rights offering the opportunity to avoid any dilution in their ownership interest. The subscription price for each right is expected to be \$2.92 per share.

Explorer owns approximately 45.5% of the Company's issued and outstanding Common Stock (giving effect to the conversion of Explorer's Series C Preferred). The terms of Explorer's Series C Preferred give Explorer the right to receive its pro rata portion on an as-converted basis of all dividends paid to the holders of Common Stock, including the rights to be offered in the rights offering. Explorer has agreed to waive this provision and will not receive rights in the rights offering. Instead, Explorer has entered into an agreement (the "INVESTMENT AGREEMENT") with the Company to invest at least \$22.76 million, representing its pro rata portion on an as-converted basis of the \$50 million in new equity the Company is seeking to raise, plus an amount equal to the subscription price of the shares that are not subscribed for by the Company's stockholders in the rights offering. Explorer has agreed to purchase its stock at the same price per share as is offered to the Company's stockholders in the rights offering. As a result of Explorer's commitment, the Company is assured of receiving the entire \$50 million in new equity capital it is seeking to raise if the rights offering and the private placement to Explorer are completed.

The Company's issuance of Common Stock to Explorer must be approved by the Company's stockholders under NYSE rules. The Company intends to call a special meeting of stockholders to seek approval of the issuance of Common Stock to Explorer among other matters. Explorer has committed to vote its shares, representing approximately 45.5% of the voting shares, in favor of this proposal.

If the stockholders of Omega approve the issuance of Common Stock to Explorer prior to the closing of the transactions contemplated by the Investment Agreement, Explorer will purchase shares of Common Stock; otherwise, the purchased shares (the "SHARES") will consist of Series D Preferred. The Series D Preferred are (i) non-voting, (ii) automatically convertible into Common Stock at the rights offering subscription price subject to customary antidilution provisions, on the earlier of stockholder approval, or waiver by the New York Stock Exchange of the stockholder approval requirement, and (iii) accrue cumulative dividends from the date of initial issuance at the greater of 10% and the rate paid on the Common Stock if stockholder approval of the conversion of the Series D Preferred is not obtained prior to January 31, 2002. The foregoing description of the Series D Preferred is qualified in its entirety by reference to the form of Series D Articles Supplementary, the full text of which is incorporated herein by reference to EXHIBIT C attached hereto.

The source of funds for Explorer's purchase of the Shares is expected to be Explorer's working capital, which is expected to be derived from capital contributions from its partners. However, Explorer reserves the right to obtain such funds in whole or in part from other sources, including indebtedness. If Explorer obtains such financing from other sources, it will promptly amend this Statement.

Pursuant to the Investment Agreement, the closing is subject to the following conditions:

1. The absence of any order, law or other legal restraint preventing the consummation of the transactions contemplated by the Investment Agreement;
2. The absence of the commencement or written threat of any lawsuits against Explorer, the Company or their respective affiliates seeking to prevent or materially and adversely alter the transactions contemplated by the Investment Agreement which is reasonably likely to render it impossible or unlawful to consummate the transactions contemplated by the Investment Agreement or in the good faith judgment of Explorer could reasonably be expected to have a Company Material Adverse Effect (as defined in the Investment Agreement); and
3. The lenders under the Company's two credit facilities (i) entering into amendments to their respective loan agreements with the Company on terms and conditions satisfactory to each of the Company and Explorer in their sole discretion, and (ii) waiving existing covenant defaults, and the lender of our \$175 million secured revolving credit facility extending the maturity date of its loan by not less than 12 months from its current maturity of December 31, 2002.

As a result of the foregoing conditions and other matters, including matters which may be beyond the control of Explorer and the Company, there can be no assurance as to whether the transactions contemplated by the Investment Agreement will be consummated. In the event such

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conditions are not satisfied, the Company will terminate the rights offering and the private placement to Explorer.

The Investment Agreement also contains various provisions relating to indemnification (Article VI), termination (Article VII), and expenses (Section 8.12), all of which are incorporated herein by reference to the Investment Agreement attached hereto as EXHIBIT A.

#### ITEM 4. PURPOSE OF TRANSACTION.

The responses to Items 3, 5, and 6 are incorporated herein by this reference.

Upon the closing of the transactions contemplated by the Investment Agreement, Explorer and the Company will amend their existing Stockholders Agreement. Pursuant to the Amended and Restated Stockholders Agreement (the "AMENDED STOCKHOLDERS AGREEMENT"), Explorer will be entitled to designate to the Board that number of directors that would generally be proportionate to Explorer's ownership of voting securities of the Company, not to exceed five directors (six following a proposed increase in the size of the Board to ten directors). The Company has agreed that the number of directors on the Board will not exceed ten without the consent of Explorer. The Company has also agreed to take such action to ensure generally that Explorer's representation on all committees of the Board (other than the standing committee of independent directors) is proportionate to its representation on the entire Board.

Explorer has agreed, so long as it owns at least 15.0% of the Company's voting securities, to vote its shares in favor of three

"independent directors" as defined under the rules of The New York Stock Exchange who are not affiliated with Explorer (the "NON-EXPLORER DIRECTORS"). Upon the increase of the size of the Board to ten members, Explorer will vote its shares in accordance with the previous sentence in favor of an additional person who is not an affiliate or associate of Explorer as a Non-Explorer Director. Upon the increase of the size of the Board to ten members, the Board has appointed C. Taylor Pickett, the Company's Chief Executive Officer, as a Non-Explorer Director.

Pursuant to the Amended Stockholders Agreement, Explorer will no longer be subject to certain restrictions under the prior Stockholders Agreement preventing it from acquiring more than an additional 5% of the Company's voting securities without prior Board approval, but Explorer will be restricted from acquiring beneficial ownership of more than 80% of the voting securities of the Company without the approval of a committee of the Board consisting entirely of Non-Explorer Directors. Other restrictions on Explorer under the prior Stockholders Agreement, including the agreement of Explorer not to solicit proxies in opposition to, or prior to the issuance of a recommendation by, the Board; not to join, form or participate in a group; not to deposit any securities in a voting trust or other voting arrangement; and not to tender any securities in a tender offer not approved by the Board will also no longer apply to Explorer.

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Explorer will also no longer be subject to the right of first offer transfer restrictions in the prior Stockholders Agreement.

Pursuant to the Amended Stockholders Agreement, Explorer has agreed that it will not transfer voting securities of the Company to a transferee who, as a result of such transfer, would beneficially own 10% or more of the outstanding voting securities following such transfer unless such transferee agrees to be bound by certain provisions of the Amended Stockholders Agreement. The foregoing description of the Amended Stockholders Agreement is qualified in its entirety by reference to the form of Amended Stockholders Agreement, the full text of which is incorporated herein by reference to EXHIBIT D attached hereto.

Pursuant to an Amended and Restated Registration Rights Agreement to be entered into at the closing of the transactions contemplated by the Investment Agreement, which will replace the Registration Rights Agreement between the Company and Explorer, dated as of July 14, 2000, the Company will agree, subject to certain limitations and under certain circumstances, to register for sale any shares of the Company held by Explorer after the closing. The foregoing description of the Amended and Restated Registration Rights Agreement is qualified in its entirety by reference to the form of Amended and Restated Registration Rights Agreement, the full text of which is incorporated herein by reference to EXHIBIT E attached hereto.

Pursuant to the Investment Agreement, the Company is required to seek the approval of the Company's stockholders to amend the Series C Articles Supplementary for the Series C Preferred presently owned by Explorer (the "AMENDED SERIES C ARTICLES SUPPLEMENTARY"). Pursuant to the Amended Series C Articles Supplementary, the terms of the Series C Preferred will, subject to stockholder approval, be amended to (i) remove the restriction that prevents the voting or conversion of the Series C Preferred in excess of 49.9% of the voting securities of the Company owned by Explorer, (ii) provide that upon the failure of the Company to pay dividends owed upon the Series C Preferred or the Series D Preferred for a period of time, the holders of the Series C Preferred and the Series D Preferred, voting as a separate class, will be entitled to designate two additional directors to the Company's Board, and (iii) make other technical changes. The foregoing description of the Amended Series C Articles Supplementary is qualified in its entirety by reference to the form of Amended Series C Articles Supplementary, the full text of which is incorporated herein by reference to EXHIBIT B attached hereto.

Pursuant to the Investment Agreement, the Company amended its Rights Agreement, dated as of May 12, 1999, to exempt Explorer and its transferees from the provisions thereof. The foregoing description of the amendment to the Rights Agreement is qualified in its entirety by reference to Amendment No. 2 to Rights Agreement, the full text of which is incorporated herein by reference to EXHIBIT F attached hereto.

#### ITEM 5. INTEREST IN SECURITIES OF THE ISSUER.

(a) As previously reported in the Statement, each of the Reporting Persons beneficially owns 16,774,720 shares of Common Stock by virtue of Explorer's ownership of 1,048,420 shares of Series C Preferred. Based on the number of shares of Common Stock reported to be outstanding as of October 26, 2001, such shares would represent 45.5% of the Company's outstanding shares of Common Stock as of October 26, 2001, after giving effect to such issuance. The number of Shares that Explorer will

closing of the transactions contemplated by the Investment Agreement will depend upon the price of the shares offered in the rights offering and the number of shares of Common Stock purchased by the Company's stockholders pursuant to the rights offering. Explorer will beneficially own such Shares directly and each of the other Reporting Persons will beneficially own such Shares indirectly through the relationships described in the Statement. Messrs. McNamara and Decker disclaim beneficial ownership of all shares held by Explorer.

(b) Each of the Reporting Persons has shared power to vote and dispose of shares held by Explorer. Messrs. McNamara and Decker disclaim beneficial ownership of all shares held by Explorer.

(c)-(e) Not applicable.

ITEM 6. CONTRACTS, ARRANGEMENTS, UNDERSTANDINGS OR RELATIONSHIPS WITH RESPECT TO SECURITIES OF THE ISSUER.

The responses to Items 3, 4 and 5 are incorporated by reference, including, in particular, the descriptions of the following documents:

1. Investment Agreement. See Items 3 and 4 above.
2. Amended Series C Articles Supplementary. See Item 4 above.
3. Series D Articles Supplementary. See Item 3 above.
4. Amended and Restated Stockholders Agreement. See Item 4 above.
5. Amended and Restated Registration Rights Agreement. See Item 4 above.
6. Amendment No. 2 to Rights Agreement. See Item 4 above.

ITEM 7. MATERIAL TO BE FILED AS EXHIBITS.

- Exhibit A - Investment Agreement, dated as of October 29, 2001, by and between Omega Healthcare Investors, Inc. and Explorer Holdings, L.P.
- Exhibit B - Form of Amended and Restated Articles Supplementary for Series C Convertible Preferred Stock.
- Exhibit C - Form of Articles Supplementary for Series D Convertible Preferred Stock.
- Exhibit D - Form of Amended and Restated Stockholders Agreement.
- Exhibit E - Form of Amended and Restated Registration Rights Agreement.
- Exhibit F - Amendment No. 2 to Rights Agreement

SIGNATURES

After reasonable inquiry and to the best of its knowledge and belief, the undersigned certify that the information set forth in this statement is true, complete and correct, and agree that this Statement may be filed collectively on behalf of each of the undersigned by Explorer Holdings, L.P., Explorer Holdings GenPar, LLC, Hampstead Investment Partners III, L.P., Donald J. McNamara and Daniel A. Decker.

Date: October 30, 2001 EXPLORER HOLDINGS, L.P.

By: Explorer Holdings GenPar, LLC,  
its General Partner

By: /S/ WILLIAM T. CAVANAUGH, JR.  
-----  
William T. Cavanaugh, Jr.  
Authorized Officer



EXPLORER HOLDINGS GENPAR, LLC

By: /S/ WILLIAM T. CAVANAUGH, JR.

-----  
William T. Cavanaugh, Jr.  
Authorized Officer

HAMPSTEAD INVESTMENT PARTNERS III, L.P.

By: Hampstead Investment Partners III  
GenPar, L.P., its General Partner

By: Hampstead GenPar III, LLC,  
its General Partner

By: /S/ WILLIAM T. CAVANAUGH, JR.

-----  
William T. Cavanaugh, Jr.  
Authorized Officer

/S/ WILLIAM T. CAVANAUGH, JR.\*

-----  
Donald J. McNamara

/S/ WILLIAM T. CAVANAUGH, JR.\*

-----  
Daniel A. Decker

-----  
\* Pursuant to Power of Attorney previously filed.

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EXHIBIT INDEX

- Exhibit A - Investment Agreement, dated as of October 29, 2001, by and between Omega Healthcare Investors, Inc. and Explorer Holdings, L.P.
- Exhibit B - Form of Amended and Restated Articles Supplementary for Series C Convertible Preferred Stock.
- Exhibit C - Form of Articles Supplementary for Series D Convertible Preferred Stock.
- Exhibit D - Form of Amended and Restated Stockholders Agreement.
- Exhibit E - Form of Amended and Restated Registration Rights Agreement.
- Exhibit F - Amendment No. 2 to Rights Agreement.

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## INVESTMENT AGREEMENT

INVESTMENT AGREEMENT (this "AGREEMENT"), dated as of October 29, 2001, by and among Omega Healthcare Investors, Inc., a Maryland corporation (the "COMPANY"), and Explorer Holdings, L.P., a Delaware limited partnership ("PURCHASER").

## I. SHARE PURCHASE

1.1 SHARE PURCHASE. (a) The Board of Directors of the Company has authorized the issuance and sale to Purchaser hereunder of that number of newly issued shares (the "SHARES") of (i) Series D Preferred Stock of the Company, par value \$1.00 per share (the "SERIES D PREFERRED STOCK", having the designations, voting powers, preferences and relative, participating, optional and other special rights, qualifications, limitations and restrictions thereof, set forth in the Articles Supplementary attached hereto as EXHIBIT A (the "SERIES D ARTICLES SUPPLEMENTARY"), or (ii) if the Company Stockholder Approval shall have been obtained on or prior to the Closing Date, Common Stock, in each case equal to the Share Amount. The "SHARE AMOUNT" shall mean (i) in the case of Series D Preferred Stock, that number of shares of Series D Preferred Stock that would upon conversion on the date of issuance of the Series D Preferred result in the issuance of a number of shares of Common Stock equal to the quotient of (A) the difference between \$50 million and the gross proceeds received by the Company from the sale of Common Stock in the Rights Offering (such difference, the "UNSUBSCRIBED PURCHASE AMOUNT") divided by (B) the Rights Offering Exercise Price (as defined in EXHIBIT G) and (ii) in the case of Common Stock, that number of shares of Common Stock equal to the quotient of (A) the Unsubscribed Purchase Amount divided by (B) the Rights Offering Exercise Price.

(b) At the Closing, the Company will issue and sell to Purchaser, and Purchaser will purchase from the Company, the Shares for an aggregate purchase price equal to the Unsubscribed Purchase Amount.

1.2 UNSUBSCRIBED PURCHASE AMOUNT. The Unsubscribed Purchase Amount will be payable on the Closing Date in cash by bank wire transfer of immediately available funds to an account of the Company designated by the Company by written notice to Purchaser at least two Business Days prior to the Closing.

1.3 CLOSING. Subject to the satisfaction or waiver by Purchaser of the conditions set forth in Article V, the closing (the "CLOSING") of the purchase and sale of the Shares will take place at the offices of Jones, Day, Reavis & Pogue, 599 Lexington Avenue, New York, New York at 10:00 a.m. local time within the later of (i) ten Business Days after the expiration date of the Rights Offering (the "CLOSING DATE") and (ii) the date of closing of the Rights Offering if it occurs.

1.4 CLOSING DELIVERIES. (a) At or prior to the Closing, Purchaser will deliver to the Company:

(i) the Unsubscribed Purchase Amount, in accordance with Section 1.2;

(ii) an Amended and Restated Stockholders Agreement in the form attached hereto as EXHIBIT B (the "STOCKHOLDERS AGREEMENT"), duly executed by Purchaser;

(iii) an Amended and Restated Registration Rights Agreement in the form attached hereto as EXHIBIT C (the "REGISTRATION RIGHTS AGREEMENT"), duly executed by Purchaser; and

(iv) a letter relating to the Advisory Agreement between the Company and The Hampstead Group, L.L.C. (the "ADVISORY AGREEMENT"), in the form attached hereto as EXHIBIT D (the "ADVISORY LETTER"), duly executed by The Hampstead Group, L.L.C.

(b) At or prior to the Closing, the Company will deliver to Purchaser:

(i) such number of validly issued stock certificates evidencing the Shares, registered in the name of Purchaser or its Affiliates, as Purchaser requests at least three Business Days prior to the Closing;

(ii) the Stockholders Agreement duly executed by the Company;

(iii) the Registration Rights Agreement duly executed by the Company;

(iv) the Advisory Letter, duly executed by the Company;

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(v) the legal opinion of Powell, Goldstein, Frazer & Murphy LLP, counsel to the Company, addressed to Purchaser and dated as of the Closing Date, generally as to the matters set forth in Sections 2.1 (as to the Company only), 2.2, 2.3(a), 2.4 and 2.7(a) (i) and (ii);

(vi) the Bank Agreements; and

(vii) the amendment to the Company Rights Agreement, in the form attached hereto as EXHIBIT E (the "RIGHTS AMENDMENT"), duly executed by the Company and First Chicago Trust Company.

(c) At or prior to the Closing, the Company and Purchaser will deliver to each other such other supporting documents and certificates as the other party may reasonably request.

(d) At or prior to the Closing, if Series D Preferred Stock shall be issued on the Closing Date, the Series D Articles Supplementary shall have been filed and accepted for record by the appropriate Maryland governmental authority, and shall have become effective in accordance with the laws of the State of Maryland.

1.5 USE OF PROCEEDS. The Company shall use the proceeds from the issuance and sale of the Shares and the Common Stock issued in the Rights Offering to pay indebtedness of the Company and for general working capital purposes.

## II. REPRESENTATIONS AND WARRANTIES OF THE COMPANY

The Company hereby represents and warrants to Purchaser, except as set forth in the letter, dated the date hereof, from the Company to Purchaser specifically referencing this Agreement and delivered prior to or simultaneously with the execution of this Agreement and initialed by the parties hereto (the "COMPANY DISCLOSURE LETTER"), as follows:

2.1 EXISTENCE; GOOD STANDING; CORPORATE AUTHORITY. The Company is a corporation duly incorporated, validly existing and in good standing under the laws of the State of Maryland. The Company is duly licensed or qualified to do business as a foreign corporation and is in good standing under the laws of each state in which the character of the properties owned or leased by it or in which the transaction of its business makes such qualification necessary, except where the failure to be so qualified or to be in good standing would not have a Company

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Material Adverse Effect. The Company has all requisite corporate power and authority to own, operate and lease its properties and carry on its business as now conducted. The copies of the Company's Articles of Restatement, as amended (the "CHARTER") and bylaws delivered to Purchaser on the Closing Date are true, correct and complete. As used in this Agreement, the term "COMPANY MATERIAL ADVERSE EFFECT" means any change, effect, event or condition that has had or could reasonably be expected to (i) have a material adverse effect on the business, results of operations or financial condition of the Company and its Subsidiaries, taken as a whole, or (ii) prevent or materially delay the Company's ability to consummate the transactions contemplated hereby; PROVIDED, HOWEVER, that without waiving any representation, warranty or covenant in no event will any of the following constitute a Company Material Adverse Effect: (a) a change in the trading prices of any of the Company's securities, in and of itself; (b) effects, changes, events, circumstances or conditions generally affecting the long-term care or real estate finance industries or arising from changes in general business or economic conditions, PROVIDED that the effect thereof is not materially disproportionate on the Company and its Subsidiaries than the effect on similarly situated companies; (c) effects, changes, events, circumstances or conditions directly attributable to out-of-pocket fees and expenses (including without limitation legal, accounting, investigatory, investment banking and other fees and expenses) incurred in connection with the transactions contemplated by the Transaction Documents; (d) any effects, changes, events, circumstances or conditions resulting from the announcement or pendency of any of the transactions provided for in the Transaction Documents; (e) any effects, changes, events, circumstances or conditions resulting from compliance by Purchaser or the Company with the terms of, or the taking of any actions specifically required to be taken in, the Transaction Documents; (f) the effect of the financial condition of any operator of any of the Company Properties described in Section 2.1 of the Company Disclosure Letter; (g) the effect of any operator of any of the Company Properties in bankruptcy proceedings as of the date hereof rejecting leases to Company Properties or Material Contacts; (h) the effect of any matters specifically disclosed in the

Company Disclosure Letter; and (i) the effect of the closure of any of the securities exchanges on which the Company's securities are then traded for a period of not more than four consecutive trading days. As used in this Agreement, the term "SUBSIDIARY" (i) when used with respect to any Person, means any corporation or other Person, whether incorporated or unincorporated, of which such Person directly or indirectly owns or controls more than 50% of

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the securities or other interests having by their terms ordinary voting power to elect a majority of the board of directors or others performing similar functions and (ii) when used with respect to the Company, shall also include each of the following entities: (1) Bayside Street II, Inc., a Delaware corporation, (2) Bayside Alabama Healthcare Second, Inc., an Alabama corporation, (3) Bayside Arizona Healthcare Second, Inc., an Arizona corporation, and (4) Bayside Colorado Healthcare Second, Inc., a Colorado corporation.

2.2 AUTHORIZATION, VALIDITY AND EFFECT OF AGREEMENT. The Company has the requisite corporate power and authority to execute and deliver this Agreement and all agreements and documents contemplated hereby to be executed and delivered by it. This Agreement and the consummation by the Company of the transactions contemplated hereby have been duly authorized by all requisite corporate action. This Agreement, the Stockholders Agreement, the Registration Rights Agreement, the Bank Amendments, the Advisory Letter, the Series D Articles Supplementary and the Rights Amendment (collectively, the "TRANSACTION DOCUMENTS") have been (or, in the case of agreements to be delivered at the Closing, will be at the Closing) duly and validly executed and delivered by the Company and constitute (or, in the case of agreements to be delivered at the Closing, will constitute at the Closing) the valid and binding obligations of the Company, enforceable against the Company in accordance with their respective terms, except that (i) such enforceability may be subject to applicable bankruptcy, insolvency or other similar laws now or hereinafter in effect affecting creditors' rights generally, (ii) the availability of the remedy of specific performance or injunctive or other forms of equitable relief may be subject to equitable defenses and would be subject to the discretion of the court before which any proceeding therefor may be brought, and (iii) rights to indemnification may be limited by public policy considerations.

2.3 CAPITALIZATION; RIGHTS AGREEMENT. (a) The authorized capital stock of the Company consists of 100,000,000 shares of the Company's common stock, par value \$0.10 per share (the "COMMON STOCK"), 2,300,000 shares of 9.25% Series A Preferred Stock, par value \$1.00 per share (the "SERIES A PREFERRED STOCK"), 2,000,000 shares of 8.625% Series B Preferred Stock, par value \$1.00 per share (the "SERIES B PREFERRED STOCK"), 2,000,000 shares of Series C Convertible Preferred Stock, par value \$1.00 per share (the "Series C Preferred Stock"), and 100,000 shares of Series A Junior Participating Preferred Stock, par value \$1.00 per share. As of the close of

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business on October 26, 2001 (the "MEASUREMENT DATE"), (i) 20,076,024 shares of Common Stock were issued and outstanding, each of which was duly authorized, validly issued, fully paid and nonassessable and issued free of any preemptive rights, (ii) 2,300,000 shares of Series A Preferred Stock were issued and outstanding, each of which was duly authorized, validly issued, fully paid and nonassessable and issued free of any preemptive rights, (iii) 2,000,000 shares of Series B Preferred Stock were issued and outstanding, each of which was duly authorized, validly issued, fully paid and nonassessable and issued free of any preemptive rights, and (iv) 1,048,420 shares of Series C Preferred Stock were issued and outstanding, each of which was duly authorized, validly issued, fully paid and nonassessable and issued free of any preemptive rights. Section 2.3 of the Company Disclosure Schedule set forth (i) the number of shares of Common Stock reserved for issuance under the stock option plans listed in Section 2.3 of the Company Disclosure Letter (the "STOCK OPTION PLANS"), (ii) the aggregate number of shares of Common Stock underlying outstanding options under the Stock Option Plans as more particularly described in Section 2.3 of the Company Disclosure Letter (including the holders thereof, the expiration date, the exercise prices thereof and the dates of grant), and (iii) the aggregate number of Deferred Compensation Units issued and outstanding pursuant to the Company's 1993 Deferred Compensation Plan as of the close of business on October 26, 2001. Since the Measurement Date, no additional shares of capital stock of the Company have been issued and no other options, warrants or other rights to acquire shares of the Company's capital stock (collectively, the "RIGHTS TO ACQUIRE") have been granted. Except as described in the second preceding sentence, the Company has no outstanding bonds, debentures, notes or other securities or obligations the holders of which have the right to vote or which are or were convertible into or exercisable for, voting securities, capital stock or other equity ownership interests in the Company. Except as

set forth in Section 2.3 of the Company Disclosure Letter, there are not at the date of this Agreement any existing options, warrants, calls, subscriptions, convertible securities or other Rights To Acquire which obligate the Company or any of its Subsidiaries to issue, exchange, transfer or sell any shares of capital stock of the Company or any of its Subsidiaries other than shares of Common Stock issuable under the Stock Option Plans or awards granted pursuant thereto. There are no outstanding contractual or legal obligations of the Company or any of its Subsidiaries (x) to repurchase, redeem or otherwise acquire any shares of capital stock of the Company or any of its Subsidiaries, or (y) to vote or to dispose of any shares of the capital stock of any of its Subsidiaries. Except as

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contemplated by this Agreement or the transactions contemplated hereby, none of the Company or any of its Subsidiaries has any obligation to issue, transfer or sell any shares of the capital stock or other securities of the Company or any of its Subsidiaries.

(b) The Company has taken all necessary action so that neither the execution, delivery and performance of the Transaction Documents nor the consummation of the transactions contemplated hereby and thereby shall (i) cause Purchaser or any of its Affiliates to become an "Acquiring Person" or (ii) result in the occurrence of a "Triggering Event" or "Distribution Date" (as such terms are defined in the Company Rights Agreement, dated as of May 12, 1999, as amended on May 11, 2000 (the "COMPANY RIGHTS AGREEMENT"), between the Company and First Chicago Trust Company, as rights agent). The board of directors of the Company (the "COMPANY BOARD") has approved, and the Company has entered into, the Rights Amendment. Pursuant to the Rights Amendment, among other things, neither the execution, delivery and performance of the Transaction Documents nor the consummation of the transactions contemplated hereby or thereby will (x) result in the distribution of separate certificates representing Rights (as defined in the Company Rights Agreement), (y) cause the Rights to become exercisable, or (z) result in the occurrence of a "Triggering Event" or a "Distribution Date" (as such terms are defined the Company Rights Agreement).

2.4 VALIDITY OF SHARES, ETC. Each of the Shares has been duly authorized for issuance and, when issued to Purchaser for the consideration set forth herein and as otherwise provided herein, will be duly and validity issued, fully paid, non-assessable and free of preemptive rights. Upon issuance of the Shares in accordance with the terms and conditions of this Agreement or upon conversion (if applicable) of the Shares from time to time, Purchaser will acquire good and valid title to such shares of Common Stock, free and clear of any and all liens, claims, security interests, encumbrances, restrictions on voting or alienation or otherwise, or adverse interests (collectively, "LIENS"), except as may be created by Purchaser, the Transaction Documents or by applicable securities Laws.

2.5 SUBSIDIARIES. Section 2.5 of the Company Disclosure Letter lists all of the Subsidiaries of the Company. Each of the Company's Subsidiaries is a corporation, partnership or limited liability company duly organized, validly existing and in good standing under the laws of its jurisdiction of incorporation or organization, has the corporate, partnership or

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similar power and authority to own its properties and to carry on its business as it is now being conducted, and is duly qualified to do business and is in good standing in each jurisdiction in which the ownership of its property or the conduct of its business requires such qualification, except for jurisdictions in which such failure to be so qualified or to be in good standing would not have a Company Material Adverse Effect. The Company owns, directly or indirectly, all of the outstanding shares of capital stock (or other ownership interests having by their terms ordinary voting power to elect a majority of directors or others performing similar functions with respect to such Subsidiary) of each of the Company's Subsidiaries, free and clear of all Liens, except as set forth in Section 2.5 of the Company Disclosure Letter. Each of the outstanding shares of capital stock (or such other ownership interests) of each of the Company's Subsidiaries is duly authorized, validly issued, fully paid and nonassessable.

2.6 OTHER INTERESTS. Except for interests in the Company's Subsidiaries and as set forth in Section 2.6 of the Company Disclosure Letter, neither the Company nor any of the Company's Subsidiaries owns, directly or indirectly, any material interest or investment (whether equity or debt) in any domestic or foreign corporation, company, partnership, joint venture, business, trust or entity.

2.7 NO CONFLICT; REQUIRED FILINGS AND CONSENTS. (a) Except as set forth in Section 2.7 of the Company Disclosure Letter, the execution, delivery and performance of the Transaction Documents by the Company do not, and

the consummation by the Company of the transactions contemplated hereby and thereby will not, (i) conflict with or violate the articles of incorporation or bylaws or equivalent organizational documents of the Company or any of its Subsidiaries, (ii) subject to the Company making any filings, notifications or registrations and obtaining any approvals identified in Section 2.7(b), conflict with or violate any domestic or foreign statute, rule, regulation or other legal requirement ("LAW") or order, judgment, injunction or decree ("ORDER") applicable to the Company or any of its Subsidiaries or by which any property or asset of the Company or any of its Subsidiaries is bound or affected, or (iii) result in any breach of or constitute a default (or an event which with or without notice or lapse of time or both would become a default) under, result in the loss of a material benefit under, or give to others any right of purchase or sale, or any right of termination, amendment, acceleration, increased payments or cancellation of, or result

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in the creation of a Lien on any property or asset of the Company or any of its Subsidiaries pursuant to, any note, bond, mortgage, indenture, contract, agreement, lease, license, permit, franchise or other instrument or obligation to which the Company or any of its Subsidiaries is a party or by which the Company or any of its Subsidiaries or any property or asset of the Company or any of its Subsidiaries is bound or affected, except, in the case of clauses (ii) and (iii), for any such conflicts, violations, breaches, defaults, events, losses, rights, payments, cancellations, encumbrances or other occurrences that, individually or in the aggregate, would not have a Company Material Adverse Effect, or (iv) result in the loss of the Company's status as a real estate investment trust ("REIT") under Section 856 of the Internal Revenue Code of 1986, as amended (the "CODE").

