
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

Amendment No. 1

to

FORM S-4

REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933

Omega Healthcare Investors, Inc.

*and the guarantors identified in footnote * on the following pages*

(Exact name of registrant as specified in its charter)

Maryland

(State or other jurisdiction of
incorporation or organization)

6798

(Primary Standard Industrial
Classification Code Number)

38-3041398

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

9690 Deereco Road, Suite 100

Timonium, Maryland 21093

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

C. Taylor Pickett

Chief Executive Officer

Omega Healthcare Investors, Inc.

9690 Deereco Road, Suite 100

Timonium, Maryland 21093

(410) 427-1700

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

Copies To:

Richard H. Miller, Esq.

Powell, Goldstein, Frazer & Murphy LLP

Sixteenth Floor

191 Peachtree Street, N.E.

Atlanta, Georgia 30303

(404) 572-6600

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

If the securities being registered on this form are being offered in connection with the formation of a holding company and there is compliance with General Instruction G, check the following box.

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

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

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

* The following subsidiaries of Omega Healthcare Investors, Inc. are guarantors of the exchange notes and are co-registrants:

Exact name of registrant as specified in its charter; address, including zip code, and telephone number, including area code of registrant's principal executive office(1)	State or other jurisdiction of Incorporation or organization	Primary Standard Industrial Classification Code	I.R.S. Employer Identification No.
Arizona Lessor—Infinia, Inc.	Maryland	6798	32-0008074
Bayside Alabama Healthcare Second, Inc.	Alabama	6798	38-3520327
Bayside Arizona Healthcare Associates, Inc.	Arizona	6798	38-3518309
Bayside Arizona Healthcare Second, Inc.	Arizona	6798	38-3520329
Bayside Colorado Healthcare Associates, Inc.	Colorado	6798	38-3517837
Bayside Colorado Healthcare Second, Inc.	Colorado	6798	38-3520325
Bayside Indiana Healthcare Associates, Inc.	Indiana	6798	38-3517842
Bayside Street II, Inc.	Delaware	6798	38-3519969
Bayside Street, Inc.	Maryland	6798	38-3160026
Center Healthcare Associates, Inc.	Texas	6798	38-3517844
Cherry Street—Skilled Nursing, Inc.	Texas	6798	38-3592148
Colorado Lessor—Conifer, Inc.	Maryland	6798	32-0008069
Dallas Skilled Nursing, Inc.	Texas	6798	38-3592151
Delta Investors, I, LLC	Maryland	6798	54-2112455
Delta Investor II, LLC	Maryland	6798	54-2112456
Florida Lessor—Crystal Springs, Inc.	Maryland	6798	75-3116533
Florida Lessor—Emerald, Inc.	Maryland	6798	22-3872569
Florida Lessor—Five Facilities, Inc.	Maryland	6798	16-1650493
Florida Lessor—Lakeland, Inc.	Maryland	6798	22-3872564
Florida Lessor—Meadowview, Inc.	Maryland	6798	56-2398721
Florida Lessor—West Palm Beach and Southpoint, Inc.	Maryland	6798	33-1067711
Georgia Lessor—Bonterra/Parkview, Inc.	Maryland	6798	16-1650494
Heritage Texarkana Healthcare Associates, Inc.	Texas	6798	38-3517861
Indiana Lessor—Jeffersonville, Inc.	Maryland	6798	22-3872575
Indiana Lessor—Wellington Manor, Inc.	Maryland	6798	32-0008064
Jefferson Clark, Inc.	Maryland	6798	38-3433390
Lake Park Skilled Nursing, Inc.	Texas	6798	38-3592152
Long Term Care—Michigan, Inc.	Michigan	6798	applied for
Long Term Care—North Carolina, Inc.	North Carolina	6798	applied for
Long Term Care Associates—Illinois, Inc.	Illinois	6798	38-3592159
Long Term Care Associates—Indiana, Inc.	Indiana	6798	38-3592160
Long Term Care Associates—Texas, Inc.	Texas	6798	38-3592142
NRS Ventures, LLC	Kentucky	6798	38-4236118
OHI (Connecticut), Inc.	Connecticut	6798	06-1552120
OHI (Florida), Inc.	Florida	6798	65-0523484
OHI (Illinois), Inc.	Illinois	6798	37-1332375
OHI (Indiana), Inc.	Indiana	6798	38-3568359
OHI (Iowa), Inc.	Iowa	6798	38-3377918
OHI (Kansas), Inc.	Kansas	6798	48-1156047
OHI Asset (CA), LLC	Delaware	6798	04-3759925
OHI Asset (FL) Tarpon Springs, Pinellas Park & Gainesville, LLC	Delaware	6798	90-0137715
OHI Asset (FL), LLC	Delaware	6798	13-4225158
OHI Asset (ID), LLC	Delaware	6798	04-3759931
OHI Asset (IN), LLC	Delaware	6798	04-3759933
OHI Asset (LA), LLC	Delaware	6798	04-3759935
OHI Asset (MI/NC), LLC	Delaware	6798	04-3759928
OHI Asset (MO), LLC	Delaware	6798	04-3759939
OHI Asset (OH), LLC	Delaware	6798	04-3759938
OHI Asset (TX), LLC	Delaware	6798	04-3759927
OHI Asset II (CA), LLC	Delaware	6798	20-1000878
OHI Asset II (TX), LLC	Delaware	6798	83-0398543
OHI Asset, LLC	Delaware	6798	32-0079270
Ohio Lessor Waterford & Crestwood, Inc.	Maryland	6798	32-0008067

OHI of Kentucky, Inc.	Maryland	6798	38-3509157
OHI of Texas, Inc.	Maryland	6798	38-3506136
OHI Sunshine, Inc.	Florida	6798	82-0558471
OHIMA, Inc.	Massachusetts	6798	06-1552118
Omega (Kansas), Inc.	Kansas	6798	applied for
Omega Acquisition Facility I, LLC	Delaware	6798	83-0379722
Omega TRS I, Inc.	Maryland	6798	38-3587540
OS Leasing Company	Kentucky	6798	38-3221641
Parkview—Skilled Nursing, Inc.	Texas	6798	38-3592157
Pine Texarkana Healthcare Associates, Inc.	Texas	6798	38-3517864
Reunion Texarkana Healthcare Associates, Inc.	Texas	6798	38-3517865
San Augustine Healthcare Associates, Inc.	Texas	6798	38-3517866
Skilled Nursing—Gaston, Inc.	Indiana	6798	38-3592171
Skilled Nursing—Herrin, Inc.	Illinois	6798	38-3592162
Skilled Nursing—Hicksville, Inc.	Ohio	6798	38-3592172
Skilled Nursing—Paris, Inc.	Illinois	6798	38-3592165
South Athens Healthcare Associates, Inc.	Texas	6798	38-3517880
Sterling Acquisition Corp.	Kentucky	6798	38-3207992
Sterling Acquisition Corp. II	Kentucky	6798	38-3207991
Texas Lessor—Stonegate GP, Inc.	Maryland	6798	32-0008071
Texas Lessor—Stonegate Limited, Inc.	Maryland	6798	32-0008072
Texas Lessor—Stonegate, L.P.	Maryland	6798	32-0008073
Texas Lessor—Treemont, Inc.	Maryland	6798	16-1650495
Washington Lessor—Silverdale, Inc.	Maryland	6798	56-2386887
Waxahachie Healthcare Associates, Inc.	Texas	6798	38-3517884
West Athens Healthcare Associates, Inc.	Texas	6798	38-3517886

- (1) The address for each of the above registrants' principal executive office is c/o Omega Healthcare Investors, Inc., 9690 Deereco Road, Suite 100, Timonium, Maryland 21093 and the telephone number is (410) 427-1700.

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

Subject to completion, dated July 26, 2004

PROSPECTUS



OMEGA HEALTHCARE INVESTORS, INC.

Exchange Offer

**\$200,000,000 aggregate principal amount of our 7% Senior Notes due 2014
which have been registered under the Securities Act of 1933 for our
outstanding \$200,000,000 7% Senior Notes due 2014**

We are offering to exchange up to \$200,000,000 in aggregate principal amount of our registered 7% senior notes due 2014, which we refer to as the exchange notes, for all of our outstanding unregistered 7% senior notes due 2014, which we refer to as the initial notes. The initial notes and the exchange notes are collectively referred to as the notes. The initial notes and the exchange notes will be guaranteed by certain of our present and future domestic restricted subsidiaries with unconditional guarantees of payment that will rank equally with existing and future senior unsecured debt of such subsidiaries and senior to existing and future subordinated debt of such subsidiaries. The initial notes were issued on March 22, 2004. The terms of the exchange notes are identical to the terms of the initial notes except that the exchange notes are registered under the Securities Act of 1933, as amended, or the Securities Act, and therefore are freely transferable, subject to certain conditions. The exchange notes evidence the same indebtedness as the initial notes.

You should consider the following:

- **Investing in the notes involves risks. See "Risk Factors" beginning on page 12 of this prospectus.**
- Our exchange offer will be open until 5:00 p.m., New York City time, on _____, 2004, unless we extend the offer.
- If you fail to tender your initial notes, you will continue to hold unregistered securities and your ability to transfer them could be adversely affected.
- No public market currently exists for the exchange notes. We do not intend to apply for listing of the exchange notes on any securities exchange or for inclusion of the exchange notes in any automated quotation system.
- If the holder of the notes is a broker-dealer that will receive exchange notes for its own account in exchange for initial notes that were acquired as a result of market-making activities or other trading activities, it will be required to acknowledge that it will deliver this prospectus, as it may be amended or supplemented, in connection with any resale of such exchange notes.

The exchange notes bear interest at the rate of 7% per year. We will pay interest on the exchange notes on April 1 and October 1 of each year. The first such payment will be made on October 1, 2004. The exchange notes will mature on April 1, 2014. We have the option to redeem all or a portion of the exchange notes at any time on or after April 1, 2009 at the redemption prices set forth in this prospectus. Exchange notes will be issued only in registered book-entry form, in denominations of \$1,000 and integral multiples of \$1,000.

NEITHER THE SECURITIES AND EXCHANGE COMMISSION NOR ANY STATE SECURITIES COMMISSION OR SIMILAR AUTHORITY HAS APPROVED OR DISAPPROVED OF THESE SECURITIES OR PASSED UPON THE ADEQUACY OR ACCURACY OF THIS PROSPECTUS. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

The date of this prospectus is _____, 2004.

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INCORPORATION OF DOCUMENTS BY REFERENCE

The Securities and Exchange Commission, or the SEC, allows us to "incorporate by reference" information into this prospectus, which means that we can disclose important information about us to you by referring you to another document filed separately with the SEC not included in or delivered with this prospectus. The information incorporated by reference is deemed to be a part of this prospectus, except any information superseded or modified by information contained directly in this prospectus. We incorporate by reference the following documents filed with the SEC by us (File No. 1-11316):

- Our Current Report on Form 8-K, filed on January 27, 2004;
- Our Current Report on Form 8-K, filed on January 29, 2004;*
- Our Current Report on Form 8-K, filed on February 5, 2004;
- Our Current Report on Form 8-K, filed on February 5, 2004;
- Our Current Report on Form 8-K, filed on February 10, 2004;
- Our Annual Report on Form 10-K for the year ended December 31, 2003, filed February 20, 2004;
- Our Current Report on Form 8-K, filed on February 23, 2004;
- Our Current Report on Form 8-K, filed on March 4, 2004;
- Our Current Report on Form 8-K, filed on March 8, 2004;
- Our Current Report on Form 8-K, filed on March 11, 2004;
- Our Current Report on Form 8-K, filed on March 26, 2004;
- Our Current Report on Form 8-K, filed on April 27, 2004;*
- Our Quarterly Report on Form 10-Q for the quarter ended March 31, 2004, filed on May 5, 2004;
- Our Current Report on Form 8-K, filed on May 24, 2004; and
- All other documents and reports filed by us pursuant to Section 13(a), 13(c), 14 or 15(b) of the Securities Exchange Act of 1934, as amended, or the Exchange Act after the date of this prospectus and prior to the termination of this offering.

* This report contains information furnished to the SEC under Item 12 of Form 8-K which pursuant to General Instruction B(6) of Form 8-K, is not deemed to be "filed" for purposes of Section 18 of the Exchange Act and we are not subject to the liabilities imposed by that section. We are not incorporating and will not incorporate by reference into this prospectus part or future information or reports furnished or that will be furnished under Items 9 and/or 12 of Form 8-K.

The documents incorporated by reference in this prospectus (other than exhibits to such documents, unless such exhibits are specifically incorporated by reference) are available, without charge to any person upon written or oral request. Requests for such copies should be directed to:

Omega Healthcare Investors, Inc.
9690 Deereco Road, Suite 100
Timonium, Maryland 21093
Attention: Chief Financial Officer
Telephone: (410) 427-1700

To ensure timely delivery of the documents, please make any requests by _____, 2004.

WHERE YOU CAN FIND MORE INFORMATION

We file annual, quarterly and special reports, proxy statements, and other information with the SEC under the Exchange Act. You may read and copy any of the reports, statements, or other information that we have filed with the SEC at the commission's public reference room at Room 1024, Judiciary Plaza, 450 Fifth Street, N.W., Washington, D.C. 20549. Please call the SEC at 1-800-SEC-0330 for further information on the public reference room. Our filings with the SEC are also available to the public from commercial document retrieval services and at the SEC's web site at www.sec.gov, as well as on our website at www.omegahealthcare.com.

You may request a copy of any of these filings, at no cost, by writing or calling us at the following address or phone number:

Omega Healthcare Investors, Inc.
9690 Deereco Road, Suite 100
Timonium, Maryland 21093
Attention: Chief Financial Officer
Telephone: (410) 427-1700

FINANCIAL PRESENTATION

This prospectus includes Funds From Operations, or FFO, which is a non-GAAP financial measure. For purposes of SEC Regulation G, a non-GAAP financial measure is a numerical measure of a company's historical or future financial performance, financial position or cash flows that excludes amounts, or is subject to adjustments that have the effect of excluding amounts, that are included in the most directly comparable financial measure calculated and presented in accordance with GAAP in the statement of operations, balance sheet or statement of cash flows (or equivalent statements) of the company; or includes amounts, or is subject to adjustments that have the effect of including amounts, that are excluded from the most directly comparable financial measure so calculated and presented. As used in this prospectus, GAAP refers to general accepted accounting principles in the United States of America. Pursuant to the requirements of Regulation G, we have provided reconciliations of the non-GAAP financial measures to the most directly comparable GAAP financial measures.

We define FFO as net income available to common stockholders, adjusted for the effects of asset dispositions and certain non-cash items, primarily depreciation and amortization. We believe that FFO is an important supplemental measure of our operating performance. Because the historical cost accounting convention used for real estate assets requires depreciation (except on land), such accounting presentation implies that the value of real estate assets diminishes predictably over time, while real estate values instead have historically risen or fallen with market conditions. The term FFO was designed by the real estate industry to address this issue. FFO herein is not necessarily comparable to FFO of other real estate investment trusts, or REITs, that do not use the same definition or implementation guidelines or interpret the standards differently from us.

Management uses FFO as one of several criteria to measure operating performance of our business. We offer this measure to assist the users of our financial statements in analyzing our performance; however, this is not a measure of financial performance under GAAP and should not be considered a measure of liquidity, an alternative to net income or an indicator of any other performance measure determined in accordance with GAAP. Investors and potential investors in our securities should not rely on this measure as a substitute for any GAAP measure, including net income.

In February 2004, the National Association of Real Estate Investment Trusts, or NAREIT, informed its member companies that it was adopting the position of the SEC with respect to asset impairment charges and would no longer recommend that impairment write-downs be excluded from FFO. In the tables included in this prospectus, we have applied this interpretation and have not excluded asset impairment charges in calculating our FFO. As a result, our FFO may not be comparable to similar measures reported in previous disclosures. According to NAREIT, there is inconsistency among NAREIT member companies as to the adoption of this interpretation of FFO. Therefore, a comparison of our FFO results to another company's FFO results may not be meaningful.

PROSPECTUS SUMMARY

This summary highlights the key information contained in this prospectus. Because it is only a summary, it does not contain all of the information you should consider before making an investment decision. You should read carefully this entire prospectus. In particular, you should read the section titled "Risk Factors," and our financial statements and the notes relating thereto incorporated by reference into this prospectus. All references to "we," "our," "us," and similar terms in this prospectus refer to Omega Healthcare Investors, Inc. together with its subsidiaries through which it operates. Unless otherwise indicated, the non-financial information presented herein is as of the date of this prospectus.

Our Company

We are a self-administered REIT investing in income-producing healthcare facilities, principally long-term care facilities located in the United States. We provide lease or mortgage financing to qualified operators of skilled nursing facilities and, to a lesser extent, assisted living and acute care facilities. We have historically financed investments through borrowings under our revolving credit facilities, private placements or public offerings of debt and equity securities, the assumption of secured indebtedness or a combination of these methods.

Our portfolio of investments at March 31, 2004 consisted of 209 healthcare facilities, located in 28 states and operated by 40 third-party operators. This portfolio is made up of:

- 152 long-term healthcare facilities and two rehabilitation hospitals owned and leased to third-parties;
- fixed rate mortgages on 51 long-term healthcare facilities; and
- four long-term healthcare facilities that were recovered from customers and are currently closed.

As of March 31, 2004, our gross investments in healthcare facilities, net of impairments, totaled \$811.6 million. In addition, we also held miscellaneous investments of approximately \$30 million, consisting primarily of secured loans to third-party operators of our facilities.

Our Property Investments

We own a diversified portfolio of assets. The following table summarizes our property investments as of March 31, 2004:

Investment Structure/Operator	No. Of Beds	No. Of Facilities	Occupancy Percentage(1)	Gross Investment (In thousands)
Purchase/Leaseback				
Sun Healthcare Group, Inc.	3,561	33	85	\$ 156,761
Advocat, Inc.	2,997	29	77	91,567
Seacrest Healthcare	950	7	88	55,020
Claremont Health Care Holdings, Inc.	268	2	95	20,200
Alden Management Services, Inc	868	4	56	31,727
Harborside Healthcare Corporation	465	4	84	22,868
Haven Healthcare	442	4	95	22,387
Alterra Healthcare Corporation	273	7	75	22,216
StoneGate Senior Care LP	664	6	84	21,781
CommuniCare Health Services	260	2	60	20,300
Infinia Properties of Arizona, LLC	378	4	69	17,874
USA Healthcare, Inc.	550	5	75	14,879
Conifer Care Communities, Inc.	195	3	87	14,365
Senior Management	386	3	83	13,463
Washington N&R, LLC	286	2	80	12,152
Peak Medical of Idaho, Inc.	224	2	70	10,500
HQM of Floyd County, Inc.	643	6	87	36,200
Triad Health Management of Georgia II, LLC	304	2	99	10,000
Mark Ide Limited Liability Company	851	8	78	24,023
The Ensign Group, Inc.	271	3	93	9,656
Lakeland Investors, LLC	300	1	62	8,496
Hickory Creek Healthcare Foundation, Inc.	138	2	89	7,250
American Senior Communities, LLC	78	2	73	6,195
Liberty Assisted Living Centers, LP	120	1	100	5,995
Emeritus Corporation	52	1	72	5,674
Longwood Management Corporation	185	2	93	5,200
Eldorado Care Center, Inc. & Magnolia Manor, Inc.	167	2	46	5,100
Nexion Management	131	1	96	4,603
LandCastle Diversified LLC	238	2	62	3,900
Lamar Healthcare, Inc.	102	1	68	2,540
Carter Care Centers, Inc.	117	2	85	2,878
Generations Healthcare, Inc.	59	1	87	2,507
	16,523	154	81	688,277
Closed Facilities				
Closed Facilities	—	4	—	4,088
	—	4	—	4,088

Fixed Rate Mortgages

Mariner Health Care, Inc.	1,618	12	94	59,688
Essex Healthcare Corporation	633	6	76	14,314
Advocat, Inc.	423	4	82	12,706
Parthenon Healthcare, Inc.	300	2	81	10,815
Hickory Creek Healthcare Foundation, Inc.	667	15	71	10,016
Tiffany Care Centers, Inc.	319	5	75	4,471
Texas Health Enterprises/HEA Mgmt. Group, Inc	450	3	67	3,060
Evergreen Healthcare	191	2	66	2,043
Covenant Care Midwest, Inc.	150	1	60	1,652
Paris Nursing Home, Inc.	144	1	70	460
	<u>4,895</u>	<u>51</u>	<u>82</u>	<u>119,225</u>
Total	21,418	209	81	\$ 811,590

(1) Generally represents data for the 12 month period ended March 31, 2004.

Recent Developments*New Credit Facility Increased to \$175 Million*

On April 30, 2004, we exercised our right to increase the revolving commitments under our new \$125 million credit facility by an additional \$50 million, to \$175 million. All other terms of the credit facility, which closed on March 22, 2004, remain the same. Bank of America, N.A. serves as administrative agent for the credit facility.

9.25% Series A Preferred Redemption

On April 30, 2004, we fully redeemed our 9.25% Series A Cumulative Preferred Stock (NYSE:OHI PrA) ("Series A"). We redeemed the 2.3 million shares of Series A at a price of \$25.57813, comprising the \$25 liquidation value and accrued dividend. Under FASB-EITF Issue D-42, "The Effect on the Calculation of Earnings per Share for the Redemption or Induced Conversion of Preferred Stock," the repurchase of the Series A preferred stock resulted in a non-cash charge to net income available to common shareholders of approximately \$2.3 million reflecting the write-off of unamortized costs of issuance of the Series A preferred stock and was recorded in the second quarter. This non-cash charge did not have any effect on our net worth.

New Investments

On April 1, 2004, we purchased three skilled nursing facilities, representing 399 beds for a total investment of \$26.0 million. Two of the facilities are located in Vermont, with the third located in Connecticut. The facilities were combined into an existing master lease with Haven Healthcare. Rent under the master lease was increased by approximately \$2.7 million for the first lease year commencing April 1, 2004, with annual increases thereafter. The term of the master lease had been increased to ten years on January 1, 2004 and runs through December 31, 2013, followed by two ten-year renewal options. We received a security deposit equivalent to three months of the incremental rent.

On April 30, 2004, we closed on the purchase of two skilled nursing facilities, representing 477 beds for a total investment of \$9.4 million. The purchase price included funds for capital expenditures, additional bed licenses and transaction costs. Both facilities are located in Texas and were combined

into an existing master lease with Senior Management Services. Rent under the master lease was increased by approximately \$1.0 million for the first lease year commencing May 1, 2004, with annual increases thereafter. The term of the master lease has been increased to ten years, and is followed by two ten year renewal options. During the first lease year, the operator will fund a security deposit equivalent to approximately four months of the incremental rent.

Mortgage Repayments

On April 6, 2004, we received approximately \$4.6 million in proceeds on a mortgage loan payoff. We held mortgages on five facilities located in Missouri, representing 319 beds, which produced approximately \$0.5 million of annual interest revenue in 2003.

Corporate Information

We are a Maryland corporation. Our principal executive office is located at 9690 Deereco Road, Suite 100, Timonium, Maryland 21093, and our telephone number is (410) 427-1700. Our web address is www.omegahealthcare.com. Information contained on our website does not constitute part of this prospectus.

The Exchange Offer

The following summarizes the terms of this exchange offer. You should read the discussion under the heading "The Exchange Offer" for further information regarding this exchange offer and resale of the exchange notes.

Securities to be Exchanged

On March 22, 2004, we issued \$200,000,000 in aggregate principal amount of initial notes to the initial purchasers in a transaction exempt from the registration requirements of the Securities Act. The terms of the exchange notes and the initial notes are substantially identical in all material respects, except that the exchange notes will be freely transferable by the holders thereof except as otherwise provided in this prospectus. See "Description of Notes."

The Exchange Offer

For each initial note surrendered to us pursuant to the exchange offer, the holder of such initial note will receive an exchange note having a principal amount equal to that of the surrendered initial note. Exchange notes will only be issued in denominations of \$1,000 and integral multiples of \$1,000. The form and terms of the exchange notes will be substantially the same as the form and terms of the surrendered initial notes. The exchange notes will evidence the same indebtedness as, and will replace the initial notes tendered in exchange therefor and will be issued pursuant to, and entitled to the benefits of, the indenture governing the initial notes. As of the date of this prospectus, initial notes representing \$200,000,000 aggregate principal amount are outstanding.

Under existing SEC interpretations, the exchange notes would in general be freely transferable after the exchange offer without further registration under the Securities Act; provided that, in the case of broker-dealers, a prospectus meeting the requirements of the Securities Act is delivered as required.

Each holder of initial notes that wishes to exchange such initial notes for exchange notes in the exchange offer will be required to make certain representations, including representations:

- that any exchange notes to be received by it will be acquired in the ordinary course of its business;
- it has no arrangement with any person to participate in the distribution of the exchange notes; and
- it is not an "affiliate," as defined in the Securities Act, of ours or any of our subsidiaries, or if it is an affiliate, it will comply with the registration and prospectus delivery requirements of the Securities Act to the extent applicable.

In addition, if the holder is not a broker-dealer, it will be required to represent that it is not engaged in, and does not intend to engage in, the distribution of the exchange notes. If the holder is a broker-dealer that will receive exchange notes for its own account in exchange for notes that were acquired as a result of market-making activities or other trading activities, it will be required to acknowledge that it will deliver a prospectus in connection with any resale of such exchange notes.

Registration Rights Agreement

We sold the initial notes on March 22, 2004, in a private offering in reliance on Section 4(2) of the Securities Act. The initial notes were immediately resold by the initial purchasers in reliance on Rule 144A under the Securities Act. In connection with the sale, we entered into the registration rights agreement with the initial purchasers requiring us to make this exchange offer. For a more detailed discussion of the registration rights agreement please see "The Exchange Offer—Purpose and Effect; Registration Rights."

Expiration Date

This exchange offer will expire at 5:00 p.m., New York City time, on _____, 2004, or a later date and time if we extend it.

Withdrawal

You may withdraw your tender of initial notes at any time before the exchange offer expires. Any initial notes so withdrawn will be deemed not to have been validly tendered for purposes of the exchange offer. The initial notes will be credited to an account maintained with DTC for the initial notes.

Interest on the Exchange Notes and the Initial Notes

We will pay interest on the exchange notes twice a year, on each April 1 and October 1, beginning October 1, 2004. No additional interest will be paid on initial notes tendered and accepted for exchange.

Procedures for Tendering Initial Notes

A holder who wishes to tender initial notes in the exchange offer must transmit to the exchange agent an agent's message, which agent's message must be received by the exchange agent prior to 5:00 p.m., New York City time, on the expiration date. In addition, the exchange agent must receive a timely confirmation of book-entry transfer of the initial notes into the exchange agent's account at DTC under the procedure for book-entry transfers described in "The Exchange Offer—Procedures for Tendering Initial Notes."

Exchange Agent

U.S. Bank National Association is serving as exchange agent in connection with this exchange offer.

U.S. Federal Income Tax Considerations

Generally, a holder of initial notes will not recognize taxable gain or loss on the exchange of initial notes for exchange notes pursuant to the exchange offer. See "Certain United States Federal Income Tax Considerations."

Accounting Treatment

We will not recognize any gain or loss for accounting purposes in connection with the exchange offer. See "The Exchange Offer—Accounting Treatment."

Effect of Not Tendering

Initial notes that are not tendered or that are tendered but not accepted will, following the completion of this exchange offer, continue to be subject to the existing restrictions upon transfer. Under certain circumstances, holders of the initial notes may request that we file a shelf registration statement registering such notes under the Securities Act. For a more detailed description of our obligation to file a shelf registration statement, see "The Exchange Offer—Consequences of Failure to Exchange Initial Notes."