(b) The execution, delivery and performance of the Transaction Documents by the Company do not, and the consummation by the Company of the transactions contemplated hereby and thereby will not, require any consent, approval, authorization or permit of, or filing with or notification to, any governmental or regulatory authority, domestic or foreign, including without limitation any quasi-governmental, supranational, statutory, environmental entity and any stock exchange, court or arbitral body (each a "GOVERNMENTAL ENTITY") under any Law, except (i) for (A) applicable requirements, if any, under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the "HSR ACT"), (B) applicable requirements, if any, of the Securities Act and the Securities Exchange Act of 1934, as amended (the "EXCHANGE ACT") and (C) the consents, approvals and authorizations set forth in Section 2.7 of the Company Disclosure Letter, and (ii) where the failure to obtain any such consent, approval, authorization or permit, or to make any such filing or notification, would not, individually or in the aggregate, have a Company Material Adverse Effect.

2.8 COMPLIANCE WITH LAWS. Except as set forth in Section 2.8 of the Company Disclosure Letter, neither the Company nor any of its Subsidiaries is in conflict with, or in default or violation of, (a) any Law or Order applicable to the Company or any of its Subsidiaries or by which any property or asset of the Company or any of its Subsidiaries is bound or affected (PROVIDED that no representation or warranty is made in this Section 2.8 with respect to Environmental Laws) or (b) any note, bond, mortgage, indenture, contract, agreement, lease, license, permit, franchise or other instrument or obligation to which the Company or any of its Subsidiaries is a party or by

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which the Company or any of its Subsidiaries or any property or asset of the Company or any of its Subsidiaries is bound or affected, and to the Knowledge of the Company, neither the Company nor any of its Subsidiaries is under review or investigation with respect to or has been threatened to be charged with or given notice of any violation of any Law or Order, except in each case for such conflicts, defaults, violations, reviews or investigations that would not, individually or in the aggregate, have a Company Material Adverse Effect. The Company and its Subsidiaries hold all licenses, permits, orders, registrations and other authorizations ("PERMITS") and have taken all actions required by applicable Law or regulations of any Governmental Entity in connection with their business as now conducted, except where the failure to obtain any such item or to take any such action would not, individually or in the aggregate, have a Company Material Adverse Effect.

2.9 SEC DOCUMENTS. (a) The Company has timely filed all forms, reports and documents required to be filed by it with the Securities and Exchange Commission (the "SEC") since January 1, 1999 (collectively, the "COMPANY REPORTS"). As of their respective dates, the Company Reports and any such reports, forms and other documents filed by the Company with the SEC after the date of this Agreement and until the Closing Date (i) complied, or will comply, in all material respects with the applicable requirements of the Securities Act of 1933, as amended (the "SECURITIES ACT"), the Exchange Act and the rules and regulations thereunder and (ii) did not, and will not, contain any untrue statement of a material fact or omit to state a material fact required to

be stated therein or necessary to make the statements made therein, in the light of the circumstances under which they were made, not misleading. The representation in clause (ii) of the preceding sentence does not apply to any misstatement or omission in any Company Report filed prior to the date of this Agreement which was superseded by a subsequent Company Report filed prior to the date of this Agreement. No Subsidiary of the Company is required to file any periodic reports with the SEC under the Exchange Act.

(b) Each of the financial statements included in or incorporated by reference into the Company Reports (including the related notes and schedules) (the "COMPANY FINANCIAL STATEMENTS") presents fairly, in all material respects, the consolidated financial position of the Company and its Subsidiaries as of its date and, to the extent applicable, the results of operations, retained earnings or cash flows, as the

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case may be, of the Company and its Subsidiaries for the periods set forth therein (subject, in the case of unaudited statements, to normal year-end audit adjustments, none of which will be material in amount), in each case in accordance with United States generally accepted accounting principles consistently applied ("GAAP") during the periods involved, except as may be noted therein.

2.10 NO UNDISCLOSED MATERIAL LIABILITIES. There are no material liabilities or obligations of the Company or any of its Subsidiaries of any kind whatsoever, whether accrued, contingent, absolute, determined, determinable or otherwise that would result in such a liability, other than (a) liabilities or obligations disclosed in the Company Financial Statements or in Section 2.10 of the Company Disclosure Letter and (b) liabilities or obligations incurred in the ordinary course of business consistent with past practices since July 1, 2001 that would not have, individually or in the aggregate, a Company Material Adverse Effect.

2.11 LITIGATION. Except as disclosed in Section 2.11 of the Company Disclosure Letter or such of the following as would not have a Company Material Adverse Effect, and other than personal injury and other routine tort litigation arising from the ordinary course of operations of the Company and its Subsidiaries which are covered by adequate insurance, as of the date of this Agreement, there are no actions, suits or proceedings pending, publicly announced or, to the Knowledge of the Company, threatened against or affecting the Company or any of its Subsidiaries and there are no Orders of any Governmental Entity outstanding against the Company or any of its Subsidiaries.

2.12 ABSENCE OF CERTAIN CHANGES. From July 1, 2001 through the date of this Agreement, the Company and its Subsidiaries have conducted their respective businesses in the ordinary course consistent with past practice and there has not been any Company Material Adverse Effect.

2.13 TAXES. (a) Each of the Company and its Subsidiaries and any consolidated, combined, unitary or aggregate group for tax purposes of which the Company or any Subsidiary of the Company is or has been a member has timely filed all Tax Returns required to be filed by it (after giving effect to any extension properly granted by a Tax Authority having authority to do so) and has timely paid (or the Company has timely paid on its behalf) all material Taxes required to be paid by it (whether or not shown on such Tax Returns), except

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Taxes that are being contested in good faith by appropriate proceedings and for which the Company or the applicable Subsidiary of the Company shall have set aside on its books adequate reserves.

(b) The Company (i) for all taxable years commencing with its initial taxable year and through December 31, 2000 has been properly subject to taxation as a REIT within the meaning of Section 856 of the Code and has qualified as a REIT for such years, (ii) has operated since December 31, 2000 in such a manner as to qualify as a REIT (determined without regard to the dividends paid deduction requirements for the current year) for the taxable year beginning January 1, 2001 determined as if the taxable year of the REIT ended as of the Closing, and (iii) has not taken or omitted to take any action that would result in loss of or a challenge to its status as a REIT, and no such challenge is pending or, to the Company's Knowledge, threatened. The Company has complied, and reasonably expects to continue complying, with the income qualification tests set out in Section 856(c) (2) and (3) of the Code. Neither the Company nor any Subsidiary has received, or reasonably expects to receive, any material rent that does not qualify as "rents from real property" within the meaning of Section 856(d) of the Code, including rent attributable to personal property under Section 856(d) (1) (C), any contingent rent under Section 856(d) (2) (A) of the Code, or any rent from a related-party tenant under Section 856(d) (2) (B) of the Code. Neither the Company nor any Subsidiary has received, or reasonably expects to receive, any contingent interest that does not qualify as "interest" under Section 856(f) of the Code or any income from a shared appreciation

provision, as described under Section 856(j) of the Code, that is subject to the prohibited transaction tax under Section 857(b)(6).

(c) For purposes of this Agreement, (i) "TAXES" means all taxes, charges, fees, levies or other assessments imposed by any United States Federal, state, or local taxing authority or by any non-U.S. taxing authority, including, but not limited to, income, gross receipts, excise, property, sales, use, transfer, payroll, license, ad valorem, value added, withholding, social security, national insurance (or other similar contributions or payments), franchise, estimated, severance, stamp, and other taxes (including any interest, fines, penalties or additions attributable to or imposed on or with respect to any such taxes, charges, fees, levies or other assessments), (ii) "TAX RETURN" means any return, report, information return or other document (including any related or supporting information and, where

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applicable, profit and loss accounts and balance sheets) with respect to Taxes, and (iii) "TAX AUTHORITY" shall mean the Internal Revenue Service and any other domestic or foreign bureau, department, entity, agency or other Governmental Entity responsible for the administration of any Tax.

2.14 PROPERTIES. (a) Except as would not have a Company Material Adverse Effect, the Company or one of its Subsidiaries owns marketable fee simple or leasehold title to, or a valid first priority mortgage Lien on, all of the real properties identified as such in the Company Reports (collectively with all buildings, structures and other improvements thereon, the "COMPANY PROPERTIES" and each, collectively with all buildings, structures and other improvements thereon, a "COMPANY PROPERTY").

(b) Each material certificate, permit or license from any Governmental Entity having jurisdiction over any of the Company Properties and each agreement, easement or other right which is necessary to permit the lawful use and operation of the buildings and improvements on any of the Company Properties or which is material to the operation of the property have been obtained and are in full force and effect, except to the extent that the failure to obtain or maintain any such certificate, permit, license, agreement, easement or other right would not have a Company Material Adverse Effect. Neither the Company nor any of its Subsidiaries has received written notice of any violation of any Law with respect to any of the Company Properties which, individually or in the aggregate, would have a Company Material Adverse Effect.

2.15 CONTRACTS. Except as set forth in Section 2.15 of the Company Disclosure Letter, neither the Company nor any of its Subsidiaries is in breach or default under any material contract nor, to the Knowledge of the Company, is any other party to any material contract in breach or default thereunder, in either case except for such breaches and defaults of any material contract, either individually or in the aggregate, that would not have a Company Material Adverse Effect.

2.16 ENVIRONMENTAL MATTERS. (a) Except as disclosed in Section 2.16 of the Company Disclosure Letter and for such exceptions to any of the following that, individually or in the aggregate, would not have a Company Material Adverse Effect, (A) none of the Company nor any of its Subsidiaries nor any other Person has caused or permitted (i) the presence of any Hazardous Substances on any of the Company's Properties, (ii) any spills, releases, discharges or disposal of Hazardous Substances to have

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occurred or be presently occurring on or from the Company Properties as a result of any construction on or operation and use of the Company Properties, (B) (i) the Company and its Subsidiaries have complied with all applicable local, state and federal Environmental Laws, including all regulations, ordinances and administrative and judicial orders relating to the generation, sale, storage, handling, transport and disposal of any Hazardous Substances, (ii) the Company and its Subsidiaries have obtained, currently maintain and, as currently operating are in compliance with, all Permits necessary under any Environmental Law ("ENVIRONMENTAL PERMITS") for the conduct of the business and operations of the Company and its Subsidiaries in the manner now conducted, and, to the Knowledge of the Company, there are no actions or proceedings pending or threatened to revoke or materially modify such Permits; (iii) no Hazardous Substances have been used, stored, manufactured, treated, processed or transported to or from any such Company Property by the Company and its Subsidiaries or any other Person, except as necessary to the customary conduct of business and in compliance with Law and in a manner that does not result in any material liability under applicable Environmental Laws; and (iv) the Company and its Subsidiaries have not received any written notice of potential responsibility, letter of inquiry or written notice of alleged liability from any Person regarding such Company Property or the business conducted thereon.



For the purposes of this Section 2.16 only, "COMPANY PROPERTIES" shall be deemed to include all property formerly owned, operated or leased by the Company or its current or former Subsidiaries, solely, however, as to the period of time when such property was so owned, operated or leased by the Company or its current or former Subsidiaries.

(b) For purposes of this Agreement, the term (i) "ENVIRONMENTAL LAWS" means any national, federal, state or local Law (including, without limitation, common law), Order, Permit or any agreement with any Governmental Entity or other third party (whether domestic or foreign) relating to: (A) releases or threatened releases of Hazardous Substances or materials containing Hazardous Substances; (B) the manufacture, processing, distribution, handling, transport, use, treatment, storage or disposal of Hazardous Substances or materials containing Hazardous Substances; or (C) pollution of the environment, and (ii) "HAZARDOUS SUBSTANCES" means: (A) those materials, pollutants and/or substances defined in or regulated under the following federal statutes and their state counterparts, as each may be amended from time to time, and all regulations thereunder: the Hazardous Materials Transportation

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Act of 1980, the Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Compensation and Liability Act, the Clean Water Act, the Safe Drinking Water Act, the Atomic Energy Act, the Federal Insecticide, Fungicide and Rodenticide Act, the Toxic Substances Control Act and the Clean Air Act; (B) petroleum and petroleum products including crude oil and any fractions thereof; (C) natural gas, synthetic gas and any mixtures thereof; (D) radon; (E) asbestos; (F) any other contaminant; and (G) any materials, pollutants and/or substance with respect to which any Governmental Entity requires environmental investigation, monitoring, reporting or remediation.

2.17 COMPANY BENEFIT PLANS; ERISA COMPLIANCE. (a) Each Company Benefit Plan has been administered in accordance with its terms, all applicable Laws, including ERISA and the Code, except to the extent that the failure to so administer the applicable plan would not have a Company Material Adverse Effect. All contributions to, and payments from, each Company Benefit Plan and "multiple employer plan" (within the meaning of Section 3(40) of ERISA) that are required to be made in accordance with such Plans and applicable Laws (including ERISA and the Code) have been timely made.

(b) Except as set forth on Section 2.17(b) of the Company Disclosure Letter, the consummation of the transactions contemplated by this Agreement will not, either alone or in combination with another event, (i) entitle any current or former employee, officer or director of the Company to severance pay, unemployment compensation or any other payment or (ii) accelerate the time of payment or vesting, or increase the amount of compensation, equity rights or benefits due any such employee, officer or director.

(c) The execution, delivery or performance of the transactions contemplated by the Transaction Documents does not constitute a "Change in Control" under the employment agreements, incentive stock option or nonqualified stock option agreements of any of the Company's officers (such agreements, the "COMPANY CHANGE IN CONTROL AGREEMENTS"). The Compensation Committee of the Company Board has taken all appropriate action to confirm that none of the issuance of the Shares to Purchaser, the issuance of shares of Common Stock to Purchaser upon conversion (if applicable) of the Shares or the execution and delivery by the Company of any of the Transaction Documents shall result in any adjustment pursuant to Section 5.2 of the Company's 2000 Stock Incentive Plan.

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(f) "COMPANY BENEFIT PLAN" means each compensation, bonus, pension, profit sharing, deferred compensation, incentive compensation, stock ownership, stock purchase, stock option or other stock related fringe benefit, retirement, vacation, disability, death benefit, supplemental unemployment benefits, hospitalization, medical, dental, life, severance, post-employment benefits or other plan, agreement, arrangement, policies or understanding, or employment severance, retention, consulting, change of control or similar agreement whether formal or informal, oral or written, providing benefits to any current or former employee, officer, director or shareholder of the Company or any of its Subsidiaries or to which the Company or any of its Subsidiaries contributes or is or was obligated to contribute.

2.18 NO BROKERS. The Company has not entered into any contract, arrangement or understanding with any Person or firm which may result in the obligation of the Company or Purchaser to pay any investment banker's or finder's fees, brokerage or agent's commissions or other like payments in connection with the negotiations leading to this Agreement or the consummation of the transactions contemplated hereby, except that the Company has retained Shattuck Hammond Partners LLC as its financial advisor (the "FINANCIAL ADVISOR"), the arrangements with which have been disclosed to Purchaser prior to the date hereof. The Company will pay all amounts owed pursuant to the foregoing arrangements.

2.19 PROXY AND REGISTRATION STATEMENT. The proxy statement (as amended or supplemented, the "PROXY STATEMENT") to be mailed to the holders of Common Stock of the Company (the "COMPANY STOCKHOLDERS") in connection with the meeting of the Company Stockholders (the "COMPANY STOCKHOLDERS MEETING") to approve (i) the issuance to Purchaser of shares of Common Stock upon the conversion of the Series D Preferred (including any change in control resulting therefrom), (ii) the amendment of the Company's Charter and Bylaws to increase the size of the Board that may be authorized to eleven members, and (iii) the amendment to the terms of the Series C Preferred contemplated by the Amended Series C Articles Supplementary (the matters to be considered for approval, the "STOCKHOLDER APPROVAL MATTERS" and such approval, the "STOCKHOLDER APPROVAL"), and the registration statement to be mailed to the Company Stockholders in connection with the Rights Offering (as amended or supplemented, the "REGISTRATION STATEMENT"), at the date mailed to the Company Stockholders and at the time of the Company Stockholders Meeting, in the case of the Proxy Statement, and on the

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effective date of the Registration Statement, on the date mailed to the Company Stockholders, and on the date of closing of the Rights Offering, in the case of the Registration Statement, (i) will comply in all material respects with the applicable requirements of the Securities Act, the Exchange Act and the rules and regulations thereunder and (ii) will not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading.

2.20 FAIRNESS OPINION. The Company has received the opinion of the Financial Advisor, dated October 29, 2001, to the effect that, as of such date, the Financial Terms of the Investment Agreement (as defined in the Financial Advisor's opinion), taken as a whole, are fair to the Company from a financial point of view, a signed copy of which has been delivered to Purchaser.

2.21 VOTING REQUIREMENTS. The affirmative vote of no more than the holders of a majority of the issued and outstanding shares of Common Stock (giving effect to the conversion of the Series C Preferred), voting as a single class, at the Company Stockholders Meeting to approve the Stockholder Approval Matters (the "COMPANY STOCKHOLDER APPROVAL"), is the only vote of the holders of any class or series of the Company's capital stock necessary to approve the transactions contemplated hereby.

2.22 STATE TAKEOVER STATUTES. The limitations on "business combinations" (as defined in Subtitle 6 of Title 3 of the Maryland General Corporation Law ("MGCL")) and the Charter and the limitations on voting rights of shares of stock acquired in a "control share acquisition" (as defined in Subtitle 7 of Title 3 of the MGCL) are not applicable to the transactions contemplated hereby. There is no other provision of the MGCL or the Company's bylaws or Charter under which special voting or waiting period requirements would become applicable, or Purchaser would not have rights possessed by other stockholders, had the Company issued to Purchaser all Shares and shares of Common Stock upon conversion of the Shares (if applicable) prior to the date hereof.

2.23 STATEMENTS TRUE AND CORRECT. The representations made by the Company pursuant to this Agreement and the Company Disclosure Letter do not contain as of the date hereof any untrue statement of material fact or omit to state a material

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fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading.

### III. REPRESENTATIONS AND WARRANTIES

OF PURCHASER

Purchaser represents and warrants to the Company as follows:

3.1 EXISTENCE; GOOD STANDING; CORPORATE AUTHORITY. Purchaser is a limited partnership duly formed, validly existing and in good standing under the laws of the State of Delaware. Purchaser is duly licensed or qualified to do business as a limited partnership and is in good standing in each jurisdiction in which the character of the properties owned or leased by it or in which the transaction of its business makes such qualification necessary, except where the failure to be so qualified or to be in good standing would not have a Purchaser Material Adverse Effect. A "PURCHASER MATERIAL ADVERSE EFFECT" means any change, effect, event or condition that has had or could reasonably be expected to (i) have a material adverse effect on the business, results of

operations or financial condition of Purchaser and its Subsidiaries, taken as a whole, PROVIDED, HOWEVER, that no event referred to in clauses (b), (c), (d) or (e) of the proviso to the definition of Company Material Adverse Effect will, as applied to Purchaser, constitute a Purchaser Material Adverse Effect, or (ii) prevent or materially delay Purchaser's ability to consummate the transactions contemplated hereby. Purchaser has all requisite limited partnership power and authority to own, operate and lease its properties and carry on its business as now conducted.

### 3.2 AUTHORIZATION, VALIDITY AND EFFECT OF TRANSACTION

DOCUMENTS. Purchaser has all requisite limited partnership power and authority to execute and deliver the Transaction Documents to be executed by it. Each Transaction Document to which Purchaser is a party and the consummation by Purchaser of the transactions contemplated hereby and thereby have been duly and validly authorized by the general partner of Purchaser and the applicable governing body of Purchaser's general partner, and no other action on the part of Purchaser or Purchaser's general partner is necessary to authorize such Transaction Documents or to consummate the transactions contemplated hereby or thereby. All Transaction Documents executed and delivered by Purchaser constitute the valid and binding obligations of Purchaser, enforceable against it in accordance with their respective terms, except that (i) the enforceability hereof and thereof may be subject to applicable bankruptcy, insolvency or other similar laws now or hereinafter in effect affecting

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creditors' rights generally, (ii) the availability of the remedy of specific performance or injunctive or other forms of equitable relief may be subject to equitable defenses and would be subject to the discretion of the court before which any proceeding therefor may be brought, and (iii) rights to indemnification may be limited by public policy considerations.

3.3 NO CONFLICT; REQUIRED FILINGS AND CONSENTS. (a) The execution, delivery and performance of each Transaction Document to which Purchaser is a party do not, and the consummation by Purchaser of the transactions contemplated hereby and thereby will not, (i) conflict with or violate the articles of incorporation, bylaws or other similar constituent documents of Purchaser or any of its Subsidiaries, (ii) subject to Purchaser making any filings, notifications or registrations and obtaining any approvals, consents or authorizations identified in Section 3.3(b), conflict with or violate any Law or Order applicable to Purchaser or any of its Subsidiaries or by which any property or asset of Purchaser or any of its Subsidiaries is bound or affected, or (iii) result in any breach of or constitute a default (or an event which with notice or lapse of time or both would become a default) under, result in the loss of a material benefit under, or give to others any right of termination, amendment, acceleration, increased payments or cancellation of, or result in the creation of a Lien on any property or asset of Purchaser or any of its Subsidiaries pursuant to, any note, bond, mortgage, indenture, contract, agreement, lease, license, permit, franchise or other instrument or obligation to which Purchaser or any of its Subsidiaries is a party or by which Purchaser or any of its Subsidiaries or any property or asset of Purchaser or any of its Subsidiaries is bound or affected, except in the case of clauses (ii) and (iii), for any such conflicts, violations, breaches, defaults, events, losses, rights, payments, cancellations, encumbrances or other occurrences that would not, individually or in the aggregate, have a Purchaser Material Adverse Effect.

(b) The execution, delivery and performances of each Transaction Document to which Purchaser is a party do not, and the consummation of the transactions contemplated hereby and thereby by it will not, require any consent, approval, authorization or permit of, or filing with or notification to, any Governmental Entity, except for (A) applicable requirements, if any, of the Securities Act and the Exchange Act and (B) where failure to obtain such consents, approvals, authorizations or permits, or to make such filings or notifications, would not,

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individually or in the aggregate, have a Purchaser Material Adverse Effect.

3.4 NO BROKERS. Purchaser has not entered into any contract, arrangement or understanding with any Person or firm which may result in the obligation of the Company or any Subsidiary of the Company to pay any investment banker's or finder's fees, brokerage or agent's commissions or other like payments in connection with the negotiations leading to this Agreement or the consummation of the transactions contemplated hereby, any such amounts to be the sole liability of Purchaser.

3.5 PROXY AND REGISTRATION STATEMENT. None of the information provided by Purchaser or its officers, directors, representatives, agents or employees specifically for inclusion in the Proxy Statement or the Registration Statement will, in the case of the Proxy Statement, on the date the Proxy Statement is first mailed to the Company Stockholders or at the time of the

Company Stockholders Meeting, and, in the case of the Registration Statement, on the effective date of the Registration Statement, on the date mailed to the Company Stockholders, and on the date of closing of the Rights Offering contain any untrue statement of a material fact, or will omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading.

3.6 SUFFICIENT FUNDS. Purchaser will have sufficient funds available to (a) pay all amounts required to be paid pursuant to this Agreement when due and (b) pay all nonreimbursable fees, costs and expenses incurred by Purchaser in connection with this Agreement and the transactions contemplated herein.

3.7 INVESTMENT INTENT. Purchaser is purchasing the Shares to be purchased by it for its own account and for investment purposes, and does not intend to redistribute the Shares (except in a transaction or transactions exempt from registration under the federal and state securities laws or pursuant to an effective registration statement under such laws). Purchaser acknowledges that the Shares have not been registered under the Securities Act or any state blue sky or securities Laws and that the transfer of the Shares may be subject to compliance with such Laws (in addition to the restrictions set forth in the Stockholders Agreement). As of the date hereof, Purchaser has no present intention to transfer the Shares.

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3.8 INVESTOR SOPHISTICATION; ETC. Purchaser is an "accredited investor" as defined in Regulation D under the Securities Act, has such knowledge and experience in financial business matters that it is capable of evaluating the merits and risks of an investment in the Shares, and, without limiting the scope or effect of any of the representations and warranties of the Company in Article II or Purchaser's indemnification rights under Article VI, has had access to such information as it has deemed necessary in order to formulate an informed decision to purchase the Shares. Purchaser is not an "investment company" within the meaning of the Investment Company Act of 1940, as amended.

#### IV. COVENANTS -----

4.1 FILINGS, REASONABLE EFFORTS. Upon the terms and subject to the conditions set forth in this Agreement, each of the parties will use all commercially reasonable efforts to take, or cause to be taken, all actions, and to do, or cause to be done, and to assist and cooperate with the other parties in doing, all things necessary, proper or advisable to consummate and make effective, in the most expeditious manner practicable, the transactions contemplated by this Agreement, including without limitation (i) obtaining of all necessary actions or nonactions, waivers, consents and approvals from Governmental Entities and making of all necessary registrations and filings (including filings with Governmental Entities) and taking of all reasonable steps as may be necessary to obtain an approval or waiver from, or to avoid an action or proceeding by, any Governmental Entity, (ii) obtaining, in writing, of all necessary consents, approvals or waivers from third parties in form reasonably satisfactory to Purchaser, and (iii) executing and delivering any additional instruments necessary to consummate the transactions contemplated by, and to fully carry out the purposes of, this Agreement.

4.2 PUBLICITY. The initial press release relating to this Agreement will be in the form of a joint press release previously agreed between Purchaser and the Company and thereafter the Company and Purchaser will, subject to their respective legal obligations (including requirements of stock exchanges and other similar regulatory bodies), consult with each other, and use reasonable efforts to agree upon the text of any press release, before issuing any such press release or otherwise making public statements with respect to the transactions contemplated hereby and in making any filings with any Governmental Entity or with any national securities exchange with respect thereto.

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4.3 PROXY STATEMENT. The Company will promptly prepare the Proxy Statement and file it with the SEC as soon as practicable after the date hereof and will use its commercially reasonable best efforts to have the Proxy Statement cleared by the SEC within 75 calendar days after the date of filing and promptly thereafter will mail the Proxy Statement to the Company Stockholders in order for the Company Stockholders Meeting to occur within 90 calendar days after the date hereof. Purchaser will use its commercially reasonable best efforts to cooperate with the Company in the preparation and finalization of the Proxy Statement. Any Proxy Statement will disclose the recommendation of the Company Board as of the date hereof that the Company Stockholders approve the Stockholder Approval Matters. The Company agrees not to

mail the Proxy Statement to the Stockholders until Purchaser confirms that the information provided by Purchaser continues to be accurate. If at any time prior to the Company Stockholders Meeting any event or circumstance relating to the Company or any of its Subsidiaries or Affiliates, or its or their respective officers or directors, should be discovered by the Company that is required to be set forth in a supplement to any Proxy Statement, the Company will inform Purchaser, supplement such Proxy Statement and mail such supplement to the Company Stockholders. The Company will promptly advise the Purchaser of any oral or written comments to the Proxy Statement from the SEC or the issuance of any stop order with respect to the Proxy Statement. The Company will provide the Purchaser and its counsel with a reasonable opportunity to review and comment on the Proxy Statement and any amendment or supplement thereto prior to filing such with the SEC, and will provide the Purchaser with a copy of all such filings made with the SEC.

4.4 NYSE LISTING. The Company will use its best efforts to cause the shares of the Common Stock to be issued hereunder or upon the conversion of the Series D Preferred Stock, if applicable, and the shares of Common Stock to be issued in the Rights Offering to be approved for listing on The New York Stock Exchange ("NYSE"), subject to official notice of issuance.

4.5 COMPANY STOCKHOLDERS MEETING. (a) The Company will take all action necessary in accordance with applicable Law and its Charter and bylaws to duly call, give notice of, convene and hold a special meeting of the Company Stockholders as promptly as practicable (but in no event later than 90 calendar days after the date hereof) and to include for consideration and vote at the Company Stockholders Meeting the Stockholder

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Approval Matters. The Company Board will recommend approval of the Stockholder Approval Matters and the Company will take all lawful action to solicit such approval, including without limitation timely mailing of the Proxy Statement. In the event the Stockholder Approval Matters are not approved at the Company Stockholders Meeting, the Company will (i) use reasonable efforts to obtain as promptly as practicable a waiver from the NYSE of Stockholder Approval of the conversion of the Series D Preferred Stock into Common Stock and (ii) if such waiver is not obtained prior to March 1, 2002, convene and hold a meeting of the Company Stockholders at least one time during each six month period commencing on the date of the first Company Stockholders Meeting and include for consideration and vote at such Company Stockholders Meeting, and recommend approval of, the Stockholder Approval Matters until such matters have been approved in accordance with the rules and regulations of NYSE.

(b) Purchaser will, and will cause its Affiliates and any other entity that becomes an assignee of any voting securities of the Company owned by Purchaser or its Affiliates to, vote such securities in favor of the Stockholder Approval Matters at each meeting of the Company Stockholders in which such matters are considered.

4.6 REIT-RELATED MATTERS. (a) The Company will take such further actions and engage in such further transactions as Purchaser reasonably requests to preserve the Company's status as a REIT under the Code (including with respect to the period following the Closing Date) and to avoid the payment of any Taxes under Sections 857(b), 859(f), 860(c) or 4981 of the Code. The Company will not make or rescind any express or deemed election relative to Taxes (unless required by Law or necessary to preserve the Company's status as a REIT or the status of any Subsidiary as a partnership for federal income Tax purposes or as a qualified REIT subsidiary under Section 856(i) of the Code, as the case may be).

(b) The Company Board will take no action that would render Section 4 of Article V of the Charter applicable to, and will not exercise any right provided under such section with respect to, Purchaser or to the transactions contemplated by the Transaction Documents.

(c) Purchaser will take such actions as may be required to ensure that Purchaser's manner of holding ownership of the Company's securities will not cause REIT disqualification under Section 856(a)(6) of the Code and will not cause more than 9.9% of the value of the Company's securities to be owned,

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directly or indirectly, by an individual as determined under the REIT provisions of the Code, including Section 544 of the Code.

4.7 RIGHTS OFFERING. (a) As promptly as practical after the date hereof, the Company shall establish a record date (the "RECORD DATE") for the distribution to all holders of Common Stock as of the Record Date a right (the "RIGHT") to purchase shares of Common Stock on the terms set forth on EXHIBIT G hereto (such offering, the "RIGHTS OFFERING"). The Company will promptly prepare the Registration Statement and file it with the SEC as soon as

practicable after the date hereof and will use its commercially reasonable best efforts to have the Registration Statement cleared by the SEC within 30 calendar days after the date of filing and promptly thereafter will mail the prospectus included as part of such Registration Statement to the Company Stockholders as of the Record Date.

4.8 FURTHER ACTION. Each of the parties hereto will use all commercially reasonable efforts to take, or cause to be taken, all appropriate action, do or cause to be done all things reasonably necessary, proper or advisable under applicable law, and execute and deliver such documents and other papers, as may be required to carry out the provisions of the Transaction Documents and consummate and make effective the transactions contemplated hereby and thereby.

4.9 OTHER MATTERS. The Company will use all reasonable efforts to arrange for the signature of the Rights Amendment by First Chicago Trust Company as soon as practicable after the date hereof. Promptly after the receipt of Stockholder Approval with respect to the Amended and Restated Series C Articles Supplementary in the form attached hereto as EXHIBIT F (the "AMENDED SERIES C ARTICLES SUPPLEMENTARY"), the Company will cause the Amended Series C Articles Supplementary to be filed and accepted for record by the appropriate Maryland governmental authority. Notwithstanding anything in the Amended Series C Articles Supplementary or any of the other Transaction Documents to the contrary, the letter agreement, dated January 31, 2001, between Purchaser and the Company shall remain in full force and effect, and all references therein to the Articles Supplementary for the Series C Preferred Stock shall include the Amended Series C Articles Supplementary.

4.10 NO PARTICIPATION IN RIGHTS OFFERING OR ADJUSTMENT TO SERIES C PREFERRED. Purchaser agrees that, notwithstanding anything to the contrary in the Articles Supplementary for the Series C Preferred Stock, (i) Purchaser shall not be entitled to any dividend distributed in the Rights Offering in respect of

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its Series C Preferred Stock and (ii) there shall be no adjustment to the conversion price of the Series C Preferred Stock as a result of the declaration of a dividend, or distribution or exercise of Rights, in the Rights Offering.

#### V. CONDITIONS TO CLOSING

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5.1 CONDITIONS TO EACH PARTY'S OBLIGATIONS. The respective obligations of each party to consummate the transactions contemplated by this Agreement are subject to there not being in effect on the Closing Date any Order or Law enacted, entered, promulgated, enforced or issued by any court of competent jurisdiction or other Governmental Entity or other legal restraint or prohibition preventing the consummation of the transactions contemplated by this Agreement (a "GOVERNMENTAL RESTRAINT").

5.2 CONDITIONS TO OBLIGATIONS OF PURCHASER. The obligations of Purchaser to consummate the transactions contemplated by this Agreement are subject to the satisfaction or waiver, at or prior to the Closing of each of the following conditions:

(a) LITIGATION. No action, suit or proceeding shall have been commenced or threatened in writing by or before any court or other Governmental Entity against Purchaser, the Company or any of their respective Affiliates, seeking to restrain or materially and adversely alter the transactions contemplated hereby or by the other documents contemplated hereby, which (i) is reasonably likely to render it impossible or unlawful to consummate the transactions contemplated hereby or thereby, or (ii) in the good faith judgment of Purchaser could reasonably be expected to have a Company Material Adverse Effect or materially limit or restrict the rights of the Purchaser under the Transaction Documents.

(b) RIGHTS AMENDMENT. The Rights Amendment shall continue to be in effect and no "Triggering Event," "Distribution Date" or "Stock Acquisition Date" shall have occurred pursuant to and as defined in the Company Rights Agreement.

(c) BANK AGREEMENTS. Fleet Bank, N.A. and The Provident Bank shall have (i) entered into amendments to their respective loan agreements with the Company on terms and conditions satisfactory to each of Purchaser and the Company in their respective sole discretion, (ii) waived any and all then-existing covenant defaults, as well as the waiver of the right

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to assert a default or give notice of an event which, with the giving of notice and/or the passing of time, could become an event of default under such

agreements, and (iii) with respect to Fleet, extended the current maturity date of its loan by not less than 12 months (such agreements, the "BANK AGREEMENTS").

Each of the conditions set forth in this Section 5.2 shall be deemed satisfied, without any further action by the Company or Purchaser, upon the closing of the Rights Offering (provided that the Closing Condition described in EXHIBIT G has been satisfied).

## VI. INDEMNIFICATION

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### 6.1 INDEMNIFICATION OF PURCHASER. (a) RIGHT OF

INDEMNIFICATION. Subject to the terms of this Article VI, the Company covenants and agrees to indemnify and hold harmless each of Purchaser and its Affiliates and their respective partners, members, officers, directors, employees, attorneys, advisors and agents controlling, and any person or entity controlling, controlled by or under common control with, any of the foregoing within the meaning of either Section 15 of the Securities Act or Section 20 of the Exchange Act, including without limitation The Hampstead Group, L.L.C. and its Affiliates (collectively, the "INDEMNIFIED PARTIES"), from and against all losses, claims, liabilities, damages, costs (including without limitation costs of preparation and reasonable attorneys' fees and charges) and reasonable expenses (including without limitation expenses incurred in connection with investigating, preparing or defending any action, claim or proceeding, whether or not in connection with pending or threatened litigation in which any Indemnified Party is a party) or actions in respect thereof suffered by any Indemnified Party, directly or indirectly, arising out of (i) any inaccuracy in or breach of any of the representations, warranties, covenants or agreements made by the Company in this Agreement or in any other document contemplated hereby or (ii) any actual or threatened claim against such Indemnified Party by a person or entity related to or arising out of or in connection with any Transaction Document or any actions taken by any Indemnified Party pursuant hereto or thereto or in connection with the transactions contemplated hereby or thereby (whether or not the transactions contemplated hereby or thereby are consummated) (collectively, "LOSSES").

(b) LOSSES. The Company will not be liable to any Indemnified Party for any Losses to the extent, but only to the extent, that it is finally judicially determined by a court of competent jurisdiction (which determination is not subject to

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appeal) that such Losses resulted primarily from (i) such Indemnified Party's breach of this Agreement, (ii) a misstatement or omission contained in a report filed by such Indemnified Party pursuant to the Exchange Act, the Securities Act or any other Law unless such misstatement or omission relates to information furnished or confirmed by or on behalf of the Company, or (iii) a misstatement or omission contained in a report filed by the Company pursuant to the Exchange Act, the Securities Act or any other Law based on information furnished in writing by the Indemnified Party to the Company expressly for use therein. The indemnification provisions of this Section 6.1 are expressly intended to cover Losses relating to an Indemnified Party's own negligence. The Company will promptly reimburse each Indemnified Party for all such Losses as they are incurred. If the foregoing indemnity is unavailable to any Indemnified Party or insufficient to hold any Indemnified Party harmless, then the Company will contribute to the amount paid or payable by such Indemnified Party as a result of such Loss in such proportion as is appropriate to reflect the relative fault of the Company, on the one hand, and such Indemnified Party, on the other, as well as any other relevant equitable considerations. The relative fault of the Company, on the one hand, and any Indemnified Party, on the other, will be determined by reference to, among other things, whether any action in question, including any untrue or alleged untrue statement of a material fact or omission or alleged omission to state a material fact, has been taken by, or relates to information supplied by, the Company or such Indemnified Party, and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent any such action, statement or omission. The amount paid or payable by a party as a result of any Losses will be deemed to include any reasonable legal or other fees or expenses incurred by such party in connection with any action, suit or proceeding. The parties hereto agree that it would not be just and equitable if contribution pursuant to this paragraph were determined by prorata allocation or by any other method of allocation that does not take account of the equitable considerations referred to above. No person or entity guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) will be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation.

(c) THRESHOLD. No Indemnified Party will be entitled to indemnification pursuant to this Section 6.1 with respect to any Losses in respect of breaches of representations and warranties until the aggregate amount of all such Losses

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suffered by Indemnified Parties in the aggregate exceeds \$500,000 (the "THRESHOLD"), whereupon Indemnified Parties will be entitled to indemnification pursuant to this Section 6.1 from the Company for the full amount of all such Losses suffered by Indemnified Parties (regardless of the Threshold) up to an aggregate total amount of the Unsubscribed Purchase Amount (the "CAP"). The foregoing provision of this Section 6.1(c) notwithstanding, the Threshold and the Cap will not apply with respect to any Loss or Losses relating directly or indirectly to claims of any nature whatsoever (i) relating to, resulting from or arising out of any breach of any covenant or agreement made by the Company in this Agreement or in any Transaction Documents or (ii) against any Indemnified Party or Parties made by or on behalf of any director or officer of the Company or any of its Subsidiaries.

(d) SURVIVAL. No Indemnified Party will be entitled to give a Notice of Claim with respect to any actual or alleged breach of any representation or warranty herein after the second anniversary of the date of the Closing.

6.2 PROCEDURE FOR CLAIMS. (a) NOTICE OF CLAIM. After obtaining knowledge of any claim or demand which has given rise to, or could reasonably give rise to, a claim for indemnification under this Article VI (referred to herein as an "INDEMNIFICATION CLAIM"), an Indemnified Party will be required to give written notice to the Company of such Indemnification Claim ("NOTICE OF CLAIM"). A Notice of Claim will be given with respect to all Indemnification Claims, whether or not the Threshold has been reached; PROVIDED, HOWEVER, that the failure to give Notice of Claim to the Company will not relieve the Company from any liability that it may have to an Indemnified Party hereunder to the extent that the Company is not prejudiced by such failure. The Notice of Claim will be required to set forth the amount (or a reasonable estimate) of the Loss or Losses suffered, or which may be suffered, by an Indemnified Party as a result of such Indemnification Claim, whether or not the Threshold has been reached, and a brief description of the facts giving rise to such Indemnification Claim. The Indemnified Party will furnish to the Company such information (in reasonable detail) it may have with respect to such Indemnification Claim (including copies of any summons, complaint or other pleading which may have been served on it and any written claim, demand, invoice, billing or other document evidencing or asserting the same).

(b) THIRD PARTY CLAIM. (i) If the claim or demand set forth in the Notice of Claim is a claim or demand asserted

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by a third party (a "THIRD PARTY CLAIM"), the Company will have 15 calendar days after the date of receipt by the Company of the Notice of Claim (the "NOTICE DATE") to notify the Indemnified Parties in writing of the election by the Company to defend the Third Party Claim on behalf of the Indemnified Parties, PROVIDED, HOWEVER, that the Company will be entitled to assume the defense of any such Third Party Claim only if it unconditionally and irrevocably undertakes to indemnify all Indemnified Parties in respect thereof (subject to any applicable limitations set forth in Section 6.1).

(ii) If the Company elects to defend a Third Party Claim on behalf of the Indemnified Parties, the Indemnified Parties will make available to the Company and their agents and representatives all records and other materials in their possession which are reasonably required in the defense of the Third Party Claim, and the Company will pay all expenses payable in connection with the defense of the Third Party Claim as they are incurred (subject to any applicable limitations set forth in Section 6.1).

(iii) In no event may the Company settle or compromise any Third Party Claim without the Indemnified Parties' consent, which may not be unreasonably withheld, PROVIDED, HOWEVER, that if a settlement is presented by the Company to the Indemnified Parties for approval and the Indemnified Parties withhold their consent thereto, then any amount by which the final Losses (including reasonable attorneys' fees and charges) resulting from the resolution of the matter exceeds the sum of the rejected settlement amount plus attorneys' fees incurred to such date will be excluded from the amount covered by the indemnification provided for in this Agreement and shall be borne by the Indemnified Parties.

(iv) If the Company elects to defend a Third Party Claim, the Indemnified Parties will have the right to participate in the defense of the Third Party Claim, at the Indemnified Parties' expense (and without the right to indemnification for such expense under this Agreement), PROVIDED, HOWEVER, that the reasonable fees and expenses of counsel retained by the Indemnified Parties will be at the expense of the Company if (A) the use of the counsel chosen by the Company to represent the Indemnified Parties would present such counsel with a conflict of interest; (B) the parties to such proceeding include both Indemnified Parties and the Company and there may be legal defenses available to Indemnified Parties which are different from or additional to those available to



Company of the identity of counsel to be retained to represent Indemnified Parties, they shall have objected to the retention of such counsel for valid reasons (which shall be stated in a written notice to the Company), and the Company shall not have retained different counsel satisfactory to the Indemnified Parties; or (D) the Company shall have authorized the Indemnified Parties to retain a single separate counsel at the expense of the Company, such authorization to be made by the directors who are not designees of Purchaser or its Affiliates.

(v) If the Company does not elect to defend a Third Party Claim, or does not defend a Third Party Claim in good faith, the Indemnified Parties will have the right, in addition to any other right or remedy it may have hereunder, at the sole and exclusive expense of the Company, to defend such Third Party Claim.

(c) COOPERATION IN DEFENSE. The Indemnified Parties will cooperate with the Company in the defense of a Third Party Claim and make reasonably available the facts relating to the Third Party Claim. Subject to the foregoing, (i) no Indemnified Party will have any obligation to participate in the defense of or to defend any Third Party Claim and (ii) no Indemnified Parties' defense of, or their participation in, the defense of any Third Party Claim will in any way diminish or lessen their right to indemnification as provided in this Agreement.

6.3 INDEMNIFICATION OF THE COMPANY. Purchaser will indemnify and hold harmless the Company and its current and future officers, directors, employees and agents from and against all Losses suffered by any of them as a result of any inaccuracy in or breach of any of the representations, warranties or covenants made by Purchaser hereunder. The procedures for and limits on indemnification in respect of the obligations of Purchaser under this Section 6.3 will be the same as those set forth in Section 6.1 and 6.2.

6.4 NON-EXCLUSIVITY OF INDEMNIFICATION. The rights of any Indemnified Party hereunder will not be exclusive of the rights of any Indemnified Party under any other agreement or instrument to which the Company is a party. Nothing in such other agreement or instrument will be interpreted as limiting or otherwise adversely affecting an Indemnified Party's rights hereunder and nothing in this Agreement will be interpreted as limiting or otherwise adversely affecting the Indemnified Party's rights under any such other agreement or instrument; PROVIDED, HOWEVER, that no Indemnified Party will be entitled hereunder to recover more than its indemnified Losses. The

indemnity, contribution and expense reimbursement obligation of the Company in this Agreement will be in addition to any liability the Company may otherwise have. The obligations of the Company to each Indemnified Party will be separate obligations, and the liability of the Company to any Indemnified Party will not be extinguished solely because any other Indemnified Party is not entitled to indemnity or contribution hereunder.

6.5 SURVIVAL OF INDEMNIFICATION. The provisions of this Article VI will survive notwithstanding any termination hereof or the Closing of any of the transactions contemplated hereby.

VII. TERMINATION AND WAIVER

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7.1 TERMINATION BY MUTUAL CONSENT. This Agreement may be terminated at any time prior to the Closing Date by the mutual consent of Purchaser and the Company.

7.2 TERMINATION BY PURCHASER. This Agreement may be terminated by Purchaser if the Closing shall not have occurred on or before January 15, 2002 (the "OUTSIDE DATE"); PROVIDED, HOWEVER, (i) that Purchaser may not terminate this Agreement pursuant to this Section 7.2 if Purchaser's failure to fulfill any of its obligations under this Agreement shall have been the reason that the Closing shall not have occurred on or before the Outside Date and (ii) if the Registration Statement has not been declared effective by the SEC on or prior to December 1, 2001 (other than due to the Company's breach of its obligation under Section 4.7 of this Agreement), the Outside Date will be extended beyond December 31, 2001 on a day-for-day basis by that number of days beyond December 1, 2001 that the Registration Statement has not been declared effective, not to exceed 30 calendar days.

VIII. GENERAL PROVISIONS

8.1 NOTICES. Any notice or other communication required to be given hereunder shall be in writing, and sent by reputable courier service (with proof of service), by hand delivery or by facsimile (followed on the same day by delivery by courier service (with proof of delivery) or by hand delivery), addressed as follows:

IF TO PURCHASER:

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Explorer Holdings, L.P.  
4200 Texas Commerce Tower West  
2200 Ross Avenue  
Dallas, Texas 75201  
Attn: William T. Cavanaugh, Jr.  
Fax No.: (214) 220-4949

WITH COPIES TO:

-----  
Jones, Day, Reavis & Pogue  
599 Lexington Avenue  
New York, New York 10022  
Attn: Thomas W. Bark  
Fax No.: (212) 755-7306

IF TO THE COMPANY:

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Omega Healthcare Investors, Inc.  
900 Victors Way, Suite 350  
Ann Arbor, Michigan 48108  
Attn: Chief Financial Officer  
Fax No.: (734) 887-0322

WITH COPIES TO:

-----  
Powell, Goldstein, Frazer & Murphy LLP  
191 Peachtree Street, N.E.  
Suite 1600  
Atlanta, Georgia 30303  
Attn: Rick Miller or Eliot Robinson  
Fax No.: (404) 572-6999

or to such other address as any party will specify by written notice so given, and such notice will be deemed to have been delivered as of the date so telecommunicated or personally delivered.

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8.2 ASSIGNMENT; BINDING EFFECT. Neither this Agreement nor any of the rights, interests or obligations hereunder will be assigned by any party hereto (whether by operation of Law or otherwise) without the prior written consent of the other party, except that Purchaser will have the right to assign to any direct or indirect wholly owned subsidiary of Purchaser or to the partners of Purchaser any and all rights and obligations of Purchaser under this Agreement, provided, that any such assignment will not relieve Purchaser from any of its obligations hereunder. Any assignment not granted in accordance with the foregoing shall be null and void. Subject to the first sentence of this Section 8.2, this Agreement will be binding upon and will inure to the benefit of the parties hereto and their respective successors and assigns. Notwithstanding anything contained in this Agreement to the contrary, except for the provisions of Article VI, nothing in this Agreement, expressed or implied, is intended to confer on any Person other than the parties hereto or their respective heirs, successors, executors, administrators and assigns any rights, remedies, obligations or liabilities under or by reason of this Agreement.

8.3 ENTIRE AGREEMENT. This Agreement, the Company Disclosure Letter, the other Transaction Documents and any documents delivered by the parties in connection herewith or therewith, constitute the entire agreement among the parties with respect to the subject matter hereof and supersede all prior agreements and understandings among the parties with respect thereto, including, without limitation, any draft proposal or letter of intent with respect to the transactions contemplated herein.

8.4 AMENDMENT. This Agreement may be amended by the parties hereto, by action taken by their respective Boards of Directors, or other equivalent governing bodies, at any time before or after approval of matters

presented to the Company Stockholders, but after any such Company Stockholder approval, no amendment will be made which by Law requires the further approval of the Company Stockholders without obtaining such further approval. This Agreement may not be amended except by an instrument in writing signed on behalf of each of the parties hereto.

8.5 GOVERNING LAW. This Agreement will be governed by and construed in accordance with the laws of the State of Delaware, without regard to its conflict of laws principles.

8.6 COUNTERPARTS. This Agreement may be executed by the parties hereto in separate counterparts, each of which when

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so executed and delivered will be an original, but all such counterparts will together constitute one and the same instrument. Each counterpart may consist of a number of copies hereof each signed by less than all, but together signed by all of the parties hereto. A facsimile copy of a signature page shall be deemed to be an original signature page.

8.7 HEADINGS. Headings of the Articles and Sections of this Agreement are for the convenience of the parties only, and will be given no substantive or interpretive effect whatsoever.

8.8 CERTAIN DEFINITIONS/INTERPRETATIONS. (a) For purposes of this Agreement:

(i) An "AFFILIATE" of any Person means another Person that, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such first Person;

(ii) "BUSINESS DAY" means any day other than a Saturday, Sunday or day on which banks in New York, New York are authorized or required by Law to close;

(iii) "KNOWLEDGE" of any Person which is not an individual means the actual knowledge of any of such Person's officers after reasonable inquiry; and

(iv) "PERSON" means an individual, corporation, partnership, limited liability company, joint venture, association, trust, unincorporated organization or other entity.

(b) When a reference is made in this Agreement to an Article, Section, Exhibit or Annex, such reference will be to an Article or Section of, or an Annex or Exhibit to, this Agreement unless otherwise indicated. Whenever the words "include," "includes" or "including" are used in this Agreement, they will be deemed to be followed by the words "without limitation", except when used in conjunction with a negative predicate. The words "hereof," "herein" and "hereunder" and words of similar import when used in this Agreement will refer to this Agreement as a whole and not to any particular provision of this Agreement. All terms used herein with initial capital letters have the meanings ascribed to them herein and all terms defined in this Agreement will have such defined meanings when used in any certificate or other document made or delivered pursuant hereto unless otherwise defined therein. The definitions

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contained in this Agreement are applicable to the singular as well as the plural forms of such terms and to the masculine as well as to the feminine and neuter genders of such term. Any agreement, instrument or statute defined or referred to herein or in any agreement or instrument that is referred to herein means such agreement, instrument or statute as from time to time amended, modified or supplemented, including (in the case of agreements or instruments) by written waiver or written consent and (in the case of statutes) by succession of comparable successor statutes and references to all attachments thereto and instruments incorporated therein. References to a Person are also to its permitted successors and assigns.

8.9 WAIVERS. Except as provided in this Agreement, no action taken pursuant to this Agreement, including without limitation any investigation by or on behalf of any party, will be deemed to constitute a waiver by the party taking such action of compliance with any representations, warranties, covenants or agreements contained in this Agreement. The waiver by any party hereto of a breach of any provision hereunder will not operate or be construed as a waiver of any prior or subsequent breach of the same or any other provision hereunder. At any time any party hereto may (a) extend the time for the performance of any of the obligations or other acts of the other parties hereto, (b) waive any inaccuracies in the representations and warranties contained herein or in any document delivered pursuant hereto, and (c) waive compliance with any of the agreements or conditions contained herein. Any such extension or waiver shall be valid only if set forth in an instrument in writing signed by the party or

parties to be bound thereby.

8.10 SEVERABILITY. Any term or provision of this Agreement which is invalid or unenforceable in any jurisdiction will, as to that jurisdiction, be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining terms and provisions of this Agreement or affecting the validity or enforceability of any of the terms or provisions of this Agreement in any other jurisdiction. If any provision of this Agreement is so broad as to be unenforceable, the provision will be interpreted to be only so broad as is enforceable.

8.11 ENFORCEMENT OF AGREEMENT. The parties hereto agree that irreparable damage would occur in the event that any of the provisions of this Agreement was not performed in accordance with its specific terms or was otherwise breached. It is accordingly agreed that the parties will be entitled to an injunction or injunctions to prevent breaches of this Agreement

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and to enforce specifically the terms and provisions hereof, this being in addition to any other remedy to which they are entitled at law or in equity.

8.12 EXPENSES. Without limiting the generality or effect of any other provision hereof, including without limitation Section 6.1 or any agreement or instrument contemplated hereby, whether or not the Closing occurs, the Company will reimburse Purchaser for all Purchaser Expenses at the Closing or the termination of this Agreement, and from time to time thereafter promptly upon request by Purchaser, not to exceed \$1 million. As used in this Agreement, "PURCHASER EXPENSES" shall be an amount equal to all out-of-pocket costs and expenses of Purchaser and Purchaser's partners incurred in connection with this Agreement and the transactions contemplated hereby and any litigation associated therewith (including, without limitation, all fees and expenses payable to accountants, counsel, consultants and due diligence expenses, but expressly excluding the costs of Purchaser's employees and Purchaser's overhead). "PURCHASER EXPENSES" shall not include (i) any out-of-pocket costs and expenses of Purchaser or its Affiliates for which Purchaser or its Affiliates would be entitled to indemnification pursuant to Article VI or to payment pursuant to the Advisory Agreement and (ii) any fee payable to The Hampstead Group, L.L.C. pursuant to the Advisory Agreement in respect of the transactions contemplated by this Agreement.

8.13 JURISDICTION; CONSENT TO SERVICE OF PROCESS. (a) Each party hereby irrevocably and unconditionally submits, for itself and its property, to the exclusive jurisdiction of any state or federal court located in the State of Delaware (a "DELAWARE COURT"), and any appellate court from any such court, in any suit, action or proceeding arising out of or relating to this Agreement, or for recognition or enforcement of any judgment resulting from any such suit, action or proceeding, and each party hereby irrevocably and unconditionally agrees that all claims in respect of any such suit, action or proceeding may be heard and determined in a Delaware Court.

(b) It will be a condition precedent to each party's right to bring any such suit, action or proceeding that such suit, action or proceeding, in the first instance, be brought in a Delaware Court (unless such suit, action or proceeding is brought solely to obtain discovery or to enforce a judgment), and if each such court refuses to accept jurisdiction with respect thereto, such suit, action or proceeding may be brought in any other court with jurisdiction; PROVIDED that the foregoing will not apply to any suit, action or proceeding by a

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party seeking indemnification or contribution pursuant to this Agreement or otherwise in respect of a suit, action or proceeding against such party by a third party if such suit, action or proceeding by such party seeking indemnification or contribution is brought in the same court as the suit, action or proceeding against such party.

(c) No party may move to (i) transfer any such suit, action or proceeding from a Delaware Court to another jurisdiction, (ii) consolidate any such suit, action or proceeding brought in a Delaware Court with a suit, action or proceeding in another jurisdiction, or (iii) dismiss any such suit, action or proceeding brought in a Delaware Court for the purpose of bringing the same in another jurisdiction.

(d) Each party hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, (i) any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement in a Delaware Court, (ii) the defense of an inconvenient forum to the maintenance of such suit, action or proceeding in any such court, and (iii) the right to object, with respect to such suit, action or proceeding, that such court does not have jurisdiction over such party. Each party irrevocably consents to service of

process in any manner permitted by law. Notwithstanding the foregoing, this Section 8.13 will not apply to any suit, action or proceeding to enforce a judgment of a Delaware Court.

8.14 WAIVER OF JURY TRIAL. EACH OF THE PARTIES HERETO IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING, CLAIM OR COUNTERCLAIM, WHETHER IN CONTRACT OR TORT, AT LAW OR IN EQUITY, ARISING OUT OF OR IN ANY WAY RELATED TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

8.15 NO STRICT CONSTRUCTION. The parties hereto have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties hereto, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

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IN WITNESS WHEREOF, the parties have executed this Agreement and caused the same to be duly delivered on their behalf on the day and year first written above.

OMEGA HEALTHCARE INVESTORS, INC.

By: /s/ C. Taylor Pickett  
-----  
C. Taylor Pickett  
Chief Executive Officer

EXPLORER HOLDINGS, L.P.

By: Explorer Holdings GenPar, LLC,  
its General Partner

By: /s/ William T. Cavanaugh, Jr.  
-----  
William T. Cavanaugh, Jr.  
Vice President

OMEGA HEALTHCARE INVESTORS, INC.  
 AMENDED AND RESTATED ARTICLES SUPPLEMENTARY  
 FOR SERIES C CONVERTIBLE PREFERRED STOCK

OMEGA HEALTHCARE INVESTORS, INC., a Maryland corporation (the "COMPANY"), hereby certifies to the State Department of Assessments and Taxation of Maryland that:

FIRST: Pursuant to authority contained in the charter of the Company (the "CHARTER"), 2,000,000 shares of authorized but unissued shares of the Company's Preferred Stock have been duly classified by the Board of Directors of the Company (the "BOARD") as authorized but unissued shares of the Company's Series C Preferred Stock.

SECOND: A description of the Series C Preferred Stock is as follows:

1. DESIGNATION AND NUMBER. A series of Preferred Stock, designated the "Series C Convertible Preferred Stock" (the "SERIES C PREFERRED STOCK"), is hereby established. The number of shares of the Series C Preferred Stock shall be 2,000,000, subject to increase pursuant to Section 4(b) prior to payment by the Company of any dividend in shares of Series C Preferred Stock in accordance with Section 4.

2. MATURITY. The Series C Preferred Stock has no stated maturity.

3. RANK. The Series C Preferred Stock will, with respect to dividend rights and rights upon liquidation, dissolution or winding up of the Company, rank (i) senior to all classes or series of Common Stock of the Company, and to all equity securities ranking junior to the Series C Preferred Stock with respect to dividend rights or rights upon liquidation, dissolution or winding up of the Company, (ii) on a parity with the Series A Preferred Stock, Series B Preferred Stock, Series D Preferred Stock and all other equity securities issued by the Company the terms of which specifically provide that such equity securities rank on a parity with the Series C Preferred Stock with respect to dividend rights or rights upon liquidation, dissolution or winding up of the Company (the "PARITY PREFERRED"), and (iii) junior to all existing and future indebtedness of the Company. The term "equity securities" does not include convertible debt securities, which will rank senior

to the Series C Preferred Stock prior to conversion of such debt securities.

4. DIVIDENDS. (a) Except as set forth in Section 4(b), holders of shares of the Series C Preferred Stock are entitled to receive, out of funds legally available for the payment of dividends, preferential cumulative dividends at the greater of (i) 10% per annum of the Liquidation Preference per share (equivalent to a fixed annual amount of \$10.00 per share) and (ii) the amount per share declared or paid or set aside for payment based on the number of shares of Common Stock into which such shares of Series C Preferred Stock are then convertible in accordance with Section 8. Dividends on each share of the Series C Preferred Stock shall be cumulative commencing from the date of issuance of such share of Series C Preferred Stock and shall be payable in arrears for each period ended July 31, October 31, January 31 and April 30 (each a "DIVIDEND PERIOD") on or before the 15th day of August, November, February and May of each year, or, if not a Business Day, the next succeeding Business Day (each, a "DIVIDEND PAYMENT DATE"). The first dividend will be paid on November 15, 2000, with respect to the period commencing on the date of first issuance of Series C Preferred Stock (the "ISSUE Date") and ending on October 31, 2000. Any dividend payable on shares of the Series C Preferred Stock for any partial period will be computed based on the actual number of days elapsed (commencing with and including the date of issuance of such shares) and on the basis of a 360-day year consisting of twelve 30-day months. Dividends will be payable to holders of record as they appear in the stock records of the Company at the close of business on the applicable record date, which shall be the last day of the preceding calendar month prior to the applicable Dividend Payment Date or on such other date designated by the Board that is not more than 30 nor less than 10 days prior to such Dividend Payment Date (each, a "DIVIDEND RECORD DATE").

(b) For any Dividend Period ending prior to February 1, 2001, dividends will be payable, at the election of the Board, (i) by the issuance as of the relevant Dividend Payment Date of additional shares of fully paid, nonassessable Series C Preferred Stock having an aggregate liquidation preference equal to the amount of such accrued dividends or (ii) in cash. In the event that dividends are declared and paid pursuant to clause (i), (A) such dividends will be deemed paid in full and will not accumulate and (B) prior to paying any such dividends, the Board will take such action as is necessary to

Stock by the number of shares to be issued pursuant to this Section 4, including but not limited to the filing of Articles Supplementary with the State Department of Assessments and Taxation of Maryland in accordance with Article VII of the Charter. The Company will deliver certificates representing shares of Series C Preferred Stock issued pursuant to this Section 4(b) promptly after the relevant Dividend Payment Date. For any Dividend Period ending after February 1, 2001, dividends will be payable in cash.