Description of Exchange Notes

The following summarizes the terms of the exchange notes. You should read the discussion under the heading "Description of Notes" for further information regarding the exchange notes.

Issuer	Omega Healthcare Investors, Inc.
Securities Offered	\$200,000,000 principal amount of 7% senior notes due 2014.
Maturity	April 1, 2014.
Interest Rate	7% per year (calculated using a 360-day year).
Interest Payment Dates	October 1 and April 1, beginning on October 1, 2004. Interest will accrue from the issue date of the notes.
Ranking	<p>The notes will be unsecured senior obligations of the issuer and will rank equally with our existing and future senior unsecured debt and senior to all of our existing and future subordinated debt. The guarantees by our subsidiaries will rank equally with existing and future senior unsecured debt of such subsidiaries and senior to existing and future subordinated debt of such subsidiaries. The notes and the related guarantees will be effectively subordinated to all of our secured indebtedness and that of the guarantors.</p> <p>As of March 31, 2004, we and our subsidiaries had \$313.5 million of senior debt, of which none was secured. On the same date, we had approximately \$102.9 million of availability under our new senior credit facility.</p>
Guarantees	The notes will be unconditionally guaranteed by our existing or future subsidiaries that guarantee our senior credit facility or any of our other indebtedness.
Optional Redemption	We cannot redeem the notes until April 1, 2009. Thereafter, we may redeem some or all of the notes at the redemption prices listed in the "Description of Notes" section under the heading "Optional Redemption," plus accrued and unpaid interest to the date of redemption.
Optional Redemption After Public Equity Offerings	<p>At any time (which may be more than once) on or before April 1, 2007, we can choose to redeem up to 35% of the outstanding notes with money that we raise in one or more equity offerings, as long as:</p> <ul style="list-style-type: none">• we pay 107% of the face amount of the notes, plus interest;• we redeem the notes within 90 days of completing the equity offering; and• at least 65% of the aggregate principal amount of notes issued remains outstanding afterwards.

Change of Control Offer	<p>If a change of control occurs, we must give holders of the notes the opportunity to sell us their notes at 101% of their face amount, plus accrued and unpaid interest to the date of repurchase. We might not be able to pay you the required price for notes you present to us at the time of a change of control, because:</p>
	<ul style="list-style-type: none"> • we might not have enough funds at that time; or • the terms of our other senior debt may prevent us from paying.
Asset Sale Proceeds	<p>If we or our subsidiaries engage in asset sales, we generally must either invest the net cash proceeds from such sales in our business within a period of time, permanently repay debt under our new senior credit facility or make an offer to repurchase a principal amount of the notes equal to the excess net cash proceeds. The purchase price of the notes will be 100% of their principal amount, plus accrued and unpaid interest to the date of repurchase.</p>
Certain Indenture Provisions	<p>The indenture governing the notes will contain covenants limiting our (and all of our subsidiaries') ability to:</p>
	<ul style="list-style-type: none"> • incur additional debt;
	<ul style="list-style-type: none"> • pay dividends or distributions on our capital stock or repurchase our capital stock or repay our indebtedness;
	<ul style="list-style-type: none"> • make certain investments;
	<ul style="list-style-type: none"> • create liens on our assets to secure debt;
	<ul style="list-style-type: none"> • enter into transactions with affiliates;
	<ul style="list-style-type: none"> • merge or consolidate with another company; and • transfer and sell assets.
	<p>In addition, the indenture governing the notes will require us to maintain a minimum ratio of unencumbered assets to unsecured indebtedness. These covenants are subject to a number of important limitations and exceptions.</p>
Suspension of Covenants	<p>Under the indenture governing the notes, in the event, and only for as long as, the notes are rated investment grade and no default or event of default has occurred or is continuing, many of the covenants above will not apply to us.</p>
No Public Market	<p>There is no public market for the exchange notes. Although the initial purchasers have informed us that they intend to make a market in the exchange notes, they are not obligated to do so and they may discontinue market-making at any time without notice. Accordingly, we cannot assure you that a liquid market for the exchange notes will develop or be maintained.</p>

Required Approvals

Other than the registration of the exchange notes under the Securities Act, and compliance with federal securities laws, we are not aware of any state or federal regulatory requirements that must be complied with in connection with the exchange offer.

Dissenters and Appraisal Rights

No dissenter's rights or rights of appraisal exist in connection with the exchange offer.

Risk Factors

Before making an investment decision, you should carefully consider all the information set forth in this prospectus and, in particular, should evaluate the specific factors set forth under the section "Risk Factors."

Forward-Looking Statements

Certain statements in this prospectus or in documents incorporated herein by reference may constitute "forward-looking" statements as defined in Section 27A of the Securities Act, Section 21E of the Exchange Act the Private Securities Litigation Reform Act of 1995, or the PSLRA, or in releases made by the SEC, all as may be amended from time to time. Any such forward-looking statements reflect our beliefs and assumptions and are based on information currently available to us. Forward-looking statements are only predictions and involve known and unknown risks, uncertainties and other factors that are, in some cases, beyond our control and that may cause our actual results, performance or achievements, or industry results, to be materially different from any future results, performance or achievements expressed or implied by such forward-looking statements. These cautionary statements are being made pursuant to the Securities Act, the Exchange Act and the PSLRA with the intention of obtaining the benefits of the "safe harbor" provisions of such laws. Omega cautions investors that any forward-looking statements we make are not guarantees or indicative of future performance. For additional information regarding factors that may cause our results of operations to differ materially from those presented herein, please see "Risk Factors" contained in this prospectus.

You can identify forward-looking statements as those that are not historical in nature, particularly those that use terminology such as "may," "will," "should," "expect," "anticipate," "contemplate," "estimate," "believe," "plan," "project," "predict," "potential" or "continue," or the negative of these, or similar terms. These forward-looking statements may include, but are not limited to:

- statements contained in "Risk Factors";
- statements contained in "Management's Discussion and Analysis of Financial Condition and Results of Operations" and the notes to our consolidated financial statements incorporated by reference into this prospectus, such as our ability to meet our liquidity needs, scheduled debt and interest payments and expected future capital expenditure requirements; the expected changes in and effects of government regulation on our operators and our business; the expected costs and certain expenses in fiscal 2004 and the foreseeable future; and estimates in our critical accounting policies;
- statements contained in "Business" incorporated by reference into this prospectus, such as those concerning our business strategy, competitive strengths, environmental matters and legal proceedings; and
- statements throughout this prospectus concerning our new senior credit facility and the notes offered hereby.

In evaluating these forward-looking statements, you should consider the following factors, as well as others contained in our public filings from time to time, which may cause our actual results to differ materially from any forward-looking statement:

- those items discussed in "Risk Factors";
- uncertainties relating to the business operations of the operators of our assets, including those relating to reimbursement by third-party payors, regulatory matters and occupancy levels;
- the ability of any operators in bankruptcy to reject unexpired lease obligations, modify the terms of our mortgages and impede our ability to collect unpaid rent or interest during the process of a bankruptcy proceeding and retain security deposits for the debtors' obligations;
- our ability to sell closed assets on a timely basis and at terms that allow us to realize the carrying value of these assets;
- our ability to negotiate appropriate modifications to the terms of our new senior credit facility;
- our ability to manage, re-lease or sell any owned and operated facilities;
- the availability and cost of capital;
- competition in the financing of healthcare facilities;
- regulatory and other changes in the healthcare sector;
- the effect of economic and market conditions generally and, particularly, in the healthcare industry;
- changes in interest rates;
- the amount and yield of any additional investments;
- changes in tax laws and regulations affecting REITs; and
- changes in the ratings of our debt and preferred securities.

Any subsequent written or oral forward-looking statements attributable to us or persons acting on our behalf are expressly qualified in their entirety by the cautionary statements set forth or referred to above, as well as the risk factors contained in this prospectus. Except as required by law, we disclaim any obligation to update such statements or to publicly announce the result of any revisions to any of the forward-looking statements contained in this prospectus to reflect future events or developments.

RISK FACTORS

You should carefully consider the risk factors set forth below, as well as the other information contained in this prospectus. The risks described below are not the only risks facing us. Additional risks and uncertainties not currently known to us or that we currently deem to be immaterial may also materially and adversely affect our business operations. Any of the following risks could materially adversely affect our business, financial condition or results of operations. In such case you may lose all or part of your original investment.

Risks Relating to The Exchange Offer

Our substantial level of indebtedness could adversely affect our financial condition and prevent us from fulfilling our obligations under the notes.

We have a substantial amount of debt requiring significant interest payments. On March 31, 2004, we had a total debt of approximately \$313.5 million, of which \$10.0 million consisted of borrowings under our new credit facility. We also have our outstanding initial notes and \$100 million in aggregate principal amount of our 6.95% notes due 2007. We had stockholder's equity of approximately \$450.0 million at March 31, 2004. As of March 31, 2004, our capitalization and ratio of total debt to total capitalization were as follows (in thousands):

New senior credit facility	\$	10,000
Total indebtedness under the initial notes		200,000
6.95% notes due 2007		100,000
Other long term borrowings		3,520
		<hr/>
Total debt	\$	313,520
Total stockholders' equity		449,950
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Total capitalization	\$	763,470
		<hr/>
Total debt to total capitalization		41.1%
		<hr/>

Our substantial indebtedness could have important consequences to you. For example, it could:

- make it more difficult for us to satisfy our obligations with respect to the notes;
- increase our vulnerability to general adverse economic and industry conditions;
- limit our ability to obtain additional financing to fund future working capital, capital expenditures and other general corporate requirements, or to carry out other aspects of our business plan;
- require us to dedicate a substantial portion of our cash flow from operations to payments on indebtedness, thereby reducing the availability of such cash flow to fund working capital, capital expenditures and other general corporate requirements, or to carry out other aspects of our business plan;
- require us to pledge as collateral substantially all of our assets;
- require us to maintain certain debt coverage and financial ratios at specified levels, thereby reducing our financial flexibility;
- limit our ability to make material acquisitions or take advantage of business opportunities that may arise;
- expose us to fluctuations in interest rates, to the extent our borrowings bear variable rates of interests;

- limit our flexibility in planning for, or reacting to, changes in our business and industry; and
- place us at a competitive disadvantage compared to our competitors that have less debt.

In addition, the indenture governing the notes and our new senior credit facility contain financial and other restrictive covenants limiting our ability to engage in activities that may be in our long-term best interests. Our failure to comply with those covenants could result in an event of default, which, if not cured or waived, could result in the acceleration of all of our debts.

Your right to receive payment on the notes will be effectively subordinated to our obligations under the senior secured credit facility and certain other secured indebtedness.

The notes will not be secured. Our obligations and the obligations of the subsidiary guarantors under our new senior credit facility are secured by a first priority security interest on substantially all of our and the subsidiary guarantors' assets. Any borrowings by us or the subsidiary guarantors under the new senior credit facility will be senior in payment rights to these notes. In the event of our liquidation or insolvency, or if any of our secured indebtedness is accelerated, the assets securing such indebtedness will first be applied to repay our obligations under our secured indebtedness in full and then to repay our obligations under our unsecured indebtedness, including the notes. As a result, the notes are effectively subordinated to our new senior credit facility and our other secured indebtedness to the extent of the value of the assets securing that indebtedness. The holders of the notes would, in all likelihood recover ratably less than the lenders of our secured indebtedness in the event of our bankruptcy or insolvency. As of March 31, 2004, we have no senior secured debt and other structurally senior debt outstanding, excluding \$102.9 million of availability under the new senior credit facility.

Our subsidiaries hold most of our assets and conduct most of our operations and, unless they are subsidiaries that guarantee the notes, they are not obligated to make payments on the notes.

Most of our operations are conducted through our subsidiaries. Therefore, we depend on the cash flow of our subsidiaries to meet our obligations under the notes. Our subsidiaries are separate and distinct legal entities and, except for the existing and future domestic subsidiaries that will be subsidiary guarantors of the notes, they will have no obligation, contingent or otherwise, to pay amounts due under the notes or to make any funds available to pay those amounts, whether by dividend, distribution, loan or other payments. If there are any non-guarantor subsidiaries, the creditors of those non-guarantor subsidiaries will have direct claims on those subsidiaries and their assets, the claims of holders of the notes would be "structurally subordinated" to any liabilities of our future non-guarantor subsidiaries. This means that the creditors of the non-guarantor subsidiaries have priority in their claims on the assets of our subsidiaries over our creditors. Our operating subsidiaries' ability to make loans, distributions or other payments to us will depend on their earnings, business, tax considerations and legal and contractual restrictions, which may adversely impact our ability to pay interest and principal due on the notes.

Federal and state fraudulent transfer and conveyance laws may permit a court to void the notes and the guarantees, and, if that occurs, you may not receive any payments on the notes.

The issuance of the notes and the guarantees may be subject to review under federal and state fraudulent transfer and conveyance statutes. While the relevant laws may vary from state to state, under such laws the payment of consideration will be a fraudulent transfer or conveyance if (1) we paid the consideration with the intent of hindering, delaying or defrauding creditors or (2) we or any of the guarantors, as applicable, received less than reasonably equivalent value or fair consideration in return

for issuing either the notes or a guarantee, and, in the case of (2) only, one of the following is also true:

- we or any of the guarantors were or was insolvent or rendered insolvent by reason of the incurrence of the indebtedness;
- payment of the consideration left us or any of the guarantors with an unreasonably small amount of capital to carry on our or such guarantor's business; or
- we or any of the guarantors intended to, or believed that we or it would, incur debts beyond our or its ability to pay as they mature.

If a court were to find that the issuance of the notes or a guarantee was a fraudulent transfer or conveyance, the court could void the payment obligations under the new notes or such guarantee or further subordinate the new notes or such guarantee to presently existing and future indebtedness of ours or such guarantor, or require the holders of the notes to repay any amounts received with respect to the notes or such guarantee. In the event of a finding that a fraudulent transfer or conveyance occurred, you may not receive any repayment on the notes. Further, the voidance of the notes could result in an event of default with respect to our other debt and that of our subsidiaries that could result in acceleration of such debt.

Generally, an entity would be considered insolvent if, at the time it incurred indebtedness:

- the sum of its debts, including contingent liabilities, were greater than the fair salable value of all its assets; or
- the present fair salable value of its assets were less than the amount that would be required to pay its probable liability on its existing debts and liabilities, including contingent liabilities, as they become absolute and mature; or
- it could not pay its debts as they become due.

We cannot be certain as to the standards a court would use to determine whether or not we or the guarantors were solvent at the relevant time, or regardless of the standard that a court uses, that the issuance of the new notes and the guarantees would not be subordinated to our or any guarantor's other debt. If any other subsidiary of ours guarantees the notes in the future, such guarantee will become subject to the same risks described above.

If any of the guarantees were legally challenged, such challenged guarantee could also be subject to the claim that, since the guarantee was incurred for our benefit, and only indirectly for the benefit of the guarantor, the obligations of the applicable guarantor were incurred for less than fair consideration. A court could thus void the obligations under the guarantees, subordinate them to the applicable guarantor's other debt or take other action detrimental to the holders of the notes.

The indenture for the notes and our new senior credit facility impose significant operating and financial restrictions on us, which may prevent us from capitalizing on business opportunities and taking some corporate actions.

The indenture for the notes and our new senior credit facility impose, and the terms of any future debt may impose, significant operating and financial restrictions on us. These restrictions, among other things, limit our ability and that of our subsidiaries to:

- incur or guarantee additional indebtedness;
- issue preferred stock;
- pay dividends or make other distributions to our stockholders;

- repurchase our stock;
- make other restricted payments and investments;
- create liens;
- incur restrictions on the ability of our or their subsidiaries to pay dividends or other payments to us or them;
- sell or otherwise dispose of certain assets;
- consolidate, merge or sell all of our assets;
- prepay, redeem or repurchase subordinated debt;
- enter into transactions with affiliates;
- engage in certain business activities; and
- incur indebtedness that is subordinated to any senior debt and senior in right of payment to the notes.

In addition, our new senior credit facility requires us to maintain specified financial ratios and satisfy other financial conditions tests. We cannot assure you that these covenants will not adversely affect our ability to finance our future operations or capital needs or to pursue available business opportunities or limit our ability to plan for or react to market conditions or meet capital needs or otherwise restrict our activities or business plans. A breach of any of these covenants or our inability to maintain the required financial ratios could result in a default in respect of the related indebtedness. If a default occurs, the relevant lenders could elect to declare the indebtedness, together with accrued interest and other fees, to be immediately due and payable and proceed against any collateral securing that indebtedness.

We may not have the ability to raise the funds necessary to finance any change of control offer required by the indenture governing the notes.

Upon the occurrence of certain specific kind of change of control events, we will be required to offer to repurchase all outstanding notes at 101% of their principal amount plus accrued and unpaid interest and additional interest, if any, to the date of repurchase. However, it is possible that we will not have sufficient funds at the time of the change of control to make any required repurchases of notes or that restrictions in our existing or future senior credit facilities will not allow such repurchases. In addition, certain important corporate events, such as leveraged recapitalizations that would increase the level of our indebtedness, would not constitute a "Change of Control" under the indenture.

If an active trading market for the notes does not develop, the liquidity and value of the notes could be harmed.

The exchange notes have been registered under the Securities Act. Although the exchange notes are eligible for trading, we cannot assure you that an active trading market will develop for the exchange notes. If no active trading market develops, you may not be able to resell your exchange notes at their fair market value or at all. Future trading prices of the exchange notes will depend on many factors, including, among other things, the success of this exchange offer, prevailing interest rates, our operating results and the market for similar securities. We may or may not apply for listing of the exchange notes on a national securities exchange at some point in the future.

Risks Related to the Operators of Our Facilities

Our financial position could be weakened and our ability to fulfill our obligations under the notes could be limited if any of our major operators were unable to meet their obligations to us or failed to renew or extend their relationship with us as their lease terms expire, or if we were unable to lease or re-lease our facilities or make mortgage loans on economically favorable terms. These adverse developments could arise due to a number of factors, including those listed below.

Our recent efforts to restructure and stabilize our portfolio may not prove to be successful.

In large part as a result of the 1997 changes in Medicare reimbursement of services provided by skilled nursing facilities and reimbursement cuts imposed under state Medicaid programs, a number of operators of our properties have encountered significant financial difficulties during the last several years. In 1999, our investment portfolio consisted of 216 properties and our largest public operators (by investment) were Sun Healthcare Group, Inc., or Sun, Integrated Health Services, or IHS, Advocat, Inc., or Advocat, and Mariner Health Care, Inc., or Mariner. Some of these operators, including Sun, IHS and Mariner, subsequently filed for bankruptcy protection. Other of our operators were required to undertake significant restructuring efforts. We have restructured our arrangements with many of our operators whereby we have renegotiated lease and mortgage terms, re-leased properties to new operators and have closed and/or disposed of properties. At March 31, 2004, our investment portfolio consisted of 209 properties and our largest public operators (by investment) were Sun (19.3%), Advocat (12.8%) and Mariner (7.4%). Our largest private company operators (by investment) were Seacrest Healthcare (6.8%) and HQM of Floyd County Inc. (4.5%).

We continue to have ongoing restructuring discussions with Claremont regarding two facilities Claremont currently leases from us. We might not be successful in reaching a definitive agreement with Claremont. We are also aware of four properties in our portfolio located in Illinois where facility operations are currently insufficient to meet rental payments due to us under our leases for these facilities. These lease payments are currently being paid by the lessee from funds other than those generated by the facilities. It is possible that we will need to take steps to restructure this portion of our portfolio, or other properties in our portfolio with respect to which our operators encounter financial difficulty. We cannot assure you that our recent efforts to restructure and stabilize our property portfolio will be successful.

The bankruptcy, insolvency or financial deterioration of our operators could delay our ability to collect unpaid rents or require us to find new operators for rejected facilities.

We are exposed to the risk that our operators may not be able to meet their obligations, which may result in their bankruptcy or insolvency. Although our leases and loans provide us the right to terminate an investment, evict an operator, demand immediate repayment and other remedies, the bankruptcy laws afford certain protections to a party that has filed for bankruptcy that may render these remedies unenforceable. In addition, an operator in bankruptcy may be able to restrict our ability to collect unpaid rent or mortgage payments during the bankruptcy case.

If one of our lessees seeks bankruptcy protection, Title 11 of the United States Code, or Bankruptcy Code, provides that a trustee in a liquidation or reorganization case under the Bankruptcy Code, or a debtor-in-possession in a reorganization case under the Bankruptcy Code, has the option to assume or reject the unexpired lease obligations of a debtor-lessee. However, our lease arrangements with operators who operate more than one of our facilities are generally made pursuant to a single master lease covering all of that operator's facilities leased from us. Subject to certain restrictions, a debtor-lessee under a master lease agreement would generally be required to assume or reject a master lease as a whole, rather than making the decision on a facility by facility basis, thereby preventing the debtor-lessee from assuming only the better performing facilities and terminating the leasing

arrangement with respect to the poorer performing facilities. Whether or not a court would require a master lease agreement to be assumed or rejected as a whole would depend on a number of factors, including applicable state law, the parties intent, whether the master lease agreement and related documents were executed contemporaneously, the nature and purpose of the relevant documents, whether there was separate and distinct consideration for each lease, and the provisions contained in the relevant documents, including whether the relevant documents are interrelated and contain ample cross-references. Therefore, it is not possible to predict how a bankruptcy court would decide this issue.

- *Assumption of Leases.* In the event that an unexpired lease is assumed by or on behalf of the debtor-lessee, any defaults, other than those created by the financial condition of the debtor-lessee, the commencement of its bankruptcy case or the appointment of a trustee, would have to be cured and all the rental obligations thereunder generally would be entitled to a priority over other unsecured claims. Generally, unexpired leases must be assumed in their totality, however, a bankruptcy court has the power to refuse to enforce certain provisions of a lease, such as cross-default provisions or penalty provisions, that would otherwise prevent or limit the ability of a debtor-lessee from assuming or assuming and assigning to another party the unexpired lease.
- *Rejection of Leases.* Generally, the debtor-lessee is required to make rent payments to us during its bankruptcy unless and until it rejects the lease. The rejection of a lease is deemed to be a pre-petition breach of the lease and the lessor will be allowed a pre-petition general unsecured claim that will be limited to any unpaid rent already due plus an amount equal to the rent reserved under the lease, without acceleration, for the greater of (a) one year and (b) fifteen percent (15%), not to exceed three years, of the remaining term of such lease, following the earlier of (i) the petition date and (ii) repossession or surrender of the leased property. Although the amount of a lease rejection claim is subject to the statutory cap described above, the lessor should receive the same percentage recovery on account of its claim as other holders of allowed pre-petition unsecured claims receive from the bankruptcy estate. If the debtor-lessee rejects the lease, the facility would be returned to us. In that event, if we were unable to re-lease the facility to a new operator on favorable terms or only after a significant delay, we could lose some or all of the associated revenue from that facility for an extended period of time.

If an operator defaults under one of our mortgage loans, we may have to foreclose on the mortgage or protect our interest by acquiring title to the property and thereafter making substantial improvements or repairs in order to maximize the facility's investment potential. Operators may contest enforcement of foreclosure or other remedies, seek bankruptcy protection against our exercise of enforcement or other remedies and/or bring claims for lender liability in response to actions to enforce mortgage obligations. If an operator seeks bankruptcy protection, the automatic stay provisions of the federal bankruptcy law would preclude us from enforcing foreclosure or other remedies against the operator unless relief is obtained from the court. High "loan to value" ratios or declines in the value of the facility may prevent us from realizing an amount equal to our mortgage loan upon foreclosure.

The receipt of liquidation proceeds or the replacement of an operator that has defaulted on its lease or loan could be delayed by the approval and licensure process of any federal, state or local agency necessary for the replacement of the previous operator licensed to manage the facility. In some instances, we may take possession of a property and such action could expose us to successor liabilities. These events, if they were to occur, could reduce our revenue and operating cash flow.

Operators that fail to comply with governmental reimbursement programs such as Medicare or Medicaid, licensing and certification requirements, fraud and abuse regulations or new legislative developments may be unable to meet their obligations to us.

Our operators are subject to numerous federal, state and local laws and regulations that are subject to frequent and substantial changes (sometimes applied retroactively) resulting from legislation,

adoption of rules and regulations, and administrative and judicial interpretations of existing law. The ultimate timing or effect of these changes cannot be predicted. These changes may have a dramatic effect on our operators' costs of doing business and the amount of reimbursement by both government and other third-party payors. The failure of any of our operators to comply with these laws, requirements and regulations could adversely affect their ability to meet their obligations to us. In particular:

- *Medicare and Medicaid.* A significant portion of our skilled nursing facility operators' revenue is derived from governmentally-funded reimbursement programs, primarily Medicare and Medicaid, and failure to maintain certification and accreditation in these programs would result in a loss of funding from such programs. Loss of certification or accreditation could cause the revenues of our operators to decline, potentially jeopardizing their ability to meet their obligations to us. In that event, our revenues from those facilities could be reduced, which could in turn cause the value of our affected properties to decline. State licensing and Medicare and Medicaid laws also require operators of nursing homes and assisted living facilities to comply with extensive standards governing operations. Federal and state agencies administering those laws regularly inspect such facilities and investigate complaints. Our operators and their managers receive notices of potential sanctions and remedies from time to time, and such sanctions have been imposed from time to time on facilities operated by them. If they are unable to cure deficiencies which have been identified or which are identified in the future, such sanctions may be imposed and if imposed may adversely affect our operators' revenues, potentially jeopardizing their ability to meet their obligations to us.
- *Licensing and Certification.* Our operators and facilities are subject to regulatory and licensing requirements of federal, state and local authorities and are periodically audited by them to confirm compliance. Failure to obtain licensure or loss or suspension of licensure would prevent a facility from operating or result in a suspension of reimbursement payments until all licensure issues have been resolved and the necessary licenses obtained or reinstated. Our skilled nursing facilities require governmental approval, in the form of a certificate of need that generally varies by state and is subject to change, prior to the addition or construction of new beds, the addition of services or certain capital expenditures. Some of our facilities may be unable to satisfy current and future certificate of need requirements and may for this reason be unable to continue operating in the future. In such event, our revenues from those facilities could be reduced or eliminated for an extended period of time.
- *Fraud and Abuse Regulations.* There are various extremely complex and largely uninterpreted federal and state laws governing a wide array of referrals, relationships and arrangements and prohibiting fraud by healthcare providers, including criminal provisions that prohibit filing false claims or making false statements to receive payment or certification under Medicare and Medicaid, or failing to refund overpayments or improper payments. Governments are devoting increasing attention and resources to anti-fraud initiatives against healthcare providers. The Health Insurance Portability and Accountability Act of 1996 and the Balanced Budget Act expanded the penalties for healthcare fraud, including broader provisions for the exclusion of providers from the Medicare and Medicaid programs. Furthermore, the Office of Inspector General of the U.S. Department of Health and Human Services, or OIG, in cooperation with other federal and state agencies, continues to focus on the activities of skilled nursing facilities in certain states in which we have properties. In addition, the federal False Claims Act allows a private individual with knowledge of fraud to bring a claim on behalf of the federal government and earn a percentage of the federal government's recovery. Because of these incentives, these so-called "whistleblower" suits have become more frequent. The violation of any of these regulations by an operator may result in the imposition of fines or other penalties that could jeopardize that operator's ability to make lease or mortgage payments to us or to continue operating its facility.