(c) No dividends on shares of Series C Preferred Stock shall be declared by the Board or paid or set apart for payment by the Company at such time as the terms and provisions of any agreement of the Company, including any agreement relating to its indebtedness, prohibits such declaration, payment or setting apart for payment or provides that such declaration, payment or setting apart for payment would constitute a breach thereof or a default thereunder, or if such declaration or payment shall be restricted or prohibited by law. (d) Notwithstanding the foregoing, dividends on the Series C Preferred Stock will accrue whether or not the Company has earnings, whether or not there are funds legally available for the payment of such dividends and whether or not such dividends are declared. Accrued but unpaid dividends on the Series C Preferred Stock will not bear interest and holders of the Series C Preferred Stock will not be entitled to any distributions in excess of full cumulative distributions described above. Except as set forth in the next sentence, no dividends will be declared or paid or set apart for payment on any capital stock of the Company or any other series of Preferred Stock ranking, as to dividends, on a parity with or junior to the Series C Preferred Stock (other than a dividend in shares of the Company's Common Stock or in shares of any other class of stock ranking junior to the Series C Preferred Stock as to dividends and upon liquidation) for any period unless full cumulative dividends have been or contemporaneously are declared and paid or declared and a sum sufficient for the payment thereof is set apart for such payment on the Series C Preferred Stock for all past dividend periods and the then current dividend period. When dividends are not paid in full (or a sum sufficient for such full payment is not so set apart) upon the Series C Preferred Stock and the shares of any other series of Preferred Stock ranking on a parity as to dividends with the Series C Preferred Stock, all dividends declared upon the Series C Preferred Stock and any other series of Preferred Stock ranking on a parity as to dividends with the Series C Preferred

Stock shall be declared pro rata so that the amount of dividends declared per share of Series C Preferred Stock and such other series of Preferred Stock shall in all cases bear to each other the same ratio that accrued dividends per share on the Series C Preferred Stock and such other series of Preferred Stock (which shall not include any accrual in respect of unpaid dividends for prior dividend periods if such Preferred Stock does not have a cumulative dividend) bear to each other.

(e) Except as provided in the immediately preceding paragraph, unless full cumulative dividends on the Series C Preferred Stock have been or contemporaneously are declared and paid or declared and a sum sufficient for the payment thereof is set apart for payment for all past dividend periods and the then current dividend period, no dividends (other than in shares of Common Stock or other shares of capital stock ranking junior to the Series C Preferred Stock as to dividends and upon liquidation) shall be declared or paid or set aside for payment nor shall any other distribution be declared or made upon the Common Stock, or any other capital stock of the Company ranking junior to or on a parity with the Series C Preferred Stock as to dividends or upon liquidation, nor shall any shares of Common Stock, or any other shares of capital stock of the Company ranking junior to or on a parity with the Series C Preferred Stock as to dividends or upon liquidation be redeemed, purchased or otherwise acquired for any consideration (or any moneys be paid to or made available for a sinking fund for the redemption of any such shares) by the Company (except by conversion into or exchange for other capital stock of the Company ranking junior to the Series C Preferred Stock as to dividends and upon liquidation or redemption or for the purpose of preserving the Company's qualification as a real estate investment trust under the Internal Revenue Code of 1986, as amended (the "CODE")). Holders of shares of the Series C Preferred Stock shall not be entitled to any dividend, whether payable in cash, property or stock, in excess of full cumulative dividends on the Series C Preferred Stock as provided above. Any dividend payment made on shares of the Series C Preferred Stock shall first be credited against the earliest accrued but unpaid dividend due with respect to such shares which remains payable.

5. LIQUIDATION PREFERENCE. Upon any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Company, each holder of shares of Series C Preferred Stock shall, at the election of such holder, be entitled to be paid out of the assets of the Company legally available for distribution

Preference (as defined in Section 10(e)) before any distribution of assets is made to holders of Common Stock or any other class or series of capital stock of the Company that ranks junior to the Series C Preferred Stock as to liquidation rights. The Company will promptly provide to the holders of Series C Preferred Stock written notice of any event triggering the right to receive such Liquidation Preference. After payment of the full amount of the Liquidation Preference, plus any accrued and unpaid dividends to which they are entitled, the holders of Series C Preferred Stock will have no right or claim to any of the remaining assets of the Company. A Change in Control (as defined in Section 10(b)), or the sale, lease or conveyance of all or substantially all of the property, business or assets of the Company shall be deemed to constitute a liquidation, dissolution or winding up of the Company for purposes of Section 5 of these Articles Supplementary only and shall not be deemed a liquidation, dissolution or winding up of the Company for any other series of Preferred Stock unless the terms of such series of Preferred Stock expressly provide.

In determining whether a distribution (other than upon voluntary or involuntary liquidation) by dividend, redemption or other acquisition of shares of stock of the Company or otherwise is permitted under the Maryland General Corporation Law (the "MGCL"), no effect shall be given to amounts that would be needed if the Company would be dissolved at the time of the distribution, to satisfy the preferential rights upon distribution of holders of shares of stock of the Company whose preferential rights upon distribution are superior to those receiving the distribution.

6. REDEMPTION. The Series C Preferred Stock is not redeemable without the consent of the holder of such share of Series C Preferred Stock.

7. VOTING RIGHTS. (a) Holders of the Series C Preferred Stock will not have any voting rights, except as set forth below.

(b) Each holder of shares of Series C Preferred Stock shall be entitled to notice of any stockholder meeting in accordance with the bylaws of the Company (the "BYLAWS"), shall be entitled to a number of votes equal to the number of shares of Common Stock into which the shares of Series C Preferred Stock held by such holder could then be converted pursuant to Section 8, shall have voting rights and powers equal to the voting rights and powers of the holders of Common Stock, and shall vote together as a single class with holders of Common

Stock, except as expressly required by law. Fractional votes shall not be permitted, and any fractional voting rights resulting from the right of any holder of Series C Preferred Stock to vote on an as converted basis (after aggregating the shares into which all shares of Series C Preferred Stock held such holder could be converted) shall be rounded to the nearest whole number (with one-half being rounded upward). The holders of Series C Preferred Stock shall have no separate class or series vote on any matter except as expressly required by law or as otherwise set forth in these Articles Supplementary.

(c) Whenever dividends on any shares of Series C Preferred Stock shall be in arrears for four or more Dividend Periods (a "PREFERRED DIVIDEND DEFAULT"), the number of directors then constituting the Board shall be increased by two (if not already increased by reason of a similar arrearage with respect to the Series D Preferred Stock). The holders of such shares of Series C Preferred Stock and the holders of Series D Preferred Stock upon which like voting rights have been conferred and are exercisable (voting together as a single class) will be entitled to fill the vacancies thereby created by the addition of such number of directors of the Company determined pursuant to the first sentence of this Section 7(c) (the "ADDITIONAL SERIES C/D PREFERRED STOCK DIRECTORS") at a special meeting called by the holders of record of at least 20% of the Series C Preferred Stock or the holders of record of at least 20% of the Series D Preferred Stock until all dividends accumulated on such shares of Series C Preferred Stock and Series D Preferred Stock for the past dividend periods and the dividend for the then current

dividend period shall have been fully paid or declared and a sum sufficient for the payment thereof set aside. In any vote to elect or remove additional directors pursuant to this Section 7, each such holder of shares of Series C Preferred Stock and Series D Preferred Stock entitled to vote will be entitled to one vote for each share held by such holder. In the event the directors of the Company are divided into classes, each such vacancy shall be apportioned among the classes of directors to prevent stacking in any one class and to ensure that the number of directors in each of the classes of directors are as equal as possible. Each Additional Series C/D Preferred Stock Director, as a



qualification for election as such (and regardless of how elected), shall submit to the Board a duly executed, valid, binding and enforceable letter of resignation from the Board, to be effective upon the date upon which all dividends accumulated on such shares of Series C Preferred Stock and Series D Preferred Stock for the past dividend periods and the dividend for the then current dividend period shall have been fully paid or declared and a sum sufficient for the payment thereof set aside for payment, whereupon the terms of office of all persons elected as Additional Series C/D Preferred Stock Directors by the holders of such shares of Series C Preferred Stock and Series D Preferred Stock shall, upon the effectiveness of their respective letters of resignation, forthwith terminate, and the number of directors then constituting the Board shall be reduced accordingly. A quorum for any such meeting shall exist if the holders of at least a majority of the outstanding shares of Series C Preferred Stock and Series D Preferred Stock so entitled to vote are represented in person or by proxy at such meeting. Such Additional Series C/D Preferred Stock Directors shall be elected upon the affirmative vote of a plurality (based on the number of votes entitled to be cast) of the shares of Series C Preferred Stock and Series D Preferred Stock so entitled to vote that are present and voting in person or by proxy at a duly called and held meeting at which a quorum is present. If and when all accumulated dividends and the dividend for the then current dividend period on such shares of Series C Preferred Stock and Series D Preferred Stock shall have been paid in full or declared and a sum sufficient for the payment thereof in full shall have been set aside, the holders thereof shall be divested of the foregoing voting rights (subject to reversion in the event of each and every Preferred Dividend Default) and the term of office of each Additional Series C/D Preferred Stock Director so elected shall terminate. Any Additional Series C/D Preferred Stock Director may be removed at any time with or without cause by, and shall not be removed otherwise than by the vote of, the holders of record of a majority of the outstanding shares of the Series C Preferred Stock and Series D Preferred Stock entitled to vote (voting together as a single class). So long as a Preferred Dividend Default shall continue, any vacancy in the office of an Additional Series C/D Preferred Stock Director may be filled by written consent of the Additional Series C/D Preferred Stock Directors remaining in office, or if none remains in office, by a vote of the holders of record of a majority of the outstanding shares of Series C Preferred Stock and Series D Preferred Stock so entitled to vote (voting together as a single class). The Additional Series C/D Preferred Stock Directors shall each be entitled to one vote per director on any matter.

(d) Explorer Holdings, L.P. ("EXPLORER") hereby waives, for the period from the date hereof through and including December 31, 2002 (the "GOVERNANCE RIGHT DEFERRAL PERIOD"), its rights under Section 7(c) of these Amended and

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Restated Articles Supplementary to elect Additional Series C/D Preferred Stock Directors, provided that the dividends on any shares of Series C Preferred Stock shall not be in arrears for six or more Dividend Periods during the Governance Right Deferral Period. For the avoidance of doubt, if (i) at any time during the Governance Right Deferral Period the holders of any Parity Preferred shall be entitled to elect Additional Preferred Stock Directors then Explorer shall be entitled to simultaneously exercise its rights under Section 7(c) of these Amended and Restated Articles Supplementary and (ii) on or after January 1, 2003 the dividends on any shares of Series C Preferred Stock shall then be in arrears for four or more Dividend Periods (including any Dividend Periods prior to January 1, 2003), the holders of the Series C Preferred Stock shall be entitled to elect Additional Series C/D Preferred Stock Directors in accordance with the provisions of Section 7(c) of these Amended and Restated Articles Supplementary.

(e) So long as any shares of Series C Preferred Stock remain outstanding, the Company will not, without the affirmative vote or consent of the holders of at least two-thirds of the shares of the Series C Preferred Stock outstanding at the time, given in person or by proxy, either in writing or at a meeting (voting together with any other classes of Preferred Stock adversely affected in the same manner as a single class), amend, alter or repeal the provisions of the Charter or the Articles Supplementary, whether by merger, consolidation or otherwise (an "EVENT"), so as to materially and adversely affect any right, preference, privilege or voting power of the Series C Preferred Stock or the holders thereof, including without limitation, the creation of any series of Preferred Stock ranking senior to the Series C Preferred Stock with respect to payment of dividends or the distribution of assets upon liquidation, dissolution or winding up, but not including the creation or issuance of Parity Preferred.

(f) Except as expressly stated in these Articles Supplementary, the Series C Preferred Stock shall not have any relative, participating, optional or other special voting rights and powers and the consent of the holders thereof shall not be required for the taking of any corporate action, including but not limited to, any merger or consolidation involving the Company or a sale of all or substantially all of the assets of the Company, irrespective of the effect that such merger, consolidation or sale may have upon the rights, preferences or voting power of the holders of the Series C Preferred Stock.

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8. CONVERSION. The holders of Series C Preferred Stock shall have the following conversion rights with respect to such shares:

8.1 OPTIONAL CONVERSION. Each share of Series C Preferred Stock (including all accrued and unpaid dividends thereon, to the extent declared) may be converted, at any time at the option of the holder thereof, into fully paid and nonassessable shares of Common Stock (and any other securities or property expressly provided in this Section 8) as set forth in this Section 8.

8.2 CONVERSION PRICE. Each share of Series C Preferred Stock may be converted into such number of shares of Common Stock as is equal to the quotient obtained by dividing the Original Issue Price for such share by the Conversion Price (as defined below) in effect at the time of conversion. The Conversion Price initially shall be equal to \$6.25 per share of Common Stock, subject to adjustment from time to time as provided herein (the "CONVERSION PRICE").

8.3 MECHANICS OF CONVERSION. A holder of Series C Preferred Stock who desires to convert the same into Common Stock shall surrender the certificate or certificates representing such shares, duly endorsed, at the office of the Company or at the office of any transfer agent for the Series C Preferred Stock or Common Stock, and shall give written notice to the Company at such office that such holder elects to convert the same and shall state therein both the number of shares of Series C Preferred Stock being converted and the name or names in which the holder wishes the certificate or certificates for Common Stock to be issued. The Company shall, as soon as practicable after such surrender, issue and deliver at such office to such holder a certificate or certificates representing the number of shares of Common Stock to which such holder is entitled and a new certificate or certificates representing the number of shares of Series C Preferred Stock represented by the certificate or certificates surrendered by the holder minus the number of Series C Preferred Stock so converted by the holder. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of such surrender of the certificate representing the Series C Preferred Stock to be converted, and the Person entitled to receive the Common Stock issuable upon such conversion shall be treated for all purposes as the record holder of such Common Stock on such date. Any Series C Preferred Stock converted into Common Stock shall be retired and may not be reissued by the Company.

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8.4 ADJUSTMENT FOR STOCK SPLITS AND COMBINATIONS. If the Company at any time or from time to time after the Issue Date effects a subdivision of the outstanding Common Stock, the Conversion Price then in effect immediately before that subdivision shall be proportionately decreased, and conversely, if the Company at any time or from time to time after the Issue Date combines the outstanding Common Stock into a smaller number of shares, the Conversion Price then in effect immediately before the combination shall be proportionately increased. Any adjustment under this Section 8.4 shall become effective at the close of business on the date such subdivision or combination becomes effective.

8.5 ADJUSTMENT FOR CERTAIN DIVIDENDS AND DISTRIBUTIONS. If the Company at any time or from time to time after the Issue Date makes, or fixes a record date for the determination of holders of Common Stock entitled to receive, a dividend or other distribution payable in additional Common Stock, then and in each such event the Conversion Price then in effect shall be decreased as of the time of such issuance or, in the event such record date is fixed, as of the close of business on such record date, by multiplying the Conversion Price then in effect by a fraction (1) the numerator of which is the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date, and (2) the denominator of which shall be the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date plus the number of shares of Common Stock issuable in payment of such dividend or distribution; PROVIDED, HOWEVER, that if such record date is fixed and such dividend is not fully paid or if such distribution is not fully made on the date fixed therefor, the Conversion Price shall be recomputed accordingly as of the close of business on such record date and thereafter the Conversion Price shall be adjusted pursuant to this Section 8.5 as of the time of actual payment of such dividends or distributions.

8.6 ADJUSTMENTS FOR OTHER DIVIDENDS AND DISTRIBUTIONS. In the event the Company at any time or from time to time after the Issue Date makes, or fixes a record date for the determination of holders of Common Stock entitled to receive, a dividend or other distribution payable in securities of the Company other than Common Stock or other assets or property of the Company (other than ordinary cash dividends, any special dividends necessary to preserve the Company's qualification as a REIT and the dividend payable pursuant to the

Rights Offering), then and in each such event provision shall be made so that the holders of Series C Preferred Stock shall receive upon conversion thereof, in addition to the number of shares of Common Stock receivable thereupon, the amount of securities of the Company or other assets or property of the Company which they would have received had their Series C Preferred Stock been converted into Common Stock on the date of such event and had they thereafter, during the period from the date of such event to and including the conversion date, retained such securities or other assets or property of the Company receivable by them as aforesaid during such period, subject to all other adjustments called for during such period under this Section 8 with respect to the rights of the holders of the Series C Preferred Stock.

8.7 ADJUSTMENT FOR RECLASSIFICATION, EXCHANGE AND SUBSTITUTION. In the event that at any time or from time to time after the Issue Date, the Common Stock or other securities as provided herein issuable upon the conversion of the Series C Preferred Stock are changed into the same or a different number of shares of any class or classes of stock, whether by recapitalization, reclassification or otherwise (other than a subdivision or combination of shares or stock dividend or a reorganization, merger, consolidation or sale of assets, provided for elsewhere in this Section 8), then and in any such event each holder of Series C Preferred Stock shall have the right thereafter to convert such Series C Preferred Stock into the kind and amount of stock and other securities and property receivable upon such recapitalization, reclassification or other change, by holders of Common Stock or other securities as provided herein into which such shares of Series C Preferred Stock could have been converted immediately prior to such recapitalization, reclassification or change, all subject to further adjustment as provided herein.

8.8 REORGANIZATIONS, MERGERS, CONSOLIDATIONS OR TRANSFERS OF ASSETS. If at any time or from time to time after the Issue Date there is a capital reorganization of the Common Stock or other securities issuable upon conversion of Series C Preferred Stock as provided herein (other than a recapitalization, subdivision, combination, reclassification or exchange of shares provided for elsewhere in this Section 8) or a merger or consolidation or statutory binding share exchange of the Company with or into another Person, or the transfer of all or substantially all of the Company's properties and assets to any other Person and such capital reorganization, merger, consolidation or transfer does not constitute a Change in

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Control, then, as a part of such capital reorganization, merger, consolidation, exchange or transfer, provision shall be made so that the holders of the Series C Preferred Stock shall thereafter be entitled to receive upon conversion of Series C Preferred Stock the number of shares of stock or other securities, cash or property to which a holder of the number of shares of Common Stock or other securities deliverable upon conversion of the Series C Preferred Stock would have been entitled on such capital reorganization, merger, consolidation, exchange or transfer. In any such case, appropriate adjustment shall be made in the application of the provisions of this Section 8 with respect to the rights of the holders of the Series C Preferred Stock after the capital reorganization, merger, consolidation, exchange or transfer to the end that the provisions of this Section 8 (including adjustment of the Conversion Price then in effect and the number of shares receivable upon conversion of the Series C Preferred Stock) shall be applicable after that event and be as nearly equivalent as may be practicable.

8.9 SALE OF SHARES BELOW FAIR MARKET VALUE. (a) If at any time or from time to time after the Issue Date, the Company issues or sells, or is deemed by the express provisions of this Section 8.9 to have issued or sold, Additional Common Stock (as defined below), other than as a dividend or other distribution on any class of stock as provided in Section 8.5 above and other than upon a subdivision or combination of Common Stock as provided in Section 8.4 above, for an Effective Price (as defined below) less than the Fair Market Value, then and in each such case the then existing Conversion Price shall be reduced, as of the opening of business on the date of such issue or sale, to a price determined by multiplying that Conversion Price by a fraction (i) the numerator of which shall be equal to the sum of (A) the number of shares of Common Stock issued and outstanding at the close of business on the Business Day immediately preceding the date of such issue or sale, (B) the number of shares of Common Stock which the aggregate consideration received (or by the express provisions hereof is deemed to have been received) by the Company for the total number of shares of Additional Common Stock so issued or sold would purchase at such Fair Market Value, (C) the number of shares of Common Stock into which all outstanding Series C Preferred Stock and Series D Preferred Stock would be convertible at the close of business on the Business Day immediately preceding the date of such issuance or sale (whether or not the Series D Preferred Stock is then convertible), and (D) the number of shares of Common Stock underlying all

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Convertible Securities (as defined below) at the close of business on the Business Day immediately preceding the date of such issuance or sale, and (ii)

the denominator of which shall be equal to the sum of (A) the number of shares of Common Stock issued and outstanding at the close of business on the date of such issuance or sale after giving effect to such issuance or sale of Additional Common Stock, (B) the number of shares of Common Stock into which all outstanding Series C Preferred Stock and Series D Preferred Stock would be convertible at the close of business on the Business Day immediately preceding the date of such issuance or sale (whether or not the Series D Preferred Stock is then convertible), and (C) the number of shares of Common Stock underlying all Convertible Securities at the close of business on the Business Day immediately preceding the date of such issuance or sale.

(b) For the purpose of making any adjustment required under this Section 8.9, the consideration for any issuance or sale of securities shall be deemed to be (A) to the extent it consists of cash, equal to the gross amount paid in such issuance or sale, (B) to the extent it consists of property other than cash, equal to the Fair Market Value of that property, and (C) if Additional Common Stock, Convertible Securities (as defined below) or rights or options to purchase either Additional Common Stock or Convertible Securities are issued or sold together with other stock, securities or assets of the Company for a consideration which covers both, that portion of the consideration so received that is determined in good faith by the Board to be allocable to such Additional Common Stock, Convertible Securities or rights or options.

(c) For the purpose of the adjustment required under this Section 8.9, if the Company issues or sells any rights or options for the purchase of, or stock or other securities convertible into or exchangeable or exercisable for, Additional Common Stock (such convertible or exchangeable or exercisable stock or securities being hereinafter referred to as "CONVERTIBLE SECURITIES") and if the Effective Price of such Additional Common Stock is less than the Fair Market Value, then in each case the Company shall be deemed to have (i) issued at the time of the issuance of such rights or options or Convertible Securities the number of shares of Additional Common Stock issuable upon exercise, conversion or exchange thereof irrespective of whether the holders thereof have the fully vested legal right to exercise, convert or exchange the Convertible Securities for Additional Common Stock and (ii) received as consideration for the issuance of such

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Additional Common Stock an amount equal to the total amount of the consideration, if any, received by the Company for the issuance of such rights or options or Convertible Securities, plus, in the case of such rights or options, the consideration, if any, payable to the Company upon the exercise of such rights or options, plus, in the case of Convertible Securities, the consideration, if any, payable to the Company (other than by cancellation of liabilities or obligations evidenced by such Convertible Securities) upon the exercise, conversion or exchange thereof. No further adjustment of the Conversion Price, as adjusted upon the issuance of such rights, options or Convertible Securities, shall be made as a result of the actual issuance of Additional Common Stock on the exercise of any such rights or options or the conversion or exchange of any such Convertible Securities. If any such rights or options or the conversion or exchange privilege represented by any such Convertible Securities shall expire without having been exercised, the Conversion Price as adjusted upon the issuance of such rights, options or Convertible Securities shall be readjusted to the Conversion Price which would have been in effect had an adjustment been made on the basis that the only shares of Additional Common Stock so issued were the shares of Additional Common Stock, if any, actually issued or sold on the exercise of such rights or options or rights of conversion or exchange of such Convertible Securities, and such shares of Additional Common Stock, if any, were issued or sold for the consideration actually received by the Company upon such exercise, plus the consideration, if any, actually received by the Company for the granting of the rights or options whether or not exercised, plus the consideration received for issuing or selling the Convertible Securities actually converted or exchanged, plus the consideration, if any, actually received by the Company (other than by cancellation of liabilities or obligations evidenced by such Convertible Securities) on the conversion or exchange of such Convertible Securities.

(d) "ADDITIONAL COMMON STOCK" shall mean all Common Stock issued or issuable by the Company after the Issue Date, whether or not subsequently reacquired or retired by the Company, other than (i) Common Stock issued or issuable upon conversion of, or as a dividend on, any Series C Preferred Stock or Series D Preferred Stock, (ii) Common Stock issued or issuable pursuant to any employee benefit plan or similar plan or arrangement intended to provide compensation and other benefits to officers, directors, employees and consultants of the Company provided that such plans and any grants or awards thereunder have been approved by the Board or a committee

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thereof, (iii) securities issued by the Company in payment of a purchase price to the seller or any Person who beneficially owns equity securities of such seller for any acquisition of assets or a business, which acquisition is approved by the Board, or (iv) Common Stock issued or issuable pursuant to the

Rights Offering, the Investment Agreement or upon issuance or conversion of the Series D Preferred Stock. The "EFFECTIVE PRICE" of Additional Common Stock shall mean the quotient determined by dividing the total number of shares of Additional Common Stock issued or sold, or deemed to have been issued or sold by the Company, by the aggregate consideration received, or deemed to have been received, by the Company for such Additional Common Stock. The share numbers in this Section 8.9(d) shall be appropriately adjusted for any stock dividends, combinations, splits, reverse splits, recapitalizations and similar events affecting the securities of the Company.

8.10 CERTIFICATE OF ADJUSTMENT. In each case of an adjustment or readjustment of the Conversion Price or the number of shares of Common Stock or other securities issuable upon conversion of the Series C Preferred Stock, the Company, at its expense, shall cause the Chief Financial Officer of the Company to compute such adjustment or readjustment in accordance with the provisions hereof and prepare a certificate showing such adjustment or readjustment, and shall mail such certificate, by first class mail, postage prepaid, to each registered holder of the Series C Preferred Stock at the holder's address as shown in the Company's books. The certificate shall set forth such adjustment or readjustment, showing in detail the facts upon which such adjustment or readjustment is based, including a statement of (1) the consideration received or deemed to be received by the Company for any Additional Common Stock issued or sold or deemed to have been issued or sold, (2) the Conversion Price in effect immediately prior to the occurrence of the event giving rise to such adjustment, (3) the number of shares of Additional Common Stock, and (4) the type and amount, if any, of other property which at the time would be received upon conversion of the Series C Preferred Stock.

8.11 NOTICES OF RECORD DATE. In the event of (i) any taking by the Company of a record of the holders of any class of securities for the purpose of determining the holders thereof who are entitled to receive any dividend or other distribution or (ii) any capital reorganization of the Company, any reclassification or recapitalization of the capital stock of the Company, any merger or consolidation of the Company with or into any other entity, or any transfer of all or substantially all of

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the assets of the Company to any other person or any voluntary or involuntary dissolution, liquidation or winding up of the Company, the Company shall mail to each holder of Series C Preferred Stock at least ten days prior to the record date specified therein, a notice specifying (1) the date on which any such record is to be taken for the purpose of such dividend or distribution and a description of such dividend or distribution, (2) the date on which any such reorganization, reclassification, transfer, consolidation, merger, dissolution, liquidation or winding up is expected to become effective, and (3) the date, if any, that is to be fixed, as to when the holders of record of Common Stock (or other securities) shall be entitled to exchange their Common Stock (or other securities) for securities or other property deliverable upon such reorganization, reclassification, transfer, consolidation, merger, dissolution, liquidation or winding up.

8.12 FRACTIONAL SHARES. No fractional shares of Common Stock shall be issued upon conversion of Series C Preferred Stock. In lieu of any fractional share to which the holder would otherwise be entitled (calculated based on the aggregate number of shares of Common Stock to which such holder is entitled upon such conversion), the Company shall pay cash equal to the product of such fraction multiplied by the Fair Market Value of one share of Common Stock on the date of conversion.

8.13 RESERVATION OF STOCK ISSUABLE UPON CONVERSION. The Company shall at all times reserve and keep available out of its authorized but unissued Common Stock, solely for the purpose of effecting the conversion of the Series C Preferred Stock, such number of shares of its Common Stock and other securities, if any, issuable upon conversion thereof as expressly provided in Section 8 as shall from time to time be sufficient to effect the conversion of all outstanding Series C Preferred Stock.

8.14 NOTICES. Any notice required or permitted by this Section 8 to be given to a holder of Series C Preferred Stock or to the Company shall be in writing and be deemed given upon the earlier of actual receipt or five days after the same has been deposited in the United States mail, by certified or registered mail, return receipt requested, postage prepaid, and addressed (i) to each holder of record at the address of such holder appearing on the books of the Company, or (ii) to the Company at its registered office, or (iii) to the Company or any holder, at any other address specified in a written notice given to the other for the giving of notice.

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8.15 PAYMENT OF TAXES. The Company will pay all taxes (other than taxes based upon income) and other governmental charges that may be imposed with

respect to the issue and delivery of Common Stock upon conversion of Series C Preferred Stock, including without limitation any tax or other charge imposed in connection with the issue and delivery of Common Stock or other securities, if any, issuable upon conversion thereof as expressly provided in Section 8 in a name other than that in which the Series C Preferred Stock so converted were registered.

8.16 CANCELLATION OF SHARES. Any shares of Series C Preferred Stock which are converted in accordance with Section 8 or which are redeemed, repurchased or otherwise acquired by the Company, shall be canceled and added to the authorized but undesignated Preferred Stock of the Company but shall not be reissued as Series C Preferred Stock.

9. RESTRICTIONS ON OWNERSHIP AND TRANSFER. Once there is a completed public offering of the Series C Preferred Stock, if the Board shall, at any time and in good faith, be of the opinion that actual or constructive ownership of at least 9.9% or more of the value of the outstanding capital stock of the Company has or may become concentrated in the hands of one owner (other than Explorer Holdings, L.P. and its direct and indirect equity owners), the Board shall have the power (i) by means deemed equitable by the Board, and pursuant to written notice, to call for the purchase from any shareholder of the corporation a number of shares of Series C Preferred Stock sufficient, in the opinion of the Board, to maintain or bring the direct or indirect ownership of such beneficial owner to no more than 9.9% of the value of the outstanding capital stock of the corporation, and (ii) to refuse to transfer or issue shares of Series C Preferred Stock to any person whose acquisition of such Series C Preferred Stock would, in the opinion of the Board, result in the direct or indirect ownership by that person of more than 9.9% of the value of the outstanding capital stock of the Company. The purchase price for any shares of Series C Preferred Stock shall be equal to the fair market value of the shares reflected in the closing sales price for the shares, if then listed on a national securities exchange, or if the shares are not then listed on a national securities exchange, the purchase price shall be equal to the Liquidation Preference of such shares of Series C Preferred Stock. Payment of the purchase price shall be made within thirty days following the date set forth in the notice of call for purchase, and shall be made in such manner as may be determined by the Board. From and

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after the date fixed for purchase by the Board, as set forth in the notice, the holder of any shares so called for purchase shall cease to be entitled to distributions and other benefits with respect to such shares, excepting only the right to payment of the purchase price fixed as aforesaid. Any transfer of Series C Preferred Stock that would create an actual or constructive owner of more than 9.9% of the value of the outstanding shares of capital stock of this Company shall be deemed VOID AB INITIO and the intended transferee shall be deemed never to have had an interest therein. If the foregoing provision is determined to be void or invalid by virtue of any legal decision, statute, rule or regulation, then the transferee of such Series C Preferred Stock shall be deemed, at the option of the Company, to have acted as agent on behalf of the Company in acquiring such shares and to hold such shares on behalf of the Company.

Notwithstanding anything herein to the contrary, nothing herein shall authorize the Company or its transfer agent to refuse to transfer any shares of Series C Preferred Stock, passing either by voluntary transfer, by operation of law, or under the last will and testament of any shareholder, if such transfer would not, in the written opinion of counsel to the transferor reasonably acceptable to the Company, disqualify the Company as a Real Estate Investment Trust under the Code. Nothing herein contained shall limit the ability of the Company to impose or to seek judicial or other imposition of additional restrictions if deemed necessary or advisable to preserve the Company's tax status as a qualified Real Estate Investment Trust.

10. CERTAIN DEFINED TERMS. In addition to the terms defined elsewhere in these Articles Supplementary or the Charter, the following terms will have the following meanings when used herein with initial capital letters:

(a) "BUSINESS DAY" means any day (other than a day which is a Saturday, Sunday or legal holiday in New York City, or any day on which banks in New York City are authorized by law to close).

(b) "CHANGE IN CONTROL" means the occurrence of any of the following in one or a series of related transactions: (A) any consolidation, merger, reorganization, share exchange or other form of business combination transaction involving the Company in which the holders of the Company's Voting Stock immediately before such transaction do not, immediately after such transaction, retain Voting Stock representing a majority of the voting power of the acquiring entity, the Company or the

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entity surviving such transaction or (B) the sale, transfer or assignment of Voting Stock of the Company representing a majority of the voting power of the Company to an acquiring Person; PROVIDED, HOWEVER, that any transaction described in clause (A) or (B) in which Voting Stock of the Company or the acquiring or surviving entity in such transaction representing a majority of the voting power of such Person is acquired by or from Explorer Holdings, L.P., its partners and/or their respective Affiliates in one transaction or a series of related transactions shall not be deemed a Change in Control.

(c) "EXCHANGE ACT" means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

(d) "FAIR MARKET VALUE" of any security or other asset means:

(i) In the case of any security:

(A) if the security is traded on a securities exchange, the weighted average trading volume of the per share closing prices of the security on such exchange over the five trading day period ending three trading days prior to the date on which such value is measured;

(B) if the security is traded over-the-counter, the weighted average trading volume of the per share closing bid prices of the security over the five trading day period ending three trading days prior to the date on which such value is measured; or

(C) if there is no public market for such security that meets the criteria set forth in (A) or (B) above, the Fair Market Value shall be the per share fair market value of such security as of the date on which such value is measured, as determined in good faith by the Board.

(ii) In the case of assets other than securities, the Fair Market Value shall be the fair market value of such assets, as determined in good faith by the Board.

(e) "LIQUIDATION PREFERENCE" measured per share of Series C Preferred Stock as of any date in question (the "RELEVANT DATE"), means an amount equal to the Original Issue Price of such share, plus an amount equal to any accrued and

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unpaid dividends, but without interest, at the rate set forth in Section 4 hereof, if any, for such share of Series C Preferred Stock. In connection with the determination of the Liquidation Preference of a share of Series C Preferred Stock upon liquidation, dissolution or winding up of the Company, the Relevant Date shall be the date of distribution of amounts payable to stockholders in connection with any such liquidation, dissolution or winding up.

(f) "ORIGINAL ISSUE PRICE" means \$100 per share of Series C Preferred Stock, subject to appropriate adjustment to reflect any stock dividends, combinations, splits, reverse splits, recapitalizations or similar events affecting the Series C Preferred Stock after the Issue Date.

(g) "PERSON" means any individual, firm, corporation, partnership, limited liability company, or group (within the meaning of Section 13(d)(3) of the Exchange Act).

(h) "RIGHTS OFFERING" means the offering of shares of Common Stock by the Company pursuant to Section 4.7 of the Investment Agreement, dated as of October 29, 2001, relating to the Series D Preferred Stock (the "INVESTMENT AGREEMENT").

(i) "VOTING STOCK" means, with respect to any Person, the shares of any class or kind ordinarily having the power to vote for the election of directors or other members of the governing body of such Person, and for purposes hereof, the Series D Preferred Stock whether or not then convertible. For avoidance of doubt, Common Stock and Series C Preferred Stock both constitute Voting Stock of the Company; provided, however, no class of Preferred Stock shall be deemed to be Voting Stock by virtue of the rights of such holder upon any Preferred Dividend Default.

11. AMENDMENT; WAIVER. Except as expressly prohibited by law, these Amended and Restated Articles Supplementary may be amended and any provision herein may be waived with the approval of the holders of a majority of the Series C Preferred Stock and a majority of the members of the Board who are not Affiliates of any holder of Series C Preferred Stock. Any amendment or waiver so effected shall be binding upon each holder of Series C Preferred Stock.

THIRD: The classification of authorized but unissued shares as set forth in these Amended and Restated Articles Supplementary does not increase the authorized capital of the Company or the aggregate par value thereof.

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FOURTH: These Amended and Restated Articles Supplementary have been approved by the Board in the manner and by the vote required by law.

FIFTH: The undersigned Vice President of the Company acknowledges these Amended and Restated Articles Supplementary to be the corporate act of the Company and, as to all matters or facts required to be verified under oath, the undersigned Vice President of the Company acknowledges that to the best of his or her knowledge, information and belief, these matters and facts are true in all material respects and that this statement is made under the penalties for perjury.

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IN WITNESS WHEREOF, the Company has caused these Amended and Restated Articles Supplementary to be executed under seal in its name and on its behalf by its Vice President and attested to by its Secretary on this \_\_\_ day of \_\_\_\_\_, 2001.

ATTEST

OMEGA HEALTHCARE INVESTORS,  
INC.

By: \_\_\_\_\_  
Secretary

By: \_\_\_\_\_  
Vice President

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OMEGA HEALTHCARE INVESTORS, INC.  
ARTICLES SUPPLEMENTARY  
FOR SERIES D CONVERTIBLE PREFERRED STOCK

OMEGA HEALTHCARE INVESTORS, INC., a Maryland corporation (the "COMPANY"), hereby certifies to the State Department of Assessments and Taxation of Maryland that:

FIRST: Pursuant to authority contained in the charter of the Company (the "CHARTER"), 1,000,000 shares of authorized but unissued shares of the Company's Preferred Stock have been duly classified by the Board of Directors of the Company (the "BOARD") as authorized but unissued shares of the Company's Series D Preferred Stock.

SECOND: A description of the Series D Preferred Stock is as follows:

1. DESIGNATION AND NUMBER. A series of Preferred Stock, designated the "Series D Convertible Preferred Stock" (the "SERIES D PREFERRED STOCK"), is hereby established. The number of shares of the Series D Preferred Stock shall be 1,000,000, subject to increase pursuant to Section 4(b) prior to payment by the Company of any dividend in shares of Series D Preferred Stock in accordance with Section 4.

2. MATURITY. The Series D Preferred Stock has no stated maturity.

3. RANK. The Series D Preferred Stock will, with respect to dividend rights and rights upon liquidation, dissolution or winding up of the Company, rank (i) senior to all classes or series of Common Stock of the Company, and to all equity securities ranking junior to the Series D Preferred Stock with respect to dividend rights or rights upon liquidation, dissolution or winding up of the Company, (ii) on a parity with the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock and all other equity securities issued by the Company the terms of which specifically provide that such equity securities rank on a parity with the Series D Preferred Stock with respect to dividend rights or rights upon liquidation, dissolution or winding up of the Company (the "PARITY PREFERRED"), and (iii) junior to all existing and future indebtedness of the Company. The term "equity securities" does not include convertible debt securities, which will rank senior

to the Series D Preferred Stock prior to conversion of such debt securities.

4. DIVIDENDS. (a) Except as set forth in Section 4(b), if the Stockholder Approval Date does not occur on or prior to January 31, 2002, holders of shares of the Series D Preferred Stock are entitled to receive, out of funds legally available for the payment of dividends, preferential cumulative dividends at the greater of (i) 10% per annum of the Liquidation Preference per share (equivalent to a fixed annual amount of \$\_\_\_\_\_ per share) and (ii) the amount per share declared or paid or set aside for payment based on the number of shares of Common Stock into which such shares of Series D Preferred Stock are then convertible in accordance with Section 8. Subject to the preceding sentence, dividends on each share of the Series D Preferred Stock shall be cumulative commencing from the date of issuance (the "ISSUE DATE") of such share of Series D Preferred Stock and shall be payable in arrears for each period ended July 31, October 31, January 31 and April 30 (each a "DIVIDEND PERIOD") on or before the 15th day of August, November, February and May of each year, or, if not a Business Day, the next succeeding Business Day (each, a "DIVIDEND PAYMENT DATE"). Any dividend payable on shares of the Series D Preferred Stock for any partial period will be computed based on the actual number of days elapsed (commencing with and including the date of issuance of such shares) and on the basis of a 360-day year consisting of twelve 30-day months. Dividends will be payable to holders of record as they appear in the stock records of the Company at the close of business on the applicable record date, which shall be the last day of the preceding calendar month prior to the applicable Dividend Payment Date or on such other date designated by the Board that is not more than 30 nor less than 10 days prior to such Dividend Payment Date (each, a "DIVIDEND RECORD DATE").

(b) Dividends will be payable, (1) at the election of the holders of a majority of the Series D Preferred Stock, in respect of any period after June 30, 2002 and (2) at the election of the Board, in respect of any period on or prior to June 30, 2002, either (i) by the issuance as of the relevant Dividend Payment Date of additional shares of fully paid, nonassessable Series D Preferred Stock having an aggregate liquidation preference equal to the amount of such accrued dividends or (ii) in cash. In the event that dividends are

declared and paid pursuant to clause (i), (A) such dividends will be deemed paid in full and will not accumulate and (B) prior to paying any such dividends, the Board will take such

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action as is necessary to increase the number of authorized shares of Series D Preferred Stock by the number of shares to be issued pursuant to this Section 4, including but not limited to the filing of Articles Supplementary with the State Department of Assessments and Taxation of Maryland in accordance with Article VII of the Charter. The Company will deliver certificates representing shares of Series D Preferred Stock issued pursuant to this Section 4(b) promptly after the relevant Dividend Payment Date.

(c) No dividends on shares of Series D Preferred Stock shall be declared by the Board or paid or set apart for payment by the Company at such time as the terms and provisions of any agreement of the Company, including any agreement relating to its indebtedness, prohibits such declaration, payment or setting apart for payment or provides that such declaration, payment or setting apart for payment would constitute a breach thereof or a default thereunder, or if such declaration or payment shall be restricted or prohibited by law.

(d) Notwithstanding the foregoing, dividends on the Series D Preferred Stock will accrue whether or not the Company has earnings, whether or not there are funds legally available for the payment of such dividends and whether or not such dividends are declared. Accrued but unpaid dividends on the Series D Preferred Stock will not bear interest.

(e) Except as set forth in the next sentence, no dividends will be declared or paid or set apart for payment on any capital stock of the Company or any other series of Preferred Stock ranking, as to dividends, on a parity with or junior to the Series D Preferred Stock (other than a dividend in shares of the Company's Common Stock or in shares of any other class of stock ranking junior to the Series D Preferred Stock as to dividends and upon liquidation) for any period unless full cumulative dividends have been or contemporaneously are declared and paid or declared and a sum sufficient for the payment thereof is set apart for such payment on the Series D Preferred Stock for all past dividend periods and the then current dividend period. When dividends are not paid in full (or a sum sufficient for such full payment is not so set apart) upon the Series D Preferred Stock and the shares of any other series of Preferred Stock ranking on a parity as to dividends with the Series D Preferred Stock, all dividends declared upon the Series D Preferred Stock and any other series of Preferred Stock ranking on a parity as to dividends with the Series D Preferred Stock shall be declared pro rata so that the amount of dividends declared per share of Series D Preferred Stock and such other

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series of Preferred Stock shall in all cases bear to each other the same ratio that accrued dividends per share on the Series D Preferred Stock and such other series of Preferred Stock (which shall not include any accrual in respect of unpaid dividends for prior dividend periods if such Preferred Stock does not have a cumulative dividend) bear to each other.

(f) Except as provided in the immediately preceding paragraph, unless full cumulative dividends on the Series D Preferred Stock have been or contemporaneously are declared and paid or declared and a sum sufficient for the payment thereof is set apart for payment for all past dividend periods and the then current dividend period, no dividends (other than in shares of Common Stock or other shares of capital stock ranking junior to the Series D Preferred Stock as to dividends and upon liquidation) shall be declared or paid or set aside for payment nor shall any other distribution be declared or made upon the Common Stock, or any other capital stock of the Company ranking junior to or on a parity with the Series D Preferred Stock as to dividends or upon liquidation, nor shall any shares of Common Stock, or any other shares of capital stock of the Company ranking junior to or on a parity with the Series D Preferred Stock as to dividends or upon liquidation be redeemed, purchased or otherwise acquired for any consideration (or any moneys be paid to or made available for a sinking fund for the redemption of any such shares) by the Company (except by conversion into or exchange for other capital stock of the Company ranking junior to the Series D Preferred Stock as to dividends and upon liquidation or redemption or for the purpose of preserving the Company's qualification as a real estate investment trust under the Internal Revenue Code of 1986, as amended (the "CODE")). Holders of shares of the Series D Preferred Stock shall not be entitled to any dividend, whether payable in cash, property or stock, in excess of full cumulative dividends on the Series D Preferred Stock as provided above. Any dividend payment made on shares of the Series D Preferred Stock shall first be credited against the earliest accrued but unpaid dividend due with respect to such shares which remains payable.

5. LIQUIDATION PREFERENCE. Upon any voluntary or involuntary

liquidation, dissolution or winding up of the affairs of the Company, each holder of shares of Series D Preferred Stock shall, at the election of such holder, be entitled to be paid out of the assets of the Company legally available for distribution to its shareholders the Liquidation Preference (as defined in Section 10(e)) before any distribution of assets is made to holders of Common Stock or any other class

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or series of capital stock of the Company that ranks junior to the Series D Preferred Stock as to liquidation rights. The Company will promptly provide to the holders of Series D Preferred Stock written notice of any event triggering the right to receive such Liquidation Preference. After payment of the full amount of the Liquidation Preference, plus any accrued and unpaid dividends to which they are entitled, the holders of Series D Preferred Stock will have no right or claim to any of the remaining assets of the Company. A Change in Control (as defined in Section 10(b)), or the sale, lease or conveyance of all or substantially all of the property, business or assets of the Company shall be deemed to constitute a liquidation, dissolution or winding up of the Company for purposes of Section 5 of these Articles Supplementary only and shall not be deemed a liquidation, dissolution or winding up of the Company for any other series of Preferred Stock unless the terms of such series of Preferred Stock expressly provide.

In determining whether a distribution (other than upon voluntary or involuntary liquidation) by dividend, redemption or other acquisition of shares of stock of the Company or otherwise is permitted under the Maryland General Corporation Law (the "MGCL"), no effect shall be given to amounts that would be needed if the Company would be dissolved at the time of the distribution, to satisfy the preferential rights upon distribution of holders of shares of stock of the Company whose preferential rights upon distribution are superior to those receiving the distribution.

6. REDEMPTION. The Series D Preferred Stock is not redeemable without the consent of the holder of such share of Series D Preferred Stock.

7. VOTING RIGHTS. (a) Holders of the Series D Preferred Stock will not have any voting rights, except as set forth below.

(b) Whenever dividends on any shares of Series D Preferred Stock shall be in arrears for two or more Dividend Periods (a "PREFERRED DIVIDEND DEFAULT"), the number of directors then constituting the Board shall be increased by two (if not already increased by reason of a similar arrearage with respect to the Series C Preferred Stock). The holders of such shares of Series D Preferred Stock and the holders of Series C Preferred Stock upon which like voting rights have been conferred and are exercisable (voting together as a single class) will be entitled to fill the vacancies thereby created by the addition of such number of directors of the Company

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determined pursuant to the first sentence of this Section 7(b) (the "ADDITIONAL SERIES C/D PREFERRED STOCK DIRECTORS") at a special meeting called by the holders of record of at least 20% of the Series D Preferred Stock or the holders of record of at least 20% of the Series C Preferred Stock until all dividends accumulated on such shares of Series D Preferred Stock and Series C Preferred Stock for the past dividend periods and the dividend for the then current dividend period shall have been fully paid or declared and a sum sufficient for the payment thereof set aside. In any vote to elect or remove additional directors pursuant to this Section 7, each such holder of shares of Series D Preferred Stock and Series C Preferred Stock entitled to vote will be entitled to one vote for each share held by such holder. In the event the directors of the Company are divided into classes, each such vacancy shall be apportioned among the classes of directors to prevent stacking in any one class and to ensure that the number of directors in each of the classes of directors are as equal as possible. Each Additional Series C/D Preferred Stock Director, as a qualification for election as such (and regardless of how elected), shall submit to the Board a duly executed, valid, binding and enforceable letter of resignation from the Board, to be effective upon the date upon which all dividends accumulated on such shares of Series D Preferred Stock and Series C Preferred Stock for the past dividend periods and the dividend for the then current dividend period shall have been fully paid or declared and a sum sufficient for the payment thereof set aside for payment, whereupon the terms of office of all persons elected as Additional Series C/D Preferred Stock Directors by the holders of such shares of Series D Preferred Stock and Series C Preferred Stock shall, upon the effectiveness of their respective letters of resignation, forthwith terminate, and the number of directors then constituting the Board shall be reduced accordingly. A quorum for any such meeting shall exist if the holders of at least a majority of the outstanding shares of Series D Preferred Stock and Series C Preferred Stock so entitled to vote are represented in person or by proxy at such meeting. Such Additional Series C/D Preferred Stock Directors shall be elected upon the affirmative vote of a plurality (based on the number of votes entitled to be cast) of the shares of Series D Preferred

Stock and Series C Preferred Stock so entitled to vote that are present and voting in person or by proxy at a duly called and held meeting at which a quorum is present. If and when all accumulated dividends and the dividend for the then current dividend period on such shares of Series D Preferred Stock and Series C Preferred Stock shall have been paid in full or declared and a sum sufficient for the payment

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thereof in full shall have been set aside, the holders thereof shall be divested of the foregoing voting rights (subject to revesting in the event of each and every Preferred Dividend Default) and the term of office of each Additional Series C/D Preferred Stock Director so elected shall terminate. Any Additional Series C/D Preferred Stock Director may be removed at any time with or without cause by, and shall not be removed otherwise than by the vote of, the holders of record of a majority of the outstanding shares of the Series D Preferred Stock and Series C Preferred Stock entitled to vote (voting together as a single class). So long as a Preferred Dividend Default shall continue, any vacancy in the office of an Additional Series C/D Preferred Stock Director may be filled by written consent of the Additional Series C/D Preferred Stock Directors remaining in office, or if none remains in office, by a vote of the holders of record of a majority of the outstanding shares of Series D Preferred Stock and Series C Preferred Stock so entitled to vote (voting together as a single class). The Additional Series C/D Preferred Stock Directors shall each be entitled to one vote per director on any matter.

(c) So long as any shares of Series D Preferred Stock remain outstanding, the Company will not, without the affirmative vote or consent of the holders of at least two-thirds of the shares of the Series D Preferred Stock outstanding at the time, given in person or by proxy, either in writing or at a meeting (voting together with any other classes of Preferred Stock adversely affected in the same manner as a single class), amend, alter or repeal the provisions of the Charter or the Articles Supplementary, whether by merger, consolidation or otherwise (an "EVENT"), so as to materially and adversely affect any right, preference, privilege or voting power of the Series D Preferred Stock or the holders thereof, including without limitation, the creation of any series of Preferred Stock ranking senior to the Series D Preferred Stock with respect to payment of dividends or the distribution of assets upon liquidation, dissolution or winding up, but not including the creation or issuance of Parity Preferred.

(d) Except as expressly stated in these Articles Supplementary, the Series D Preferred Stock shall not have any relative, participating, optional or other special voting rights and powers and the consent of the holders thereof shall not be required for the taking of any corporate action, including but not limited to, any merger or consolidation involving the Company or a sale of all or substantially all of the assets of the Company, irrespective of the effect that such merger,

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consolidation or sale may have upon the rights, preferences or voting power of the holders of the Series D Preferred Stock.

8. CONVERSION. The holders of Series D Preferred Stock shall have the following conversion rights with respect to such shares:

8.1 AUTOMATIC CONVERSION. Each share of Series D Preferred Stock (including all accrued and unpaid dividends thereon) shall automatically be converted into fully paid and nonassessable shares of Common Stock upon the earlier of (i) the date the holders of a majority of the shares of Common Stock (giving effect to the conversion of the Series C Preferred) present and entitled to vote at a duly convened meeting of the Company's stockholders vote to approve the issuance of Common Stock pursuant to Section 8 hereof (such date, the "STOCKHOLDER APPROVAL DATE") or (ii) the date the New York Stock Exchange waives any requirement for stockholder approval of the conversion of the Series D Preferred into Common Stock under its rules and policies.

8.2 CONVERSION PRICE. Each share of Series D Preferred Stock will be converted into such number of shares of Common Stock as is equal to the quotient obtained by dividing the Original Issue Price for such share by the Conversion Price (as defined below) in effect at the time of conversion. The Conversion Price initially shall be equal to \$\_\_\_\_\_ per share of Common Stock, subject to adjustment from time to time as provided herein (the "CONVERSION PRICE") from and after the Issue Date, irrespective of whether the Series D Preferred Stock is convertible at such time.

8.3 MECHANICS OF CONVERSION. Upon the occurrence of an event specified in Section 8.1 above, the outstanding shares of Series D Preferred Stock shall be converted automatically without any further action by the holders of such shares and whether or not the certificates representing such shares are

surrendered to the Company or its transfer agent; provided, however, that the Company shall not be obligated to issue certificates evidencing the shares of Common Stock issuable upon such conversation unless the certificates evidencing such shares of Series D Preferred Stock are either delivered to the Company or its transfer agent as provided below, or the holder notifies the Company or its transfer agent that such certificates have been lost, stolen or destroyed and executes an agreement satisfactory to the Company to indemnify the Company from any loss incurred by it in connection with such certificates. Promptly following the conversion of the Series D Preferred

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Stock, the holders thereof shall surrender the certificates representing such shares at the office of the Company or any transfer agent for the Series D Preferred Stock, as applicable. Thereupon, there shall be issued and delivered to such holder promptly at such office and in its names as shown on such surrendered certificate or certificates, or such other name or names as such holder shall notify the Company in writing, a certificate or certificates for the number of shares of Common Stock into which the shares of Series D Preferred Stock surrendered were convertible on the date on which such conversion occurred.

8.4 ADJUSTMENT FOR STOCK SPLITS AND COMBINATIONS. If the Company at any time or from time to time after the Issue Date effects a subdivision of the outstanding Common Stock, the Conversion Price then in effect immediately before that subdivision shall be proportionately decreased, and conversely, if the Company at any time or from time to time after the Issue Date combines the outstanding Common Stock into a smaller number of shares, the Conversion Price then in effect immediately before the combination shall be proportionately increased. Any adjustment under this Section 8.4 shall become effective at the close of business on the date such subdivision or combination becomes effective.

8.5 ADJUSTMENT FOR CERTAIN DIVIDENDS AND DISTRIBUTIONS. If the Company at any time or from time to time after the Issue Date makes, or fixes a record date for the determination of holders of Common Stock entitled to receive, a dividend or other distribution payable in additional Common Stock, then and in each such event the Conversion Price then in effect shall be decreased as of the time of such issuance or, in the event such record date is fixed, as of the close of business on such record date, by multiplying the Conversion Price then in effect by a fraction (1) the numerator of which is the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date, and (2) the denominator of which shall be the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date plus the number of shares of Common Stock issuable in payment of such dividend or distribution; PROVIDED, HOWEVER, that if such record date is fixed and such dividend is not fully paid or if such distribution is not fully made on the date fixed therefor, the Conversion Price shall be recomputed accordingly as of the close of business on such record date and thereafter the Conversion

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Price shall be adjusted pursuant to this Section 8.5 as of the time of actual payment of such dividends or distributions.

8.6 ADJUSTMENTS FOR OTHER DIVIDENDS AND DISTRIBUTIONS. In the event the Company at any time or from time to time after the Issue Date makes, or fixes a record date for the determination of holders of Common Stock entitled to receive, a dividend or other distribution payable in securities of the Company other than Common Stock or other assets or property of the Company (other than ordinary cash dividends and any special dividends necessary to preserve the Company's qualification as a REIT), then and in each such event provision shall be made so that the holders of Series D Preferred Stock shall receive upon conversion thereof, in addition to the number of shares of Common Stock receivable thereupon, the amount of securities of the Company or other assets or property of the Company which they would have received had their Series D Preferred Stock been converted into Common Stock on the date of such event and had they thereafter, during the period from the date of such event to and including the conversion date, retained such securities or other assets or property of the Company receivable by them as aforesaid during such period, subject to all other adjustments called for during such period under this Section 8 with respect to the rights of the holders of the Series D Preferred Stock.

8.7 ADJUSTMENT FOR RECLASSIFICATION, EXCHANGE AND SUBSTITUTION. In the event that at any time or from time to time after the Issue Date, the Common Stock or other securities as provided herein issuable upon the conversion of the Series D Preferred Stock are changed into the same or a different number of shares of any class or classes of stock, whether by recapitalization, reclassification or otherwise (other than a subdivision or combination of shares or stock dividend or a reorganization, merger, consolidation or sale of assets, provided for elsewhere in this Section 8), then and in any such event each

holder of Series D Preferred Stock shall have the right thereafter to convert such Series D Preferred Stock into the kind and amount of stock and other securities and property receivable upon such recapitalization, reclassification or other change, by holders of Common Stock or other securities as provided herein into which such shares of Series D Preferred Stock could have been converted immediately prior to such recapitalization, reclassification or change, all subject to further adjustment as provided herein.

8.8 REORGANIZATIONS, MERGERS, CONSOLIDATIONS OR TRANSFERS OF ASSETS. If at any time or from time to time after

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the Issue Date there is a capital reorganization of the Common Stock or other securities issuable upon conversion of Series D Preferred Stock as provided herein (other than a recapitalization, subdivision, combination, reclassification or exchange of shares provided for elsewhere in this Section 8) or a merger or consolidation or statutory binding share exchange of the Company with or into another Person, or the transfer of all or substantially all of the Company's properties and assets to any other Person and such capital reorganization, merger, consolidation or transfer does not constitute a Change in Control, then, as a part of such capital reorganization, merger, consolidation, exchange or transfer, provision shall be made so that the holders of Series D Preferred Stock shall thereafter be entitled to receive upon conversion of Series D Preferred Stock the number of shares of stock or other securities, cash or property to which a holder of the number of shares of Common Stock or other securities deliverable upon conversion of the Series D Preferred Stock would have been entitled on such capital reorganization, merger, consolidation, exchange or transfer. In any such case, appropriate adjustment shall be made in the application of the provisions of this Section 8 with respect to the rights of the holders of the Series D Preferred Stock after the capital reorganization, merger, consolidation, exchange or transfer to the end that the provisions of this Section 8 (including adjustment of the Conversion Price then in effect and the number of shares receivable upon conversion of the Series D Preferred Stock) shall be applicable after that event and be as nearly equivalent as may be practicable.

8.9 SALE OF SHARES BELOW FAIR MARKET VALUE. (a) If at any time or from time to time after the Issue Date, the Company issues or sells, or is deemed by the express provisions of this Section 8.9 to have issued or sold, Additional Common Stock (as defined below), other than as a dividend or other distribution on any class of stock as provided in Section 8.5 above and other than upon a subdivision or combination of Common Stock as provided in Section 8.4 above, for an Effective Price (as defined below) less than the Fair Market Value, then and in each such case the then existing Conversion Price shall be reduced, as of the opening of business on the date of such issue or sale, to a price determined by multiplying that Conversion Price by a fraction (i) the numerator of which shall be equal to the sum of (A) the number of shares of Common Stock issued and outstanding at the close of business on the Business Day immediately preceding the date of such issue or sale, (B) the number of shares of Common Stock which the aggregate consideration received (or by the express provisions hereof is

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deemed to have been received) by the Company for the total number of shares of Additional Common Stock so issued or sold would purchase at such Fair Market Value, (C) the number of shares of Common Stock into which all outstanding Series C Preferred Stock and Series D Preferred Stock would be convertible at the close of business on the Business Day immediately preceding the date of such issuance or sale (whether or not the Series D Preferred Stock is then convertible), and (D) the number of shares of Common Stock underlying all Convertible Securities (as defined below) at the close of business on the Business Day immediately preceding the date of such issuance or sale, and (ii) the denominator of which shall be equal to the sum of (A) the number of shares of Common Stock issued and outstanding at the close of business on the date of such issuance or sale after giving effect to such issuance or sale of Additional Common Stock, (B) the number of shares of Common Stock into which all outstanding Series C Preferred Stock and Series D Preferred Stock would be convertible at the close of business on the Business Day immediately preceding the date of such issuance or sale (whether or not the Series D Preferred Stock is then convertible), and (C) the number of shares of Common Stock underlying all Convertible Securities at the close of business on the Business Day immediately preceding the date of such issuance or sale.

(b) For the purpose of making any adjustment required under this Section 8.9, the consideration for any issuance or sale of securities shall be deemed to be (A) to the extent it consists of cash, equal to the gross amount paid in such issuance or sale, (B) to the extent it consists of property other than cash, equal to the Fair Market Value of that property, and (C) if Additional Common Stock, Convertible Securities (as defined below) or rights or options to purchase either Additional Common Stock or Convertible Securities are issued or sold together with other stock, securities or assets of the Company

for a consideration which covers both, that portion of the consideration so received that is determined in good faith by the Board to be allocable to such Additional Common Stock, Convertible Securities or rights or options.