- *Legislative and Regulatory Developments.* Each year, legislative proposals are introduced or proposed in Congress and in some state legislatures that would affect major changes in the healthcare system, either nationally or at the state level. The Medicare Prescription Drug Improvement and Modernization Act of 2003, P. Law 108-173, which is one example of such legislation, was enacted in late 2003. The Medicare reimbursement changes for the long term care industry under this act are limited to a temporary increase in the per diem amount paid to skilled nursing facilities for residents who have AIDS. The significant expansion of other benefits for Medicare beneficiaries under this act, such as the expanded prescription drug benefit, could result in financial pressures on the Medicare program that might result in future legislative and regulatory changes with impacts for our operators. Other proposals under consideration include efforts by individual states to control costs by decreasing state Medicaid reimbursements, a federal "Patient Protection Act" to protect consumers in managed care plans, efforts to improve quality of care and reduce medical errors throughout the healthcare industry and hospital cost-containment initiatives by public and private payors. We cannot accurately predict whether any proposals will be adopted or, if adopted, what effect, if any, these proposals would have on operators and, thus, our business.

Regulatory proposals and rules are released on an ongoing basis that may have a major impact on the healthcare system generally and the skilled nursing and long-term care industries in particular.

Our operators depend on reimbursement from governmental and other third-party payors and reimbursement rates from such payors may be reduced.

Changes in the reimbursement rate or methods of payment from third-party payors, including the Medicare and Medicaid programs, or the implementation of other measures to reduce reimbursements for services provided by our operators has in the past, and could in the future, result in a substantial reduction in our operators' revenues and operating margins. Additionally, net revenue realizable under third-party payor agreements can change after examination and retroactive adjustment by payors during the claims settlement processes or as a result of post-payment audits. Payors may disallow requests for reimbursement based on determinations that certain costs are not reimbursable or reasonable or because additional documentation is necessary or because certain services were not covered or were not medically necessary. There also continue to be new legislative and regulatory proposals that could impose further limitations on government and private payments to healthcare providers. In some cases, states have enacted or are considering enacting measures designed to reduce their Medicaid expenditures and to make changes to private healthcare insurance. We cannot assure you that adequate reimbursement levels will continue to be available for the services provided by our operators, which are currently being reimbursed by Medicare, Medicaid or private third-party payors. Further limits on the scope of services reimbursed and on reimbursement rates could have a material adverse effect on our operators' liquidity, financial condition and results of operations, which could cause the revenues of our operators to decline and potentially jeopardize their ability to meet their obligations to us.

Our operators may be subject to significant legal actions that could subject them to increased operating costs and substantial uninsured liabilities, which may affect their ability to pay their lease and mortgage payments to us.

As is typical in the healthcare industry, our operators are often subject to claims that their services have resulted in resident injury or other adverse effects. Many of these operators have experienced an increasing trend in the frequency and severity of professional liability and general liability insurance claims and litigation asserted against them. The insurance coverage maintained by our operators may not cover all claims made against them nor continue to be available at a reasonable cost, if at all. In some states, insurance coverage for the risk of punitive damages arising from professional liability and general liability claims and/or litigation may not, in certain cases, be available to operators due to state law prohibitions or limitations of availability. As a result, our operators operating in these states may

be liable for punitive damage awards that are either not covered or are in excess of their insurance policy limits. We also believe that there has been, and will continue to be, an increase in governmental investigations of long-term care providers, particularly in the area of Medicare/Medicaid false claims, as well as an increase in enforcement actions resulting from these investigations. Insurance is not available to cover such losses. Any adverse determination in a legal proceeding or governmental investigation, whether currently asserted or arising in the future, could have a material adverse effect on an operator's financial condition. If an operator is unable to obtain or maintain insurance coverage, if judgments are obtained in excess of the insurance coverage, if an operator is required to pay uninsured punitive damages, or if an operator is subject to an uninsurable government enforcement action, the operator could be exposed to substantial additional liabilities.

One of our largest operators was recently served with six lawsuits by the State of Arkansas seeking substantial damages relating to patient care issues and alleged Medicaid false claims.

On February 19, 2004, Advocat announced that it had been served with six lawsuits by the State of Arkansas alleging violations by Advocat and certain of its subsidiaries of the Arkansas Abuse of Adults Act and the Arkansas Medicaid False Claims Act. In its announcement, Advocat stated that the complaints seek, in the aggregate, actual damages of approximately \$250,000 and fines and penalties in excess of \$45 million. Although Advocat stated its intention to vigorously defend itself against the subject allegations, Advocat further stated that it cannot predict the outcome of the subject lawsuits or the impact of the ultimate outcome on Advocat's financial condition, cash flows or results of operations. Advocat accounts for approximately 13.4% of our 2003 total revenues. In the event that there is an adverse outcome to Advocat in these lawsuits, or in the event that Advocat's business is otherwise adversely affected as a result of the lawsuits (for example, as a result of penalties imposed in connection with a settlement of the lawsuits, as a result of licensure revocation, admission holds or similar restrictions being imposed or as a result of a decline in business due to reputational issues), and Advocat is unable to pay its full monthly rental obligation to us, then we will experience a reduction of our rental income. Should such events occur, our income and cash flows from operations would be adversely affected. We are unable currently to predict how this matter may ultimately affect us.

Increased competition as well as increased operating costs have resulted in lower revenues for some of our operators and may affect the ability of our tenants to meet their payment obligations to us.

The healthcare industry is highly competitive and we expect that it may become more competitive in the future. Our operators are competing with numerous other companies providing similar healthcare services or alternatives such as home health agencies, life care at home, community-based service programs, retirement communities and convalescent centers. We cannot be certain the operators of all of our facilities will be able to achieve occupancy and rate levels that will enable them to meet all of their obligations to us. Our operators may encounter increased competition in the future that could limit their ability to attract residents or expand their businesses and therefore affect their ability to pay their lease or mortgage payments.

The market for qualified nurses, healthcare professionals and other key personnel is highly competitive and our operators may experience difficulties in attracting and retaining qualified personnel. Increases in labor costs due to higher wages and greater benefits required to attract and retain qualified healthcare personnel incurred by our operators could affect their ability to pay their lease or mortgage payments. This situation could be particularly acute in certain states that have enacted legislation establishing minimum staffing requirements.

Risks Related to Us and Our Operations

In addition to the operator related risks discussed above, there are a number of risks directly associated with us and our operations.

We rely on external sources of capital to fund future capital needs, and if we encounter difficulty in obtaining such capital, we may not be able to make future investments necessary to grow our business or meet maturing commitments.

In order to qualify as a REIT under the Internal Revenue Code of 1986, as amended, or the Code, we are required, among other things, to distribute each year to our stockholders at least 90% of our REIT taxable income. Because of this distribution requirement, we may not be able to fund, from cash retained from operations, all future capital needs, including capital needs to make investments and to satisfy or refinance maturing commitments. As a result, we rely on external sources of capital. If we are unable to obtain needed capital at all or only on unfavorable terms from these sources, we might not be able to make the investments needed to grow our business, or to meet our obligations and commitments as they mature, which could negatively affect the ratings of our debt and even, in extreme circumstances, affect our ability to continue operations. Our access to capital depends upon a number of factors over which we have little or no control, including general market conditions and the market's perception of our growth potential and our current and potential future earnings and cash distributions and the market price of the shares of our capital stock. Generally speaking, difficult capital market conditions in our industry during the past several years and our need to stabilize our portfolio have limited our access to capital. Our potential capital sources include, but are not limited to:

Equity Financing. As with other publicly-traded companies, the availability of equity capital will depend, in part, on the market price of our common stock which, in turn, will depend upon various market conditions and other factors that may change from time to time including:

- the extent of investor interest;
- the general reputation of REITs and the attractiveness of their equity securities in comparison to other equity securities, including securities issued by other real estate-based companies;
- our financial performance and that of our operators;
- the contents of analyst reports about us and the REIT industry;
- general stock and bond market conditions, including changes in interest rates on fixed income securities, which may lead prospective purchasers of our common stock to demand a higher annual yield from future distributions;
- our failure to maintain or increase our dividend, which is dependent, to a large part, on growth of funds from operations which in turn depends upon increased revenues from additional investments and rental increases; and
- other factors such as governmental regulatory action and changes in REIT tax laws.

The market value of the equity securities of a REIT is generally based upon the market's perception of the REIT's growth potential and its current and potential future earnings and cash distributions. Our failure to meet the market's expectation with regard to future earnings and cash distributions would likely adversely affect the market price of our common stock.

Debt Financing/Leverage. Financing for future investments and our maturing commitments may be provided by borrowings under our new senior credit facility, private or public offerings of debt, the assumption of secured indebtedness, mortgage financing on a portion of our owned portfolio or through joint ventures. We are subject to risks normally associated with debt financing, including the risks that our cash flow will be insufficient to make timely payments of interest, that we will be unable to refinance existing indebtedness and that the terms of refinancing will not be as favorable as the terms of existing indebtedness. If we are unable to refinance or extend principal payments due at maturity or pay them with proceeds from other capital transactions, our cash flow may not be sufficient in all years to pay distributions to our stockholders and to repay all maturing debt. Furthermore, if prevailing interest rates, changes in our debt ratings or other factors at the time of refinancing result in

higher interest rates upon refinancing, the interest expense relating to that refinanced indebtedness would increase, which could reduce our profitability and the amount of dividends we are able to pay. Moreover, additional debt financing increases the amount of our leverage.

Certain of our operators account for a significant percentage of our revenues.

Based on existing contractual rent and lease payments regarding the restructuring of certain existing investments, Advocat and Sun each account for over 10% of our current contractual monthly revenues, with Sun accounting for slightly over 20% of our current contractual monthly revenues. Additionally, our top five operators account for approximately 55% of our current contractual monthly revenues. The failure or inability of any of these operators to pay their obligations to us could materially reduce our revenues and net income, which could in turn reduce the amount of dividends we pay and cause our stock price to decline.

Unforeseen costs associated with the acquisition of new properties could reduce our profitability.

Our business strategy contemplates future acquisitions that may not prove to be successful. For example, we might encounter unanticipated difficulties and expenditures relating to any acquired properties, including contingent liabilities, or newly acquired properties might require significant management attention that would otherwise be devoted to our ongoing business. If we agree to provide funding to enable healthcare operators to build, expand or renovate facilities on our properties and the project is not completed, we could be forced to become involved in the development to ensure completion or we could lose the property. These costs may negatively affect our results of operations.

Our assets may be subject to impairment charges.

We periodically, but not less than annually, evaluate our real estate investments and other assets for impairment indicators. The judgment regarding the existence of impairment indicators is based on factors such as market conditions, operator performance and legal structure. If we determine that a significant impairment has occurred, we would be required to make an adjustment to the net carrying value of the asset, which could have a material adverse affect on our results of operations and funds from operations in the period in which the write-off occurs.

We may not be able to sell certain closed facilities for their book value.

From time to time, we close facilities and actively market such facilities for sale. To the extent we are unable to sell these properties for our book value, we may be required to take a non-cash impairment charge or loss on the sale, either of which would reduce our net income.

Our real estate investments are relatively illiquid.

Real estate investments are relatively illiquid and, therefore, tend to limit our ability to vary our portfolio promptly in response to changes in economic or other conditions. All of our properties are "special purpose" properties that could not be readily converted to general residential, retail or office use. Healthcare facilities that participate in Medicare or Medicaid must meet extensive program requirements, including physical plant and operational requirements, which are revised from time to time. Such requirements may include a duty to admit Medicare and Medicaid patients, limiting the ability of the facility to increase its private pay census beyond certain limits. Medicare and Medicaid facilities are regularly inspected to determine compliance, and may be excluded from the programs—in some cases without a prior hearing—for failure to meet program requirements. Transfers of operations of nursing homes and other healthcare-related facilities are subject to regulatory approvals not required for transfers of other types of commercial operations and other types of real estate. Thus, if the operation of any of our properties becomes unprofitable due to competition, age of improvements or other factors such that our lessee or mortgagor becomes unable to meet its obligations on the lease or

mortgage loan, the liquidation value of the property may be substantially less, particularly relative to the amount owing on any related mortgage loan, than would be the case if the property were readily adaptable to other uses. The receipt of liquidation proceeds or the replacement of an operator that has defaulted on its lease or loan could be delayed by the approval process of any federal, state or local agency necessary for the transfer of the property or the replacement of the operator with a new operator licensed to manage the facility. In addition, certain significant expenditures associated with real estate investment, such as real estate taxes and maintenance costs, are generally not reduced when circumstances cause a reduction in income from the investment. Should such events occur, our income and cash flows from operations would be adversely affected.

As an owner or lender with respect to real property, we may be exposed to possible environmental liabilities.

Under various federal, state and local environmental laws, ordinances and regulations, an owner of real property or a secured lender, such as us, may be liable in certain circumstances for the costs of removal or remediation of certain hazardous or toxic substances at, under or disposed of in connection with such property, as well as certain other potential costs relating to hazardous or toxic substances, including government fines and damages for injuries to persons and adjacent property. Such laws often impose liability without regard to whether the owner knew of, or was responsible for, the presence or disposal of such substances and liability may be imposed on the owner in connection with the activities of an operator of the property. The cost of any required remediation, removal, fines or personal or property damages and the owner's liability therefore could exceed the value of the property and/or the assets of the owner. In addition, the presence of such substances, or the failure to properly dispose of or remediate such substances, may adversely affect the owner's ability to sell or rent such property or to borrow using such property as collateral which, in turn, would reduce the owner's revenues.

Although our leases and mortgage loans require the lessee and the mortgagor to indemnify us for certain environmental liabilities, the scope of such obligations may be limited, and we cannot assure you that any such mortgagor or lessee would be able to fulfill its indemnification obligations.

The industry in which we operate is highly competitive. This competition may prevent us from raising prices at the same pace as our costs increase.

We compete for additional healthcare facility investments with other healthcare investors, including other REITs. The operators of the facilities compete with other regional or local nursing care facilities for the support of the medical community, including physicians and acute care hospitals, as well as the general public. Some significant competitive factors for the placing of patients in skilled and intermediate care nursing facilities include quality of care, reputation, physical appearance of the facilities, services offered, family preferences, physician services and price. If our cost of capital should increase relative to the cost of capital of our competitors, the spread that we realize on our investments may decline if competitive pressures limit or prevent us from charging higher lease or mortgage rates.

We are named as defendants in litigation arising out of professional liability and general liability claims relating to our previously owned and operated facilities which if decided against us, could adversely affect our financial condition.

We and several of our wholly-owned subsidiaries have been named as defendants in professional liability and general liability claims related to our owned and operated facilities. Other third-party managers responsible for the day-to-day operations of these facilities have also been named as defendants in these claims. In these suits, patients of certain previously owned and operated facilities have alleged significant damages, including punitive damages, against the defendants. The lawsuits are in various stages of discovery and we are unable to predict the likely outcome at this time. We continue to vigorously defend these claims and pursue all rights we may have against the managers of the facilities, under the terms of the management agreements. We have insured these matters, subject to self-insured retentions of various amounts. There can be no assurance that we will be successful in our

defense of these matters or in asserting our claims against various managers of the subject facilities or that the amount of any settlement or judgment will be substantially covered by insurance or that any punitive damages will be covered by insurance.

If we fail to maintain our REIT status, we will be subject to federal income tax on our taxable income at regular corporate rates.

We were organized to qualify for taxation as a REIT under Sections 856 through 860 of the Code. We believe we have conducted, and we intend to continue to conduct, our operations so as to qualify as a REIT. Qualification as a REIT involves the satisfaction of numerous requirements, some on an annual and some on a quarterly basis, established under highly technical and complex provisions of the Code for which there are only limited judicial and administrative interpretations and involve the determination of various factual matters and circumstances not entirely within our control. We cannot assure you that we will at all times satisfy these rules and tests.

If we were to fail to qualify as a REIT in any taxable year, as a result of a determination that we failed to meet the annual distribution requirement or otherwise, we would be subject to federal income tax, including any applicable alternative minimum tax, on our taxable income at regular corporate rates with respect to each such taxable year for which the statute of limitations remains open. Moreover, unless entitled to relief under certain statutory provisions, we also would be disqualified from treatment as a REIT for the four taxable years following the year during which qualification is lost. This treatment would significantly reduce our net earnings and cash flow because of our additional tax liability for the years involved, which could significantly impact our ability to pay interest and principal with respect to the notes.

To maintain our REIT status, we must distribute at least 90% of our taxable income each year.

We generally must distribute annually at least 90% of our taxable income to our stockholders to maintain our REIT status. As a result, those earnings will not be available to pay principal or interest with respect to the notes.

We are exposed to market risk due to the fact that borrowings under our new senior credit facility are or will be subject to wide fluctuations based on changing interest rates.

Market risk is the risk of loss arising from adverse changes in market rates and prices, such as interest rates, foreign currency exchange rates and commodity prices. Our primary exposure to market risk is interest rate risk associated with variable borrowings under our new senior credit facility. Since our new senior credit facility provides for variable rates, if market interest rates rise, so will our required interest payments on borrowings under the new senior credit facility. We do not currently have any mechanism in place to manage, or hedge, the market risk associated with our variable rate debt.

We depend upon our key employees and may be unable to attract or retain sufficient numbers of qualified personnel.

Our future performance depends to a significant degree upon the continued contributions of our executive management team and other key employees. Accordingly, our future success depends on our ability to attract, hire, train and retain highly skilled management and other qualified personnel. Competition for qualified employees is intense, and we compete for qualified employees with companies that may have greater financial resources than we have. Our employment agreements with our executive officers provide that their employment may be terminated by either party at any time. Consequently, we may not be successful in attracting, hiring, training and retaining the people we need, which would seriously impede our ability to implement our business strategy.

RATIO OF EARNINGS TO FIXED CHARGES

The following table sets forth our ratio of earnings to fixed charges on a reported basis for the periods indicated. Earnings consists of income from continuing operations plus fixed charges. Fixed charges consist of interest expense.

	Year Ended December 31,					Three Months
	1999	2000	2001	2002	2003	Ended March 31, 2004
RATIO OF EARNINGS TO FIXED CHARGES						
Income (loss) from continuing operations	\$ 18,966	\$ (43,250)	\$ (15,588)	\$ (3,744)	\$ 23,341	\$ (9,945)
Interest expense	42,947	42,400	33,204	27,381	23,388	24,253
Earnings	\$ 61,913	\$ (850)	\$ 17,616	\$ 23,637	\$ 46,729	\$ 14,308
Interest expense	\$ 42,947	\$ 42,400	\$ 33,204	\$ 27,381	\$ 23,388	\$ 24,253
Total fixed charges	\$ 42,947	\$ 42,400	\$ 33,204	\$ 27,381	\$ 23,388	\$ 24,253
Ratio of earnings to fixed charges	1.4x	*	*	*	2.0x	*

* Our earnings were insufficient to cover fixed charges by \$43,250, \$15,588, \$3,744 and \$9,945 in 2000, 2001, 2002 and the three-months ending March 31, 2004, respectively.

The following table gives effect to issuance of the notes, the application of the proceeds therefrom as described in "Use of Proceeds" and the effectiveness of our new senior credit facility, as if these transactions had occurred as of January 1, 2003 and January 1, 2004, respectively.

	Year Ended December 31, 2003	Three Months Ended March 31, 2004
RATIO OF EARNINGS TO FIXED CHARGES—PRO FORMA		
Income (loss) from continuing operations	\$ 2,789	\$ (13,095)
Interest expense	43,940	27,403
Earnings	\$ 46,729	\$ 14,308
Interest expense	\$ 43,940	\$ 27,403
Total fixed charges	\$ 43,940	\$ 27,403
Ratio of earnings to fixed charges	1.1x	*

* Our pro forma earnings for the three-months ending March 31, 2004 were insufficient to cover fixed charges by \$13,095.

USE OF PROCEEDS

We will not receive any proceeds from the exchange offer. The net proceeds to us from the sale of the initial notes in the March 22, 2004 offering was approximately \$194 million, after deducting the initial purchasers' discount and expenses of the offering. We used the net proceeds of the offering to repay borrowings under our GECC credit facility. The balance will be used for working capital and general corporate purposes.

CAPITALIZATION

The following table presents our capitalization as of March 31, 2004 on an actual basis. This table should be read in conjunction with our interim financial statements and other information incorporated by reference into this prospectus.

	As of March 31, 2004
	(In thousands)
Cash and cash equivalents	\$ 62,315
<i>Debt:</i>	
New senior credit facility(1)	\$ 10,000
6.95% Notes due 2007	100,000
Senior Notes due 2014 offered hereby	200,000
Other long-term borrowings	3,520
Total indebtedness	313,520
<i>Stockholders' Equity:</i>	
Preferred Stock \$1.00 par value; authorized—10,000 shares:	
Issued and Outstanding—2,300 shares Series A with an aggregate liquidation preference of \$57,500 as of March 31, 2004	57,500
Issued and Outstanding—2,000 shares Series B with an aggregate liquidation preference of \$50,000 as of March 31, 2004	50,000
Issued and Outstanding—4,740 shares Series D with and aggregate liquidation preference of \$118,488 as of March 31, 2004	118,488
Common Stock \$.10 par value:	
Authorized—100,000 shares; Issued and Outstanding—46,328	4,633
Additional paid in capital	541,594
Cumulative net earnings	163,977
Cumulative dividends paid	(447,499)
Cumulative dividends—Redemption	(38,743)
Total stockholders' equity	449,950
Total capitalization	\$ 763,470

- (1) Subject to certain conditions, we are able to borrow up to \$125 million under our new senior credit facility. Effective June 18, 2004, we exercised an option under our new senior credit facility increasing the credit facility from \$125 million to \$175 million.

SELECTED HISTORICAL FINANCIAL AND OTHER DATA

The following selected financial data should be read in conjunction with Item 7, "Management's Discussion and Analysis of Financial Condition and Results of Operations," and the consolidated financial statements and related notes appearing in our Annual Report on Form 10-K for the year ended December 31, 2003 and the unaudited consolidated financial statements and related notes appearing in our Quarterly Report on Form 10-Q for the three months ended March 31, 2004, each of which is incorporated by reference into this prospectus. The consolidated statements of operations for each of the five years in the period ended December 31, 2003 and the consolidated balance sheets as of December 31, 1999, 2000, 2001, 2002 and 2003 are derived from our audited consolidated financial statements and the unaudited consolidated statement of operations for the three-month periods ended March 31, 2003 and 2004, and the consolidated balance sheets as of March 31, 2003 and 2004 are derived from our unaudited consolidated financial statements.

Consolidated operating data:	Year ended December 31,					Three Months ended March 31,	
	1999	2000	2001	2002	2003	2003	2004
Revenues from core operations	\$ 120,385	\$ 98,325	\$ 88,082	\$ 90,699	\$ 84,080	\$ 22,122	\$ 21,536
Revenues from nursing home operations	1,050	167,287	162,042	42,905	4,601	1,539	—
Other	—	—	—	—	2,187	2,187	—
Total revenues	\$ 121,435	\$ 265,612	\$ 250,124	\$ 133,604	\$ 90,868	\$ 25,848	\$ 21,536
Income (loss) from continuing operations	\$ 18,966	\$ (43,250)	\$ (15,588)	\$ (3,744)	\$ 23,341	\$ 5,851	\$ (9,945)
Net income (loss) available to common	10,040	(66,485)	(36,651)	(34,761)	2,915	956	(53,728)
Per share amounts:							
Income (loss) from continuing operations:							
Basic	\$ 0.47	\$ (3.00)	\$ (1.78)	\$ (0.69)	\$ 0.09	\$ 0.02	\$ (1.29)
Diluted	0.47	(3.00)	(1.78)	(0.69)	0.08	0.02	(1.29)
Net income (loss) available to common:							
Basic	\$ 0.51	\$ (3.32)	\$ (1.83)	\$ (1.00)	\$ 0.08	\$ 0.03	\$ (1.30)
Diluted	0.51	(3.32)	(1.83)	(1.00)	0.08	0.03	(1.30)
Dividends, Common Stock(1)	2.80	1.00	—	—	0.15	—	0.17
Dividends, Series A Preferred(1)	2.31	2.31	—	—	6.937	—	0.58
Dividends, Series B Preferred(1)	2.16	2.16	—	—	6.469	—	0.54
Dividends, Series C Preferred(2)	—	0.25	—	—	29.807	—	2.72
Weighted-average common shares							
outstanding, basic	19,877	20,052	20,038	34,739	37,189	37,145	41,459
outstanding, diluted	19,877	20,052	20,038	34,739	38,154	37,145	41,459
Other Financial Data:							
Depreciation and amortization	\$ 23,396	\$ 22,340	\$ 21,300	\$ 20,538	\$ 20,985	\$ 5,208	\$ 5,224
Funds from operations(3)	44,758	(53,209)	(13,908)	(16,039)	24,490	6,285	(48,152)

Consolidated balance sheet data:	December 31,					March 31,	
	1999	2000	2001	2002	2003	2003	2004
Gross investments	\$ 1,072,398	\$ 974,507	\$ 938,228	\$ 882,313	\$ 842,056	\$ 878,762	\$ 841,555
Total assets	1,040,688	950,213	892,414	804,009	725,054	800,331	787,257
Revolving lines of credit	166,600	185,641	193,689	177,000	177,074	177,000	10,000
Other long-term borrowings	339,764	249,161	219,483	129,462	103,520	129,344	303,520
Subordinated convertible debentures	48,405	16,590	—	—	—	—	—
Stockholders equity	457,081	464,313	450,690	479,701	436,235	485,085	449,950

- (1) Dividends per share are those declared and paid during such period.
- (2) Dividends per share are those declared during such period, based on the number of shares of common stock issuable upon conversion of the outstanding Series C preferred stock.
- (3) We consider FFO as one of several criteria to measure operating performance of our business. We offer this measure to assist the users of our financial statements in analyzing our performance; however, this is not a measure of financial performance under GAAP and should not be considered a measure of liquidity, an alternative to net income or an indicator of any other performance measure determined in accordance with GAAP. Investor and potential investors in our securities should not rely on this measure as a substitute for any GAAP measure, including net income. See "Financial Presentation" for a discussion of FFO. The following table is a reconciliation of income (loss) available to common to FFO.

	Year ended December 31,					Three Months Ended March 31,	
	1999	2000	2001	2002	2003	2003	2004
	(In thousands)						
Income (loss) available to common	\$ 10,040	\$ (66,485)	\$ (36,651)	\$ (34,761)	\$ 2,915	\$ 956	\$ (53,728)
(Deduct gain) add back loss from real estate dispositions(a)	10,507	(9,989)	677	(2,548)	149	—	351
	20,547	(76,474)	(35,974)	(37,309)	3,064	956	(53,377)
Elimination of non-cash items included in income (loss):							
Depreciation and amortization(b)	24,211	23,265	22,066	21,270	21,426	5,329	5,225
FFO	\$ 44,758	\$ (53,209)	\$ (13,908)	\$ (16,039)	\$ 24,490	\$ 6,285	\$ (48,152)

- (a) The add back of loss/deduction of gain from real estate dispositions includes the facilities classified as discontinued operations in our audited consolidated financial statements included elsewhere in this prospectus. The 2003 net income add back includes a \$0.8 million loss related to facilities classified as discontinued operations. The net loss add back for the three months ended March 31, 2004 is all related to facilities classified as discontinued operations.
- (b) The add back of depreciation and amortization includes the facilities classified as discontinued operations in our audited consolidated financial statements included elsewhere in this prospectus. The 1999, 2000, 2001, 2002, 2003 and the three-months ended March 31, 2003 and 2004 includes depreciation of \$0.8 million, \$0.9 million, \$0.8 million, \$0.7 million, \$0.4 million, \$0.1 million and \$0.0 million respectively, related to facilities classified as discontinued operations.