(c) For the purpose of the adjustment required under this Section 8.9, if the Company issues or sells any rights or options for the purchase of, or stock or other securities convertible into or exchangeable or exercisable for, Additional Common Stock (such convertible or exchangeable or exercisable stock or securities being hereinafter referred to as "CONVERTIBLE SECURITIES") and if the Effective Price of such

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Additional Common Stock is less than the Fair Market Value, then in each case the Company shall be deemed to have (i) issued at the time of the issuance of such rights or options or Convertible Securities the number of shares of Additional Common Stock issuable upon exercise, conversion or exchange thereof irrespective of whether the holders thereof have the fully vested legal right to exercise, convert or exchange the Convertible Securities for Additional Common Stock and (ii) received as consideration for the issuance of such Additional Common Stock an amount equal to the total amount of the consideration, if any, received by the Company for the issuance of such rights or options or Convertible Securities, plus, in the case of such rights or options, the consideration, if any, payable to the Company upon the exercise of such rights or options, plus, in the case of Convertible Securities, the consideration, if any, payable to the Company (other than by cancellation of liabilities or obligations evidenced by such Convertible Securities) upon the exercise, conversion or exchange thereof. No further adjustment of the Conversion Price, as adjusted upon the issuance of such rights, options or Convertible Securities, shall be made as a result of the actual issuance of Additional Common Stock on the exercise of any such rights or options or the conversion or exchange of any such Convertible Securities. If any such rights or options or the conversion or exchange privilege represented by any such Convertible Securities shall expire without having been exercised, the Conversion Price as adjusted upon the issuance of such rights, options or Convertible Securities shall be readjusted to the Conversion Price which would have been in effect had an adjustment been made on the basis that the only shares of Additional Common Stock so issued were the shares of Additional Common Stock, if any, actually issued or sold on the exercise of such rights or options or rights of conversion or exchange of such Convertible Securities, and such shares of Additional Common Stock, if any, were issued or sold for the consideration actually received by the Company upon such exercise, plus the consideration, if any, actually received by the Company for the granting of the rights or options whether or not exercised, plus the consideration received for issuing or selling the Convertible Securities actually converted or exchanged, plus the consideration, if any, actually received by the Company (other than by cancellation of liabilities or obligations evidenced by such Convertible Securities) on the conversion or exchange of such Convertible Securities.

(d) "ADDITIONAL COMMON STOCK" shall mean all Common Stock issued or issuable by the Company after the Issue Date,

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whether or not subsequently reacquired or retired by the Company, other than (i) Common Stock issued or issuable upon conversion of, or as a dividend on, any Series C Preferred Stock or Series D Preferred Stock, (ii) Common Stock issued or issuable pursuant to any employee benefit plan or similar plan or arrangement intended to provide compensation and other benefits to officers, directors, employees and consultants of the Company provided that such plans and any grants or awards thereunder have been approved by the Board or a committee thereof, (iii) securities issued by the Company in payment of a purchase price to the seller or any Person who beneficially owns equity securities of such seller for any acquisition of assets or a business, which acquisition is approved by the Board, or (iv) Common Stock issued or issuable pursuant to the Rights Offering, the Investment Agreement or upon issuance or conversion of the Series D Preferred Stock. The "EFFECTIVE PRICE" of Additional Common Stock shall mean the quotient determined by dividing the total number of shares of Additional Common Stock issued or sold, or deemed to have been issued or sold by the Company, by the aggregate consideration received, or deemed to have been received, by the Company for such Additional Common Stock. The share numbers in this Section 8.9(d) shall be appropriately adjusted for any stock dividends, combinations, splits, reverse splits, recapitalizations and similar events affecting the securities of the Company.

8.10 CERTIFICATE OF ADJUSTMENT. In each case of an adjustment or readjustment of the Conversion Price or the number of shares of Common Stock or other securities issuable upon conversion of the Series D Preferred Stock, the Company, at its expense, shall cause the Chief Financial Officer of the Company to compute such adjustment or readjustment in accordance with the provisions hereof and prepare a certificate showing such adjustment or readjustment, and shall mail such certificate, by first class mail, postage prepaid, to each registered holder of the Series D Preferred Stock at the holder's address as

shown in the Company's books. The certificate shall set forth such adjustment or readjustment, showing in detail the facts upon which such adjustment or readjustment is based, including a statement of (1) the consideration received or deemed to be received by the Company for any Additional Common Stock issued or sold or deemed to have been issued or sold, (2) the Conversion Price in effect immediately prior to the occurrence of the event giving rise to such adjustment, (3) the number of shares of Additional Common Stock, and (4) the type and amount, if any, of other property which at the time would be received upon conversion of the Series D Preferred Stock.

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8.11 NOTICES OF RECORD DATE. In the event of (i) any taking by the Company of a record of the holders of any class of securities for the purpose of determining the holders thereof who are entitled to receive any dividend or other distribution or (ii) any capital reorganization of the Company, any reclassification or recapitalization of the capital stock of the Company, any merger or consolidation of the Company with or into any other entity, or any transfer of all or substantially all of the assets of the Company to any other person or any voluntary or involuntary dissolution, liquidation or winding up of the Company, the Company shall mail to each holder of Series D Preferred Stock at least ten days prior to the record date specified therein, a notice specifying (1) the date on which any such record is to be taken for the purpose of such dividend or distribution and a description of such dividend or distribution, (2) the date on which any such reorganization, reclassification, transfer, consolidation, merger, dissolution, liquidation or winding up is expected to become effective, and (3) the date, if any, that is to be fixed, as to when the holders of record of Common Stock (or other securities) shall be entitled to exchange their Common Stock (or other securities) for securities or other property deliverable upon such reorganization, reclassification, transfer, consolidation, merger, dissolution, liquidation or winding up.

8.12 FRACTIONAL SHARES. No fractional shares of Common Stock shall be issued upon conversion of Series D Preferred Stock. In lieu of any fractional share to which the holder would otherwise be entitled (calculated based on the aggregate number of shares of Common Stock to which such holder is entitled upon such conversion), the Company shall pay cash equal to the product of such fraction multiplied by the Fair Market Value of one share of Common Stock on the date of conversion.

8.13 RESERVATION OF STOCK ISSUABLE UPON CONVERSION. The Company shall at all times reserve and keep available out of its authorized but unissued Common Stock, solely for the purpose of effecting the conversion of the Series D Preferred Stock, such number of shares of its Common Stock and other securities, if any, issuable upon conversion thereof as expressly provided in Section 8 as shall from time to time be sufficient to effect the conversion of all outstanding Series D Preferred Stock.

8.14 NOTICES. Any notice required or permitted by this Section 8 to be given to a holder of Series D Preferred Stock or to the Company shall be in writing and be deemed given upon the earlier of actual receipt or five days after the same

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has been deposited in the United States mail, by certified or registered mail, return receipt requested, postage prepaid, and addressed (i) to each holder of record at the address of such holder appearing on the books of the Company, or (ii) to the Company at its registered office, or (iii) to the Company or any holder, at any other address specified in a written notice given to the other for the giving of notice.

8.15 PAYMENT OF TAXES. The Company will pay all taxes (other than taxes based upon income) and other governmental charges that may be imposed with respect to the issue and delivery of Common Stock upon conversion of Series D Preferred Stock, including without limitation any tax or other charge imposed in connection with the issue and delivery of Common Stock or other securities, if any, issuable upon conversion thereof as expressly provided in Section 8 in a name other than that in which the Series D Preferred Stock so converted were registered.

8.16 CANCELLATION OF SHARES. Any shares of Series D Preferred Stock which are converted in accordance with Section 8 or which are redeemed, repurchased or otherwise acquired by the Company, shall be canceled and added to the authorized but undesignated Preferred Stock of the Company but shall not be reissued as Series D Preferred Stock.

9. RESTRICTIONS ON OWNERSHIP AND TRANSFER. Once there is a completed public offering of the Series D Preferred Stock, if the Board shall, at any time and in good faith, be of the opinion that actual or constructive ownership of at least 9.9% or more of the value of the outstanding capital stock of the Company has or may become concentrated in the hands of one owner (other than Explorer



Holdings, L.P. and its direct and indirect equity owners), the Board shall have the power (i) by means deemed equitable by the Board, and pursuant to written notice, to call for the purchase from any shareholder of the corporation a number of shares of Series D Preferred Stock sufficient, in the opinion of the Board, to maintain or bring the direct or indirect ownership of such beneficial owner to no more than 9.9% of the value of the outstanding capital stock of the corporation, and (ii) to refuse to transfer or issue shares of Series D Preferred Stock to any person whose acquisition of such Series D Preferred Stock would, in the opinion of the Board, result in the direct or indirect ownership by that person of more than 9.9% of the value of the outstanding capital stock of the Company. The purchase price for any shares of Series D Preferred Stock shall be equal to the fair market value of the shares reflected in the closing sales price for the shares, if

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then listed on a national securities exchange, or if the shares are not then listed on a national securities exchange, the purchase price shall be equal to the Liquidation Preference of such shares of Series D Preferred Stock. Payment of the purchase price shall be made within thirty days following the date set forth in the notice of call for purchase, and shall be made in such manner as may be determined by the Board. From and after the date fixed for purchase by the Board, as set forth in the notice, the holder of any shares so called for purchase shall cease to be entitled to distributions and other benefits with respect to such shares, excepting only the right to payment of the purchase price fixed as aforesaid. Any transfer of Series D Preferred Stock that would create an actual or constructive owner of more than 9.9% of the value of the outstanding shares of capital stock of this Company shall be deemed VOID AB INITIO and the intended transferee shall be deemed never to have had an interest therein. If the foregoing provision is determined to be void or invalid by virtue of any legal decision, statute, rule or regulation, then the transferee of such Series D Preferred Stock shall be deemed, at the option of the Company, to have acted as agent on behalf of the Company in acquiring such shares and to hold such shares on behalf of the Company.

Notwithstanding anything herein to the contrary, nothing herein shall authorize the Company or its transfer agent to refuse to transfer any shares of Series D Preferred Stock, passing either by voluntary transfer, by operation of law, or under the last will and testament of any shareholder, if such transfer would not, in the written opinion of counsel to the transferor reasonably acceptable to the Company, disqualify the Company as a Real Estate Investment Trust under the Code. Nothing herein contained shall limit the ability of the Company to impose or to seek judicial or other imposition of additional restrictions if deemed necessary or advisable to preserve the Company's tax status as a qualified Real Estate Investment Trust.

10. CERTAIN DEFINED TERMS. In addition to the terms defined elsewhere in these Articles Supplementary or the Charter, the following terms will have the following meanings when used herein with initial capital letters:

(a) "BUSINESS DAY" means any day (other than a day which is a Saturday, Sunday or legal holiday in New York City, or any day on which banks in New York City are authorized by law to close).

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(b) "CHANGE IN CONTROL" means the occurrence of any of the following in one or a series of related transactions: (A) any consolidation, merger, reorganization, share exchange or other form of business combination transaction involving the Company in which the holders of the Company's Voting Stock immediately before such transaction do not, immediately after such transaction, retain Voting Stock representing a majority of the voting power of the acquiring entity, the Company or the entity surviving such transaction or (B) the sale, transfer or assignment of Voting Stock of the Company representing a majority of the voting power of the Company to an acquiring Person; provided, however, that any transaction described in clause (A) or (B) in which Voting Stock of the Company or the acquiring or surviving entity in such transaction representing a majority of the voting power of such Person is acquired by or from Explorer Holdings, L.P., its partners and/or their respective Affiliates in one transaction or a series of related transactions shall not be deemed a Change in Control.

(c) "EXCHANGE ACT" means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

(d) "FAIR MARKET VALUE" of any security or other asset means:

(i) In the case of any security:

(A) if the security is traded on a securities exchange, the weighted average trading volume of the per share closing prices of the security on such exchange over the five trading day period ending three trading days prior to the date on which such value is measured;

(B) if the security is traded over-the-counter, the weighted average trading volume of the per share closing bid prices of the security over the five trading day period ending three trading days prior to the date on which such value is measured; or

(C) if there is no public market for such security that meets the criteria set forth in (A) or (B) above, the Fair Market Value shall be the per share fair market value of such security as of the date on which such value is measured, as determined in good faith by the Board.

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(ii) In the case of assets other than securities, the Fair Market Value shall be the fair market value of such assets, as determined in good faith by the Board.

(e) "LIQUIDATION PREFERENCE" measured per share of Series D Preferred Stock as of any date in question (the "RELEVANT DATE"), means an amount equal to the Original Issue Price of such share, plus an amount equal to any accrued and unpaid dividends at the rate set forth in Section 4 hereof, if any, for such share of Series D Preferred Stock. In connection with the determination of the Liquidation Preference of a share of Series D Preferred Stock upon liquidation, dissolution or winding up of the Company, the Relevant Date shall be the date of distribution of amounts payable to stockholders in connection with any such liquidation, dissolution or winding up.

(f) "ORIGINAL ISSUE PRICE" means \$\_\_\_ per share of Series D Preferred Stock, subject to appropriate adjustment to reflect any stock dividends, combinations, splits, reverse splits, recapitalizations or similar events affecting the Series D Preferred Stock after the Issue Date.

(g) "PERSON" means any individual, firm, corporation, partnership, limited liability company, or group (within the meaning of Section 13(d)(3) of the Exchange Act).

(h) "RIGHTS OFFERING" means the offering of shares of common stock by the Company pursuant to Section 4.7 of the Investment Agreement, dated as of October 29, 2001, relating to the Series D Preferred Stock (the "INVESTMENT AGREEMENT").

(i) "VOTING STOCK" means, with respect to any Person, the shares of any class or kind ordinarily having the power to vote for the election of directors or other members of the governing body of such Person, and for purposes hereof, the Series D Preferred Stock whether or not then convertible. For avoidance of doubt, Common Stock and Series C Preferred Stock both constitute Voting Stock of the Company; PROVIDED, HOWEVER, that no class of Preferred Stock shall be deemed to be Voting Stock by virtue of the rights of such holder upon any Preferred Dividend Default.

11. AMENDMENT; WAIVER. Except as expressly prohibited by law, these Articles Supplementary may be amended and any provision herein may be waived with the approval of the holders of a majority of the Series D Preferred Stock and a majority of the members of the Board who are not Affiliates of any holder of

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Series D Preferred Stock. Any amendment or waiver so effected shall be binding upon each holder of Series D Preferred Stock.

THIRD: The classification of authorized but unissued shares as set forth in these Articles Supplementary does not increase the authorized capital of the Company or the aggregate par value thereof.

FOURTH: These Articles Supplementary have been approved by the Board in the manner and by the vote required by law.

FIFTH: The undersigned Vice President of the Company acknowledges these Articles Supplementary to be the corporate act of the Company and, as to all matters or facts required to be verified under oath, the undersigned Vice President of the Company acknowledges that to the best of his or her knowledge, information and belief, these matters and facts are true in all material respects and that this statement is made under the penalties for perjury.

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IN WITNESS WHEREOF, the Company has caused these Articles Supplementary to be executed under seal in its name and on its behalf by its Vice President and attested to by its Secretary on this \_\_\_ day of \_\_\_\_\_, 2001.

ATTEST

OMEGA HEALTHCARE INVESTORS,  
INC.

By: \_\_\_\_\_  
Secretary

By: \_\_\_\_\_  
Vice President

AMENDED AND RESTATED  
STOCKHOLDERS AGREEMENT

AMENDED AND RESTATED STOCKHOLDERS AGREEMENT (this "AGREEMENT"), dated as of \_\_\_\_\_, 2001, between Explorer Holdings, L.P., a Delaware limited partnership ("STOCKHOLDER"), and Omega Healthcare Investors, Inc., a Maryland corporation (the "COMPANY").

WHEREAS, the Company and Stockholder have entered into an Investment Agreement, dated as of October 29, 2001 (the "INVESTMENT AGREEMENT"), pursuant to which, among other things, Stockholder acquired shares of [Common Stock] [Series D Preferred Stock, par value \$1.00 per share, of the Company (the "SERIES D PREFERRED"), which are convertible into shares of common stock, par value \$0.10 per share, of the Company (the "COMMON STOCK") under certain circumstances];

WHEREAS, the Company and Stockholder are parties to that certain Stockholders Agreement, dated as of July 14, 2000 (the "ORIGINAL AGREEMENT"); and

WHEREAS, the Company and the Stockholder wish to amend and restate the Original Agreement in its entirety.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements herein contained, the parties hereto hereby agree as follows:

I. DEFINITIONS  
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1.1 DEFINITIONS. Capitalized terms used herein and not defined herein will have the meaning set forth in the Investment Agreement. In addition to the terms defined elsewhere herein, the following terms have the following meanings when used herein with initial capital letters:

(a) "AFFILIATE" of any Person means any other Person, that, directly or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, such Person; and, for the purposes of this definition only, "CONTROL" (including the terms "CONTROLLING", "CONTROLLED BY" and "UNDER COMMON CONTROL WITH") means the possession, direct or indirect, of the power to direct or cause the direction of the

management, policies or activities of a Person whether through the ownership of securities, by contract or agency or otherwise.

(b) "ASSUMPTION AGREEMENT" means an agreement in writing in substantially the form of EXHIBIT A hereto pursuant to which the party thereto agrees to be bound by the terms and provisions of Sections 2.2, 2.5, 3.1 and 3.2 of this Agreement.

(c) A Person will be deemed the "BENEFICIAL OWNER" of, and will be deemed to "BENEFICIALLY OWN", and will be deemed to have "BENEFICIAL OWNERSHIP" of:

(i) any securities that such Person or any of such Person's Affiliates is deemed to "BENEFICIALLY OWN" within the meaning of Rule 13d-3 under the Exchange Act, as in effect on the date of this Agreement; and

(ii) any securities (the "UNDERLYING SECURITIES") that such Person or any of such Person's Affiliates has the right to acquire (whether such right is exercisable immediately or only after the passage of time) pursuant to any agreement, arrangement or understanding (written or oral), or upon the exercise of conversion rights, exchange rights, rights, warrants or options, or otherwise (it being understood that such Person will also be deemed to be the beneficial owner of the securities convertible into or exchangeable for the underlying securities).

(d) "BOARD" means the Board of Directors of the Company.

(e) "EXCHANGE ACT" means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

(f) "PERSON" means an individual, a corporation, a partnership, a limited partnership, a limited liability company, an association, a trust or other entity or organization, including without limitation a government or political subdivision or an agency or instrumentality thereof.

(g) "PUBLIC OFFERING" means the sale of shares of any class of Securities to the public pursuant to an effective registration statement (other

than a registration statement on

Form S-4 or S-8 or any similar or successor form) filed under the Securities Act.

(h) "REGISTRATION RIGHTS AGREEMENT" means the Amended and Restated Registration Rights Agreement, dated as of the date hereof, between Stockholder and the Company and any other registration rights agreement entered into in accordance with Article III hereof.

(i) "SECURITIES" means the Common Stock, the Series C Preferred, the Series D Preferred, all other securities of the Company entitled to vote generally in the election of the directors of the Company, and all other securities convertible into, exchangeable for or exercisable for any such securities (whether immediately or otherwise).

(j) "SECURITIES ACT" means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

(k) "TRANSFER" means a transfer, sale, assignment, pledge, hypothecation or disposition.

(l) "VOTING SECURITIES" means all Securities, other than the Series D Preferred.

II. GOVERNANCE; RESTRICTIONS ON  
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ACQUISITION OF VOTING SECURITIES  
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2.1 NOMINATION AND VOTING FOR STOCKHOLDER DESIGNEES AND INDEPENDENT DIRECTOR. (a) From and after the Stockholder Approval Date, Stockholder will be entitled at Stockholder's election to designate from time to time up to such number of directors to the Board (the "STOCKHOLDER DESIGNEES") based on the percentage of the Company's total issued and outstanding Voting Securities beneficially owned by Stockholder, as set forth in the table below:

PERCENTAGE OF VOTING SECURITIES BENEFICIALLY OWNED BY STOCKHOLDER -----	NUMBER OF STOCKHOLDER DESIGNEES -----
Less than 5.00%	0
5.00% - 14.99%	1
15.0% - 24.99%	2
25.0% - 34.99%	3
35.0% - 44.99%	4
45.0% - 49.99%	5
Greater than 50.0%	6

(b) Between the date hereof and the Stockholder Approval Date, Stockholder will be entitled at Stockholder's election to designate from time to time up to such number of directors to the Board based on the percentage of the Company's total issued and outstanding Voting Securities beneficially owned by Stockholder, as set forth in the table below:

PERCENTAGE OF VOTING SECURITIES BENEFICIALLY OWNED BY STOCKHOLDER -----	NUMBER OF STOCKHOLDER DESIGNEES -----
Less than 5.00%	0
5.00% - 16.67%	1
16.67% - 27.78%	2
27.78% - 38.89%	3
38.89% - 50.00%	4
Greater than 50.0%	5

(c) The Company, at each meeting of stockholders of the Company at which directors are elected or pursuant to which such action is to be taken by written consent, will nominate for election as directors of the Company such number of Stockholder Designees such that following such election the Stockholder Designees who are members of the Board represent the aggregate number of Stockholder Designees that Stockholder is permitted to designate pursuant to this Section 2.1. Ninety calendar days prior to any such meeting or action by written consent, Stockholder will provide the Company with the information required pursuant to Regulation 14A under the Exchange Act with

respect to each such Stockholder Designee. The Company will solicit proxies from its stockholders for such nominees, vote all proxies in favor of such nominees, except for such proxies that specifically indicate to the contrary, and otherwise use

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its best efforts to cause such nominees to be elected to the Board as herein contemplated.

(d) The Stockholder Designees will be apportioned among the three classes of directors as equal as possible; PROVIDED, HOWEVER, that in the event that the number of Stockholder Designees determined pursuant to Section 2.1 is not evenly divisible by three, such additional Stockholder Designee or Designees shall be nominated to the class or classes of directors with the longest term of office. Each Stockholder Designee will serve until his successor is elected and qualified or until his earlier resignation, retirement, disqualification, removal from office, or death.

(e) Notwithstanding anything in the bylaws of the Company to the contrary, if any Stockholder Designee ceases to be a director of the Company for any reason, the Company will promptly upon the request of Stockholder cause a person designated by Stockholder to replace such director if Stockholder is so entitled.

(f) Stockholder agrees to cause a Stockholder Designee to promptly resign in the event Stockholder's beneficial ownership of Voting Securities declines such that Stockholder would no longer have the right to designate such person.

(g) From and after the date the stockholders of the Company vote to approve the amendment of the Company's Articles of Restatement and bylaws to permit an increase in the size of the Board to eleven (the "STOCKHOLDER APPROVAL DATE"), the Company will take all actions as may be necessary to appoint C. Taylor Pickett to the Board. The Company covenants that the total number of seats on the Board (including any vacant seats) will in no event exceed ten unless otherwise agreed to in writing by Stockholder or as provided pursuant to the terms of the Series A, B, C or D Preferred Stock in effect on the date hereof, or in the case of the Series C Preferred Stock, pursuant to the Amended Series C Articles Supplementary contemplated by the Investment Agreement.

(h) Except as may otherwise be required under the rules of The New York Stock Exchange or the SEC or as may be agreed to by a majority of the Stockholder Designees, at all times after the date hereof, the Company will take such action to ensure that the Stockholder Designees are represented on each committee of the Board in at least the same proportion as their representation on the entire Board and that each committee will

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consist of at least three members, other than any committee comprised solely of Non-Stockholder Designees established for the purpose of considering transactions in which the Stockholder or its Affiliates or Associates have an interest different from other stockholders of the Company.

(i) Notwithstanding anything to the contrary in this Agreement or the Articles Supplementary for the Series C Preferred Stock of the Company, prior to the receipt by the Company of Stockholder Approval for the Amended Series C Articles Supplementary, in the event the holders of the Series A Preferred Stock or Series B Preferred Stock shall be entitled to elect Additional Preferred Stock Directors (as defined in the Articles Supplementary for each of the Series A Preferred Stock and the Series B Preferred Stock), then the number of Stockholder Designees Stockholder shall be entitled to designate shall be increased by two.

2.2 VOTING FOR OTHER DIRECTORS. (a) (a) For as long as Stockholder beneficially owns at least 15.0% of the issued and outstanding Voting Securities, Stockholder will vote all Voting Securities that it beneficially owns to elect as directors (i) three Independent Directors and (ii) from and after the date the Board is increased to ten members, one additional Person who is not an Affiliate or Associate of Stockholder or its Affiliates or Associates (other than the Company) (such designees, "NON-STOCKHOLDER DESIGNEEES").

(b) The Company shall use its best efforts to cause the Non-Stockholder Designees selected in accordance with this Section 2.2 to serve on the Board. The Company, at each meeting of stockholders of the Company at which directors are elected or pursuant to which such action is to be taken by written consent, will nominate for election as directors of the Company such number of Non-Stockholder Designees such that following such election the Non-Stockholder Designees who are members of the Board represent the aggregate number of Non-Stockholder Designees that are to be elected in accordance with this Section 2.2. The Company will solicit proxies from its stockholders for such nominees, vote all proxies in favor of such nominees, except for such

proxies that specifically indicate to the contrary, and otherwise use its best efforts to cause such nominees to be elected to the Board as herein contemplated. Notwithstanding anything in the bylaws of the Company to the contrary, in the event any Non-Stockholder Designee shall be unable to serve as a director, a replacement for such director shall be designated in the same manner as set forth in this Section 2.2.

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(c) "INDEPENDENT DIRECTOR" shall mean a Person who (i) satisfies the qualification requirements as an "independent" director and as a member of the audit committee of the Company under the rules and regulations of The New York Stock Exchange and (ii) is not an Affiliate of Stockholder.

2.3 OTHER VOTING RIGHTS. Stockholder and the Company agree that under applicable law, including without limitation Section 2-419 of the MGCL, and pursuant to the Company's constituent documents, neither the Stockholder nor the Stockholder Designees would be precluded, and the Company agrees that it will not assert that the Stockholder or any of the Stockholder Designees is precluded, from voting with respect to any transaction involving Stockholder following appropriate disclosure to the then directors of any circumstances that could provide the basis for an assertion of a conflict of interest.

2.4 ACCESS. The Company will, and will cause its subsidiaries and each of the Company's and its subsidiaries' officers, directors, employees, agents, representatives, accountants and counsel to: (a) afford the officers, employees and authorized agents, accountants, counsel, financing sources and representatives of Stockholder reasonable access, during normal business hours, to the offices, properties, other facilities, books and records of the Company and each subsidiary and to those officers, directors, employees, agents, accountants and counsel of the Company and of each subsidiary who have any knowledge relating to the Company or any subsidiary and (b) furnish to the officers, employees and authorized agents, accountants, counsel, financing sources and representatives of Stockholder, such additional financial and operating data and other information regarding the assets, properties and goodwill of the Company and its subsidiaries (or legible copies thereof) as Stockholder may from time to time reasonably request (other than information and material from the Company's counsel which is subject to the attorney/client privilege, which information and material shall be made available to the Stockholder Designees in their capacity as members of the Board).

2.5 RESTRICTION ON ACQUISITION OF VOTING SECURITIES. Except in connection with the acquisition of Voting Securities in a transaction approved by a committee of the Board, all of the members of which committee shall consist of Non-Stockholder Designees, Stockholder will not purchase or otherwise acquire beneficial ownership of more than 80% of the Voting Securities then issued and outstanding. Notwithstanding the foregoing, Stockholder shall not be in breach of this Section 2.5 as the result of (i) an acquisition of Voting Securities by the Company which, by reducing the number of Voting Securities outstanding,

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increases the proportionate number of Voting Securities beneficially owned by Stockholder in excess of 80% of the Voting Securities then issued and outstanding, (ii) the acquisition by Stockholder of newly issued Voting Securities directly from the Company, or (iii) any increase in the number of Voting Securities beneficially owned by Stockholder as a result of the anti-dilution provisions of any Voting Securities. This Section 2.5 will immediately terminate if a third party publicly announces an intent to effect a transaction, "commence a tender offer" (within the meaning of Rule 14d-2 under the Exchange Act), or enter into an agreement contemplating the acquisition of, 20% or more of the Voting Securities then issued and outstanding.

### III. TRANSFER OF SECURITIES

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3.1 TRANSFER OF VOTING SECURITIES BY STOCKHOLDER. (a) Stockholder agrees that Stockholder will not Transfer Voting Securities beneficially owned by it, the effect of which would cause the transferee to acquire beneficial ownership of 10% or more of the Voting Securities then-outstanding (other than to any Affiliate of Stockholder), unless, prior to such Transfer (i) notice of such Transfer is given to the Company and (ii) the Person to whom such Voting Securities are to be Transferred enters into an Assumption Agreement.

(b) In the event of any purported Transfer by Stockholder of any Voting Securities not made in compliance with this Section 3.1, such purported Transfer will be void and of no effect and the Company will not give effect to such Transfer. The Company shall be entitled to treat the prior owner as the holder of any such Securities not Transferred in accordance with this Agreement.

3.2 LEGEND. Each certificate representing Securities issued to

Stockholder will bear a legend on the face thereof substantially to the following effect (with such additions thereto or changes therein as the Company may be advised by counsel are required by law (the "LEGEND")):

"THE SHARES OF STOCK REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 AND MAY NOT BE TRANSFERRED OR OTHERWISE DISPOSED OF UNLESS THEY HAVE BEEN REGISTERED UNDER THAT ACT OR ANY OTHER APPLICABLE LAW OR AN EXEMPTION FROM REGISTRATION IS AVAILABLE."

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"THE SHARES OF STOCK REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO AN AMENDED AND RESTATED STOCKHOLDERS AGREEMENT, DATED \_\_\_\_\_, 2001, BETWEEN THE COMPANY AND EXPLORER HOLDINGS, L.P., A COPY OF WHICH IS ON FILE WITH THE SECRETARY OF THE COMPANY. NO TRANSFER, SALE, ASSIGNMENT, PLEDGE, HYPOTHECATION OR OTHER DISPOSITION OF THE SECURITIES REPRESENTED BY THIS CERTIFICATE MAY BE MADE EXCEPT IN ACCORDANCE WITH THE PROVISIONS OF SUCH AMENDED AND RESTATED STOCKHOLDERS AGREEMENT."

The Legend will be removed by the Company by the delivery of a legal opinion from counsel to the Stockholder to the effect that such legend is no longer required for purposes of applicable securities laws. In connection with the foregoing, the Company agrees that, if the Company is required to file reports under the Exchange Act, for so long as and to the extent necessary to permit the Stockholder to sell any Securities pursuant to Rule 144, the Company will use its reasonable efforts to file, on a timely basis, all reports required to be filed with the SEC by it pursuant to Section 13 of the Exchange Act, furnish to the Stockholder upon request a written statement as to whether the Company has complied with such reporting requirements during the 12 months preceding any proposed sale under Rule 144 and otherwise use its reasonable efforts to permit such sales pursuant to Rule 144.

3.3 TRANSFERS OF VOTING SECURITIES BY STOCKHOLDER. The Company and its transfer agent may not refuse to Transfer any Voting Securities, passing either by voluntary Transfer or by operation of law, by Stockholder if such Transfer (i) complies with Section 3.1 hereof and (ii) would not, in the written opinion of counsel to Stockholder reasonably acceptable to the Company, disqualify the Company as a Real Estate Investment Trust under the Internal Revenue Code of 1986, as amended.