THE EXCHANGE OFFER

Purpose and Effect; Registration Rights

We sold the initial notes on March 22, 2004 in transactions exempt from the registration requirements of the Securities Act. Thus, the initial notes are subject to significant restrictions on resale. In connection with the issuance of the initial notes, we entered into a registration rights agreement, which required that we, at our cost, would:

- within 90 days after the issue date, file an exchange offer registration statement with the SEC with respect to a registered offer to exchange the initial notes for the exchange notes, which will have terms substantially identical in all material respects to the initial notes (except that the exchange notes will not contain terms with respect to transfer restrictions);
- within 180 days after the issue date, use our reasonable best efforts to cause the exchange offer registration statement to be declared effective under the Securities Act. Upon the exchange offer registration statement being declared effective, we will offer the exchange notes in exchange for surrender of the initial notes; and
- keep the exchange offer open for not less than 30 days, or longer if required by applicable law, after the date notice of the exchange offer is mailed to the holders of the initial notes.

For each initial note surrendered to us pursuant to the exchange offer, the holder of such note will receive an exchange note having a principal amount equal to that of the surrendered note.

Under existing SEC interpretations, the exchange notes would in general be freely transferable after the exchange offer without further registration under the Securities Act. In the case of broker-dealers, however, a prospectus meeting the requirements of the Securities Act is delivered as required below. We have agreed, for a period of 180 days after consummation of the exchange offer to make available a prospectus meeting the requirements of the Securities Act to any broker-dealer for use in connection with any resale of any such exchange notes acquired as described below. A broker-dealer that delivers such a prospectus to purchasers in connection with such resales will be subject to certain of the civil liability provisions under the Securities Act, and will be bound by the provisions of the registration rights agreement including certain indemnification rights and obligations.

Each holder of initial notes that wishes to exchange such notes for exchange notes in the exchange offer will be required to make certain representations including representations that:

- any exchange notes to be received by it will be acquired in the ordinary course of its business;
- it has no arrangement with any person to participate in the distribution of the exchange notes; and
- it is not an "affiliate," as defined in Rule 405 of the Securities Act, of ours or any of our subsidiaries, or if it is an affiliate, it will comply with the registration and prospectus delivery requirements of the Securities Act to the extent applicable.

If the holder is not a broker-dealer, it will be required to represent that it is not engaged in, and does not intend to engage in, the distribution of the exchange notes. If the holder is a broker-dealer that will receive exchange notes for its own account in exchange for notes that were acquired as a result of market-making activities or other trading activities, it will be required to acknowledge that it will deliver a prospectus in connection with any resale of such exchange notes.

If, because of any change in law or in currently prevailing interpretations of the staff of the SEC, we are not permitted to effect such an exchange offer, or if for any other reason the exchange offer is

not consummated within 210 days of the issue date or, under certain circumstances, if the initial purchasers shall so request, we will, at our own expense:

- as promptly as practicable, file a shelf registration statement covering resales of the initial notes;
- use our best efforts to cause the shelf registration statement to be declared effective under the Securities Act; and
- use our best efforts to keep effective the shelf registration statement until the earlier of the disposition of the notes covered by the shelf registration statement or two years after the issue date of the notes.

We will, in the event of the shelf registration statement, provide to each holder of the initial notes copies of the prospectus which is a part of the shelf registration statement, notify each such holder when the shelf registration statement for the notes has become effective and take certain other actions as are required to permit unrestricted resales of the notes. A holder of the notes that sells such notes pursuant to the shelf registration statement generally would be required to be named as a selling securityholder in the related prospectus and to deliver a prospectus to purchasers, will be subject to certain of the civil liability provisions under the Securities Act in connection with such sales and will be bound by the provisions of the registration rights agreement which are applicable to such a holder, including certain indemnification rights and obligations.

There can be no assurance that one of the registration statements described above will be filed, or if filed, will become effective. If we fail to comply with the above provisions or if such registration statement fails to become effective, then, additional interest shall become payable in respect of the initial notes as follows:

- If (a) the exchange offer registration statement or shelf registration statement is not filed within 90 days on or prior to the issue date of the notes or (b) notwithstanding that we have consummated or will consummate an exchange offer, we are required to file a shelf registration statement and such shelf registration statement is not confidentially submitted or filed on or prior to the date required by the registration rights agreement;
- If (a) an exchange offer registration statement or shelf registration statement is not declared effective on or prior to 180 days after the issue date or (b) notwithstanding that we have consummated or will consummate an exchange offer, we are required to file a shelf registration statement and such shelf registration statement is not declared effective by the SEC on or prior to the date required by the registration rights agreement; or
- If either (a) we have not exchanged the exchange notes for all notes validly tendered in accordance with the terms of the exchange offer on or prior to the 45th day after the date on which the exchange offer registration statement was declared effective or (b) if applicable, the shelf registration statement ceases to be effective at any time prior to the second anniversary of the issue date;

(each event referred to in the examples listed immediately above is a "registration default"), the sole remedy available to holders of the notes will be the immediate assessment of additional interest as follows: the per annum interest rate on the notes will increase by 0.5%, and the per year interest rate will increase by an additional 0.5% for each subsequent 90-day period during which the registration default remains uncured, up to a maximum additional interest rate of 2.0% per year in excess of the interest rate. All additional interest will be payable to holders of the notes in cash on each interest payment date, commencing with the first such date occurring after any such additional interest commences to accrue, until such registration default is cured. After the date on which such registration default is cured, the interest rate on the notes will revert to the interest rate originally borne by the notes.

The summary herein of certain provisions of the registration rights agreement does not purport to be complete and is subject to, and is qualified in its entirety by reference to, all the provisions of the registration rights agreement, a copy of which has been filed with our Current Report on Form 8-K filed on March 26, 2004.

Terms of the Exchange Offer

We are offering to exchange \$200,000,000 in aggregate principal amount of our 7% senior notes due 2014 which have been registered under the Securities Act for a like aggregate principal amount of our outstanding unregistered 7% senior notes due 2014.

Upon the terms and subject to the conditions set forth in this prospectus, we will accept for all initial notes validly tendered and not withdrawn before 5:00 p.m., New York City time, on the expiration date of the exchange offer. We will issue \$1,000 principal amount of exchange notes in exchange for each \$1,000 principal amount of outstanding initial notes accepted in the exchange offer. You may tender some or all of your initial notes under the exchange offer. However, the initial notes are issuable in authorized denominations of \$1,000 and integral multiples thereof. The exchange offer is not conditioned upon any minimum amount of initial notes being tendered.

The form and terms of the exchange notes will be identical in all material respects to the form and terms of the initial notes, except that the exchange notes will be registered with the SEC and, therefore, will not be subject to the restrictions on transfer or bear legends restricting their transfer. The exchange notes will not provide for registration rights or the payment of liquidated damages under circumstances relating to the timing of the exchange offer. The exchange notes will evidence the same debt as the initial notes and will be issued under, and entitled to the benefits of, the indenture governing the initial notes.

The exchange notes will accrue interest from the most recent date on which interest has been paid on the initial notes or, if no interest has been paid, from the date of issuance of the initial notes. Accordingly, registered holders of exchange notes on the record date for the first interest payment date following the completion of the exchange offer will receive interest accrued from the most recent date to which interest has been paid on the initial notes or, if no interest has been paid, from the date of issuance of the initial notes. However, if that record date occurs prior to completion of the exchange offer, then the interest payable on the first interest payment date following the completion of the exchange offer will be paid to the registered holders of the initial notes on that record date.

In connection with the exchange offer, you do not have any appraisal or dissenters' rights under applicable law or the indenture. We intend to conduct the exchange offer in accordance with the registration rights agreement and the applicable requirements of the Exchange Act, and the rules and regulations of the SEC. The exchange offer is not being made to, nor will we accept tenders for exchange from, holders of the initial notes in any jurisdiction in which the exchange offer or the acceptance of it would not be in compliance with the securities or blue sky laws of the jurisdiction.

We will be deemed to have accepted validly tendered initial notes when we have given oral or written notice of our acceptance to the exchange agent. The exchange agent will act as agent for the tendering holders for the purpose of receiving the exchange notes from us.

If we do not accept any tendered initial notes because of an invalid tender or for any other reason, then we will return any unaccepted initial notes without expense to the tendering holder promptly after the expiration date.

Holders who tender initial notes in the exchange offer will not be required to pay brokerage commissions or fees. We will pay all charges and expenses, other than certain applicable taxes, in connection with the exchange offer. See "—Fees and Expenses" below for more detailed information regarding the expenses of the exchange offer.

By submitting to the exchange agent an agent's message defined below, you will be making the representations described under "—Procedures for Tendering Initial Notes" below.

Expiration Date; Extension; Amendments

The exchange offer will expire at 5:00 p.m., New York City time, on _____, 2004 unless we, in our sole discretion, extend the exchange offer, in which case the expiration date means the latest date and time to which we extend the exchange offer.

In order to extend the exchange offer, we will notify the exchange agent of any extension by written notice and will make a public announcement thereof, each prior to 9:00 a.m., New York City time, on the next business day after the previously scheduled expiration date. During any extension, all initial notes previously tendered will remain subject to the exchange offer and may be accepted for exchange by us. Any initial notes not accepted for exchange for any reason will be returned without expense to the tendering holder promptly after the expiration or termination of the exchange offer.

We reserve the right, in our sole discretion and at any time, to:

- delay accepting any initial notes;
- extend the exchange offer;
- terminate the exchange offer, by giving oral or written notice of such delay, extension or termination to the exchange agent, if any of the conditions set forth below under "—Conditions of the Exchange Offer" have not been satisfied or waived prior to the expiration date; and
- amend the terms of the exchange offer in any manner.

We will notify you as promptly as practicable of any extension, amendment or termination. We will also file a post-effective amendment to the registration statement of which this prospectus is a part with respect to any fundamental changes in the exchange offer.

Conditions of the Exchange Offer

Notwithstanding any other term of the exchange offer, we will not be required to accept for exchange, or exchange the exchange notes for, any initial notes if in our reasonable judgment:

- the exchange notes to be received will not be tradable by the holder without restriction under the Securities Act and without material restrictions under the blue sky or securities laws of substantially all of the states of the United States;
- the exchange offer, or the making of any exchange by a holder of initial notes, would violate any applicable law or applicable interpretation of the staff of the SEC; or
- any action or proceeding is instituted or threatened in any court or by or before any governmental agency with respect to the exchange offer which, in our judgment, would reasonably be expected to impair our ability to proceed with the exchange offer.

The conditions listed above are for our sole benefit and we may assert them prior to the expiration date regardless of the circumstances giving rise to any condition. Subject to applicable law, we may waive these conditions in our discretion in whole or in part prior to the expiration date. If we waive these conditions, then we intend to continue the exchange offer for at least five business days after the waiver. If we fail at any time to exercise any of the above rights, the failure will not be deemed a waiver of those rights, and those rights will be deemed ongoing rights which may be asserted at any time and from time to time.

We will not accept for exchange any initial notes tendered, and will not issue exchange notes in exchange for any initial notes, if at that time a stop order is threatened or in effect with respect to the

registration statement of which this prospectus is a part or the qualification of the indenture under the Trust Indenture Act of 1939.

Interest

The exchange notes will bear interest at a rate equal to 7% per annum. We will pay interest on the notes twice a year, on each April 1 and October 1, beginning October 1, 2004. See "Description of Notes."

Procedures for Tendering Initial Notes

A holder who wishes to tender initial notes in the exchange offer must transmit to the exchange agent an agent's message, which agent's message must be received by the exchange agent prior to 5:00 p.m., New York City time, on the expiration date. In addition, the exchange agent must receive a timely confirmation of book-entry transfer of the initial notes into the exchange agent's account at DTC under the procedure for book-entry transfers described below along with a properly transmitted agent's message, on or before the expiration date.

The term "agent's message" means a message, transmitted by a book-entry transfer facility to, and received by, the exchange agent, and forming a part of the book-entry confirmation, which states that the book-entry transfer facility has received an express acknowledgement from the tendering participant stating that the participant has received and agrees to be bound by the terms and subject to the condition set forth in this prospectus. To receive confirmation of valid tender of initial notes, a holder should contact the exchange agent at the telephone number listed under "—The Exchange Agent; Assistance."

Any tender of initial notes that is not withdrawn prior to the expiration date will constitute a binding agreement between the tendering holder and us upon the terms and subject to the conditions set forth in this prospectus. Only a registered holder of initial notes may tender the initial notes in the exchange offer. If you wish to tender initial notes that are registered in the name of a broker, dealer, commercial bank, trust company or other nominee, you should promptly instruct the registered holder to tender on your behalf.

We will determine in our sole discretion all questions as to the validity, form, eligibility, including time of receipt, and acceptance of initial notes tendered for exchange. Our determination will be final and binding on all parties. We reserve the absolute right to reject any and all tenders of initial notes not properly tendered or initial notes our acceptance of which might, in the judgment of our counsel, be unlawful. We also reserve the absolute right to waive any defects, irregularities or conditions of tender as to any particular initial notes. However, to the extent we waive any conditions of tender with respect to one tender of initial notes, we will waive that condition for all tenders as well. Our interpretation of the terms and conditions of the exchange offer will be final and binding on all parties. Unless waived, any defects or irregularities in connection with tenders of initial notes must be cured within the time period we determine. Neither we, the exchange agent nor any other person will incur any liability for failure to give you notification of defects or irregularities with respect to tenders of your initial notes.

By tendering, you will represent to us that:

- any exchange notes to be received by you will be acquired in the ordinary course of your business;
- you have no arrangement with any person to participate in the distribution of the exchange notes; and

- you are not an "affiliate," as defined in Rule 405 of the Securities Act, of ours or any of our subsidiaries, or if you are an affiliate, you will comply with the registration and prospectus delivery requirements of the Securities Act to the extent applicable.

Under existing interpretations of the staff of the SEC contained in several no action letters to unrelated third parties, the exchange notes, including the related guarantees, would in general be freely transferable by their holders after the exchange offer without further registration under the Securities Act. However, any purchaser of initial notes who is our "affiliate," or is engaged in or intends to engage in or has an arrangement or understanding with any person to participate in a distribution of the exchange notes to be acquired in the exchange offer:

- may not rely on the applicable interpretations of the staff of the SEC;
- is not entitled and will not be permitted to tender initial notes in the exchange offer; and
- must comply with the registration and prospectus delivery requirements of the Securities Act in connection with any resale transaction.

If the holder is not a broker-dealer, it will be required to represent that it is not engaged in, and does not intend to engage in, the distribution of the exchange notes. If the holder is a broker-dealer that will receive exchange notes for its own account in exchange for notes that were acquired as a result of market-making activities or other trading activities, it will be required to acknowledge that it will deliver a prospectus in connection with any resale of such exchange notes.

Any broker-dealer that acquired initial notes directly from us may not rely on the applicable interpretations of the staff of the SEC, may not participate in the exchange offer, and must comply with the registration and prospectus delivery requirements of the Securities Act (including being named as a selling securityholder) in connection with any resales of the initial notes.

The SEC has taken the position that participating broker-dealers may fulfill their prospectus delivery requirements with respect to resales of the exchange notes with the prospectus contained in the registration statement. We have agreed, for a period of 180 days after consummation of the exchange offer to make available a prospectus meeting the requirements of the Securities Act to any broker-dealer for use in connection with any resale of any such exchange notes acquired.

Book-Entry Transfer

We understand that the exchange agent will make a request within two business days after the date of this prospectus to establish accounts for the initial notes at DTC for the purpose of facilitating the exchange offer, and any financial institution that is a participant in DTC's system may make book-entry delivery of initial notes by causing DTC to transfer the initial notes into the exchange agent's account at DTC in accordance with DTC's procedures for transfer.

Acceptance of Initial Notes for Exchange; Delivery of Exchange Notes

Upon satisfaction of all conditions to the exchange offer, we will accept, promptly after the expiration date, all initial notes properly tendered and will issue the exchange notes promptly after acceptance of the initial notes.

For purposes of the exchange offer, we will be deemed to have accepted properly tendered initial notes for exchange when we have given oral or written notice of that acceptance to the exchange agent. For each initial note accepted for exchange, you will receive an exchange note having a principal amount equal to that of the surrendered initial note.

In all cases, we will issue exchange notes for initial notes that we have accepted for exchange under the exchange offer only after the exchange agent timely receives:

- timely confirmation of book-entry transfer of your initial notes into the exchange agent's account at DTC; and
- a properly transmitted agent's message.

If we do not accept any tendered initial notes for any reason set forth in the terms of the exchange offer, we will credit the non-exchanged initial notes to your account maintained with DTC.

Withdrawal Rights

You may withdraw your tender of initial notes at any time before the exchange offer expires.

For a withdrawal to be effective, the exchange agent must receive a written or facsimile notice of withdrawal at its address listed below under "—The Exchange Agent; Assistance." A facsimile transmission notice of withdrawal that is received prior to receipt of a tender of initial notes sent by mail and postmarked prior to the date of the facsimile transmission of withdrawal will be treated as a withdrawn tender. The notice of withdrawal must identify the name and number of the DTC account to be credited, and otherwise comply with the procedures of DTC.

We will determine in our sole discretion all questions as to the validity, form and eligibility, including time of receipt, of notices of withdrawal. Our determination will be final and binding on all parties. Any initial notes so withdrawn will be deemed not to have been validly tendered for purposes of the exchange offer. The initial notes will be credited to an account maintained with DTC for the initial notes. You may retender properly withdrawn initial notes by following one of the procedures described under "—Procedures for Tendering Initial Notes" at any time on or before the expiration date.

The Exchange Agent; Assistance

U.S. Bank National Association is the exchange agent. You should direct any questions and requests for assistance and requests for additional copies of this prospectus to the exchange agent addressed as follows:

By Hand, Overnight Mail, Courier, or Registered or Certified Mail:

U.S. Bank National Association
Corporate Trust Services
60 Livingston Avenue
St. Paul, MN 55107
Attention: Specialty Finance Group
Reference: Omega Healthcare Investors, Inc.

By Facsimile:

(615) 495-8158
Attention: Specialty Finance Group
Reference: Omega Healthcare Investors, Inc.

For Information or Confirmation by Telephone:

1-800-934-6802

Attention: Specialty Finance Group

Reference: Omega Healthcare Investors, Inc.

Fees and Expenses

We will pay the expenses of the exchange offer. We will not make any payments to brokers, dealers or others soliciting acceptances of the exchange offer. We are making the principal solicitation by mail; however, our officers and employees may make additional solicitations by facsimile transmission, e-mail, telephone or in person. You will not be charged a service fee for the exchange of your initial notes, but we may require you to pay any transfer or similar government taxes in certain circumstances.

Transfer Taxes

We will pay or cause to be paid any transfer taxes applicable to the exchange of initial notes pursuant to the exchange offer. If, however, payment is to be made to, or if exchange notes and/or substitute initial notes not exchanged are to be delivered to, or are to be registered or issued in the name of, any person other than the registered holder of the initial notes, or if tendered initial notes are registered in the name of any person other than the registered holder, or if a transfer tax is imposed for any reason other than the transfer of initial notes to us pursuant to the exchange offer, the amount of any such transfer taxes (whether imposed on the registered holder or any other persons) will be payable by you.

Accounting Treatment

We will record the exchange notes in our accounting records at the same carrying values as the initial notes, which is the aggregate principal amount of the initial notes, as reflected in our accounting records on the date of exchange. Accordingly, we will not recognize any gain or loss for accounting purposes in connection with the exchange offer.

Resales of Exchange Notes

Based on interpretations of the staff of the SEC set forth in no-action letters issued to unrelated third parties, we believe that exchange notes issued pursuant to this exchange offer in exchange for initial notes may be offered for resale, resold and otherwise transferred by any initial note holder without further registration under the Securities Act and without delivery of a prospectus that satisfies the requirements of Section 10 of the Securities Act if:

- the exchange notes to be received will be acquired in the ordinary course of the holder's business;
- the holder has no arrangement with any person to participate in the distribution of the exchange notes; and
- the holder is not an "affiliate" as defined in Rule 405 of the Securities Act of ours or any of our subsidiaries.

Any holder who intends to participate in the exchange offer for the purpose of distributing the exchange notes may not rely on the applicable interpretations of the staff of the SEC, may not participate in the exchange offer, and must comply with the registration and prospectus delivery requirements of the Securities Act in connection with any resales of the exchange notes, unless such sale or transfer is made pursuant to an exemption from such requirements.

This prospectus may be used for an offer to resell, resale or other transfer of exchange notes. With regard to broker-dealers, only broker-dealers that acquired the initial notes as a result of market-making activities or other trading activities may participate in the exchange offer. Each broker-dealer that receives exchange notes for its own account in exchange for initial notes, where the initial notes were acquired by the broker-dealer as a result of market-making activities or other trading activities, must acknowledge that it will deliver a prospectus in connection with any resale of the exchange notes. By acknowledging that it will deliver a prospectus, the broker-dealer will not be deemed to admit that it is an "underwriter" within the meaning of the Securities Act. See "Plan of Distribution" for more details regarding the transfer of exchange notes.

Consequences of Failure to Exchange Initial Notes

Holders who desire to tender their initial notes in exchange for exchange notes registered under the Securities Act should allow sufficient time to ensure timely delivery. Neither we nor the exchange agent is under any duty to give notification of defects or irregularities with respect to the tenders of initial notes for exchange.

Initial notes that are not tendered or are tendered but not accepted will, following the consummation of the exchange offer, continue to be subject to the provisions in the indenture regarding the transfer and exchange of the initial notes and the existing restrictions on transfer set forth in the legend on the initial notes and in the offering memorandum, dated March 15, 2004, relating to the initial notes. Except in limited circumstances with respect to the specific types of holders of initial notes, we will have no further obligation to provide for the registration under the Securities Act of such initial notes. In general, initial notes, unless registered under the Securities Act, may not be offered or sold except pursuant to an exemption from, or in a transaction not subject to, the Securities Act and applicable state securities laws. We do not anticipate that we will take any action to register the untendered initial notes under the Securities Act or under any state securities laws. Upon completion of the exchange offer, holders of the initial notes will not be entitled to any further registration rights under the registration rights agreement, except under limited circumstances.

Initial notes that are not exchanged in the exchange offer will remain outstanding and continue to accrue interest and will be entitled to the rights and benefits their holders have under the indenture relating to the initial notes and the exchange notes. Holders of the exchange notes and any initial notes that remain outstanding after consummation of the exchange offer will vote together as a single class for purposes of determining whether holders of the requisite percentage of the class have taken certain actions or exercised certain rights under the indenture.

DESCRIPTION OF NOTES

The exchange notes are identical in all material respect to the initial notes, except that the exchange notes will not contain certain of the transfer restrictions applicable to the initial notes, and the holders of the exchange notes will not have registration rights. The exchange notes will evidence the same debt as the initial notes, which they replace, and will be governed by the same indenture by and among us, certain of our affiliate guarantors as discussed below, and U.S. Bank National Association, as trustee.

The following is a summary of the material provisions of the indenture. It does not restate that agreement, and we urge you to read the indenture in its entirety, which is filed as an exhibit to our Current Report on Form 8-K filed on March 26, 2004, because it, and not this description, defines your rights as a noteholder. We will provide you with a copy of the indenture if you request one.

Except as otherwise indicated, the following description relates to both the initial notes and the exchange notes, which are together referred to as the "notes." You can find the definitions of certain capitalized terms used in this description under the subheading "—Certain Definitions." The term "Issuer" as used in this section refers only to Omega Healthcare Investors, Inc. and not to any of its Subsidiaries.

General

The initial notes were issued in an aggregate principal amount of \$200 million. The exchange notes will be issued in an aggregate principal amount equal to the aggregate principal amount of the initial notes they replace. The notes are unsecured senior obligations of the Issuer and will mature on April 1, 2014. The notes will initially bear interest at a rate of 7% *per annum*, payable semiannually to holders of record at the close of business on the September 15 or the March 15, immediately preceding the interest payment date on October 1 and April 1 of each year, commencing October 1, 2004.

Principal of, premium, if any, and interest on the notes will be payable, and the notes may be exchanged or transferred in accordance with the terms of the indenture.

The notes will be issued only in fully registered form, without coupons, in denominations of \$1,000 of principal amount and any integral multiple. No service charge will be made for any registration of transfer or exchange of notes, but the Issuer may require payment of a sum sufficient to cover any transfer tax or other similar governmental charge payable in connection with a registration of transfer.

Subject to the covenants described below under "—Covenants" and applicable law, the Issuer may issue additional notes under the indenture on the same terms and conditions as the notes being offered hereby in an unlimited aggregate principal amount. The notes issued in this offering and any additional notes subsequently issued under the indenture will be treated as a single class for all purposes under the indenture.

Guarantees and Subsidiary Guarantors

The notes are guaranteed on an unsecured senior basis by the Subsidiary Guarantors. The guarantees are unconditional regardless of the enforceability of the notes and the indenture.

Each future Restricted Subsidiary that subsequently guarantees Indebtedness of the Issuer that ranks equally with or subordinate in right of payment to the notes will be required to execute a Subsidiary Guarantee. See "Covenants—Limitation on Issuances of Guarantees by Restricted Subsidiaries."

Optional Redemption

Optional Redemption. Except as described below, the Issuer does not have the right to redeem any notes prior to April 1, 2009. The notes will be redeemable at the option of the Issuer, in whole or in part, at any time, and from time to time, on and after April 1, 2009, upon not less than 30 days' nor more than 60 days' notice, at the following redemption prices (expressed as percentages of the principal amount thereof) if redeemed during the 12-month period commencing April 1 of the years indicated below, in each case together with accrued and unpaid interest thereon to the redemption date:

Year	Redemption Price
2009	103.500%
2010	102.333%
2011	101.167%
2012 and thereafter	100.000%

Optional Redemption upon Equity Offerings. At any time, or from time to time, on or prior to April 1, 2007, the Issuer may, at its option, use the Net Cash Proceeds of one or more Equity Offerings to redeem up to 35% of the principal amount of the notes issued under the indenture at a redemption price of 107% of the principal amount thereof plus accrued and unpaid interest thereon, if any, to the date of redemption; *provided, however*, that:

- (1) at least 65% of the principal amount of notes issued under the indenture remains outstanding immediately after such redemption; and
- (2) the Issuer makes such redemption not more than 90 days after the consummation of any such Equity Offering.

Selection and Notice of Redemption

In the event that the Issuer chooses to redeem less than all of the notes, selection of the notes for redemption will be made by the trustee either:

- (1) in compliance with the requirements of the principal national securities exchange, if any, on which the notes are then listed; or
- (2) on a *pro rata* basis, by lot or by such method as the trustee will deem fair and appropriate.

No notes of a principal amount of \$1,000 or less will be redeemed in part. If a partial redemption is made with the proceeds of an Equity Offering, the trustee will select the notes only on a *pro rata* basis or on as nearly a *pro rata* basis as is practicable (subject to DTC procedures) unless such method is otherwise prohibited. Notice of redemption will be mailed by first-class mail at least 30 but not more than 60 days before the redemption date to each holder of notes to be redeemed at its registered address. Unless the Issuer defaults in the payment of the redemption price, on and after the redemption date, interest will cease to accrue on notes or portions thereof called for redemption.

Sinking Fund

There will be no sinking fund payments for the notes.

Ranking

The notes are unsecured senior obligations of the Issuer, and rank equally in right of payment with other unsecured senior Indebtedness of the Issuer. The notes are effectively subordinated to all of the Issuer's and the Issuer's consolidated Subsidiaries' secured Indebtedness and to all other Indebtedness of the non-guarantor Subsidiaries. The Issuer's secured Indebtedness only includes our new senior

credit facility. In addition, for the 12-months ended March 31, 2004, we and our consolidated Subsidiaries would have had \$10 million in borrowings outstanding under our new senior credit facility and \$102.9 million available for borrowings under our new senior credit facility, all of which would be effectively senior to the notes to the extent of the value of the underlying assets.

Certain Definitions

Set forth below are definitions of certain terms contained in the indenture that are used in this description. Please refer to the indenture for the definition of other capitalized terms used in this description that are not defined below.

"*Acquired Indebtedness*" means Indebtedness of a Person existing at the time such Person becomes a Restricted Subsidiary or that is assumed in connection with an Asset Acquisition from such Person by a Restricted Subsidiary and not incurred by such Person in connection with, or in anticipation of, such Person becoming a Restricted Subsidiary or such Asset Acquisition; *provided, however*, that Indebtedness of such Person that is redeemed, defeased, retired or otherwise repaid at the time of or immediately upon consummation of the transactions by which such Person becomes a Restricted Subsidiary or such Asset Acquisition will not be Acquired Indebtedness.

"*Adjusted Consolidated Net Income*" means, for any period, the aggregate net income (or loss) (before giving effect to cash dividends on preferred stock of the Issuer or charges resulting from the redemption of preferred stock of the Issuer) of the Issuer and its Restricted Subsidiaries for such period determined on a consolidated basis in conformity with GAAP; *provided, however*, that the following items will be excluded in computing Adjusted Consolidated Net Income, without duplication:

- (1) the net income of any Person, other than the Issuer or a Restricted Subsidiary, except to the extent of the amount of dividends or other distributions actually paid to the Issuer or any of its Restricted Subsidiaries by such Person during such period;
- (2) the net income of any Restricted Subsidiary to the extent that the declaration or payment of dividends or similar distributions by such Restricted Subsidiary of such net income is not at the time permitted by the operation of the terms of its charter or any agreement, instrument, judgment, decree, order, statute, rule or governmental regulation applicable to such Restricted Subsidiary;
- (3) any after-tax gains or losses attributable to Asset Sales; and
- (4) all extraordinary gains and extraordinary losses.

"*Adjusted Consolidated Net Tangible Assets*" means the total amount of assets of the Issuer and its Restricted Subsidiaries (less applicable depreciation, amortization and other valuation reserves), except to the extent resulting from write-ups of capital assets (excluding write-ups in connection with accounting for acquisitions in conformity with GAAP), after deducting from the total amount of assets:

- (1) all liabilities of the Issuer and its Restricted Subsidiaries that are classified as current liabilities in accordance with GAAP, excluding intercompany items; and
- (2) all goodwill, trade names, trademarks, patents, unamortized debt discount and expense and other like intangibles, all as set forth on the most recent quarterly or annual consolidated balance sheet of the Issuer and its Restricted Subsidiaries, prepared in conformity with GAAP and filed with the SEC or provided to the trustee pursuant to the "SEC Reports and Reports to Holders" covenant.

"*Adjusted Total Assets*" means, for any Person, the sum of:

- (1) Total Assets for such Person as of the end of the fiscal quarter preceding the Transaction Date as set forth on the most recent quarterly or annual consolidated balance sheet of the Issuer

and its Restricted Subsidiaries, prepared in conformity with GAAP and filed with the SEC or provided to the trustee pursuant to the "SEC Reports and Reports to Holders" covenant; and

- (2) any increase in Total Assets following the end of such quarter including, without limitation, any increase in Total Assets resulting from the application of the proceeds of any additional Indebtedness.

"*Affiliate*" means, as applied to any Person, any other Person directly or indirectly controlling, controlled by, or under direct or indirect common control with, such Person. For purposes of this definition, "*control*" (including, with correlative meanings, the terms "*controlling*," "*controlled by*" and "*under common control with*"), as applied to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by contract or otherwise.

"*Asset Acquisition*" means:

- (1) an investment by the Issuer or any of its Restricted Subsidiaries in any other Person pursuant to which such Person will become a Restricted Subsidiary or will be merged into or consolidated with the Issuer or any of its Restricted Subsidiaries; *provided, however*, that such Person's primary business is related, ancillary, incidental or complementary to the businesses of the Issuer or any of its Restricted Subsidiaries on the date of such investment; or
- (2) an acquisition by the Issuer or any of its Restricted Subsidiaries from any other Person of assets that constitute substantially all of a division or line of business, or one or more healthcare properties, of such Person; *provided, however*, that the assets and properties acquired are related, ancillary, incidental or complementary to the businesses of the Issuer or any of its Restricted Subsidiaries on the date of such acquisition.

"*Asset Disposition*" means the sale or other disposition by the Issuer or any of its Restricted Subsidiaries, other than to the Issuer or another Restricted Subsidiary, of:

- (1) all or substantially all of the Capital Stock of any Restricted Subsidiary; or
- (2) all or substantially all of the assets that constitute a division or line of business, or one or more healthcare properties, of the Issuer or any of its Restricted Subsidiaries.

"*Asset Sale*" means any sale, transfer or other disposition, including by way of merger, consolidation or sale-leaseback transaction, in one transaction or a series of related transactions by the Issuer or any of its Subsidiaries to any Person other than the Issuer or any of its Restricted Subsidiaries of:

- (1) all or any of the Capital Stock of any Restricted Subsidiary;
- (2) all or substantially all of the property and assets of an operating unit or business of the Issuer or any of its Restricted Subsidiaries; or
- (3) any other property and assets of the Issuer or any of its Restricted Subsidiaries outside the ordinary course of business of the Issuer or such Restricted Subsidiary and, in each case, that is not governed by the provisions of the indenture applicable to mergers, consolidations and sales of assets of the Issuer;

provided, however, that "*Asset Sale*" will not include:

- (1) sales or other dispositions of inventory, receivables and other current assets;
- (2) the sale, conveyance, transfer, lease, disposition or other transfer of all or substantially all of the assets of the Issuer as permitted under "Consolidation, Merger and Sale of Assets;"

- (3) any Restricted Payment permitted by the "Limitation on Restricted Payments" covenant or that constitutes a Permitted Investment;
- (4) sales, transfers or other dispositions of assets with a fair market value not in excess of \$5 million in any transaction or series of related transactions;
- (5) sales or other dispositions of assets for consideration at least equal to the fair market value of the assets sold or disposed of, to the extent that the consideration received would satisfy the second bullet of clause (1) of the second paragraph of the "Limitation on Asset Sales" covenant;
- (6) sales or other dispositions of Temporary Cash Investments;
- (7) the creation or realization of any Lien permitted under the Indenture;
- (8) transfers of damaged, worn-out or obsolete equipment or assets that, in the Issuer's reasonable judgment, are no longer used or useful in the business of the Issuer or its Restricted Subsidiaries; or
- (9) sales or other dispositions of any of the Closed Facilities as in existence on the Closing Date.

"Average Life" means at any date of determination with respect to any debt security, the quotient obtained by dividing:

- (1) the sum of the products of:
 - the number of years from such date of determination to the dates of each successive scheduled principal payment of such debt security; and
 - the amount of such principal payment; by
- (2) the sum of all such principal payments.

"Board of Directors" means, as to any Person, the board of directors (or similar governing body) of such Person or any duly authorized committee thereof.

"Board Resolution" means, with respect to any Person, a copy of a resolution certified by the Secretary or an Assistant Secretary of such Person to have been duly adopted by the Board of Directors of such Person and to be in full force and effect on the date of such certification, and delivered to the trustee.

"Business Day" means a day other than a Saturday, Sunday or other day on which banking institutions in New York or Maryland are authorized or required by law to close

"Capital Stock" means, with respect to any Person, any and all shares, interests, participations or other equivalents (however designated, whether voting or non-voting), including partnership interests, whether general or limited, in the equity of such Person, whether outstanding on the Closing Date or issued thereafter, including, without limitation, all Common Stock and Preferred Stock.

"Capitalized Lease" means, as applied to any Person, any lease of any property, whether real, personal or mixed, of which the discounted present value of the rental obligations of such Person as lessee, in conformity with GAAP, is required to be capitalized on the balance sheet of such Person.

"Capitalized Lease Obligations" means the discounted present value of the rental obligations under a Capitalized Lease as reflected on the balance sheet of such Person in determined in conformity with GAAP.

"*Change of Control*" means the occurrence of one or more of the following events:

- (1) any sale, lease, exchange or other transfer (in one transaction or a series of related transactions) of all or substantially all of the assets of the Issuer to any "person" or "group" (as such terms are defined in Sections 13(d) and 14(d)(2) of the Exchange Act, together with any Affiliates thereof (whether or not otherwise in compliance with the provisions of the indenture);
- (2) a "person" or "group" (as such terms are defined in Sections 13(d) and 14(d)(2) of the Exchange Act), becomes the ultimate "beneficial owner" (as defined in Rule 13d-3 under the Exchange Act) of more than 50% of the total voting power of the Voting Stock of the Issuer on a fully diluted basis;
- (3) the approval by the holders of Capital Stock of the Issuer of any plan or proposal for the liquidation or dissolution of the Issuer (whether or not otherwise in compliance with the provisions of the indenture); or
- (4) individuals who on the Closing Date constitute the Board of Directors (together with any new or replacement directors whose election by the Board of Directors or whose nomination by the Board of Directors for election by the Issuer's shareholders was approved by a vote of at least a majority of the members of the Board of Directors then still in office who either were members of the Board of Directors on the Closing Date or whose election or nomination for election was so approved) cease for any reason to constitute a majority of the members of the Board of Directors then in office.

"*Closing Date*" means March 22, 2004.

"*Closed Facilities*" means each of:

- (1) Apalachicola Nursing Home, SNF, 150 10th Street, Apalachicola, Franklin, FL, 32329;
- (2) Crystal Springs, SNF, 12006 McIntosh Road, Thonotosassa, Hillsborough, FL, 33592;
- (3) Woodward Healthcare Center, SNF, 706 Cedar Avenue, Woodward, Dallas, IA, 50276;
- (4) Park Avenue Health Care Home, SNF, 1701 S. Park Avenue, Route 148 South, P.O. Box 68, Herrin, Williamson, IL, 62948;
- (5) IHS of Hershey at Woodlands, SNF, 820 Rhue Haus Lane, P.O. Box 377, Hershey, Dauphin, PA, 17036; and
- (6) Meydenbauer Medical & Rehabilitation Ctr, SNF, 150 102nd Avenue SE, Bellevue, King, WA, 98004.

"*Code*" means the Internal Revenue Code of 1986, as amended.

"*Common Stock*" means, with respect to any Person, any and all shares, interests, participations or other equivalents (however designated, whether voting or non-voting) that have no preference on liquidation or with respect to distributions over any other class of Capital Stock, including partnership interests, whether general or limited, of such Person's equity, whether outstanding on the Closing Date or issued thereafter, including, without limitation, all series and classes of common stock.

"*Consolidated EBITDA*" means, for any period, Adjusted Consolidated Net Income for such period *plus*, to the extent such amount was deducted in calculating such Adjusted Consolidated Net Income (without duplication):

- (1) Consolidated Interest Expense (plus the premium, fees and expenses, and the amortization thereof, payable in connection with this offering or the refinancing of the GECC Facility);

- (2) income taxes (other than income taxes (either positive or negative) attributable to extraordinary and non-recurring gains or losses or sales of assets);
- (3) depreciation expense;
- (4) amortization expense;
- (5) non-cash charges resulting from the write-down of the value of accounts receivable and/or notes receivable in an aggregate amount from the Closing Date not in excess of \$5 million; and
- (6) all other non-cash items reducing Adjusted Consolidated Net Income (other than items that will require cash payments and for which an accrual or reserve is, or is required by GAAP to be, made),

less all non-cash items increasing Adjusted Consolidated Net Income, all as determined on a consolidated basis for the Issuer and its Restricted Subsidiaries in conformity with GAAP; *provided, however*, that, if any Restricted Subsidiary is not a Wholly Owned Restricted Subsidiary, Consolidated EBITDA will be reduced (to the extent not already reduced in Adjusted Consolidated Net Income or otherwise reduced in accordance with GAAP) by an amount equal to:

- (1) the amount of the Adjusted Consolidated Net Income attributable to such Restricted Subsidiary *multiplied by*
- (2) the percentage ownership interest in the income of such Restricted Subsidiary not owned on the last day of such period by the Issuer or any of its Restricted Subsidiaries.

"*Consolidated Interest Expense*" means, for any period, the aggregate amount of interest expense in respect of Indebtedness of the Issuer and the Restricted Subsidiaries during such period, all as determined on a consolidated basis in conformity with GAAP including, without limitation (without duplication):

- (1) amortization of debt issuance costs, debt discount or premium and other financing fees and expenses;
- (2) the interest portion of any deferred payment obligations;
- (3) all commissions, discounts and other fees and expenses owed with respect to letters of credit and bankers' acceptance financing;
- (4) the net costs associated with Interest Rate Agreements and Indebtedness that is Guaranteed or secured by assets of the Issuer or any of its Restricted Subsidiaries; and
- (5) all but the principal component of rentals in respect of Capitalized Lease Obligations paid, accrued or scheduled to be paid or to be accrued by the Issuer and its Restricted Subsidiaries;

excluding, to the extent included in interest expense above, (x) the amount of such interest expense of any Restricted Subsidiary if the net income of such Restricted Subsidiary is excluded in the calculation of Adjusted Consolidated Net Income pursuant to clause (2) of the definition thereof (but only in the same proportion as the net income of such Restricted Subsidiary is excluded from the calculation of Adjusted Consolidated Net Income pursuant to clause (2) of the definition thereof), and (y) any premium, fees and expenses, and the amortization thereof, payable in connection with this offering or the refinancing of the GECC Facility, all as determined on a consolidated basis (without taking into account Unrestricted Subsidiaries) in conformity with GAAP.

"*Currency Agreement*" means any foreign exchange contract, currency swap agreement or other similar agreement or arrangement.

"Default" means any event that is, or after notice or passage of time or both would be, an Event of Default.

"Disqualified Stock" means any class or series of Capital Stock of any Person that by its terms or otherwise is:

- (1) required to be redeemed prior to the Stated Maturity of the notes;
- (2) redeemable at the option of the holder of such class or series of Capital Stock, at any time prior to the Stated Maturity of the notes; or
- (3) convertible into or exchangeable for Capital Stock referred to in clause (1) or (2) above or Indebtedness having a scheduled maturity prior to the Stated Maturity of the notes;

provided, however, that any Capital Stock that would not constitute Disqualified Stock but for provisions thereof giving holders thereof the right to require such Person to repurchase or redeem such Capital Stock upon the occurrence of an "asset sale" or "change of control" occurring prior to the Stated Maturity of the notes will not constitute Disqualified Stock if the "asset sale" or change of control" provisions applicable to such Capital Stock are no more favorable to the holders of such Capital Stock than the provisions contained in "Limitation on Asset Sales" and "Repurchase of Notes upon a Change of Control" covenants described below and such Capital Stock specifically provides that such Person will not repurchase or redeem any such stock pursuant to such provisions prior to the Issuer's repurchase of the notes as are required to be repurchased pursuant to the "Limitation on Asset Sales" and "Repurchase of Notes upon a Change of Control" covenants described below.

"Equity Offering" means a public or private offering of Capital Stock (other than Disqualified Stock) of the Issuer.

"Exchange Act" means the Securities Exchange Act of 1934, as amended, or any successor statute or statutes thereto.

"fair market value" means the price that would be paid in an arm's-length transaction between an informed and willing seller under no compulsion to sell and an informed and willing buyer under no compulsion to buy, as determined in good faith by the Board of Directors of the Issuer, whose determination will be conclusive if evidenced by a Board Resolution.

"Funds From Operations" for any period means the consolidated net income of the Issuer and its Restricted Subsidiaries for such period determined in conformity with GAAP after adjustments for unconsolidated partnerships and joint ventures, plus depreciation of real property (including furniture and equipment) and other real estate assets and excluding (to the extent such amount was deducted in calculating such consolidated net income):

- (1) gains or losses from (a) restructuring of Indebtedness or (b) sales of properties;
- (2) non-cash asset impairment charges;
- (3) cash litigation charges incurred in an amount not to exceed \$5 million;
- (4) non-cash charges associated with the write-down of the value of accounts and/or notes receivable in an amount not to exceed \$5 million;
- (5) non-cash charges related to redemptions of Preferred Stock of the Issuer;
- (6) satisfaction of outstanding unamortized loan fees with respect to the GECC Facility or the restructuring or refinancing of any Line of Credit;
- (7) any non-cash charges associated with the sale or settlement of any Interest Rate Agreement in existence with respect to the GECC Facility; and

- (8) any other non-cash charges associated with the sale or settlement of any Interest Rate Agreement or other hedging or derivative instruments.

"GAAP" means generally accepted accounting principles in the United States of America as in effect as of the Closing Date, including, without limitation, those set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other entity as approved by a significant segment of the accounting profession. Except as otherwise specifically provided in the indenture, all ratios and computations contained or referred to in the indenture will be computed in conformity with GAAP applied on a consistent basis.

"GECC Facility" means (i) the Loan Agreement dated as of June 23, 2003 among General Electric Capital Corporation and certain subsidiaries of the Issuer party thereto and (ii) the Guaranty Agreement dated as of June 23, 2003 between the Issuer and General Electric Capital Corporation, in each case as such agreement may be amended (including any amendment and restatement thereof), supplemented or otherwise modified from time to time.

"Guarantee" means any obligation, contingent or otherwise, of any Person directly or indirectly guaranteeing any Indebtedness of any other Person and, without limiting the generality of the foregoing, any obligation, direct or indirect, contingent or otherwise, of such Person:

- (1) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness of such other Person (whether arising by virtue of partnership arrangements, or by agreements to keep-well, to purchase assets, goods, securities or services (unless such purchase arrangements are on arm's-length terms and are entered into in the ordinary course of business), to take-or-pay, or to maintain financial statement conditions or otherwise); or
- (2) entered into for purposes of assuring in any other manner the obligee of such Indebtedness of the payment thereof or to protect such obligee against loss in respect thereof (in whole or in part);

provided, however, that the term "Guarantee" will not include endorsements for collection or deposit in the ordinary course of business. The term "Guarantee" used as a verb has a corresponding meaning.

"Incur" means, with respect to any Indebtedness, to incur, create, issue, assume, Guarantee or otherwise become liable for or with respect to, or become responsible for, the payment of, contingently or otherwise, such Indebtedness, including an "Incurrence" of Acquired Indebtedness; *provided, however*, that neither the accrual of interest nor the accretion of original issue discount will be considered an Incurrence of Indebtedness.

"Indebtedness" means, with respect to any Person at any date of determination (without duplication):

- (1) all indebtedness of such Person for borrowed money;
- (2) all obligations of such Person evidenced by bonds, debentures, notes or other similar instruments;
- (3) the face amount of letters of credit or other similar instruments (excluding obligations with respect to letters of credit (including trade letters of credit) securing obligations (other than obligations described in (1) or (2) above or (5), (6) or (7) below) entered into in the ordinary course of business of such Person to the extent such letters of credit are not drawn upon or, if drawn upon, to the extent such drawing is reimbursed no later than the third Business Day following receipt by such Person of a demand for reimbursement);

- (4) all unconditional obligations of such Person to pay the deferred and unpaid purchase price of property or services, which purchase price is due more than six months after the date of placing such property in service or taking delivery and title thereto or the completion of such services, except Trade Payables;
- (5) all Capitalized Lease Obligations;
- (6) all Indebtedness of other Persons secured by a Lien on any asset of such Person, whether or not such Indebtedness is assumed by such Person; *provided, however*, that the amount of such Indebtedness will be the lesser of (A) the fair market value of such asset at that date of determination and (B) the amount of such Indebtedness;
- (7) all Indebtedness of other Persons Guaranteed by such Person to the extent such Indebtedness is Guaranteed by such Person; and
- (8) to the extent not otherwise included in this definition or the definition of Consolidated Interest Expense, obligations under Currency Agreements and Interest Rate Agreements.

The amount of Indebtedness of any Person at any date will be the outstanding balance at such date of all unconditional obligations of the type described above and, with respect to obligations under any Guarantee, the maximum liability upon the occurrence of the contingency giving rise to the obligation; *provided, however*, that:

- (1) the amount outstanding at any time of any Indebtedness issued with original issue discount will be deemed to be the face amount with respect to such Indebtedness less the remaining unamortized portion of the original issue discount of such Indebtedness at the date of determination in conformity with GAAP; and
- (2) Indebtedness will not include any liability for federal state, local or other taxes.

"*Interest Coverage Ratio*" means, on any Transaction Date, the ratio of:

- (1) the aggregate amount of Consolidated EBITDA for the then most recent four fiscal quarters prior to such Transaction Date for which reports have been filed with the SEC or provided to the trustee pursuant to the "SEC Reports and Reports to Holders" covenant ("*Four Quarter Period*"); to
- (2) the aggregate Consolidated Interest Expense during such Four Quarter Period.

In making the foregoing calculation:

- (1) *pro forma* effect will be given to any Indebtedness Incurred or repaid (other than in connection with an Asset Acquisition or Asset Disposition) during the period ("*Reference Period*") commencing on the first day of the Four Quarter Period and ending on the Transaction Date (other than Indebtedness Incurred or repaid under a revolving credit or similar arrangement), in each case as if such Indebtedness had been Incurred or repaid on the first day of such Reference Period;
- (2) Consolidated Interest Expense attributable to interest on any Indebtedness (whether existing or being Incurred) computed on a *pro forma* basis and bearing a floating interest rate will be computed as if the rate in effect on the Transaction Date (taking into account any Interest Rate Agreement applicable to such Indebtedness if such Interest Rate Agreement has a remaining term in excess of 12 months or, if shorter, at least equal to the remaining term of such Indebtedness) had been the applicable rate for the entire period;
- (3) *pro forma* effect will be given to Asset Dispositions and Asset Acquisitions and Permitted Mortgage Investments (including giving *pro forma* effect to the application of proceeds of any Asset Disposition and any Indebtedness Incurred or repaid in connection with any such Asset

Acquisitions or Asset Dispositions) that occur during such Reference Period but subsequent to the end of the related Four Quarter Period as if they had occurred and such proceeds had been applied on the first day of such Reference Period; and

- (4) *pro forma* effect will be given to asset dispositions and asset acquisitions (including giving *pro forma* effect to (i) the application of proceeds of any asset disposition and any Indebtedness Incurred or repaid in connection with any such asset acquisitions or asset dispositions and (ii) expense and cost reductions calculated on a basis consistent with Regulation S-X under the Exchange Act) that have been made by any Person that has become a Restricted Subsidiary or has been merged with or into the Issuer or any of its Restricted Subsidiaries during such Reference Period but subsequent to the end of the related Four Quarter Period and that would have constituted asset dispositions or asset acquisitions during such Reference Period but subsequent to the end of the related Four Quarter Period had such transactions occurred when such Person was a Restricted Subsidiary as if such asset dispositions or asset acquisitions were Asset Dispositions or Asset Acquisitions and had occurred on the first day of such Reference Period;

provided, however, that to the extent that clause (3) or (4) of this paragraph requires that *pro forma* effect be given to an Asset Acquisition or Asset Disposition or asset acquisition or asset disposition, as the case may be, such *pro forma* calculation will be based upon the four full fiscal quarters immediately preceding the Transaction Date of the Person, or division or line of business, or one or more healthcare properties, of the Person that is acquired or disposed of to the extent that such financial information is available.

"*Interest Rate Agreement*" means any interest rate protection agreement, interest rate future agreement, interest rate option agreement, interest rate swap agreement, interest rate cap agreement, interest rate collar agreement, interest rate hedge agreement, option or future contract or other similar agreement or arrangement with respect to interest rates.

"*Investment*" in any Person means any direct or indirect advance, loan or other extension of credit (including without limitation by way of Guarantee or similar arrangement, but excluding advances to customers in the ordinary course of business that are, in conformity with GAAP, recorded as accounts receivable on the consolidated balance sheet of the Issuer and its Restricted Subsidiaries) or capital contribution to (by means of any transfer of cash or other property (tangible or intangible) to others or any payment for property or services solely for the account or use of others, or otherwise), or any purchase or acquisition of Capital Stock, bonds, notes, debentures or other similar instruments issued by, such Person and will include:

- (1) the designation of a Restricted Subsidiary as an Unrestricted Subsidiary; and
- (2) the fair market value of the Capital Stock (or any other Investment), held by the Issuer or any of its Restricted Subsidiaries of (or in) any Person that has ceased to be a Restricted Subsidiary;

provided, however, that the fair market value of the Investment remaining in any Person that has ceased to be a Restricted Subsidiary will be deemed not to exceed the aggregate amount of Investments previously made in such Person valued at the time such Investments were made, less the net reduction of such Investments. For purposes of the definition of "Unrestricted Subsidiary" and the "Limitation on Restricted Payments" covenant described below:

- (1) "Investment" will include the fair market value of the assets (net of liabilities (other than liabilities to the Issuer or any of its Restricted Subsidiaries)) of any Restricted Subsidiary at the time such Restricted Subsidiary is designated an Unrestricted Subsidiary;

- (2) the fair market value of the assets (net of liabilities (other than liabilities to the Issuer or any of its Restricted Subsidiaries)) of any Unrestricted Subsidiary at the time that such Unrestricted Subsidiary is designated a Restricted Subsidiary will be considered a reduction in outstanding Investments; and
- (3) any property transferred to or from an Unrestricted Subsidiary will be valued at its fair market value at the time of such transfer.

"*Investment Grade Status*" means, with respect to the Issuer, when the notes have (1) a rating of both "Baa3" or higher from Moody's and (2) a rating of "BBB—" or higher from S&P (or, if either such agency ceases to rate the notes for reasons outside the control of the Issuer, the equivalent investment grade credit rating from any other "nationally recognized statistical rating organization" within the meaning of Rule 15c3-1(c)(2)(vi)(F) under the Exchange Act selected by the Issuer as a replacement agency), in each case published by the applicable agency with no negative outlook.

"*Lien*" means any mortgage, pledge, security interest, encumbrance, lien or charge of any kind (including without limitation, any conditional sale or other title retention agreement or lease in the nature thereof or any agreement to give any security interest).

"*Line of Credit*" means the Credit Agreement to be dated as of March 22, 2004, by and among the Issuer, the lenders party thereto in their capacities as lenders thereunder and Bank of America, N.A., as administrative agent, together with the related documents thereto (including, without limitation, any guarantee agreements and security documents), in each case as such agreements may be amended (including any amendment and restatement thereof), supplemented or otherwise modified from time to time, including one or more credit agreements, loan agreements, indentures or similar agreements extending the maturity of, refinancing, replacing or otherwise restructuring (including increasing the amount of available borrowings thereunder or adding Restricted Subsidiaries of the Issuer as additional borrowers or guarantors thereunder) all or any portion of the Indebtedness under such agreement or agreements or any successor or replacement agreement or agreements and whether by the same or any other agent, lender or group of lenders.

"*Moody's*" means Moody's Investors Service, Inc. and its successors.

"*Net Cash Proceeds*" means:

- (1) with respect to any Asset Sale, the proceeds of such Asset Sale in the form of cash or Temporary Cash Investments, including payments in respect of deferred payment obligations (to the extent corresponding to the principal, but not interest, component thereof) when received in the form of cash or Temporary Cash Investments (except to the extent such obligations are financed or sold with recourse to the Issuer or any of its Restricted Subsidiaries) and proceeds from the conversion of other property received when converted to cash or cash equivalents, net of:
 - (A) brokerage commissions and other fees and expenses (including fees and expenses of counsel and investment bankers) related to such Asset Sale;
 - (B) provisions for all taxes actually paid or payable as a result of such Asset Sale by the Issuer and its Restricted Subsidiaries, taken as a whole;
 - (C) payments made to repay Indebtedness or any other obligation outstanding at the time of such Asset Sale that either (A) is secured by a Lien on the property or assets sold or (B) is required to be paid as a result of such sale; and
 - (D) amounts reserved by the Issuer and its Restricted Subsidiaries against any liabilities associated with such Asset Sale, including without limitation, pension and other post-employment benefit liabilities, liabilities related to environmental matters and

liabilities under any indemnification obligations associated with such Asset Sale, all as determined on a consolidated basis in conformity with GAAP; and

- (2) with respect to any issuance or sale of Capital Stock, the proceeds of such issuance or sale in the form of cash or Temporary Cash Investments, including payments in respect of deferred payment obligations (to the extent corresponding to the principal, but not interest, component thereof) when received in the form of cash or Temporary Cash Investments (except to the extent such obligations are financed or sold with recourse to the Issuer or any of its Restricted Subsidiaries) and proceeds from the conversion of other property received when converted to cash or Temporary Cash Investments, net of attorney's fees, accountants' fees, underwriters' or placement agents' fees, discounts or commissions and brokerage, consultant and other fees incurred in connection with such issuance or sale and net of tax paid or payable as a result thereof.

"Offer to Purchase" means an offer to purchase notes by the Issuer from the holders commenced by mailing a notice to the trustee and each holder stating:

- (1) the covenant pursuant to which the offer is being made and that all notes validly tendered will be accepted for payment on a *pro rata* basis;
- (2) the purchase price and the date of purchase (which will be a Business Day no earlier than 30 days nor later than 60 days from the date such notice is mailed) (the "*Payment Date*");
- (3) that any note not tendered will continue to accrue interest pursuant to its terms;
- (4) that, unless the Issuer defaults in the payment of the purchase price, any note accepted for payment pursuant to the Offer to Purchase will cease to accrue interest on and after the Payment Date;
- (5) that holders electing to have a note purchased pursuant to the Offer to Purchase will be required to surrender the note, together with the form entitled "Option of the Holder to Elect Purchase" on the reverse side of the note completed, to the Paying Agent at the address specified in the notice prior to the close of business on the Business Day immediately preceding the Payment Date;
- (6) that holders will be entitled to withdraw their election if the Paying Agent receives, not later than the close of business on the third Business Day immediately preceding the Payment Date, a telegram, facsimile transmission or letter setting forth the name of such holder, the principal amount of notes delivered for purchase and a statement that such holder is withdrawing his election to have such notes purchased; and
- (7) that holders whose notes are being purchased only in part will be issued new notes equal in principal amount to the unpurchased portion of the notes surrendered; *provided, however*, that each note purchased and each new note issued will be in a principal amount of \$1,000 or integral multiples thereof.

On the Payment Date, the Issuer will:

- (1) accept for payment on a *pro rata* basis notes or portions thereof tendered pursuant to an Offer to Purchase;
- (2) deposit with the Paying Agent money sufficient to pay the purchase price of all notes or portions thereof so accepted; and
- (3) will promptly thereafter deliver, or cause to be delivered, to the trustee all notes or portions thereof so accepted together with an Officers' Certificate specifying the notes or portions thereof accepted for payment by the Issuer.

The Paying Agent will promptly mail to the holders of notes so accepted payment in an amount equal to the purchase price, and the trustee will promptly authenticate and mail to such holders a new note equal in principal amount to any unpurchased portion of any note surrendered; *provided, however*, that each note purchased and each new note issued will be in a principal amount of \$1,000 or integral multiples thereof. The Issuer will publicly announce the results of an Offer to Purchase as soon as practicable after the Payment Date. The Issuer will comply with Rule 14e-1 under the Exchange Act and any other securities laws and regulations thereunder to the extent such laws and regulations are applicable, in the event that the Issuer is required to repurchase notes pursuant to an Offer to Purchase.

"*Pari Passu Indebtedness*" means any Indebtedness of the Issuer or any Subsidiary Guarantor that ranks *pari passu* in right of payment with the notes or the Guarantee thereof by such Subsidiary Guarantor, as applicable.

"*Permitted Investment*" means:

- (1) an Investment in the Issuer or any of its Restricted Subsidiaries or a Person that will, upon the making of such Investment, become a Restricted Subsidiary or be merged or consolidated with or into or transfer or convey all or substantially all its assets to, the Issuer or any of its Restricted Subsidiaries; *provided, however*, that such person's primary business is related, ancillary, incidental or complementary to the businesses of the Issuer or any of its Restricted Subsidiaries on the date of such Investment;
- (2) investments in cash and Temporary Cash Investments;
- (3) Investments made by the Issuer or its Restricted Subsidiaries as a result of consideration received in connection with an Asset Sale made in compliance with the "Limitation on Asset Sales" covenant;
- (4) Investments represented by Guarantees that are otherwise permitted under the indenture;
- (5) payroll, travel and similar advances to cover matters that are expected at the time of such advances ultimately to be treated as expenses in accordance with GAAP;
- (6) stock, obligations or securities received in satisfaction of judgments;
- (7) Permitted Mortgage Investments; and
- (8) additional Investments not to exceed \$25 million at any time outstanding.

"*Permitted Mortgage Investment*" means any Investment in secured notes, mortgage, deeds of trust, collateralized mortgage obligations, commercial mortgage-backed securities, other secured debt securities, secured debt derivative or other secured debt instruments, so long as such investment relates directly or indirectly to real property that constitutes or is used as a skilled nursing home center, hospital, assisted living facility or other property customarily constituting an asset of a real estate investment trust specializing in healthcare or senior housing property.

"*Preferred Stock*" means, with respect to any Person, any and all shares, interests, participations or other equivalents (however designated, whether voting or non-voting) that have a preference on liquidation or with respect to distributions over any other class of Capital Stock, including preferred partnership interests, whether general or limited, or such Person's preferred or preference stock, whether outstanding on the Closing Date or issued thereafter, including, without limitation, all series and classes of such preferred or preference stock.

"*Restricted Subsidiary*" means any Subsidiary of the Issuer other than an Unrestricted Subsidiary.

"*Secured Indebtedness*" means any Indebtedness secured by a Lien upon the property of the Issuer or any of its Restricted Subsidiaries.

"*Significant Subsidiary*" with respect to any Person, means any restricted subsidiary of such Person that satisfies the criteria for a "significant subsidiary" set forth in Rule 1.02(w) of Regulation S-X under the Exchange Act.

"*S&P*" means Standard & Poor's Ratings Services and its successors.

"*Stated Maturity*" means:

- (1) with respect to any debt security, the date specified in such debt security as the fixed date on which the final installment of principal of such debt security is due and payable; and
- (2) with respect to any scheduled installment of principal of or interest on any debt security, the date specified in such debt security as the fixed date on which such installment is due and payable.

"*Subsidiary*" means, with respect to any Person, any corporation, association or other business entity of which more than 50% of the voting power of the outstanding Voting Stock is owned, directly or indirectly, by such Person and one or more other Subsidiaries of such Person and the accounts of which would be consolidated with those of such Person in its consolidated financial statements in accordance with GAAP, if such statements were prepared as of such date.

"*Subsidiary Debt*" means all unsecured Indebtedness of which a Restricted Subsidiary is the primary obligor.

"*Subsidiary Guarantee*" means a Guarantee by each Subsidiary Guarantor for payment of the notes by such Subsidiary Guarantor. The Subsidiary Guarantee will be an unsecured senior obligation of each Subsidiary Guarantor and will be unconditional regardless of the enforceability of the notes and the indenture. Notwithstanding the foregoing, each Subsidiary Guarantee by a Subsidiary Guarantor will provide by its terms that it will be automatically and unconditionally released and discharged upon any sale, exchange or transfer, to any Person not an Affiliate of the Issuer, of all of the Capital Stock owned by the Issuer and its Restricted Subsidiaries in, or all or substantially all the assets of, such Restricted Subsidiary (which sale, exchange or transfer is not then prohibited by the indenture).

"*Subsidiary Guarantors*" means (i) each Restricted Subsidiary of the Issuer on the Closing Date and (ii) each other Person that is required to become a Guarantor by the terms of the Indenture after the Closing Date, in each case, until such Person is released from its Subsidiary Guarantee.

"*Temporary Cash Investment*" means any of the following:

- (1) direct obligations of the United States of America or any agency thereof or obligations fully and unconditionally guaranteed by the United States of America or any agency thereof;
- (2) time deposits accounts, certificates of deposit and money market deposits maturing within 180 days of the date of acquisition thereof issued by a bank or trust company which is organized under the laws of the United States of America, any state thereof, and which bank or trust company has capital, surplus and undivided profits aggregating in excess of \$250 million and has outstanding debt which is rated "A" (or such similar equivalent rating) or higher by at least one nationally recognized statistical rating organization (as defined in Rule 436 under the Securities Act) or any money-market fund sponsored by a registered broker dealer or mutual fund distributor;
- (3) repurchase obligations with a term of not more than 30 days for underlying securities of the types described in clause (1) above entered into with a bank meeting the qualifications described in clause (2) above;
- (4) commercial paper, maturing not more than 90 days after the date of acquisition, issued by a corporation (other than an Affiliate of the Issuer) organized and in existence under the laws

of the United States of America, any state of the United States of America with a rating at the time as of which any investment therein is made of "P-1" (or higher) according to Moody's or "A-1" (or higher) according to S&P; and

- (5) securities with maturities of six months or less from the date of acquisition issued or fully and unconditionally guaranteed by any state, commonwealth or territory of the United States of America, or by any political subdivision or taxing authority thereof, and rated at least "A" by S&P or Moody's.

"*Total Assets*" means the sum (without duplication) of:

- (1) Undepreciated Real Estate Assets; and
- (2) all other assets (excluding intangibles and accounts receivable) of the Issuer and its Restricted Subsidiaries on a consolidated basis determined in conformity with GAAP.

"*Total Unencumbered Assets*" as of any date means the sum of:

- (1) those Undepreciated Real Estate Assets not securing any portion of Secured Indebtedness; and
- (2) all other assets (but excluding intangibles and accounts receivable) of the Issuer and its Restricted Subsidiaries not securing any portion of Secured Indebtedness determined on a consolidated basis in conformity with GAAP.

"*Trade Payables*" means, with respect to any Person, any accounts payable or any other indebtedness or monetary obligation to trade creditors created, assumed or Guaranteed by such Person or any of its Subsidiaries arising in the ordinary course of business in connection with the acquisition of goods or services.

"*Transaction Date*" means, with the respect to the Incurrence of any Indebtedness by the Issuer or any of its Restricted Subsidiaries, the date such Indebtedness is to be Incurred and, with respect to any Restricted Payment, the date such Restricted Payment is to be made.

"*Undepreciated Real Estate Assets*" means, as of any date, the cost (being the original cost to the Issuer or any of its Restricted Subsidiaries plus capital improvements) of real estate assets of the Issuer and its Restricted Subsidiaries on such date, before depreciation and amortization of such real estate assets, determined on a consolidated basis in conformity with GAAP.

"*Unrestricted Subsidiary*" means:

- (1) any Subsidiary of the Issuer that at the time of determination will be designated an Unrestricted Subsidiary by the Board of Directors of the Issuer in the manner provided below; and
- (2) any Subsidiary of an Unrestricted Subsidiary.

Except during a Suspension Period, the Board of Directors of the Issuer may designate any Subsidiary (including any newly acquired or newly formed Subsidiary of the Issuer) to be an Unrestricted Subsidiary unless such Subsidiary owns any Capital Stock of, or owns or holds any Lien on any property of, the Issuer or any of its Restricted Subsidiaries; *provided, however*, that:

- (1) any Guarantee by the Issuer or any of its Restricted Subsidiaries of any Indebtedness of the Subsidiary being so designated will be deemed an "Incurrence" of such Indebtedness and an "Investment" by the Issuer or such Restricted Subsidiary (or all, if applicable) at the time of such designation;

- (2) either (i) the Subsidiary to be so designated has total assets of \$1,000 or less or (ii) if such Subsidiary has assets greater than \$1,000, such designation would be permitted under the "Limitation on Restricted Payments" covenant described below; and
- (3) if applicable, the Incurrence of Indebtedness and the Investment referred to in the first bullet of this proviso would be permitted under the "Limitation on Indebtedness" and "Limitation on Restricted Payments" covenants described below.

The Board of Directors of the Issuer may designate any Unrestricted Subsidiary to be a Restricted Subsidiary; *provided, however*, that:

- (1) no Default or Event of Default will have occurred and be continuing at the time of or after giving effect to such designation; and
- (2) all Liens and Indebtedness of such Unrestricted Subsidiary outstanding immediately after such designation would, if Incurred at such time, have been permitted to be Incurred (and will be deemed to have been Incurred) for all purposes of the indenture.

Any such designation by the Board of Directors of the Issuer will be evidenced to the trustee by promptly filing with the trustee a copy of the Board Resolution giving effect to such designation and an officers' certificate certifying that such designation complied with the foregoing provisions.

"*Unsecured Indebtedness*" means any Indebtedness of the Issuer or any of its Restricted Subsidiaries that is not Secured Indebtedness.

"*U.S. Government Obligations*" means direct obligations of, obligations guaranteed by, or participations in pools consisting solely of obligations of or obligations guaranteed by, the United States of America for the payment of which obligations or guarantee the full faith and credit of the United States of America is pledged and that are not callable or redeemable at the option of the issuer thereof.

"*Voting Stock*" means with respect to any Person, Capital Stock of any class or kind ordinarily having the power to vote for the election of directors, managers or other voting members of the governing body of such Person.

"*Wholly Owned*" means, with respect to any Subsidiary of any Person, the ownership of all of the outstanding Capital Stock of such Subsidiary (other than any director's qualifying shares or Investments by individuals mandated by applicable law) by such Person or one or more Wholly Owned Subsidiaries of such Person.

Suspension of Covenants

During a Suspension Period, the Issuer and its Subsidiaries will not be subject to the following corresponding provisions of the indenture:

- (1) "—Certain Covenants—Limitation on Restricted Payments";
- (2) "—Certain Covenants—Limitation on Dividend and other Payment Restrictions Affecting Restricted Subsidiaries";
- (3) "—Certain Covenants—Limitation on Issuances of Guarantees by Restricted Subsidiaries";
- (4) "—Certain Covenants—Limitation on Transactions with Affiliates";
- (5) "—Certain Covenants—Limitation on Asset Sales"; and
- (6) "—Repurchase on Change of Control".

All other provisions of the indenture will apply at all times during any Suspension Period so long as any notes remain outstanding thereunder.

"*Suspension Period*" means any period:

- (1) beginning on the date that:
 - (A) the notes have Investment Grade Status;
 - (B) no Default or Event of Default has occurred and is continuing; and
 - (C) the Issuer has delivered an officers' certificate to the Trustee certifying that the conditions set forth in clauses (A) and (B) above are satisfied; and
- (2) ending on the date (the "*Reversion Date*") that the notes cease to have Investment Grade Status.

On each Reversion Date, all Indebtedness incurred during the Suspension Period prior to such Reversion Date will be deemed to have been outstanding on the Closing Date.

For purposes of calculating the amount available to be made as Restricted Payments under clause (C) of the first paragraph of the "—Limitation on Restricted Payments" covenant, calculations under that clause will be made with reference to the Transaction Date, as set forth in that clause. Accordingly, (x) Restricted Payments made during the Suspension Period not otherwise permitted pursuant to any of clauses (1) through (8) under the third paragraph under the "Limitation on Restricted Payments" covenant will reduce the amount available to be made as Restricted Payments under clause (C) of the first paragraph of such covenant; *provided, however*, that the amount available to be made as a Restricted Payment on the Transaction Date will not be reduced to below zero solely as a result of such Restricted Payments, but may be reduced to below zero as a result of cumulative Funds From Operations for the purpose of the first bullet under clause (C) of the first paragraph of such covenant being a negative, and (y) the items specified in the first four bullets under clause (C) of the first paragraph of such covenant that occur during the Suspension Period will increase the amount available to be made as Restricted Payments under clause (C) of the first paragraph of such covenant. Any Restricted Payments made during the Suspension Period that are of the type described in the third paragraph of the "Limitation on Restricted Payments" covenant (other than the Restricted Payment referred to in clause (2) of the such third paragraph or an exchange of Capital Stock for Capital Stock or Indebtedness referred to in clause (3) or (4) of such third paragraph), and the Net Cash Proceeds from any issuance of Capital Stock referred to in clauses (3) and (4) of the third paragraph of the "Limitation on Restricted Payments" covenant will be included in calculating the amounts permitted to be incurred under such clause (C) on each Reversion Date.

For purposes of the "—Limitation on Asset Sales" covenant, on each Reversion Date, the unutilized Excess Proceeds will be reset to zero.

Covenants

The indenture contains, among others, the following covenants:

Limitation on Indebtedness

- (1) The Issuer will not, and will not permit any of its Restricted Subsidiaries to, Incur any Indebtedness (including Acquired Indebtedness) if, immediately after giving effect to the Incurrence of such additional Indebtedness and the receipt and application of the proceeds therefrom, the aggregate principal amount of all outstanding Indebtedness of the Issuer and its Restricted Subsidiaries on a consolidated basis determined in conformity with GAAP is greater than 60% of Adjusted Total Assets.

- (2) The Issuer will not, and will not permit any of its Restricted Subsidiaries to, Incur any Subsidiary Debt or any Secured Indebtedness if, immediately after giving effect to the Incurrence of such additional Subsidiary Debt or Secured Indebtedness and the receipt and application of the proceeds therefrom, the aggregate principal amount of all outstanding Subsidiary Debt and Secured Indebtedness of the Issuer and its Restricted Subsidiaries on a consolidated basis determined in conformity with GAAP is greater than 40% of Adjusted Total Assets.
- (3) The Issuer will not, and will not permit any of its Restricted Subsidiaries to, Incur any Indebtedness (other than the notes issued on the Closing Date and other Indebtedness existing on the Closing Date); *provided, however*, that the Issuer or any of the Subsidiary Guarantors may Incur Indebtedness if, after giving effect to the Incurrence of such Indebtedness and the receipt and application of the proceeds therefrom, the Interest Coverage Ratio of the Issuer and its Restricted Subsidiaries on a consolidated basis would be greater than 2.0 to 1.
- (4) Notwithstanding paragraphs (1), (2) or (3) above, the Issuer or any of its Restricted Subsidiaries (except as specified below) may Incur each and all of the following:
- (A) Indebtedness outstanding under the Line of Credit at any time in an aggregate principal amount not to exceed \$200 million;
- (B) Indebtedness owed to:
- the Issuer evidenced by an unsubordinated promissory note; or
 - to any Restricted Subsidiary;
- provided, however*, that any event which results in any such Restricted Subsidiary ceasing to be a Restricted Subsidiary or any subsequent transfer of such Indebtedness (other than to the Issuer or any other Restricted Subsidiary) will be deemed, in each case, to constitute an Incurrence of such Indebtedness not permitted by this clause (B);
- (C) Indebtedness issued in exchange for, or the net proceeds of which are used to refinance or refund, outstanding Indebtedness (other than Indebtedness Incurred under clause (A), (B) or (D) of this paragraph (4)) and any refinancings thereof in an amount not to exceed the amount so refinanced or refunded (plus premiums, accrued interest, fees and expenses); *provided, however*, that Indebtedness the proceeds of which are used to refinance or refund the notes or Indebtedness that ranks equally with or subordinate in right of payment to, the notes will only be permitted under this clause (C) if:
- in case the notes are refinanced in part or the Indebtedness to be refinanced ranks equally with the notes, such new Indebtedness, by its terms or by the terms of any agreement or instrument pursuant to which such new Indebtedness is outstanding, ranks equally with or is expressly made subordinate in right of payment to the remaining notes;
 - in case the Indebtedness to be refinanced is subordinated in right of payment to the notes, such new Indebtedness, by its terms or by the terms of any agreement or instrument pursuant to which such new Indebtedness is issued or remains outstanding, is expressly made subordinate in right of payment to the notes at least to the extent that the Indebtedness to be refinanced is subordinated to the notes; and
 - such new Indebtedness, determined as of the date of Incurrence of the new Indebtedness, does not mature prior to the Stated Maturity of the Indebtedness to be

refinanced or refunded, and the Average Life of such new Indebtedness is at least equal to the remaining Average Life of the Indebtedness to be refinanced or refunded;

provided further, however, that in no event may Indebtedness of the Issuer that ranks equally with or subordinate in right of payment to the notes be refinanced by means of any Indebtedness of any Restricted Subsidiary pursuant to this clause (C);

(D) Indebtedness:

- in respect of performance, surety or appeal bonds provided in the ordinary course of business;
- under Currency Agreements and Interest Rate Agreements; *provided* that such agreements (i) are designed solely to protect the Issuer or any of its Restricted Subsidiaries against fluctuations in foreign currency exchange rates or interest rates and (ii) do not increase the Indebtedness of the obligor outstanding at any time other than as a result of fluctuations in foreign currency exchange rates or interest rates or by reason of fees, indemnities and compensation payable thereunder; and
- arising from agreements providing for indemnification, adjustment of purchase price or similar obligations, or from Guarantees or letters of credit, surety bonds or performance bonds securing any obligations of the Issuer or any of its Restricted Subsidiaries pursuant to such agreements, in any case Incurred in connection with the disposition of any business, assets or Restricted Subsidiary (other than Guarantees of Indebtedness Incurred by any Person acquiring all or any portion of such business, assets or Restricted Subsidiary for the purpose of financing such acquisition), in a principal amount not to exceed the gross proceeds actually received by the Issuer and its Restricted Subsidiaries on a consolidated basis in connection with such disposition;

(E) Indebtedness of the Issuer, to the extent the net proceeds thereof are promptly:

- used to purchase notes tendered in an Offer to Purchase made as a result of a Change in Control; or
- deposited to defease the notes as described below under "Defeasance;" or
- deposited to discharge the obligations under the notes and indenture as described below under "Satisfaction and Discharge;"

(F) Guarantees of the notes and Guarantees of Indebtedness of the Issuer by any of our Restricted Subsidiaries provided the guarantee of such Indebtedness is permitted by and made in accordance with the "Limitation on Issuances of Guarantees by Restricted Subsidiaries" covenant described below; or

(G) additional Indebtedness of the Issuer and its Restricted Subsidiaries not to exceed \$30 million in aggregate principal amount at any time outstanding.

(5) Notwithstanding any other provision of this "Limitation on Indebtedness" covenant, the maximum amount of Indebtedness that the Issuer or any of its Restricted Subsidiaries may Incur pursuant to this "Limitation on Indebtedness" covenant will not be deemed to be exceeded, with respect to any outstanding Indebtedness, due solely to the result of fluctuations in the exchange rates of currencies.

- (6) For purposes of determining any particular amount of Indebtedness under this "Limitation on Indebtedness" covenant:
- (A) Indebtedness Incurred under the Line of Credit on or prior to the Closing Date will be treated as Incurred pursuant to clause (A) of paragraph (4) of this "Limitation on Indebtedness" covenant; and
 - (B) Guarantees, Liens or obligations with respect to letters of credit supporting Indebtedness otherwise included in the determination of such particular amount will not be included.

For purposes of determining compliance with this covenant, in the event that an item of Indebtedness meets the criteria of more than one of the categories of permitted Indebtedness described in clauses (A) through (G) of paragraph (4) above or is entitled to be incurred pursuant to paragraph (3) above, the Issuer will, in its sole discretion, classify (and may later reclassify) such item of Indebtedness and may divide and classify such Indebtedness in more than one of the types of Indebtedness described, except that Indebtedness incurred under the Line of Credit on the Closing Date will be deemed to have been incurred under clause (A) of paragraph (4) above.

Maintenance of Total Unencumbered Assets

The Issuer and its Restricted Subsidiaries will maintain Total Unencumbered Assets of not less than 150% of the aggregate outstanding principal amount of the Unsecured Indebtedness of the Issuer and its Restricted Subsidiaries on a consolidated basis.

Limitation on Restricted Payments

The Issuer will not, and will not permit any of its Restricted Subsidiaries to, directly or indirectly:

- (1) declare or pay any dividend or make any distribution on or with respect to Capital Stock of the Issuer held by Persons other than the Issuer or any of its Restricted Subsidiaries, other than dividends or distributions payable solely in shares of its Capital Stock (other than Disqualified Stock) or in options, warrants or other rights to acquire shares of such Capital Stock;
- (2) purchase, redeem, retire or otherwise acquire for value any shares of Capital Stock (including options, warrants or other rights to acquire such shares of Capital Stock) of the Issuer;
- (3) make any voluntary or optional principal payment, or voluntary or optional redemption, repurchase, defeasance, or other acquisition or retirement for value, of Indebtedness of the Issuer that is subordinated in right of payment to the notes or the Subsidiary Guaranties of the notes; or
- (4) make an Investment, other than a Permitted Investment, in any Person

(such payments or any other actions described in clauses (1) through (4) above being collectively " *Restricted Payments*") if, at the time of, and after giving effect to, the proposed Restricted Payment:

- (A) a Default or Event of Default will have occurred and be continuing;
- (B) the Issuer could not Incur at least \$1.00 of Indebtedness under paragraphs (1), (2) and (3) of the "Limitation on Indebtedness" covenant; or
- (C) the aggregate amount of all Restricted Payments (the amount, if other than in cash, to be determined in good faith by the Board of Directors, whose determination will be

conclusive and evidenced by a Board Resolution) made after the Closing Date will exceed the sum of:

- 95% of the aggregate amount of the Funds From Operations (or, if the Funds From Operations is a loss, minus 100% of the amount of such loss) accrued on a cumulative basis during the period (taken as one accounting period) beginning on the first day of the fiscal quarter in which the Closing Date occurs and ending on the last day of the last fiscal quarter preceding the Transaction Date for which reports have been filed with the SEC or provided to the Trustee pursuant to the "SEC Reports and Reports to Holders" covenant; *plus*
- 100% of the aggregate Net Cash Proceeds received by the Issuer after the Closing Date from the issuance and sale permitted by the indenture of its Capital Stock (other than Disqualified Stock) to a Person who is not a Subsidiary of the Issuer, including from an issuance or sale permitted by the indenture of Indebtedness of the Issuer for cash subsequent to the Closing Date upon the conversion of such Indebtedness into Capital Stock (other than Disqualified Stock) of the Issuer, or from the issuance to a Person who is not a Subsidiary of the Issuer of any options, warrants or other rights to acquire Capital Stock of the Issuer (in each case, exclusive of any Disqualified Stock or any options, warrants or other rights that are redeemable at the option of the holder, or are required to be redeemed, prior to the Stated Maturity of the notes); *plus*
- an amount equal to the net reduction in Investments (other than reductions in Permitted Investments) in any Person after the Closing Date resulting from payments of interest on Indebtedness, dividends, repayments of loans or advances, or other transfers of assets, in each case to the Issuer or any of its Restricted Subsidiaries or from the Net Cash Proceeds from the sale of any such Investment (except, in each case, to the extent any such payment or proceeds are included in the calculation of Funds From Operations) or from redesignations of Unrestricted Subsidiaries as Restricted Subsidiaries (valued in each case as provided in the definition of "Investments") not to exceed, in each case, the amount of Investments previously made by the Issuer and its Restricted Subsidiaries in such Person or Unrestricted Subsidiary; *plus*
- the fair market value of noncash tangible assets or Capital Stock acquired in exchange for an issuance of Capital Stock (other than Disqualified Stock or Capital Stock issued in exchange for Capital Stock of the Issuer pursuant to clauses (3) or (4) of the second succeeding paragraph) of the Issuer subsequent to the Closing Date; *plus*
- \$25 million.