3.4 REGISTRATION RIGHTS. Upon consummation of any Transfer of Securities constituting 5% or more of the Securities (other than a Transfer in a Public Offering or pursuant to Rule 144 under the Securities Act), the Company will enter into a registration rights agreement in favor of such transferee substantially in the form of the Registration Rights Agreement, with such modifications thereto as are acceptable to such transferee that do not materially increase the Company's obligations thereunder (excluding the effects of multiple parties); provided, however, that in no event will the Company be required to grant more than one demand registration right for

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every 5% of Securities then outstanding involved in such Transfer of Securities.

#### IV. MISCELLANEOUS

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4.1 TERMINATION. (a) The provisions of this Agreement will terminate, and be of no further force or effect (other than with respect to prior breaches), on the fifth anniversary of the date of this Agreement.

(b) Any portion or all of this Agreement will terminate and be of no further force and effect upon a written agreement of the parties to that effect.

4.2 SPECIFIC PERFORMANCE. The parties agree that any breach by either of them of any provision of this Agreement would irreparably injure the Company or the Investor, as the case may be, and that money damages would be an inadequate remedy therefor. Accordingly, the parties agree that the other party will be entitled to one or more injunctions enjoining any such breach and requiring specific performance of this Agreement and consent to the entry thereof, in addition to any other remedy to which such other party is entitled at law or in equity.

4.3 NOTICES. All notices, requests and other communications to either party hereunder will be in writing (including telecopy or similar writing) and will be given:

IF TO THE COMPANY, TO:

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Omega Healthcare Investors, Inc.



900 Victors Way, Suite 350  
Ann Arbor, Michigan 48108  
Attention: Chief Financial Officer  
Fax: (734) 887-0322

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WITH A COPY TO:  
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Powell, Goldstein, Frazer & Murphy LLP  
191 Peachtree Street, N.E.  
Suite 1600  
Atlanta, Georgia 30303  
Attention: Rick Miller or  
Eliot Robinson  
Fax: (404) 572-6999

IF TO STOCKHOLDER, TO:  
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Explorer Holdings, L.P.  
c/o The Hampstead Group, L.L.C.  
4200 Texas Commerce Tower West  
2200 Ross Avenue  
Dallas, Texas 75801  
Attention: William T. Cavanaugh  
Fax: (214) 220-4949

WITH A COPY TO:  
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Jones, Day, Reavis & Pogue  
599 Lexington Avenue  
New York, New York 10022  
Attention: Thomas W. Bark  
Fax: (212) 755-7306

or such other address or telecopier number as such party may hereafter specify by notice to the other party hereto. Each such notice, request or other communication shall be effective only when actually delivered at the address specified in this Section 4.3, if delivered prior to 5:00 (local time) and such day is a Business Day, and if not, then such notice, request or other communication shall not be effective until the next succeeding Business Day.

4.4 AMENDMENTS: NO WAIVERS. (a) Any provision of this Agreement may be amended or waived if, and only if, such amendment or waiver is in writing and signed, in the case of an amendment, by the Company and Stockholder, or in the case of a waiver, by the party against whom the waiver is to be effective.

(b) No failure or delay by any party in exercising any right, power or privilege hereunder will operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies

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herein provided will be cumulative and not exclusive of any rights or remedies provided by law.

4.5 SUCCESSORS AND ASSIGNS. The provisions of this Agreement will be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns, PROVIDED, HOWEVER, that none of the parties may assign, delegate or otherwise transfer any of their rights or obligations under this Agreement without the written consent of the other party hereto. Neither this Agreement nor any provision hereof is intended to confer upon any Person other than the parties hereto any rights or remedies hereunder.

4.6 COUNTERPARTS; EFFECTIVENESS. This Agreement may be signed in any number of counterparts, each of which will be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument. This Agreement will become effective when each party hereto shall have received a counterpart hereof signed by the other party hereto.

4.7 ENTIRE AGREEMENT. This Agreement, the Investment Agreement, the Registration Rights Agreement and the documents contemplated thereby (and all schedules and exhibits thereto) constitute the entire agreement among the parties with respect to the subject matter hereof and supersede all prior agreements, understandings and negotiations, both written and oral, between the parties with respect thereto.

4.8 GOVERNING LAW. This Agreement shall be construed in accordance with and governed by the laws of the State of Delaware, without giving effect to the principles of conflict of laws thereof.

4.9 CALCULATION OF BENEFICIAL OWNERSHIP. Any provision in this Agreement that refers to a percentage of Voting Securities shall be calculated based on the aggregate number of issued and outstanding shares of Common Stock at the time of such calculation (including any shares of Common Stock that would then be issuable upon the conversion of the Series C Preferred, Series D Preferred or any outstanding convertible security), but shall not include any shares of Common Stock issuable upon any options, warrants or other securities that are exercisable for Common Stock.

4.10 SEVERABILITY. In the event that any one or more of the provisions contained herein, or the application thereof in any circumstances, is held invalid, illegal or unenforceable in any respect for any reason, the validity, legality and

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enforceability of any such provision in every other respect and of the remaining provisions contained herein shall not be in any way impaired thereby, it being intended that all of the rights and privileges of the parties hereto shall be enforceable to the fullest extent permitted by law.

4.11 JURISDICTION; CONSENT TO SERVICE OF PROCESS. (a) Each party hereby irrevocably and unconditionally submits, for itself and its property, to the exclusive jurisdiction of any state or federal court located in the State of Delaware (as applicable, a "DELAWARE COURT"), and any appellate court from any such court, in any suit, action or proceeding arising out of or relating to this Agreement, or for recognition or enforcement of any judgment resulting from any such suit, action or proceeding, and each party hereby irrevocably and unconditionally agrees that all claims in respect of any such suit, action or proceeding may be heard and determined in the Delaware Court.

(b) It will be a condition precedent to each party's right to bring any such suit, action or proceeding that such suit, action or proceeding, in the first instance, be brought in the Delaware Court (unless such suit, action or proceeding is brought solely to obtain discovery or to enforce a judgment), and if each such court refuses to accept jurisdiction with respect thereto, such suit, action or proceeding may be brought in any other court with jurisdiction.

(c) No party may move to (i) transfer any such suit, action or proceeding from the Delaware Court to another jurisdiction, (ii) consolidate any such suit, action or proceeding brought in the Delaware Court with a suit, action or proceeding in another jurisdiction, or (iii) dismiss any such suit, action or proceeding brought in the Delaware Court for the purpose of bringing the same in another jurisdiction.

(d) Each party hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, (i) any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement in the Delaware Court, (ii) the defense of an inconvenient forum to the maintenance of such suit, action or proceeding in any such court, and (iii) the right to object, with respect to such suit, action or proceeding, that such court does not have jurisdiction over such party. Each party irrevocably consents to service of process in any manner permitted by law. Notwithstanding the foregoing, this Section 4.11 will not apply to (x) any suit, action or

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proceeding by a party seeking indemnification or contribution pursuant to this Agreement or otherwise in respect of a suit, action or proceeding against such party by a third party if such suit, action or proceeding by such party seeking indemnification or contribution is brought in the same court as the suit, action or proceeding against such party or (y) any suit, action or proceeding to enforce a judgment of a Delaware Court.

4.12 WAIVER OF JURY TRIAL. EACH OF THE PARTIES HERETO IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING, CLAIM OR COUNTERCLAIM, WHETHER IN CONTRACT OR TORT, AT LAW OR IN EQUITY, ARISING OUT OF OR IN ANY WAY RELATED TO THIS AGREEMENT.

4.13 NO STRICT CONSTRUCTION. The parties hereto have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties hereto, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the day and year first above written.

EXPLORER HOLDINGS, L.P.

By: EXPLORER HOLDINGS GENPAR,  
L.L.C., its General Partner

By: \_\_\_\_\_  
William T. Cavanaugh, Jr.  
Vice President

OMEGA HEALTHCARE INVESTORS, INC.

By: \_\_\_\_\_  
C. Taylor Pickett  
Chief Executive Officer

EXHIBIT A

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FORM OF ASSUMPTION AGREEMENT  
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The undersigned hereby agrees, effective as of the date hereof, to become a party to, and be bound by the provisions of, Sections 2.2, 2.5, 3.1 and 3.2 of that certain Amended and Restated Stockholders Agreement (the "Agreement") dated as of \_\_\_\_\_, 2001 by and between Omega Healthcare Investors, Inc. and Explorer Holdings, L.P. and for all purposes of such sections of the Agreement, the undersigned shall be included within the term "Stockholder" (as defined in the Agreement). The address and facsimile number to which notices may be sent to the undersigned is as follows:

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-----  
Facsimile No.-----

[Name]

By: \_\_\_\_\_  
Name:  
Title:

AMENDED AND RESTATED  
REGISTRATION RIGHTS AGREEMENT

AMENDED AND RESTATED REGISTRATION RIGHTS AGREEMENT (this "AGREEMENT"), dated as of \_\_\_\_\_, 2001, between Explorer Holdings, L.P., a Delaware limited partnership ("STOCKHOLDER"), and Omega Healthcare Investors, Inc., a Maryland corporation (the "COMPANY").

RECITALS

WHEREAS, the parties hereto are parties to that certain Registration Rights Agreement, dated as of July 14, 2000 (the "ORIGINAL AGREEMENT"); and

WHEREAS, the parties wish to amend and restate the Original Agreement in its entirety in connection with the closing of the transactions contemplated by the Series D Investment Agreement.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements herein contained, the parties hereto hereby agree as follows:

1. DEFINITIONS. For purposes of this Agreement, the following terms have the following meanings when used herein with initial capital letters:

(a) ADVICE: As defined in Section 6 hereof.

(b) COMMON STOCK: The Common Stock, par value \$0.10 per share, of the Company.

(c) DEMAND NOTICE: As defined in Section 3 hereof.

(d) DEMAND REGISTRATION: As defined in Section 3 hereof.

(e) EFFECTIVE DATE: The date of closing of the transactions contemplated by the Series D Investment Agreement.

(f) LOSSES: As defined in Section 8 hereof.

(g) PIGGYBACK REGISTRATION: As defined in Section 4 hereof.

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(h) PROSPECTUS: The prospectus included in any Registration Statement (including, without limitation, a prospectus that discloses information previously omitted from a prospectus filed as part of an effective registration statement in reliance upon Rule 430A promulgated under the Securities Act), as amended or supplemented by any prospectus supplement, with respect to the terms of the offering of any portion of the Registrable Securities covered by such Registration Statement and all other amendments and supplements to the Prospectus, including post-effective amendments, and all material incorporated by reference or deemed to be incorporated by reference in such Prospectus.

(i) REGISTRABLE SECURITIES: All shares of Series C Preferred, Series D Preferred, and Common Stock acquired by Stockholder or any of its Affiliates or any permitted transferee or their respective assigns of any such Person (including (i) all shares of Common Stock issued upon conversion of any shares of Series C Preferred or Series D Preferred and (ii) any shares of Series C Preferred, Series D Preferred, or Common Stock or other securities that may be received by Stockholder or any permitted transferee or their respective assigns (x) as a result of a dividend or stock split of Series C Preferred, Series D Preferred, or Common Stock or (y) on account of Series C Preferred, Series D Preferred, or Common Stock in a recapitalization or other transaction involving the Company) upon the respective original issuance thereof, and at all times subsequent thereto, and all other securities of the Company of any class or series that are beneficially owned by Stockholder or any of its Affiliates, until, in the case of any such security, (i) it is effectively registered under the Securities Act and disposed of in accordance with the Registration Statement covering it, (ii) it is saleable by the holder thereof pursuant to Rule 144(k) without any volume limitation applicable thereto, or (iii) it is distributed to the public pursuant to Rule 144.

(j) REGISTRATION EXPENSES: As defined in Section 7 hereof.

(k) REGISTRATION STATEMENT: Any registration statement of the Company under the Securities Act that covers any of the Registrable Securities

pursuant to the provisions of this Agreement, including the related Prospectus, all amendments and supplements to such registration statement (including post-effective amendments), all exhibits and all material incorporated by reference or deemed to be incorporated by reference in such registration statement.

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(l) RULE 144: Rule 144 under the Securities Act, as such Rule may be amended from time to time, or any similar rule or regulation hereafter adopted by the SEC.

(m) SEC: The Securities and Exchange Commission.

(n) SECURITIES ACT: The Securities Act of 1933, as amended.

(o) SERIES C INVESTMENT AGREEMENT: The Investment Agreement, dated as of May 11, 2000, by and between the Company and Stockholder relating to the purchase and sale of Series C Preferred.

(p) SERIES C PREFERRED: Shares of Series C Preferred Stock, par value \$1.00 per share, of the Company.

(q) SERIES D INVESTMENT AGREEMENT: The Investment Agreement, dated as of October 29, 2001, by and between the Company and Stockholder relating to the purchase and sale of Series D Preferred.

(r) SERIES D PREFERRED: Shares of Series D Preferred Stock, par value \$1.00 per share, of the Company.

(s) UNDERWRITTEN REGISTRATION OR UNDERWRITTEN OFFERING: A distribution, registered pursuant to the Securities Act in which securities of the Company are sold to an underwriter for reoffering to the public.

2. HOLDERS OF REGISTRABLE SECURITIES. Whenever a number or percentage of Registrable Securities is to be determined hereunder, each then-outstanding other equity security that is exercisable to purchase, convertible into, or exchangeable for shares of Common Stock of the Company will be deemed to be equal to the number of shares of Common Stock for which such other equity security (or the security into which such other equity security is then convertible) is then so purchasable, convertible, exchangeable or exercisable.

3. DEMAND REGISTRATION. (a) REQUESTS FOR REGISTRATION. At any time and from time to time after the Effective Date, the holder(s) of Registrable Securities constituting at least 15% of the total number of Registrable Securities then outstanding will have the right by written notice delivered to the Company (a "DEMAND NOTICE"), to require the Company to register (a "DEMAND REGISTRATION") under and in accordance with the provisions of the Securities Act a number of Registrable Securities that would

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reasonably be expected to result in aggregate gross proceeds from such offering of not less than \$7.5 million (\$1 million in the case of any Demand Registration that is requested to be effected as a "shelf" registration); PROVIDED, HOWEVER, that no Demand Notice may be given prior to six months after the effective date of the immediately preceding Demand Registration or any Piggyback Registration of which the Company has notified the Holder in accordance with Section 4(a) and for which the number of Registrable Securities requested to be registered by the Holder has not been reduced pursuant to Section 4(b).

(b) FILING AND EFFECTIVENESS. The Company will file a Registration Statement relating to any Demand Registration within 30 calendar days, and will use its reasonable efforts to cause the same to be declared effective by the SEC as soon as practicable thereafter, and in any event, within 45 calendar days, of the date on which the Registration Statement is first filed with the SEC.

All requests made pursuant to this Section 3 will specify the number of Registrable Securities to be registered and will also specify the intended methods of disposition thereof; PROVIDED, that if the holder demanding such registration specifies one particular type of underwritten offering, such method of disposition shall be such type of underwritten offering or a series of such underwritten offerings (as such demanding holders of Registrable Securities may elect) during the period during which the Registration Statement is effective.

The Company will keep the Registration Statement filed in respect of a Demand Registration effective for a period of up to 90 calendar days from the date on which the SEC declares such Registration Statement effective (subject to extensions pursuant to Section 6 hereof) or such shorter

period that will terminate when all Registrable Securities deemed by such Registration Statement have been sold pursuant to such Registration Statement. If any Demand Registration is requested to be effected as a "shelf" registration by the holders of Registrable Securities demanding such Demand Registration, the Company will keep the Registration Statement filed in respect thereof effective for a period of up to 12 months from the date on which the SEC declares such Registration Statement effective (subject to extension pursuant to Section 6 hereof) or such shorter period that will terminate when all Registrable Securities covered by such Registration Statement have been sold pursuant to such Registration Statement.

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Within ten calendar days after receipt of such Demand Notice, the Company will serve written notice thereof (the "NOTICE") to all other holders of Registrable Securities and will, subject to the provisions of Section 3(c) hereof, include in such registration all Registrable Securities with respect to which the Company receives written requests for inclusion therein within 20 calendar days after the receipt of the Notice by the applicable holder.

The holders of Registrable Securities will be permitted to withdraw Registrable Securities from a Registration at any time prior to the effective date of such registration.

(c) PRIORITY ON DEMAND REGISTRATION. If any of the Registrable Securities registered pursuant to a Demand Registration are to be sold in one or more firm commitment underwritten offerings, the Company may also provide written notice to holders of its equity securities (other than Registrable Securities), if any, who have piggyback registration rights with respect thereto and will permit all such holders who request to be included in the Demand Registration to include any or all equity securities held by such holders in such Demand Registration on the same terms and conditions as the Registrable Securities. Notwithstanding the foregoing, if the managing underwriter or underwriters of the offering to which such Demand Registration relates advises the holders of Registrable Securities that the total amount of Registrable Securities and securities that such equity security holders intend to include in such Demand Registration is in the aggregate such as to materially and adversely affect the success of such offering, then (i) first, the amount of securities to be offered for the account of the holders of such other equity securities will be reduced, to zero if necessary (PRO RATA among such holders on the basis of the amount of such other securities to be included therein by each such holder), and (ii) second, the number of Registrable Securities included in such Demand Registration will, if necessary, be reduced and there will be included in such firm commitment underwritten offering only the number of Registrable Securities that, in the opinion of such managing underwriter or underwriters, can be sold without materially and adversely affecting the success of such offering, allocated PRO RATA among the holders of Registrable Securities on the basis of the number of Registrable Securities held by each such holder.

(d) POSTPONEMENT OF DEMAND REGISTRATION. The Company will be entitled to postpone the filing period (or suspend the effectiveness) of any Demand Registration for a reasonable period of time not in excess of 60 calendar days, if the Board

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of Directors of the Company determines, in the good faith exercise of its reasonable business judgment, that such registration and offering would materially interfere with BONA FIDE financing plans of the Company or would require disclosure of information, the premature disclosure of which could materially and adversely affect the Company; PROVIDED, HOWEVER, that the Company may not exercise such right more than twice or for an aggregate of more than 90 calendar days during any twelve month period. If the Company postpones the filing of a Registration Statement, it will promptly notify the holders of Registrable Securities in writing when the events or circumstances permitting such postponement have ended.

4. PIGGYBACK REGISTRATION. (a) RIGHT TO PIGGYBACK. If at any time the Company proposes to file a registration statement under the Securities Act with respect to an offering of any class of equity securities (other than a registration statement (i) on Form S-4, S-8 or any successor form thereto or (ii) filed solely in connection with an offering made solely to employees or securityholders of the Company), whether or not for its own account, then the Company will give written notice of such proposed filing to the holders of Registrable Securities at least 20 calendar days before the anticipated filing date. Such notice will offer such holders the opportunity to register such amount of Registrable Securities as each such holder may request (a "PIGGYBACK REGISTRATION"). Subject to Section 4(b) hereof, the Company will include in each such Piggyback Registration all Registrable Securities with respect to which the Company has received written requests for inclusion therein. The holders of Registrable Securities will be permitted to withdraw all or part of the Registrable Securities from a Piggyback Registration at any time prior to the effective date of such Piggyback Registration.

(b) PRIORITY ON PIGGYBACK REGISTRATIONS. The Company will cause the managing underwriter or underwriters of a proposed underwritten offering to permit holders of Registrable Securities requested to be included in the registration for such offering to include therein all such Registrable Securities requested to be so included on the same terms and conditions as any similar securities, if any, of the Company included therein. Notwithstanding the foregoing, if the managing underwriter or underwriters of such offering advises the holders of Registrable Securities to the effect that the total amount of securities which such holders, the Company and any other persons having rights to participate in such registration propose to include in

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such offering is such as to materially and adversely affect the success of such offering, then:

(i) if such registration is a primary registration on behalf of the Company, the amount of securities to be included therein for the account of all other holders of securities of the Company (other than holders of Registrable Securities) will be reduced (to zero if necessary) PRO RATA in proportion to the number of shares held by each such person, and thereafter, if such reduction is not sufficient so as, in the opinion of such managing underwriters or underwriters, to permit the inclusion of Registrable Securities without adversely affecting the success of the offering, the amount of Registrable Securities so included in the Registration Statement for the account of the holders of Registrable Securities will be reduced (to zero if necessary) PRO RATA in proportion to the number of shares held by such persons to the extent necessary to reduce the total amount of securities to be included in such offering to the amount recommended by such managing underwriter or underwriters; and

(ii) if such registration is an underwritten secondary registration on behalf of holders of securities of the Company other than Registrable Securities, the Company will include therein: (x) first, up to the full number of securities of such persons exercising "demand" registration rights that in the opinion of such managing underwriter or underwriters can be sold or allocated among such holders as they may otherwise so determine, (y) second, up to the full amount of Registrable Securities that, in the opinion of such managing underwriter or underwriters, can be sold (allocated pro rata among the holders of such Registrable Securities in proportion to the number of Registrable Securities held by such persons), and (z) third, all other securities proposed to be sold by any other persons that in the opinion of such managing underwriter or underwriters can be sold or allocated among such holders as they may otherwise so determine.

(c) REGISTRATION OF SECURITIES OTHER THAN REGISTRABLE SECURITIES. Without the written consent of the holders of a majority of the then-outstanding Registrable Securities, the Company will not grant to any person the right to request the Company to register any securities of the Company under the Securities Act unless the rights so granted are subject to the prior rights of the holders of Registrable Securities set forth

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herein, and, if exercised, would not otherwise conflict or be inconsistent with the provisions of, this Agreement.

5. RESTRICTIONS ON SALE BY HOLDERS OF REGISTRABLE SECURITIES. Each holder of Registrable Securities whose Registrable Securities are covered by a Registration Statement filed pursuant to Section 3 or Section 4 hereof, agrees and will confirm such agreement in writing, if such holder is so requested (pursuant to a timely written notice) by the managing underwriter or underwriters in an underwritten offering, not to effect any public sale or distribution of any of the Company's equity securities (except as part of such underwritten offering), including a sale pursuant to Rule 144, during the 10-calendar day period prior to, and during such period of time, not to exceed 90 days as any managing underwriter or underwriters may reasonably request in connection with any underwritten public offering beginning on, the closing date of each underwritten offering made pursuant to such Registration Statement or such other shorter period to which the executive officers of the Company may agree.

6. REGISTRATION PROCEDURES. In connection with the Company's registration obligations pursuant to Sections 3 and 4 hereof, the Company will effect such registrations to permit the sale of such Registrable Securities in accordance with the intended method or methods of disposition thereof, and pursuant thereto the Company will as expeditiously as possible:

(a) Prepare and file with the SEC a Registration Statement or Registration Statements on any appropriate form under the Securities Act

available for the sale of the Registrable Securities by the holders thereof in accordance with holders' notice to the Company as to the intended method or methods of distribution thereof (including, without limitation, distributions in connection with transactions with broker-dealers or others for the purpose of hedging Registrable Securities, involving possible sales, short sales, options, pledges or other transactions which may require delivery and sale to broker-dealers or others of Registrable Securities), and cause each such Registration Statement to become effective and remain effective as provided herein; PROVIDED, HOWEVER, that before filing a Registration Statement or Prospectus or any amendments or supplements thereto (including documents that would be incorporated or deemed to be incorporated therein by reference) the Company will furnish to the holders of the Registrable Securities covered by such Registration Statement, the Special Counsel and the managing underwriters, if any, copies of all such documents proposed to be filed, which

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documents will be subject to the review of such holders, the Special Counsel and such underwriters. Notwithstanding Section 3(b), the Company will not file any such Registration Statement or amendment thereto or any Prospectus or any supplement thereto (including such documents which, upon filing, would or would be incorporated or deemed to be incorporated by reference therein) to which the holders of a majority of the Registrable Securities covered by such Registration Statement, the Special Counsel or the managing underwriter, if any, shall reasonably object on a timely basis.

(b) Prepare and file with the SEC such amendments and post-effective amendments to each Registration Statement as may be necessary to keep such Registration Statement continuously effective for the applicable period specified in Section 3; cause the related Prospectus to be supplemented by any required Prospectus supplement, and as so supplemented to be filed pursuant to Rule 424 (or any similar provisions then in force) under the Securities Act; and comply with the provisions of the Securities Act with respect to the disposition of all securities covered by such Registration Statement during the applicable period in accordance with the intended methods of disposition by the sellers thereof set forth in such Registration Statement as so amended or to such Prospectus as so supplemented.

(c) Notify the selling holders of Registrable Securities, the Special Counsel and the managing underwriters, if any, promptly, and (if requested by any such person) confirm such notice in writing, (i) when a Prospectus or any Prospectus supplement or post-effective amendment has been filed, and, with respect to a Registration Statement or any post-effective amendment, when the same has become effective, (ii) of any request by the SEC or any other federal or state governmental authority for amendments or supplements to a Registration Statement or related Prospectus or for additional information, (iii) of the issuance by the SEC or any other federal or state governmental authority of any stop order suspending the effectiveness of a Registration Statement or the initiation of any proceedings for that purpose, (iv) if at any time the representations and warranties of the Company contained in any agreement contemplated by Section 6(m) hereof (including any underwriting agreement) cease to be true and correct, (v) of the receipt by the Company of any notification with respect to the suspension of the qualification or exemption from qualification of any of the Registrable Securities for sale in any jurisdiction or the initiation or threatening of any proceeding for such purpose, (vi) of the occurrence of any event which

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makes any statement made in such Registration Statement or related Prospectus or any document incorporated or deemed to be incorporated therein by reference untrue in any material respect or which requires the making of any changes in a Registration Statement, Prospectus or documents so that, in the case of the Registration Statement, it will not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading and, in the case of the Prospectus, it will not contain any untrue statement of a material fact or omit to state any material fact required to be stated or which is necessary to make the statements therein, in light of the circumstances under which they were made, not misleading, and (vii) of the Company's reasonable determination that a post-effective amendment to a Registration Statement would be appropriate.

(d) Use every reasonable effort to obtain the withdrawal of any order suspending the effectiveness of a Registration Statement, or the lifting of any suspension of the qualification (or exemption from qualification) of any of the Registrable securities for sale in any jurisdiction, at the earliest possible moment.

(e) If requested by the managing underwriters, if any, or the holders of a majority of the Registrable Securities being registered, (i) promptly incorporate in a Prospectus supplement or post-effective amendment such



information as the managing underwriters, if any, and such holders agree should be included therein as may be required by applicable law and (ii) make all required filings of such Prospectus supplement or such post-effective amendment as soon as practicable after the Company has received notification of the matters to be incorporated in such Prospectus supplement or post-effective amendment; PROVIDED, HOWEVER, that the Company will not be required to take any actions under this Section 6(e) that are not, in the opinion of counsel for the Company, in compliance with applicable law.

(f) Furnish to each selling holder of Registrable Securities, the Special Counsel and each managing underwriter, if any, without charge, at least one conformed copy of the Registration Statement and any post-effective amendment thereto, including financial statements (but excluding schedules, all documents incorporated or deemed incorporated therein by reference and all exhibits, unless requested in writing by such holder, counsel or underwriter).

(g) Deliver to each selling holder of Registrable Securities, the Special Counsel and the underwriters, if any,

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without charge, as many copies of the Prospectus or Prospectuses relating to such Registrable Securities (including each preliminary prospectus) and any amendment or supplement thereto as such persons may request; and the Company hereby consents to the use of such Prospectus or each amendment or supplement thereto by each of the selling holders of Registrable Securities and the underwriters, if any, in connection with the offering and sale of the Registrable Securities covered by such Prospectus or any amendment or supplement thereto.

(h) Prior to any public offering of Registrable Securities, to register or qualify or cooperate with the selling holders of Registrable Securities, the underwriters, if any, and their respective counsel in connection with the registration or qualification (or exemption from such registration or qualification) of such Registrable Securities for offer and sale under the securities or blue sky laws of such jurisdictions within the United States as any seller or underwriter reasonably requests in writing to the extent such registration or qualification would be required taking into account federal securities laws; keep each such registration or qualification (or exemption therefrom) effective during the period such Registration Statement is required to be kept effective and do any and all other acts or things necessary or advisable to enable the disposition in such jurisdiction of the Registrable Securities covered by the applicable Registration Statement; PROVIDED, HOWEVER that the Company will not be required to (i) qualify generally to do business in any jurisdiction in which it is not then so qualified or (ii) take any action that would subject it to general service of process in any such jurisdiction in which it is not then so subject.

(i) Cooperate with the selling holders of Registrable Securities and the managing underwriters, if any, to facilitate the timely preparation and delivery of certificates representing Registrable Securities to be sold, which certificates will not bear any restrictive legends; and enable such Registrable Securities to be in such denominations and registered in such names as the managing underwriters, if any, shall request at least two business days prior to any sale of Registrable securities to the underwriters.

(j) Use reasonable efforts to cause the Registrable Securities covered by the applicable Registration Statement to be registered with or approved by such other governmental agencies or authorities within the United States except as may be required solely as a consequence of the nature of such selling holder's business, in which case the Company will

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cooperate in all reasonable respects with the filing of such Registration Statement and the granting of such approvals as may be necessary to enable the seller or sellers thereof or the underwriters, if any, to consummate the disposition of such Registrable Securities.

(k) Upon the occurrence of any event contemplated by Section 6(c) (vi) or 6(c) (vii) hereof, prepare a supplement or post-effective amendment to each Registration Statement or a supplement to the related Prospectus or any document incorporated therein by reference or file any other required document so that, as thereafter delivered to Stockholder of the Registrable Securities being sold thereunder, such Prospectus will not contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading.

(l) Use its best efforts to cause all Registrable Securities covered by such Registration Statement to be listed on each securities exchange,

if any, on which similar securities issued by the Company are then listed or, if no similar securities issued by the Company are then so listed, on the New York Stock Exchange or another national securities exchange if the securities qualify to be so listed or, if the securities do not qualify for such listing, authorized to be quoted on the National Association of Securities Dealers Automated Quotation System ("NASDAQ") or the National Market System of NASDAQ if the securities qualify to be so quoted; in each case, if requested by the holders of a majority of the Registrable Securities covered by such Registration statement or the managing underwriters, if any.