Notwithstanding the foregoing, the Issuer may declare or pay any dividend or make any distribution that is necessary to maintain the Issuer's status as a REIT under the Code if:

- (1) the aggregate principal amount of all outstanding Indebtedness of the Issuer and its Restricted Subsidiaries on a consolidated basis at such time is less than 60% of Adjusted Total Assets; and
- (2) no Default or Event of Default will have occurred and be continuing.

The foregoing provisions will not be violated by reason of:

- (1) the payment of any dividend within 60 days after the date of declaration thereof if, at said date of declaration, such payment would comply with the foregoing paragraph;

- (2) the redemption, repurchase, defeasance or other acquisition or retirement for value of Indebtedness that is subordinated in right of payment to the notes including premium, if any, and accrued and unpaid interest, with the proceeds of, or in exchange for, Indebtedness Incurred under clause (C) of paragraph (4) of the "Limitation on Indebtedness" covenant;
- (3) the repurchase, redemption or other acquisition of Capital Stock of the Issuer or an Unrestricted Subsidiary (or options, warrants or other rights to acquire such Capital Stock) in exchange for, or out of the proceeds of an issuance of, shares of Capital Stock (other than Disqualified Stock) of the Issuer (or options, warrants or other rights to acquire such Capital Stock) within 90 days of such repurchase, redemption or other acquisition;
- (4) the making of any principal payment on, or the repurchase, redemption, retirement, defeasance or other acquisition for value of, Indebtedness of the Issuer which is subordinated in right of payment to the notes in exchange for, or out of the proceeds of, an issuance of, shares of the Capital Stock (other than Disqualified Stock) of the Issuer (or options, warrants or other rights to acquire such Capital Stock) within 90 days of such principal payment, repurchase, redemption, retirement, defeasance or other acquisition;
- (5) payments or distributions, to dissenting stockholders pursuant to applicable law pursuant to or in connection with a consolidation, merger or transfer of assets that complies with the provisions of the indenture applicable to mergers, consolidations and transfers of all or substantially all of the property and assets of the Issuer;
- (6) the payment of any regularly scheduled cash dividend on shares of cumulative preferred stock of the Issuer outstanding on the Closing Date as in effect on the Closing Date;
- (7) the repurchase, redemption or other acquisition or retirement for value of any shares of Capital Stock of the Issuer held by any member of the Issuer's (or any of the Restricted Subsidiaries') management or other employees pursuant to (A) any management or employee equity subscription agreement, stock option agreement or similar agreement in an aggregate amount not to exceed \$1 million in the aggregate in any 12-month period or (B) the terms of any employee stock option plan of the Issuer for the purpose of paying employee withholding taxes with respect to such shares; or
- (8) additional Restricted Payments in an aggregate amount not to exceed \$15 million;

provided, however, that, except in the case of clauses (1) and (3), no Default or Event of Default will have occurred and be continuing or occur as a direct consequence of the actions or payments set forth therein.

Each Restricted Payment permitted pursuant to the immediately preceding paragraph (other than the Restricted Payment referred to in clause (2) of the immediately preceding paragraph or an exchange of Capital Stock for Capital Stock or Indebtedness referred to in clause (3) or (4) of the immediately preceding paragraph), and the Net Cash Proceeds from any issuance of Capital Stock referred to in clauses (3) and (4) of the immediately preceding paragraph, will be included in calculating whether the conditions of clause (C) of the first paragraph of this "Limitation on Restricted Payments" covenant have been met with respect to any subsequent Restricted Payments.

Limitation on Dividend and Other Payment Restrictions Affecting Restricted Subsidiaries

The Issuer will not, and will not permit any of its Restricted Subsidiaries to, create or otherwise cause or suffer to exist or become effective any consensual encumbrance or restriction of any kind on the ability of any Restricted Subsidiary to:

- (1) pay dividends or make any other distributions permitted by applicable law on any Capital Stock of such Restricted Subsidiary owned by the Issuer or any of its Restricted Subsidiaries;

- (2) pay any Indebtedness owed to the Issuer or any other Restricted Subsidiary;
- (3) make loans or advances to the Issuer or any other Restricted Subsidiary; or
- (4) transfer its property or assets to the Issuer or any other Restricted Subsidiary.

The foregoing provisions will not restrict any encumbrances or restrictions:

- (1) existing on the Closing Date in the indenture, the Line of Credit and any other agreement in effect on the Closing Date as in effect on the Closing Date, and any extensions, refinancings, renewals or replacements of such agreements; *provided, however*, that the encumbrances and restrictions in any such extensions, refinancings, renewals or replacements are no less favorable in any material respect to the holders than those encumbrances or restrictions that are then in effect and that are being extended, refinanced, renewed or replaced;
- (2) existing under or by reason of applicable law;
- (3) existing with respect to any Person or the property or assets of such Person acquired by the Issuer or any Restricted Subsidiary, existing at the time of such acquisition and not incurred in contemplation thereof, which encumbrances or restrictions are not applicable to any Person or the property or assets of any Person other than such Person or the property or assets of such Person so acquired;
- (4) in the case of the last bullet in the first paragraph of this "Limitation on Dividend and Other Payment Restrictions Affecting Restricted Subsidiaries" covenant:
 - (A) that restrict in a customary manner the subletting, assignment or transfer of any property or asset that is a lease, license, conveyance or contract or similar property or asset,
 - (B) existing by virtue of any transfer of, agreement to transfer, option or right with respect to, or Lien on, any property or assets of the Issuer or any Restricted Subsidiary not otherwise prohibited by the indenture, or
 - (C) arising or agreed to in the ordinary course of business, not relating to any Indebtedness, and that do not, individually or in the aggregate, detract from the value of property or assets of the Issuer or any Restricted Subsidiary in any manner material to the Issuer and its Restricted Subsidiaries taken as a whole;
- (5) with respect to a Restricted Subsidiary and imposed pursuant to an agreement that has been entered into for the sale or disposition of all or substantially all of the Capital Stock of, or property and assets of, such Restricted Subsidiary;
- (6) contained in the terms of any Indebtedness or any agreement pursuant to which such Indebtedness was issued if:
 - (A) the encumbrance or restriction applies only in the event of a payment default or a default with respect to a financial covenant contained in such Indebtedness or agreement;
 - (B) the encumbrance or restriction is not materially more disadvantageous to the holders of the notes than is customary in comparable financings (as determined by the good faith judgment of the Board of Directors of the Issuer); and
 - (C) the Board of Directors of the Issuer, in its good faith, determines that an such encumbrance or restriction will not materially affect the Issuer's ability to make principal or interest payments on the notes; or
- (7) restrictions on the transfer of assets subject to any Lien permitted under the indenture imposed by the holder of such Lien.

Nothing contained in this "Limitation on Dividend and Other Payment Restrictions Affecting Restricted Subsidiaries" covenant will prevent the Issuer or any Restricted Subsidiary from restricting the sale or other disposition of property or assets of the Issuer or any of its Restricted Subsidiaries that secure Indebtedness of the Issuer or any of its Restricted Subsidiaries.

Limitation on Issuances of Guarantees by Restricted Subsidiaries

The Issuer will not permit any of its Restricted Subsidiaries, directly or indirectly, to Guarantee any Indebtedness of the Issuer which ranks equally with or subordinate in right of payment to the notes ("*Guaranteed Indebtedness*"), unless:

- (1) such Restricted Subsidiary simultaneously executes and delivers a supplemental indenture to the indenture providing for a Subsidiary Guarantee by such Restricted Subsidiary; and
- (2) such Restricted Subsidiary waives and will not in any manner whatsoever claim or take the benefit or advantage of, any rights of reimbursement, indemnity or subrogation or any other rights against the Issuer or any other Restricted Subsidiary as a result of any payment by such Restricted Subsidiary under its Subsidiary Guarantee;

provided, however, that this paragraph will not be applicable to any Guarantee of any Restricted Subsidiary that existed at the time such Person became a Restricted Subsidiary and was not Incurred in connection with, or in contemplation of, such person becoming a Restricted Subsidiary. If the Guaranteed Indebtedness:

- (1) ranks equally with the notes, then the Guarantee of such Guaranteed Indebtedness will rank equally with, or subordinate to, the Subsidiary Guarantee; or
- (2) is subordinate to the notes, then the Guarantee of such Guaranteed Indebtedness will be subordinated to the Subsidiary Guarantee at least to the extent that the Guaranteed Indebtedness is subordinated to the notes.

Any Subsidiary Guarantee by a Restricted Subsidiary may provide by its terms that it will be automatically and unconditionally released and discharged upon:

- (1) any sale, exchange or transfer, to any Person not an Affiliate of the Issuer of all of Capital Stock held by the Issuer and its Restricted Subsidiaries in, or all or substantially all the assets of, such Restricted Subsidiary (which sale, exchange or transfer is not prohibited by the indenture); or
- (2) the release or discharge of the Guarantee which resulted in the creation of such Subsidiary Guarantee, except a discharge or release by or as a result of payment under such Guarantee.

Limitation on Transactions with Affiliates

The Issuer will not, and will not permit any of its Restricted Subsidiaries to, directly or indirectly, enter into, renew or extend any transaction (including, without limitations, the purchase, sale, lease or exchange of property or assets, or the rendering of any service) with any holder (or any Affiliate of such holder) of 5% or more of any class of Capital Stock of the Issuer or with any Affiliate of the Issuer or any of its Restricted Subsidiaries, except upon fair and reasonable terms no less favorable to the Issuer or such Restricted Subsidiary than could be obtained, at the time of such transaction or, if such transaction is pursuant to a written agreement, at the time of the execution of the agreement providing therefor, in a comparable arm's-length transaction with a Person that is not such a holder or an Affiliate.

The foregoing limitation does not limit, and will not apply to:

- (1) transactions (A) approved by a majority of the independent directors of the Board of Directors of the Issuer or (B) for which the Issuer or any Restricted Subsidiary delivers to the trustee a written opinion of a nationally recognized investment banking firm stating that the transaction is fair to the Issuer or such Restricted Subsidiary from a financial point of view;
- (2) any transaction solely between the Issuer and any of its Wholly Owned Restricted Subsidiaries or solely between Wholly Owned Restricted Subsidiaries;
- (3) the payment of reasonable and customary fees and expenses to directors of the Issuer who are not employees of the Issuer;
- (4) any Restricted Payments not prohibited by the "Limitation on Restricted Payments" covenant;
- (5) any employment agreement entered into by the Issuer or any Restricted Subsidiary with an employee of the Issuer or such Restricted Subsidiary in the ordinary course consistent with past practice; or
- (6) advances to employees of the Issuer or any Restricted Subsidiary for reasonable moving and relocation, entertainment and travel expenses and similar expenses in the ordinary course of business and consistent with past practice.

Notwithstanding the foregoing, any transaction or series of related transactions covered by the first paragraph of this "Limitation on Transactions with Affiliates" covenant and not covered by (2) through (6) of the immediately foregoing paragraph:

- (1) the aggregate amount of which exceeds \$5 million in value must be approved or determined to be fair in the manner provided for in clause (1)(A) or (B) above; and
- (2) the aggregate amount of which exceeds \$10 million in value, must be determined to be fair in the manner provided for in clause (1) (B) above.

Limitation on Asset Sales

The Issuer will not, and will not permit any of its Restricted Subsidiaries to, consummate any Asset Sale, unless:

- (1) the consideration received by the Issuer or such Restricted Subsidiary is at least equal to the fair market value of the assets sold or disposed of; and
- (2) at least 75% of the consideration received consists of cash or Temporary Cash Investments; *provided, however*, with respect to the sale of one or more healthcare properties that (A) up to 75% of the consideration may consist of indebtedness of the purchaser of such healthcare properties so long as such Indebtedness is secured by a first priority Lien on the healthcare property or properties sold and (B) up to 66²/₃% of the consideration may consist of indebtedness of the purchaser of such healthcare properties so long as such indebtedness is secured by a second priority Lien on the healthcare property or properties sold and such indebtedness together with all other indebtedness received pursuant to this clause (B) does not exceed \$7.5 million in aggregate principal amount at any time outstanding.

In the event and to the extent that the Net Cash Proceeds received by the Issuer or such Restricted Subsidiary from one or more Asset Sales occurring on or after the Closing Date in any period of 12 consecutive months exceed 5% of Adjusted Consolidated Net Tangible Assets (determined as of the date closest to the commencement of such 12-month period for which a consolidated balance sheet of the Issuer and its Restricted Subsidiaries has been filed with the SEC or provided to the

Trustee pursuant to the "SEC Reports and Reports to Holders" covenant), then the Issuer will or will cause the relevant Restricted Subsidiary to:

- (1) within 12 months after the date Net Cash Proceeds so received exceed 5% of Adjusted Consolidated Net Tangible Assets:
 - (A) apply an amount equal to such excess Net Cash Proceeds to permanently reduce Indebtedness under the Line of Credit; or
 - (B) invest an equal amount, or the amount not so applied pursuant to the foregoing bullet (or enter into a definitive agreement committing to so invest within six months after the date of such agreement), in property or assets (which may include Permitted Mortgage Investments) (other than current assets) of a nature or type or that are used in a business (or in a Restricted Subsidiary having property and assets of a nature or type, or engaged in a business) similar or related to the nature or type of the property and assets of, or the business of, the Issuer or any of its Restricted Subsidiaries existing on the date of such investment; and
- (2) apply (no later than the end of the 12-month period referred to in clause (1)) such excess Net Cash Proceeds (to the extent not applied pursuant to clause (1)) as provided in the following paragraph of this "Limitation on Asset Sales" covenant.

The amount of such excess Net Cash Proceeds required to be applied (or to be committed to be applied) during such 12-month period as set forth in clause (1) of the preceding sentence and not applied as so required by the end of such period will constitute "*Excess Proceeds*." If, as of the first day of any calendar month, the aggregate amount of Excess Proceeds not previously subject to an Offer to Purchase pursuant to this "Limitation on Asset Sales" covenant totals at least \$10 million, the Issuer must commence, not later than the fifteenth Business Day of such month, and consummate an Offer to Purchase from the holders of the notes and, to the extent required by the terms of any Pari Passu Indebtedness, to all holders of such Pari Passu Indebtedness on a *pro rata* basis an aggregate principal amount of notes (and Pari Passu Indebtedness) equal to the Excess Proceeds on such date, at a purchase price equal to 100% of the principal amount of the notes (and Pari Passu Indebtedness), plus, in each case, accrued and unpaid interest (if any) to the Payment Date.

Repurchase of Notes upon a Change of Control

The Issuer must commence, within 30 days of the occurrence of a Change of Control, and consummate an Offer to Purchase for all notes then outstanding, at a purchase price equal to 101% of the principal amount of the notes, plus accrued and unpaid interest (if any) to the Payment Date.

There can be no assurance that the Issuer will have sufficient funds available at the time of any Change of Control to make any debt payment (including repurchases of notes) required by the foregoing covenant (as well as any covenant that may be contained in other securities of the Issuer that might be outstanding at the time). The above covenant requiring the Issuer to repurchase the notes will, unless consents are obtained, require the Issuer to repay all indebtedness then outstanding which by its terms would prohibit such note repurchase, either prior to or concurrently with such note repurchase.

SEC Reports and Reports to Holders

Whether or not the Issuer is then required to file reports with the SEC, the Issuer will file with the SEC all such reports and other information as it would be required to file with the SEC by Sections 13 (a) or 15 (d) under the Exchange Act if it was subject thereto; *provided, however*, that, if filing such documents by the Issuer with the SEC is not permitted under the Exchange Act, the Issuer will provide such documents to the trustee and upon written request supply copies of such documents

to any prospective holder. The Issuer will supply the trustee and each holder or will supply to the trustee for forwarding to each such holder, without cost to such holder, copies of such reports and other information.

Events of Default

Events of Default under the indenture include the following:

- (1) default in the payment of principal of, or premium, if any, on any note when they are due and payable at maturity, upon acceleration, redemption or otherwise;
- (2) default in the payment of interest on any note when they are due and payable, and such default continues for a period of 30 days;
- (3) default in the performance or breach of the provisions of the indenture applicable to mergers, consolidations and transfers of all or substantially all of the assets of the Issuer or the failure by the Issuer to make or consummate an Offer to Purchase in accordance with the "Limitations on Asset Sales" or "Repurchase of Notes upon a Change of Control" covenants;
- (4) the Issuer defaults in the performance of or breaches any other covenant or agreement of the Issuer in the indenture or under the notes (other than a default specified in clause (1), (2) or (3) above) and such default or breach continues for a period of 30 consecutive days after written notice by the trustee or the holders of 25% or more in aggregate principal amount of the notes;
- (5) there occurs with respect to any issue or issues of Indebtedness of the Issuer or any Significant Subsidiary having an outstanding principal amount of \$10 million or more in the aggregate for all such issues of all such Persons, whether such Indebtedness now exists or will hereafter be created:
 - (A) an event of default that has caused the holder thereof to declare such Indebtedness to be due and payable prior to its Stated Maturity and such Indebtedness has not been discharged in full or such acceleration has not been rescinded or annulled within 30 days of such acceleration, and/or
 - (B) the failure to make a principal payment at the final (but not any interim) fixed maturity and such defaulted payment will not have been made, waived or extended within 30 days of such payment default;
- (6) any final judgment or order (not covered by insurance) for the payment of money in excess of \$10 million in the aggregate for all such final judgments or orders against all such Persons (treating any deductibles, self-insurance or retention as not covered by insurance):
 - (A) will be rendered against the Issuer or any Significant Subsidiary and will not be paid or discharged; and
 - (B) and there will be any period of 60 consecutive days following entry of the final judgment or order that causes the aggregate amount for all such final judgments or orders outstanding and not paid or discharged against all such Persons to exceed \$10 million during which a stay of enforcement of such final judgment or order, by reason of a pending appeal or otherwise, will not be in effect;
- (7) a court of competent jurisdiction enters a decree or order for:
 - (A) relief in respect of the Issuer or any Significant Subsidiary in an involuntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect,

- (B) appointment of a receiver, liquidator, assignee custodian, trustee, sequestrator or similar official of the Issuer or any Significant Subsidiary or for all or substantially all of the property and assets of the Issuer or any Significant Subsidiary, or
 - (C) the winding up or liquidation of the affairs of the Issuer or any Significant Subsidiary and, in each case, such decree or order will remain unstayed and in effect for a period of 60 consecutive days; or
- (8) the Issuer or any Significant Subsidiary:
- (A) commences a voluntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, or consents to the entry of an order for relief in an involuntary case under such law,
 - (B) consents to the appointment of or taking possession by a receiver, liquidator, assignee, custodian, trustee, sequestrator or similar official of the Issuer or such Significant Subsidiary or for all or substantially all of the property and assets of the Issuer or such Significant Subsidiary, or
 - (C) effects any general assignment for the benefit of its creditors.

If an Event of Default (other than an Event of Default specified in clause (7) or (8) above that occurs with respect to the Issuer) occurs and is continuing under the indenture, the trustee or the holders of at least 25% in aggregate principal amount of the notes then outstanding, by written notice to the Issuer (and to the trustee if such notice is given by the holders), may, and the trustee at the request of the holders of at least 25% in aggregate principal amount of the notes then outstanding will, declare the principal of, premium, if any, and accrued interest on the notes to be immediately due and payable. Upon a declaration of acceleration, such principal of, premium, if any, and accrued interest will be immediately due and payable. In the event of a declaration of acceleration because an Event of Default set forth in clause (5) above has occurred and is continuing, such declaration of acceleration will be automatically rescinded and annulled if the event of default triggering such Event of Default pursuant to clause (5) will be remedied or cured by the Issuer or the relevant Significant Subsidiary or waived by the holders of the relevant Indebtedness within 60 days after the declaration of acceleration with respect thereto.

If an Event or Default specified in clause (7) or (8) above occurs with respect to the Issuer, the principal of, premium, if any, and accrued interest on the notes then outstanding will automatically become and be immediately due and payable without any declaration or other act on the part of the trustee or any holder. The holders of at least a majority in principal amount of the outstanding notes by written notice to the Issuer and to the trustee, may waive all past defaults and rescind and annul a declaration of acceleration and its consequences if:

- (1) all existing Events of Default, other than the nonpayment of the principal of, premium, if any, and interest on the notes that have become due solely by such declaration of acceleration, have been cured or waived; and
- (2) the rescission would not conflict with any judgment or decree of a court of competent jurisdiction.

As to the waiver of defaults, see "—Modification and Waiver."

The holders of at least a majority in aggregate principal amount of the outstanding notes may direct the time, method and place of conducting any proceeding for any remedy available to the trustee or exercising any trust or power conferred on the trustee. However, the trustee may refuse to follow any direction that conflicts with law or the indenture, that may involve the trustee in personal liability, or that the trustee determines in good faith may be unduly prejudicial to the rights of holders of notes

not joining in the giving of such direction and may take any other action it deems proper that is not inconsistent with any such direction received from holders of notes. A holder may not pursue any remedy with respect to the indenture or the notes unless:

- (1) the holder gives the trustee written notice of a continuing Event of Default;
- (2) the holders of at least 25% in aggregate principal amount of outstanding notes make a written request to the trustee to pursue the remedy;
- (3) such holder or holders offer the trustee indemnity satisfactory to the trustee against any costs, liability or expense;
- (4) the trustee does not comply with the request within 60 days after receipt of the request and the offer of indemnity; and
- (5) during such 60-day period, the holders of a majority in aggregate principal amount of the outstanding notes do not give the trustee a direction that is inconsistent with the request.

However, such limitations do not apply to the right of any holder of a note to receive payment of the principal of, premium, if any, or interest on, such note or to bring suit for the enforcement of any such payment on or after the due date expressed in the notes, which right will not be impaired or affected without the consent of the holder.

The indenture requires certain officers of the Issuer to certify, on or before a date not more than 90 days after the end of each fiscal year, that a review has been conducted of the activities of the Issuer and its Restricted Subsidiaries and of its performance under the indenture and that the Issuer has fulfilled all obligations thereunder, or, if there has been a default in fulfillment of any such obligation, specifying each such default and the nature and status thereof. The Issuer will also be obligated to notify the trustee of any default or defaults in the performance of any covenants or agreements under the indenture.

Consolidation, Merger and Sale of Assets

The Issuer will not consolidate with or merge with or into, or sell, convey, transfer, lease or otherwise dispose of all or substantially all of its property and assets (as an entirety or substantially an entirety in one transaction or a series of related transactions) to, any Person or permit any Person to merge with or into the Issuer unless:

- (1) the Issuer will be the continuing Person, or the Person (if other than the Issuer) formed by such consolidation or into which the Issuer is merged or that acquired or leased such property and assets of the Issuer will be a corporation organized and validly existing under the laws of the United States of America or any state or jurisdiction thereof and will expressly assume, by a supplemental indenture, executed and delivered to the trustee, all of the obligations of the Issuer on the notes and under the indenture;
- (2) immediately after giving effect to such transaction, no Default or Event of Default will have occurred and be continuing;
- (3) immediately after giving effect to such transaction on a *pro forma* basis the Issuer, or any Person becoming the successor obligor of the notes, as the case may be, could incur at least \$1.00 of Indebtedness under paragraphs (1), (2) and (3) of the "Limitation on Indebtedness" covenant; *provided, however*, that this clause (3) will not apply to a consolidation or merger with or into a Wholly Owned Restricted Subsidiary with a positive net worth; *provided further, however*, that, in connection with any such merger or consolidation, no consideration (other than Capital Stock (other than Disqualified Stock) in the surviving Person or the Issuer) will be issued or distributed to the holders of Capital Stock of the Issuer; and

- (4) the Issuer delivers to the trustee an officers' certificate (attaching the arithmetic computations to demonstrate compliance with clause (3) above) and an opinion of counsel, in each case stating that such consolidation, merger or transfer and such supplemental indenture complies with this covenant and that all conditions precedent provided for herein relating to such transaction have been complied with; *provided, however*, that clause (3) above does not apply if, in the good faith determination of the Board of Directors of the Issuer, whose determination will be evidenced by a Board Resolution, the principal purpose of such transaction is to change the state of domicile of the Issuer; *provided further, however*, that any such transaction will not have as one of its purposes the evasion of the foregoing limitations.

Defeasance

The Issuer may, at its option and at any time, elect to have its obligations and the obligations of the Subsidiary Guarantors discharged with respect to the outstanding notes ("*Legal Defeasance*"). Legal Defeasance means that the Issuer and the Subsidiary Guarantors will be deemed to have paid and discharged the entire indebtedness represented by the notes and the Subsidiary Guarantees, and the indenture will cease to be of further effect as to all outstanding notes and Subsidiary Guarantees, except as to:

- (1) rights of holders to receive payments in respect of the principal of and interest on the notes when such payments are due from the trust funds referred to below;
- (2) the Issuer's obligations with respect to the notes concerning issuing temporary notes, registration of notes, mutilated, destroyed, lost or stolen notes, and the maintenance of an office or agency for payment and money for security payments held in trust;
- (3) the rights, powers, trust, duties, and immunities of the trustee, and the Issuer's obligation in connection therewith; and
- (4) the Legal Defeasance provisions of the indenture.

In addition, the Issuer may, at its option and at any time, elect to have its obligations and the obligations of the Subsidiary Guarantors released with respect to most of the covenants under the indenture, except as described otherwise in the indenture ("*Covenant Defeasance*"), and thereafter any omission to comply with such obligations will not constitute a Default. In the event Covenant Defeasance occurs, certain Events of Default (not including non-payment, bankruptcy, receivership, rehabilitation and insolvency events) will no longer apply. Covenant Defeasance will not be effective until such bankruptcy, receivership, rehabilitation and insolvency events no longer apply. The Issuer may exercise its Legal Defeasance option regardless of whether it previously exercised Covenant Defeasance.

In order to exercise either Legal Defeasance or Covenant Defeasance:

- (1) the Issuer must irrevocably deposit with the trustee, in trust, for the benefit of the holders, U.S. legal tender, U.S. Government Obligations or a combination thereof, in such amounts as will be sufficient (without reinvestment) in the opinion of a nationally recognized firm of independent public accountants selected by the Issuer, to pay the principal of and interest on the notes on the stated date for payment or on the redemption date of the notes;
- (2) in the case of Legal Defeasance, the Issuer will have delivered to the trustee an opinion of counsel in the United States confirming that:
 - (A) the Issuer has received from, or there has been published by the Internal Revenue Service, a ruling, or

(B) since the date of the indenture, there has been a change in the applicable U.S. federal income tax law,

in either case to the effect that, and based thereon this opinion of counsel will confirm that, the holders will not recognize income, gain or loss for U.S. federal income tax purposes as a result of the Legal Defeasance and will be subject to U.S. federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such Legal Defeasance had not occurred;

- (3) in the case of Covenant Defeasance, the Issuer will have delivered to the trustee an opinion of counsel in the United States reasonably acceptable to the trustee confirming that the holders will not recognize income, gain or loss for U.S. federal income tax purposes as a result of such Covenant Defeasance and will be subject to U.S. federal income tax on the same amounts, in the same manner and at the same times as would have been the case if the Covenant Defeasance had not occurred;
- (4) no Default will have occurred and be continuing on the date of such deposit (other than a Default resulting from the borrowing of funds to be applied to such deposit);
- (5) the Legal Defeasance or Covenant Defeasance will not result in a breach or violation of, or constitute a Default under the Indenture or a default under any other material agreement or instrument to which the Issuer or any of its Subsidiaries is a party or by which the Issuer or any of its Subsidiaries is bound (other than any such Default or default resulting solely from the borrowing of funds to be applied to such deposit);
- (6) the Issuer will have delivered to the trustee an officers' certificate stating that the deposit was not made by it with the intent of preferring the holders over any other of its creditors or with the intent of defeating, hindering, delaying or defrauding any other of its creditors or others; and
- (7) the Issuer will have delivered to the trustee an officers' certificate and an opinion of counsel, each stating that the conditions provided for in, in the case of the officers' certificate, clauses (1) through (6) and, in the case of the opinion of counsel, clauses (2) and/or (3) and (5) of this paragraph have been complied with.

If the funds deposited with the trustee to effect Covenant Defeasance are insufficient to pay the principal of and interest on the notes when due, then the Issuer's obligations and the obligations of the Subsidiary Guarantors under the indenture will be revived and no such defeasance will be deemed to have occurred.

Satisfaction and Discharge

The indenture will be discharged and will cease to be of further effect (except as to surviving rights or registration of transfer or exchange of the notes, as expressly provided for in the indenture) as to all outstanding notes when:

- (1) either:
 - (A) all the notes theretofore authenticated and delivered (except lost, stolen or destroyed notes which have been replaced or paid and notes for whose payment money has theretofore been deposited in trust or segregated and held in trust by the Issuer and thereafter repaid to the Issuer or discharged from such trust) have been delivered to the trustee for cancellation; or
 - (B) all notes not theretofore delivered to the trustee for cancellation (1) have become due and payable or (2) will become due and payable within one year, or are to be called for

redemption within one year, under arrangements reasonably satisfactory to the trustee for the giving of notice of redemption by the trustee in the name, and at the expense, of the Issuer, and the Issuer has irrevocably deposited or caused to be deposited with the trustee funds in an amount sufficient to pay and discharge the entire Indebtedness on the notes not theretofore delivered to the trustee for cancellation, for principal of, premium, if any, and interest on the notes to the date of maturity or redemption, as the case may be, together with irrevocable instructions from the Issuer directing the trustee to apply such funds to the payment thereof at maturity or redemption, as the case may be;

- (2) the Issuer has paid all other sums payable under the indenture by the Issuer; and
- (3) the Issuer has delivered to the trustee an officers' certificate and an opinion of counsel stating that all conditions precedent under the indenture relating to the satisfaction and discharge of the indenture have been complied with.

Modification and Waiver

Subject to certain limited exceptions, modifications and amendments of the indenture may be made by the Issuer and the trustee with the consent of the holders of not less than a majority in aggregate principal amount of the outstanding notes; *provided, however*, that no such modification or amendment may, without the consent of each holder affected thereby:

- (1) change the Stated Maturity of the principal of, or any installment of interest on, any note;
- (2) reduce the principal amount of, or premium, if any, or interest on, any note;
- (3) change the place of payment of principal of, or premium, if any, or interest on, any note;
- (4) impair the right to institute suit for the enforcement of any payment on or after the Stated Maturity (or, in the case of a redemption, on or after the Redemption Date) of any note;
- (5) reduce the above-stated percentages of outstanding notes the consent of whose holders is necessary to modify or amend the indenture;
- (6) waive a default in the payment of principal of, premium, if any, or interest on the notes;
- (7) voluntarily release a Subsidiary Guarantor of the notes, except as permitted by the indenture; or
- (8) reduce the percentage or aggregate principal amount of outstanding notes the consent of whose holders is necessary for waiver of compliance with certain provisions of the indenture or for waiver of certain defaults.

No Personal Liability of Incorporators, Stockholders, Officers, Directors, or Employees

The indenture provides that no recourse for the payment of the principal of, premium, if any, or interest on any of the notes or for any claim based thereon or otherwise in respect thereof, and no recourse under or upon any obligation, covenant or agreement of the Issuer in the indenture, or in any of the notes or because of the creation of any Indebtedness represented thereby, will be had against any incorporator, stockholder, officer, director, employee or controlling person of the Issuer or the Subsidiary Guarantors or of any successor Person thereof. Each holder, by accepting the notes, waives and releases all such liability.

Concerning the Trustee

The indenture provides that, except during the continuance of a Default, the trustee will not be liable, except for the performance of such duties as are specifically set forth in the indenture. If an

Event of Default has occurred and is continuing, the trustee will use the same degree of care and skill in its exercise of the rights and powers vested in it under the indenture as a prudent person would exercise under the circumstances in the conduct of such person's own affairs.

The indenture and provisions of the Trust Indenture Act of 1939 incorporated by reference into the indenture contain limitations on the rights of the trustee, should it become a creditor of the Issuer, to obtain payment of claims in certain cases or to realize on certain property received by it in respect of any such claims, as security or otherwise. The trustee is permitted to engage in other transactions; *provided, however*, that if it acquires any conflicting interest, it must eliminate such conflict or resign.

Transfer and Exchange

Holders of the notes may transfer or exchange the notes in accordance with the indenture. The trustee may require a holder, among other things, to furnish appropriate endorsements and transfer documents, and the Issuer may require a holder to pay any taxes and fees required by law or permitted by the indenture. The Issuer is not required to transfer or exchange any note selected for redemption and is not required to transfer or exchange any note for a period of 15 days before a selection of notes to be redeemed.

The initial notes were issued in a transaction exempt from registration under the Securities Act and are subject to certain restrictions on transfer described in the indenture, which are not applicable to the exchange notes.

CERTAIN UNITED STATES FEDERAL INCOME TAX CONSIDERATIONS

The following discussion is a summary of certain material U.S. federal income tax consequences relevant to the exchange of initial notes for exchange notes pursuant to the exchange offer. The discussion is based upon the Code, U.S. Treasury Regulations issued thereunder, Internal Revenue Service rulings and pronouncements and judicial decisions now in effect, all of which are subject to change at any time. Any such change may be applied retroactively in a manner that could adversely affect a holder of the notes. The Internal Revenue Service may take positions contrary to those taken in this discussion, and no ruling from the Internal Revenue Service has been or will be sought.

This discussion does not address all of the U.S. federal income tax consequences that may be relevant either to a holder in light of such holder's particular circumstances or to holders subject to special treatment under the Code, such as certain financial institutions, regulated investment companies, real estate investment trusts, United States expatriates, insurance companies, dealers in securities or currencies, traders in securities, life insurance companies, regulated investment companies, foreign corporations, nonresident aliens, holders whose functional currency is not the U.S. dollar, tax-exempt organizations and persons holding the notes as part of a "straddle," "hedge," "conversion transaction" or other integrated transaction. Moreover, neither the effect of any applicable state, local or foreign tax laws nor the possible application of federal estate and gift taxation or the alternative minimum tax is discussed. The discussion deals only with the notes held by investors as "capital assets" within the meaning of Section 1221 of the Code (generally, held for investment). If a partnership or other entity taxable as a partnership holds the notes, the tax treatment of a partner will generally depend on the status of the partner and the activities of the partnership. Such partner should consult its tax advisor as to the tax consequences of the partnership exchanging initial notes for exchange notes pursuant to the exchange offer. In addition, this discussion is limited to holders that purchased initial notes for cash at original issue and at their "issue price" within the meaning of Section 1273 of the Code (i.e., the first price at which a substantial amount of notes are sold to the public for cash).

We believe that the exchange of the initial notes for the exchange notes, which are debt securities identical to the initial notes, but registered under the Securities Act, pursuant to the exchange offer will not constitute a taxable exchange for U.S. federal income tax purposes. As a result, we believe that (1) a holder will not recognize taxable gain or loss as a result of exchanging such holder's initial notes for exchange notes; (2) the holding period of the exchange notes received by the holder should include the holding period of such holder's initial notes; and (3) the adjusted tax basis of the exchange notes received should be the same as the adjusted tax basis of the initial notes exchanged therefore immediately before the exchange.

EACH HOLDER SHOULD CONSULT THEIR OWN TAX ADVISORS WITH REGARD TO THE FEDERAL INCOME TAX CONSEQUENCES OF EXCHANGING INITIAL NOTES FOR EXCHANGE NOTES, IN LIGHT OF SUCH HOLDER'S OWN PARTICULAR TAX SITUATION, INCLUDING THE APPLICATION OF ANY STATE, LOCAL, FOREIGN OR OTHER TAX LAWS, INCLUDING GIFT AND ESTATE TAX LAWS.

PLAN OF DISTRIBUTION

If you are a broker-dealer and hold initial notes for your own account as a result of market-making activities or other trading activities and you receive exchange notes in exchange for initial notes in the exchange offer, then you may be a statutory underwriter and must acknowledge that you will deliver a prospectus in connection with any resale of these exchange notes. This prospectus, as it may be amended or supplemented from time to time, may be used by a broker-dealer in connection with resales of exchange notes received in exchange for initial notes where such initial notes were acquired as a result of market-making activities or other trading activities. Unless you are a broker-dealer, you must acknowledge that you are not engaged in, do not intend to engage in, and have no arrangement or understanding with any person to participate in a distribution of exchange notes. We have agreed, for a period of 180 days after consummation of the exchange offer to make available a prospectus meeting the requirements of the Securities Act to any broker-dealer for use in connection with any resale of any such exchange notes acquired.

Neither we nor any subsidiary guarantor will receive any proceeds in connection with the exchange offer or any sale of exchange notes by broker-dealers. Exchange notes received by broker-dealers for their own account pursuant to the exchange offer may be sold from time to time in one or more transactions in the over-the-counter market, in negotiated transactions, through the writing of options on the exchange notes or a combination of these methods of resale, at market prices prevailing at the time of resale, at prices related to such prevailing market prices or negotiated prices. Any resale may be made directly to purchasers or to or through brokers or dealers who may receive compensation in the form of commissions or concessions from any such broker-dealers or the purchasers of any such exchange notes. Any broker-dealer that resells exchange notes that were received by it for its own account pursuant to the exchange offer and any broker-dealer that participates in a distribution of such exchange notes may be deemed to be an "underwriter" within the meaning of the Securities Act and any profit on any such resale of exchange notes and any commissions or concessions received by any such persons may be deemed to be underwriting compensation under the Securities Act. By acknowledging that it will deliver a prospectus, a broker-dealer will not be deemed to admit that it is an "underwriter" within the meaning of the Securities Act. See "The Exchange Offer—Resales of Exchange Notes."

For a period of 180 days after consummation of the exchange offer we will make available a prospectus meeting the requirements of the Securities Act to any broker-dealer for use in connection with any resale of exchange notes. We have agreed to pay all expenses incident to our obligations in connection with the exchange offer, other than commissions and concessions of any broker dealer and, in certain instances any transfer taxes, and will indemnify the holders of initial notes, including any broker-dealers, against certain liabilities, including liabilities under the Securities Act.

LEGAL MATTERS

Certain legal matters with respect to the validity of the notes and the guarantees will be passed upon for Omega Healthcare Investors, Inc. by Powell, Goldstein, Frazer & Murphy LLP, Atlanta, Georgia.

EXPERTS

The consolidated financial statements and schedules of Omega Healthcare Investors, Inc. appearing in Omega Healthcare Investors, Inc. Annual Report (Form 10-K) for the year ended December 31, 2003, have been audited by Ernst & Young LLP, independent registered public accounting firm, as set forth in their report thereon included therein and incorporated herein by reference. Such consolidated financial statements and schedules are incorporated herein by reference in reliance upon such report given on the authority of such firm as experts in accounting and auditing.

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

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OMEGA HEALTHCARE INVESTORS, INC.

Offer to Exchange

**\$200,000,000 aggregate principal
amount of our 7% Senior Notes due
2014 which have been registered under
the Securities Act of 1933 for our
outstanding \$200,000,000 7% Senior
Notes due 2014**

PROSPECTUS

, 2004

PART II

INFORMATION NOT REQUIRED IN THE PROSPECTUS

Item 20. Indemnification of Directors and Officers

The articles of incorporation and bylaws of the registrant provide for indemnification of directors and officers to the full extent permitted by Maryland law.

Section 2-418 of the General Corporation Law of the State of Maryland generally permits indemnification of any director or officer with respect to any proceedings unless it is established that: (a) the act or omission of the director or officer was material to the matter giving rise to the proceeding and was either committed in bad faith or the result of active or deliberate dishonesty; (b) the director or officer actually received an improper personal benefit in money, property or services; or (c) in the case of a criminal proceeding, the director or officer had reasonable cause to believe that the act or omission was unlawful. The indemnity may include judgments, penalties, fines, settlements, and reasonable expenses actually incurred by the director or officer in connection with the proceedings. However, a corporation may not indemnify a director or officer who shall have been adjudged to be liable to the corporation, or who instituted a proceeding against the corporation (unless such proceeding was brought to enforce the charter, bylaws, or the indemnification provisions thereunder) The termination of any proceeding by judgment, order or settlement does not create a presumption that the director or officer did not meet the requisite standard of conduct required for permitted indemnification. The termination of any proceeding by conviction, or plea of nolo contendere or its equivalent, or an entry of an order of probation prior to judgment, creates a rebuttable presumption that the director or officer did not meet that standard of conduct.

The company has also entered into indemnity agreements with the officers and directors of the company that provide that the company will, subject to certain conditions, pay on behalf of the indemnified party any amount which the indemnified party is or becomes legally obligated to pay because of any act or omission or neglect or breach of duty, including any actual or alleged error or misstatement or misleading statement, which the indemnified party commits or suffers while acting in the capacity as an officer or director of the company. Once an initial determination is made by the company that a director or officer did not act in bad faith or for personal benefit, the indemnification provisions contained in the charter, bylaws, and indemnity agreements would require the company to advance any reasonable expenses incurred by the director or officer, and to pay the costs, judgments, and penalties determined against a director or officer in a proceeding brought against them.

Insofar as indemnification for liabilities arising under the Securities Act is permitted to directors and officers of the registrant pursuant to the above-described provisions, the registrant understands that the Commission is of the opinion that such indemnification contravenes federal public policy as expressed in said act and therefore is unenforceable.

Item 21. Exhibits and Financial Statement Schedules

The following items are filed as exhibits to this registration statement:

Exhibit Number	Exhibit
3.1	Articles of Incorporation, as amended (Incorporated by reference to the Registrant's Form 10-Q for the quarterly period ended March 31, 1995).
3.2	Articles of Amendment to the Company's Articles of Incorporation, as amended (Incorporated by reference to Exhibit 3(i) of the Company's Form 10-Q for the quarterly period ended June 30, 2002).
3.3	Amended and Restated Bylaws, as amended as of May 2002 (Incorporated by reference to Exhibit 3(ii) to the Company's Form 10-Q/A for the quarterly period ended June 30, 2002).
3.4	Form of Articles Supplementary for Series A Preferred Stock (Incorporated by reference to Exhibit 4.1 of the Company's Form 10-Q for the quarterly period ended March 31, 1997).
3.5	Articles Supplementary for Series B Preferred Stock (Incorporated by reference to Exhibit 4 to the Company's Form 8-K dated April 27, 1998).
3.6	Articles of Amendment amending and restating the terms of the Company's Series C Convertible Preferred Stock (Incorporated by reference to Exhibit 4.1 to the Company's Form 8-K dated March 4, 2002).
3.7	Form of Articles Supplementary relating to 8.375% Series D Cumulative Redeemable Preferred Stock (Incorporated by reference to Exhibit 4.1 of the Company's Form 8-K filed February 10, 2004).
3.8	Articles of Incorporation of Bayside Alabama Healthcare Second, Inc.
3.9	Bylaws of Bayside Alabama Healthcare Second, Inc.
3.10	Form of Articles of Incorporation for the following subsidiaries of Omega Healthcare Investors, Inc. incorporated in the state of Arizona: Bayside Arizona Healthcare Associates, Inc. Bayside Arizona Healthcare Second, Inc.
3.11	Form of Bylaws for the following subsidiaries of Omega Healthcare Investors, Inc. incorporated in the state of Arizona: Bayside Arizona Healthcare Associates, Inc. Bayside Arizona Healthcare Second, Inc.
3.12	Form of Articles of Incorporation for the following subsidiaries of Omega Healthcare Investors, Inc. incorporated in the state of Colorado: Bayside Colorado Healthcare Associates, Inc. Bayside Colorado Healthcare Second, Inc.
3.13	Form of Bylaws for the following subsidiaries of Omega Healthcare Investors, Inc. incorporated in the state of Colorado: Bayside Colorado Healthcare Associates, Inc. Bayside Colorado Healthcare Second, Inc.
3.14	Articles of Incorporation of OHI (Connecticut), Inc.
3.15	Bylaws of OHI (Connecticut), Inc.
3.16	Certificate of Incorporation of Bayside Street II, Inc.

- 3.17 Bylaws of Bayside Street II, Inc.
- 3.18 Form of Certificate of Formation for the following subsidiaries of Omega Healthcare Investors, Inc. formed in the state of Delaware:
 - OHI Asset (CA), LLC
 - OHI Asset (FL), LLC
 - OHI Asset (ID), LLC
 - OHI Asset (IN), LLC
 - OHI Asset (LA), LLC
 - OHI Asset (MI/NC), LLC
 - OHI Asset (MO), LLC
 - OHI Asset (OH), LLC
 - OHI Asset (TX), LLC
 - OHI Asset, LLC
 - Omega Acquisition Facility I, LLC
- 3.19 Form of Operating Agreement for the following subsidiaries of Omega Healthcare Investors, Inc. formed in the state of Delaware:
 - OHI Asset (CA), LLC
 - OHI Asset (FL), LLC
 - OHI Asset (ID), LLC
 - OHI Asset (IN), LLC
 - OHI Asset (LA), LLC
 - OHI Asset (MI/NC), LLC
 - OHI Asset (MO), LLC
 - OHI Asset (OH), LLC
 - OHI Asset (TX), LLC
 - OHI Asset, LLC
 - Omega Acquisition Facility I, LLC
- 3.20 Certificate of Formation of OHI Asset (FL) Tarpon Springs, Pinellas Park & Gainesville, LLC
- 3.21 Operating Agreement for OHI Asset (FL) Tarpon Springs, Pinellas Park & Gainesville, LLC
- 3.22 Form of Certificate of Formation for the following subsidiaries of Omega Healthcare Investors, Inc. formed in the state of Delaware:
 - OHI Asset II (CA), LLC
 - OHI Asset II (TX), LLC
- 3.23 Form of Operating Agreement for the following subsidiaries of Omega Healthcare Investors, Inc. formed in the state of Delaware:
 - OHI Asset II (CA), LLC
 - OHI Asset II (TX), LLC
- 3.24 Articles of Incorporation of OHI (Florida), Inc.
- 3.25 Bylaws of OHI (Florida), Inc.
- 3.26 Articles of Incorporation of OHI Sunshine, Inc.
- 3.27 Bylaws of OHI Sunshine, Inc.
- 3.28 Form of Articles of Incorporation for each of the following subsidiaries of Omega Healthcare Investors, Inc. incorporated in the state of Illinois:

Long Term Care Associates—Illinois, Inc.
Skilled Nursing—Herrin, Inc.
Skilled Nursing—Paris, Inc.

- 3.29 Form of Bylaws for each of the following subsidiaries of Omega Healthcare Investors, Inc. incorporated in the state of Illinois:
Long Term Care Associates—Illinois, Inc.
Skilled Nursing—Herrin, Inc.
Skilled Nursing—Paris, Inc.
- 3.30 Articles of Incorporation of OHI (Illinois), Inc.
- 3.31 Bylaws of OHI (Illinois), Inc.
- 3.32 Articles of Incorporation of Bayside Indiana Healthcare Associates, Inc.
- 3.33 Bylaws of Bayside Indiana Healthcare Associates, Inc.
- 3.34 Form of Articles of Incorporation for each of the following subsidiaries of Omega Healthcare Investors, Inc. incorporated in the state of Indiana:
Long Term Care Associates—Indiana, Inc.
OHI (Indiana), Inc.
Skilled Nursing—Gaston, Inc.
- 3.35 Form of Bylaws for each of the following subsidiaries of Omega Healthcare Investors, Inc. incorporated in the state of Indiana:
Long Term Care Associates—Indiana, Inc.
OHI (Indiana), Inc.
Skilled Nursing—Gaston, Inc.
- 3.36 Articles of Incorporation of OHI (Iowa), Inc.
- 3.37 Bylaws of OHI (Iowa), Inc.
- 3.38 Articles of Incorporation of OHI (Kansas), Inc.
- 3.39 Bylaws of OHI (Kansas), Inc.
- 3.40 Articles of Incorporation of Omega (Kansas), Inc.
- 3.41 Bylaws of Omega (Kansas), Inc.
- 3.42 Certificate of Formation of NRS Ventures, LLC
- 3.43 Operating Agreement for NRS Ventures, LLC
- 3.44 Form of Articles of Incorporation for each of the following subsidiaries of Omega Healthcare Investors, Inc. incorporated in the state of Kentucky:
OS Leasing Company
Sterling Acquisition Corp.
Sterling Acquisition Corp, II
- 3.45 Form of Bylaws for each of the following subsidiaries of Omega Healthcare Investors, Inc. incorporated in the state of Kentucky:
OS Leasing Company
Sterling Acquisition Corp.
Sterling Acquisition Corp, II

- 3.46 Form of Articles of Incorporation for each of the following subsidiaries of Omega Healthcare Investors, Inc. incorporated in the state of Maryland:
- Arizona Lessor—Infinia, Inc.
 - Colorado Lessor—Conifer, Inc.
 - Florida Lessor—Crystal Springs, Inc.
 - Florida Lessor—Emerald, Inc.
 - Florida Lessor—Five Facilities, Inc.
 - Florida Lessor—Lakeland, Inc.
 - Florida Lessor—Meadowview, Inc.
 - Florida Lessor—West Palm Beach and Southpoint, Inc.
 - Georgia Lessor—Bonterra/Parkview, Inc.
 - Indiana Lessor—Jeffersonville, Inc.
 - Indiana Lessor—Wellington Manor, Inc.
 - Ohio Lessor Waterford & Crestwood, Inc.
 - Texas Lessor—Stonegate GP, Inc.
 - Texas Lessor—Stonegate Limited, Inc.
 - Texas Lessor—Treemont, Inc.
 - Washington Lessor—Silverdale, Inc.
- 3.47 Form of Bylaws for each of the following subsidiaries of Omega Healthcare Investors, Inc. incorporated in the state of Maryland:
- Arizona Lessor—Infinia, Inc.
 - Colorado Lessor—Conifer, Inc.
 - Florida Lessor—Crystal Springs, Inc.
 - Florida Lessor—Emerald, Inc.
 - Florida Lessor—Five Facilities, Inc.
 - Florida Lessor—Lakeland, Inc.
 - Florida Lessor—Meadowview, Inc.
 - Florida Lessor—West Palm Beach and Southpoint, Inc.
 - Georgia Lessor—Bonterra/Parkview, Inc.
 - Indiana Lessor—Jeffersonville, Inc.
 - Indiana Lessor—Wellington Manor, Inc.
 - Ohio Lessor Waterford & Crestwood, Inc.
 - Texas Lessor—Stonegate GP, Inc.
 - Texas Lessor—Stonegate Limited, Inc.
 - Texas Lessor—Treemont, Inc.
 - Washington Lessor—Silverdale, Inc.
- 3.48 Articles of Incorporation of Bayside Street, Inc.
- 3.49 Bylaws of Bayside Street, Inc.
- 3.50 Form of Certificate of Formation for each of the following subsidiaries of Omega Healthcare Investors, Inc. formed in the state of Maryland:
- Delta Investors I, LLC
 - Delta Investors II, LLC
- 3.51 Form of Operating Agreement for each of the following subsidiaries of Omega Healthcare Investors, Inc. formed in the state of Maryland:
- Delta Investors I, LLC
 - Delta Investors II, LLC

- 3.52 Articles of Incorporation of Jefferson Clark, Inc.
- 3.53 Bylaws of Jefferson Clark, Inc.
- 3.54 Form of Articles of Incorporation for each of the following subsidiaries of Omega Healthcare Investors, Inc. incorporated in the state of Maryland:
 - OHI of Kentucky, Inc.
 - OHI of Texas, Inc.
- 3.55 Form of Bylaws for each of the following subsidiaries of Omega Healthcare Investors, Inc. incorporated in the state of Maryland:
 - OHI of Kentucky, Inc.
 - OHI of Texas, Inc.
- 3.56 Articles of Incorporation of Omega TRS I, Inc.
- 3.57 Bylaws of Omega TRS I, Inc.
- 3.58 Certificate of Formation of Texas Lessor—Stonegate, L.P.
- 3.59 Partnership Agreement for Texas Lessor—Stonegate, L.P.
- 3.60 Articles of Incorporation of OHIMA, Inc.
- 3.61 Bylaws of OHIMA, Inc.
- 3.62 Articles of Incorporation of Long Term Care—Michigan, Inc.
- 3.63 Bylaws of Long Term Care—Michigan, Inc.
- 3.64 Articles of Incorporation of Long Term Care—North Carolina, Inc.
- 3.65 Bylaws of Long Term Care—North Carolina, Inc.
- 3.66 Articles of Incorporation of Skilled Nursing—Hicksville, Inc.
- 3.67 Bylaws of Skilled Nursing—Hicksville, Inc.
- 3.68 Form of Articles of Incorporation for each of the following subsidiaries of Omega Healthcare Investors, Inc. incorporated in the state of Texas:
 - Center Healthcare Associates, Inc.
 - Heritage Texarkana Healthcare Associates, Inc.
 - Pine Texarkana Healthcare Associates, Inc.
 - Reunion Texarkana Healthcare Associates, Inc.
 - San Augustine Healthcare Associates, Inc.
 - South Athens Healthcare Associates, Inc.
 - Waxahachie Healthcare Associates, Inc.
 - West Athens Healthcare Associates, Inc.
- 3.69 Form of Bylaws for each of the following subsidiaries of Omega Healthcare Investors, Inc. incorporated in the state of Texas:

Center Healthcare Associates, Inc.
Heritage Texarkana Healthcare Associates, Inc.
Pine Texarkana Healthcare Associates, Inc.
Reunion Texarkana Healthcare Associates, Inc.
San Augustine Healthcare Associates, Inc.
South Athens Healthcare Associates, Inc.
Waxahachie Healthcare Associates, Inc.
West Athens Healthcare Associates, Inc.

- 3.70 Form of Articles of Incorporation for each of the following subsidiaries of Omega Healthcare Investors, Inc. incorporated in the state of Texas:
Cherry Street—Skilled Nursing Center, Inc.
Dallas Skilled Nursing, Inc.
Lake Park Skilled Nursing, Inc.
Long Term Care Associates—Texas, Inc.
Parkview—Skilled Nursing, Inc.
- 3.71 Form of Bylaws for each of the following subsidiaries of Omega Healthcare Investors, Inc. incorporated in the state of Texas:
Cherry Street—Skilled Nursing Center, Inc.
Dallas Skilled Nursing, Inc.
Lake Park Skilled Nursing, Inc.
Long Term Care Associates—Texas, Inc.
Parkview—Skilled Nursing, Inc.
- 4.0 See Exhibits 3.1 to 3.71.
- 4.1 Form of Indenture (Incorporated by reference to Exhibit 4.2 to the Company's Form S-3 dated February 3, 1997).
- 4.2 Rights Agreement, dated as of May 12, 1999, between Omega Healthcare Investors, Inc. and First Chicago Trust Company, as Rights Agent, including Exhibit A thereto (Form of Articles Supplementary relating to the Series A Junior Participating Preferred Stock) and Exhibit B thereto (Form of Rights Certificate) (Incorporated by reference to Exhibit 4 to the Company's Form 8-K dated April 20, 1999).
- 4.3 Amendment No. 1, dated May 11, 2000 to Rights Agreement, dated as of May 12, 1999, between Omega Healthcare Investors, Inc. and First Chicago Trust Company, as Rights Agent (Incorporated by reference to Exhibit 4.1 to the Company's Form 10-Q for the quarterly period ended March 31, 2000).
- 4.4 Amendment No. 2 to Rights Agreement between Omega Healthcare Investors, Inc. and First Chicago Trust Company, as