(m) In the event of an underwritten offering, enter into such agreements (including an underwriting agreement in form, scope and substance as is customary in underwritten offerings) and take all such other actions in connection therewith (including those reasonably requested by the holders of a majority of the Registrable Securities being sold or those reasonably requested by the managing underwriters) in order to expedite or facilitate the disposition of such Registrable Securities and in such connection, (i) make such representations and warranties to the underwriters, if any, with respect to the business of the Company and its subsidiaries, the Registration Statement, Prospectus and documents incorporated by reference or deemed incorporated by reference, if any, in each case, in form, substance and scope as are customarily made by issuers to underwriters in underwritten offerings and confirm the same if

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and when requested; (ii) obtain opinions of counsel to the Company and updates thereof (which counsel and opinions (in form, scope and substance) shall be reasonably satisfactory to the managing underwriters, if any, and the holders of a majority of the Registrable Securities being sold) addressed to such selling holder of Registrable Securities and each of the underwriters, if any, covering the matters customarily covered in opinions requested in underwritten offerings and such other matters as may be reasonably requested by such holders and underwriters, including without limitation the matters referred to in Section 6(m) (i) hereof; (iii) use its best efforts to obtain "comfort" letters and updates thereof from the independent certified public accountants of the Company (and, if necessary, any other certified public accountants of any subsidiary of the Company or of any business acquired by the Company for which financial statements and financial data is, or is required to be, included in the Registration Statement), addressed to each selling holder of Registrable Securities and each of the underwriters, if any, such letters to be in customary form and covering matters of the type customarily covered in "comfort" letters in connection with underwritten offerings; and (iv) deliver such documents and certificates as may be requested by the holders of a majority of the Registrable Securities being sold, the Special Counsel and the managing underwriters, if any, to evidence the continued validity of the representations and warranties of the Company and its subsidiaries made pursuant to clause (i) above and to evidence compliance with any customary conditions contained in the underwriting agreement or similar agreement entered into by the Company. The foregoing actions will be taken in connection with each closing under such underwriting or similar agreement as and to the extent required thereunder.

(n) Make available for inspection by a representative of the holders of Registrable Securities being sold, any underwriter participating in any disposition of Registrable Securities, and any attorney or accountant retained by such selling holders or underwriter, all financial and other records, pertinent corporate documents and properties of the Company and its subsidiaries, and cause the officers, directors and employees of the Company and its subsidiaries to supply all information reasonably requested by any such representative, underwriter, attorney or accountant in connection with such Registration Statement; PROVIDED, HOWEVER, that any records, information or documents that are designated by the Company in writing as confidential at the time of delivery of such records, information or documents will be kept confidential by such

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persons unless (i) such records, information or documents are in the public domain or otherwise publicly available, (ii) disclosure of such records, information or documents is required by court or administrative order or is necessary to respond to inquires of regulatory authorities, or (iii) disclosure of such records, information or documents, in the opinion of counsel to such person, is otherwise required by law (including, without limitation, pursuant to the requirements of the Securities Act).

(o) Comply with all applicable rules and regulations of the SEC and make generally available to its security holders earning statements satisfying the provisions of Section 11(a) of the Securities Act and Rule 158 thereunder (or any similar rule promulgated under the Securities Act) no later than 45 calendar days after the end of any 12-month period (or 90 calendar days after the end of any 12-month period if such period is a fiscal year) (i)

commencing at the end of any fiscal quarter in which Registrable Securities are sold to underwriters in a firm commitment or best efforts underwritten offering, and (ii) if not sold to underwriters in such an offering, commencing on the first day of the first fiscal quarter of the Company, after the effective date of a Registration Statement, which statements shall cover said 12-month period.

(p) Cooperate with any reasonable request by holders of a majority of the Registrable Securities offered for sale, including by ensuring participation by the executive management of the Company in road shows, so long as such participation does not materially interfere with the operation of the Company's business.

The Company may require each seller of Registrable Securities as to which any registration is being effected to furnish to the Company such information regarding the distribution of such Registrable Securities as the Company may, from time to time, reasonably request in writing and the Company may exclude from such registration the Registrable Securities of any seller who unreasonably fails to furnish such information within a reasonable time after receiving such request.

Each holder of Registrable Securities will be deemed to have agreed by virtue of its acquisition of such Registrable Securities that, upon receipt of any notice from the Company of the occurrence of any event of the kind described in Section 6(c) (ii), 6(c) (iii), 6(c) (v), 6(c) (vi) or 6(c) (vii) hereof, such holder will forthwith discontinue disposition of such Registrable Securities covered by such Registration Statement or Prospectus (a "BLACK-OUT") until such holder's receipt of the

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copies of the supplemented or amended Prospectus contemplated by Section 6(k) hereof, or until it is advised in writing (the "ADVICE") by the Company that the use of the applicable Prospectus may be resumed, and has received copies of any additional or supplemental filings that are incorporated or deemed to be incorporated by reference in such Prospectus, provided, HOWEVER, that in no event shall the aggregate number of days during which a Black-Out is effective during any period of twelve consecutive months exceed 90 calendar days. In the event the Company shall give any such notice, the time period prescribed in Section 3(b) hereof will be extended by the number of days during the time period from and including the date of the giving of such notice to and including the date when each seller of Registrable Securities covered by such Registration Statement shall have received (x) the copies of the supplemented or amended Prospectus contemplated by Section 6(k) hereof or (y) the Advice.

7. REGISTRATION EXPENSES. All Registration Expenses will be borne by the Company whether or not any of the Registration Statements become effective. "REGISTRATION EXPENSES" will mean all fees and expenses incident to the performance of or compliance with this Agreement by the Company, including, without limitation, (i) all registration and filing fees (including without limitation fees and expenses (x) with respect to filings required to be made with the National Association of Securities Dealers, Inc. and (y) of compliance with securities or "blue sky" laws (including without limitation fees and disbursements of counsel for the underwriters or selling holders in connection with "blue sky" qualifications of the Registrable Securities and determination of the eligibility of the Registrable Securities for investment under the laws of such jurisdictions as the managing underwriters, if any, or holders of a majority of the Registrable Securities being sold may designate)), (ii) printing expenses (including without limitation expenses of printing certificates for Registrable Securities in a form eligible for deposit with The Depository Trust Company and of printing prospectuses if the printing of prospectuses is requested by the holders of a majority of the Registrable Securities included in any Registration Statement), (iii) messenger, telephone and delivery expenses, (iv) fees and disbursements of counsel for the Company, (v) fees and disbursements of all independent certified public accountants referred to in Section 6(m) (iii) hereof (including the expenses of any special audit and "comfort" letters required by or incident to such performance), (vi) fees and expenses of any "qualified independent underwriter" or other independent

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appraiser participating in an offering pursuant to Section 3 of Schedule E to the By-laws of the National Association of Securities Dealers, Inc., (vii) Securities Act liability insurance if the Company so desires such insurance, (viii) all fees and expenses in listing the Registrable Securities pursuant to Section 6(e), and (ix) fees and expenses of all other persons retained by the Company, PROVIDED, HOWEVER, that Registration Expenses will not include fees and expenses of counsel for the holders of Registrable Securities and any local counsel nor shall it include underwriting discounts and commissions relating to the offer and sale of Registrable Securities, all of which shall be borne by the holders of Registrable Securities included in such registration PRO RATA in proportion to the number of Registrable Securities of such holder included in

such registration. In addition, the Company will pay its internal expenses (including without limitation all salaries and expenses of its officers and employees performing legal or accounting duties), the expense of any annual audit, the fees and expenses incurred in connection with the listing of the securities to be registered on any securities exchange on which similar securities issued by the Company are then listed and the fees and expenses of any person, including special experts, retained by the Company.

8. INDEMNIFICATION. (a) INDEMNIFICATION BY THE COMPANY. The Company will, without limitation as to time, indemnify and hold harmless, to the fullest extent permitted by law, each holder of Registrable Securities registered pursuant to this Agreement, the officers, directors and agents and employees of each of them, each person who controls such holder (within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act) and the officers, directors, agents and employees of any such controlling person, from and against all losses, claims, damages, liabilities, costs (including without limitation the costs of investigation and attorneys' fees) and expenses (collectively, "LOSSES"), as incurred, arising out of or based upon any untrue or alleged untrue statement of a material fact contained in any Registration Statement, Prospectus or form of Prospectus or in any amendment or supplement thereto or in any preliminary prospectus, or arising out of or based upon any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, except insofar as the same are based solely upon information furnished in writing to the Company by such holder or any underwriter expressly for use therein; PROVIDED, however, that the Company will not be liable to any holder of Registrable Securities to

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the extent that any such Losses arise out of or are based upon an untrue statement or alleged untrue statement or omission or alleged omission made in any preliminary prospectus if either (A) (i) such holder failed to send or deliver a copy of the Prospectus with or prior to the delivery of written confirmation of the sale by such holder of a Registrable Security to the person asserting the claim from which such Losses arise and (ii) the Prospectus would have corrected in all material respects such untrue statement or alleged untrue statement or such omission or alleged omission; or (B) such untrue statement or alleged untrue statement, omission or alleged omission is corrected in all material respects in an amendment or supplement to the Prospectus previously furnished by or on behalf of the Company with copies of the Prospectus as so amended or supplemented, and such holder thereafter fails to deliver such Prospectus as so amended or supplemented prior to or concurrently with the sale of a Registrable Security to the person asserting the claim from which such Losses arise.

The rights of any holder of Registrable Securities hereunder will not be exclusive of the rights of any holder of Registrable Securities under any other agreement or instrument of any holder of Registrable Securities to which the Company is a party. Nothing in such other agreement or instrument will be interpreted as limiting or otherwise adversely affecting a holder of Registrable Securities hereunder and nothing in this Agreement will be interpreted as limiting or otherwise adversely affecting the holder of Registrable Securities' rights under any such other agreement or instrument, PROVIDED, HOWEVER, that no Indemnified Party will be entitled hereunder to recover more than its indemnified Losses.

(b) INDEMNIFICATION BY HOLDERS OF REGISTRABLE SECURITIES. In connection with any Registration Statement in which a holder of Registrable Securities is participating, such holder of Registrable Securities will furnish to the Company in writing such information as the Company reasonably requests for use in connection with any Registration Statement or Prospectus and will severally indemnify, to the fullest extent permitted by law, the Company, its directors and officers, agents and employees, each person who controls the Company (within the meaning of Section 15 of the Securities Act and Section 20 of the Exchange Act), and the directors, officers, agents or employees of such controlling persons, from and against all Losses arising out of or based upon (i) any disposition of Registrable Securities after receiving notice of a Black-Out and prior to receiving Advice under Section 6 that use of the

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Prospectus may be resumed or (ii) any untrue statement of a material fact contained in any Registration Statement, Prospectus or preliminary prospectus or arising out of or based upon any omission of a material fact required to be stated therein or necessary to make the statements therein not misleading, to the extent, but only to the extent, that such untrue statement or omission is finally judicially determined by a court to have been contained in any information so furnished in writing by such holder to the Company expressly for use in such Registration Statement or Prospectus and was relied upon by the Company in the preparation of such Registration Statement, Prospectus or

preliminary prospectus. In no event will the liability of any selling holder of Registrable Securities hereunder be greater in amount than the dollar amount of the proceeds (net of payment of all expenses and underwriter's discounts and commissions) received by such holder upon the sale of the Registrable Securities giving rise to such indemnification obligation.

(c) CONDUCT OF INDEMNIFICATION PROCEEDINGS. If any person shall become entitled to indemnity hereunder (an "INDEMNIFIED PARTY"), such Indemnified Party shall give prompt notice to the party from which such indemnity is sought (the "INDEMNIFYING PARTY") of any claim or of the commencement of any action or proceeding with respect to which such Indemnified Party seeks indemnification or contribution pursuant hereto; PROVIDED, HOWEVER, that the failure to so notify the Indemnifying Party will not relieve the Indemnifying Party from any obligation or liability except to the extent that the Indemnifying Party has been prejudiced materially by such failure. All fees and expenses (including any fees and expenses incurred in connection with investigating or preparing to defend such action or proceeding) will be paid to the Indemnified Party, as incurred, within five calendar days of written notice thereof to the Indemnifying Party upon receipt of an undertaking to repay such amount if it is ultimately determined that an Indemnified Party is not entitled to indemnification hereunder). The Indemnifying Party will not consent to entry of any judgment or enter into any settlement or otherwise seek to terminate any action or proceeding in which any Indemnified Party is or could be a party and as to which indemnification or contribution could be sought by such Indemnified Party under this Section 8, unless such judgment, settlement or other termination includes as an unconditional term thereof the giving by the claimant or plaintiff to such Indemnified Party of a release, in form and substance reasonably satisfactory to the Indemnified Party, from all liability in respect of such claim or litigation for which

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such Indemnified Party would be entitled to indemnification hereunder.

(d) CONTRIBUTION. If the indemnification provided for in this Section 8 is unavailable to an Indemnified Party under Section 8(a) or 8(b) hereof in respect of any Losses or is insufficient to hold such Indemnified Party harmless, then each applicable Indemnifying Party, in lieu of indemnifying such Indemnified Party, will, jointly and severally, contribute to the amount paid or payable by such Indemnified Party as a result of such Losses, in such proportion as is appropriate to reflect the relative fault of the Indemnifying Party or Indemnifying Parties, on the one hand, and such Indemnified Party, on the other hand, in connection with the actions, statements or omissions that resulted in such Losses as well as any other relevant equitable considerations. The relative fault of such Indemnifying Party or Indemnifying Parties, on the one hand, and such Indemnified Party, on the other hand, will be determined by reference to, among other things, whether any action in question, including any untrue or alleged untrue statement of a material fact or omission or alleged omission of a material fact, has been taken or made by, or related to information supplied by, such Indemnifying Party or Indemnified Party, and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such action, statement or omission. The amount paid or payable by a party as a result of any Losses will be deemed to include any legal or other fees or expenses incurred by such party in connection with any action or proceeding.

The parties hereto agree that it would not be just and equitable if contribution pursuant to this Section 8(d) were determined by PRO RATA allocation or by any other method of allocation that does not take into account the equitable considerations referred to in the immediately preceding paragraph. Notwithstanding the provision of this Section 8(d), an Indemnifying Party that is a selling holder of Registrable Securities will not be required to contribute any amount in excess of the amount by which the total price at which the Registrable Securities sold by such Indemnifying Party and distributed to the public (net of any related expenses) exceeds the amount of any damages which such Indemnifying Party has otherwise been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) will be entitled

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to contribution from any person who was not guilty of such fraudulent misrepresentation.

The indemnity, contribution and expense reimbursement obligations of the Company hereunder will be in addition to any liability the Company may otherwise have hereunder, under the Series C Investment Agreement, the Series D Investment Agreement or otherwise. The provisions of this Section 8 will survive any termination of this Agreement.

9. RULES 144 AND 144A. The Company will file the reports required to be filed by it under the Securities Act and the Exchange Act in a timely manner, and will cooperate with any holder of Registrable Securities (including without limitation by making such representations as any such holder may reasonably request), all to the extent required from time to time to enable such holder to sell Registrable Securities without registration under the Securities Act within the limitations of the exemptions provided by Rules 144 and 144A (including, without limitation, the requirements of Rule 144A(d)(4)). Upon the request of any holder of Registrable Securities, the Company will deliver to such holder a written statement as to whether it has complied with such filing requirements.

10. UNDERWRITTEN REGISTRATIONS. If any of the Registrable Securities covered by any Demand Registration are to be sold in an underwritten offering, the investment banker or investment bankers and manager or managers that will manage the offering will be selected by the holder of Registrable Securities that gave the Demand Notice with respect to such offering; PROVIDED that such investment banker or manager shall be reasonably satisfactory to the Company. If any Piggyback Registration is an underwritten offering, the Company will have the right to select the investment banker or investment bankers and managers to administer the offering.

11. MISCELLANEOUS. (a) REMEDIES. In the event of a breach by the Company of its obligations under this Agreement, each holder of Registrable Securities, in addition to being entitled to exercise all rights granted by law, including recovery of damages, will be entitled to specific performance of its rights under this Agreement. The Company agrees that monetary damages would not be adequate compensation for any loss incurred by reason of a breach by it of any of the provisions of this Agreement and hereby further agrees that, in the event of any action for specific performance in respect of such breach, it will waive the defense that a remedy at law would be adequate.

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(b) NO INCONSISTENT AGREEMENTS. The Company has not, as of the date hereof, and will not, on or after the date hereof, enter into any agreement with respect to its securities which conflicts with the rights granted to the holders of Registrable Securities in this Agreement or otherwise conflicts with the provisions hereof. This Agreement will be deemed to be an independent agreement and no limitation or restriction contained in this Agreement will be deemed to conflict with, limit or restrict the rights of the Stockholder under this Agreement.

(c) AMENDMENTS AND WAIVERS. The provisions of this Agreement, including the provisions of this sentence, may not be amended, modified or supplemented, and waivers or consents to departures from the provisions hereof may not be given, unless the Company has obtained the written consent of holders of a majority of the then-outstanding Registrable Securities. Notwithstanding the foregoing, a waiver or consent to depart from the provisions hereof with respect to a matter that relates exclusively to the rights of holders of Registrable Securities whose securities are being sold pursuant to a Registration Statement and that does not directly or indirectly affect the rights of other holders of Registrable Securities may be given by holders of at least 51% of the Registrable Securities being sold by such holders; PROVIDED, HOWEVER, that the provisions of this sentence may not be amended, modified, or supplemented except in accordance with the provisions of the immediately preceding sentence.

(d) NOTICES. All notices and other communications provided for or permitted hereunder shall be made in writing and will be deemed given (i) when made, if made by hand delivery, (ii) upon confirmation, if made by fax, or (iii) one business day after being deposited with a reputable next-day courier, postage prepaid, to the parties as follows:

(x) if to the Company, at 900 Victors Way, Suite 350, Ann Arbor, Michigan 48108, Attention: Chief Financial Officer; Fax No.: (734) 996-0200, or at such other address, notice of which is given to the holders of Registrable Securities in accordance with the provisions of this Section 11(d);

(y) if to the Stockholder, at 4200 Texas Commerce Tower West, 2200 Ross Avenue, Dallas, Texas 75201, Attention: William T. Cavanaugh; Fax No.: (214) 220-4949, or at such other address, notice of which is given in accordance with the provisions of Section 11(d); and

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(z) if to any other holder of Registrable Securities, at the most current address given by such holder to the Company in accordance

with the provisions of this Section 11(d).

(e) OWNER OF REGISTRABLE SECURITIES. The Company will maintain, or will cause its registrar and transfer agent to maintain, a stock book with respect to the Series C Preferred, the Series D Preferred and the Common Stock, in which all transfers of Registrable Securities of which the Company has received notice will be recorded. The Company may deem and treat the person in whose name Registrable Securities are registered in the stock book of the Company as the owner thereof for all purposes, including without limitation the giving of notices under this Agreement.

(f) SUCCESSORS AND ASSIGNS. This Agreement will inure to the benefit of and be binding upon the successors and permitted assigns of each of the parties and will inure to the benefit of each holder of any Registrable Securities. The Company may not assign its rights or obligations hereunder without the prior written consent of each holder of any Registrable Securities. The holders of the Registrable Securities may assign the rights and obligations under this Agreement to any subsequent holder of such Registrable Securities. Notwithstanding the foregoing, no transferee will have any of the rights granted under this Agreement (i) until such transferee shall have acknowledged its rights and obligations hereunder by a signed written statement of such transferee's acceptance of such rights and obligations or (ii) if the transferor notifies the Company in writing on or prior to such transfer that the transferee shall not have such rights.

(g) COUNTERPARTS. This Agreement may be executed in any number of counterparts and by the parties hereto in separate counterparts, each of which when so executed will be deemed to be an original and all of which taken together will constitute one and the same instrument.

(h) HEADINGS. The headings in this Agreement are for convenience of reference only and will not limit or otherwise affect the meaning hereof.

(i) GOVERNING LAW. THIS AGREEMENT WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF DELAWARE, AS APPLIED TO CONTRACTS MADE AND PERFORMED WITHIN THE STATE OF DELAWARE, WITHOUT REGARD TO PRINCIPLES OF CONFLICT OF LAWS.

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(j) JURISDICTION; CONSENT TO SERVICE OF PROCESS.

(A) Each party hereby irrevocably and unconditionally submits, for itself and its property, to the exclusive jurisdiction of any state or federal court located in the State of Delaware (as applicable, a "DELAWARE COURT"), and any appellate court from any such court, in any suit, action or proceeding arising out of or relating to this Agreement, or for recognition or enforcement of any judgment resulting from any such suit, action or proceeding, and each party hereby irrevocably and unconditionally agrees that all claims in respect of any such suit, action or proceeding may be heard and determined in the Delaware Court.

(B) It will be a condition precedent to each party's right to bring any such suit, action or proceeding that such suit, action or proceeding, in the first instance, be brought in the Delaware Court (unless such suit, action or proceeding is brought solely to obtain discovery or to enforce a judgment), and if each such court refuses to accept jurisdiction with respect thereto, such suit, action or proceeding may be brought in any other court with jurisdiction; PROVIDED that the foregoing will not apply to any suit, action or proceeding by a party seeking indemnification or contribution pursuant to this Agreement or otherwise in respect of a suit, action or proceeding against such party by a third party if such suit, action or proceeding by such party seeking indemnification or contribution is brought in the same court as the suit, action or proceeding against such party.

(C) No party may move to (i) transfer any such suit, action or proceeding from the Delaware Court to another jurisdiction, (ii) consolidate any such suit, action or proceeding brought in the Delaware Court with a suit, action or proceeding in another jurisdiction, or (iii) dismiss any such suit, action or proceeding brought in the Delaware Court for the purpose of bringing the same in another jurisdiction.

(D) Each party hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, (i) any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement in the Delaware Court, (ii) the defense of an inconvenient

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in any such court, and (iii) the right to object, with respect to such suit, action or proceeding, that such court does not have jurisdiction over such party. Each party irrevocably consents to service of process in any manner permitted by law. Notwithstanding the foregoing, this Section 11(j) will not apply to any suit, action or proceeding to enforce a judgment of a Delaware Court.

(k) SEVERABILITY. If any term, provision, covenant or restriction of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions set forth herein will remain in full force and effect and will in no way be affected, impaired or invalidated, and the parties hereto will use their best efforts to find and employ an alternative means to achieve the same or substantially the same result as that contemplated by such term, provision, covenant or restriction. It is hereby stipulated and declared to be the intention of the parties that they would have executed the remaining terms, provisions, covenants and restrictions without including any of such which may be hereafter declared invalid, void or unenforceable.

(l) ENTIRE AGREEMENT. This Agreement is intended by the parties as a final expression of their agreement and is intended to be a complete and exclusive statement of the agreement and understanding of the parties hereto in respect of the registration rights granted by the Company with respect to the Registrable Securities. This Agreement supersedes all prior agreements and understandings among the parties with respect to such registration rights.

(M) ATTORNEYS' FEES. In any action or proceeding brought to enforce any provision of this Agreement, or where any provision hereof is validly asserted as a defense, the prevailing party, as determined by the court, will be entitled to recover reasonable attorneys' fees in addition to any other available remedy.

[SIGNATURE PAGE FOLLOWS]

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IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

EXPLORER HOLDINGS, L.P.

By: Explorer Holdings GenPar, LLC,  
its General Partner

By: \_\_\_\_\_  
William T. Cavanaugh, Jr.  
Vice President

OMEGA HEALTHCARE INVESTORS, INC.

By: \_\_\_\_\_  
C. Taylor Pickett  
Chief Executive Officer



OMEGA HEALTHCARE INVESTORS, INC.  
900 VICTORS WAY, SUITE 350  
ANN ARBOR, MICHIGAN 48108

October 29, 2001

EquiServ Trust Company, N.A.  
525 Washington Blvd., 3rd Floor  
Suite 4660  
Jersey City, New Jersey 07310

Attention: Corporate Actions Administrator

Re: AMENDMENT NO. 2 TO RIGHTS AGREEMENT  
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Ladies and Gentlemen:

Pursuant to Section 27 of the Rights Agreement, dated as of May 12, 1999, as amended on May 11, 2000 (the "RIGHTS AGREEMENT"), between Omega Healthcare Investors, Inc. (the "COMPANY") and EquiServ Trust Company, N.A. (as successor to First Chicago Trust Company), as rights agent, the Company, by resolution adopted by its Board of Directors, hereby amends the Rights Agreement as follows:

1. Section 1 of the Rights Agreement is hereby amended by deleting the definition of "Acquiring Person" and replacing it in its entirety with the following:

"`Acquiring Person' shall mean any Person (as hereinafter defined) (other than the Company, any Related Person (as hereinafter defined), or any Authorized Person (as hereinafter defined)) who or which, together with all Affiliates and Associates (as such terms are hereinafter defined) of such Person, is the Beneficial Owner (as hereinafter defined) of 10% or more of the Common Stock of the Company then outstanding; PROVIDED, HOWEVER, that a Person will not be deemed to have become an Acquiring Person solely as a result of (i) a reduction in the number of shares of Common Stock outstanding, or (ii) the acquisition by

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such Person of newly issued Common Stock directly from the Company (it being understood that a purchase from an underwriter or other intermediary is not directly from the Company) (a "Direct Purchase"), unless and until such time as (x) such Person or any Affiliate or Associate of such Person thereafter becomes the Beneficial Owner of any additional shares of Common Stock, other than as a result of a Direct Purchase or a stock dividend, stock split or similar transaction effected by the Company in which all holders of Common Stock are treated equally, or (y) any other Person who is the Beneficial Owner of Common Stock thereafter becomes an Affiliate or Associate of such Person. Notwithstanding the foregoing, if the Board of Directors determines in good faith that a Person who would otherwise be an "Acquiring Person" as defined pursuant to the foregoing provisions of this paragraph, has become such inadvertently, and such Person divests as promptly as practicable (and in any event within ten (10) Business Days after notification by the Company or such later period as may be determined by the Board of Directors prior to the expiration of such ten-day period) a sufficient number of shares of Common Stock so that such Person would no longer be an "Acquiring Person" as defined pursuant to the foregoing provisions of this paragraph, then such Person shall not be deemed to be an "Acquiring Person" for any purposes of this Agreement."

2. Section 1 of the Rights Agreement is hereby amended by deleting the definition of "Distribution Date" and replacing it in its entirety with the following:

"`Distribution Date' shall mean the earlier of (i) the Close of Business on the tenth calendar day following the Stock Acquisition Date, or (ii) the Close of Business on the fifteenth Business Day (or such later date as may be determined by an action of the Board of Directors prior to such time as any Person becomes an Acquiring Person) after the date of the commencement by any Person of, or of the first public announcement of, the intention of any Person to commence a tender or exchange offer the consummation of which would result in any Person becoming an Acquiring Person."

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3. Section 1 of the Rights Agreement is hereby amended by adding the following new definitions:

"`Authorized Person' shall mean each of Purchaser, its Affiliates and Associates, and any of their respective successors or assignees (each, a "Purchaser Person") and (ii) any Person, its Affiliates and Associates and any of their respective successors or assigns, who Beneficially Owns Common Stock that had previously been Beneficially Owned by a Purchaser (other than Common Stock Beneficially Owned by such Person as a result of the direct or indirect transfer of Common Stock through an underwriter or pursuant to the facilities of a national securities exchange); provided that the ultimate parent entity of such person is a party to the Amended and Restated Stockholders Agreement, dated the date of closing of the Rights Offering, between Purchaser and the Company."

"`Purchaser' shall mean Explorer Holdings, L.P., a Delaware limited partnership."

"`Related Person' shall mean (i) any Subsidiary of the Company or (ii) any employee benefit plan or stock ownership plan of the Company or of any Subsidiary of the Company or any entity holding Common Stock for or pursuant to the terms of any such plan."

"`Rights Offering' shall have the meaning set forth in the Series D Investment Agreement."

"`Series D Investment Agreement' shall mean the Investment Agreement, dated as of October 29, 2001, between the Company and Purchaser."

4. Section 1 of the Rights Agreement is hereby amended by deleting the definitions of "Stockholders Agreement" and "Investment Agreement."

5. Section 1 of the Rights Agreement is hereby amended by deleting the last sentence of Section 1 and replacing it in its entirety with the following:

"Notwithstanding any other provision hereof, in no event will Purchaser, or its Affiliates or Associates, be deemed to be an "Acquiring Person" for purposes hereof, nor shall a Distribution Date, a Stock Acquisition Date, a Triggering Event or any other event hereunder be deemed to have occurred, and the Rights will not become separable, distributable, unredeemable or exercisable, in each such case, as a result of the approval, execution or delivery of the Series D Investment Agreement or the other Transaction Documents (as defined in the Series D Investment Agreement) or the consummation of the transactions contemplated thereby, including but not limited to, the Rights Offering."

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6. Section 3(a) of the Rights Agreement is hereby amended by deleting it in its entirety and replacing it with the following:

"(a) Until the Distribution Date, (i) the Rights will be evidenced (subject to the provisions of Section 3(b) hereof) by certificates for Common Stock registered in the names of

the holders thereof (which certificates shall also be deemed certificates for Rights) and not by separate certificates, and (ii) the Rights will be transferable only in connection with the transfer of the underlying Common Stock (including a transfer to the Company). As soon as practicable after the Distribution Date, the Company will prepare and execute, the Rights Agent will countersign, and the Company will send or cause to be sent (and the Rights Agent will, if requested, send) by first-class, insured, postage-prepaid mail, to each record holder of Common Stock as of the Close of Business on the Distribution Date, at the address of such holder shown on the records of the Company, a Right Certificate, in substantially the form of Exhibit B hereto (a "Right Certificate"), evidencing one Right for each share of Common Stock so held. As of the Distribution Date, the Rights will be evidenced solely by Right Certificates."

7. The Rights Agreement shall not otherwise be supplemented or amended by virtue of this Amendment No. 2 to the Rights Agreement, but shall remain in full force and effect.

8. Capitalized terms used without other definition in this Amendment No. 2 to the Rights Agreement shall be used as defined in the Rights Agreement.

9. This Amendment No. 2 to the Rights Agreement shall be deemed to be a contract made under the laws of the State of Maryland and for all purposes shall be governed by and construed in accordance with the laws of such State applicable to contracts to be made and performed entirely within such State, except that those provisions of this Amendment No. 2 to the Rights Agreement affecting the rights, duties and responsibility of the Rights Agent shall be governed by and construed in accordance with the laws of the State of Illinois.

10. This Amendment No. 2 to the Rights Agreement may be executed in any number of counterparts and each of such

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counterparts shall for all purposes be deemed to be an original, and all such counterparts shall together constitute but one and the same instrument.

11. This Amendment No. 2 to the Rights Agreement shall be effective as of, and immediately prior to, the execution and delivery of the Series D Investment Agreement, and all references to the Rights Agreement shall, from and after such time, be deemed to be references to the Rights Agreement as amended hereby.

12. Exhibits A and B to the Rights Agreement shall be deemed amended in a manner consistent with this Amendment No. 2 to the Rights Agreement.

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Very truly yours,

OMEGA HEALTHCARE INVESTORS, INC.

By: /s/ C. Taylor Pickett  
-----  
C. Taylor Pickett  
Chief Executive Officer

Accepted and agreed to as of the effective time specified above:

EQUISERV TRUST COMPANY, N.A.  
(AS SUCCESSOR TO FIRST CHICAGO TRUST COMPANY)

By: \_\_\_\_\_  
Name:

Title: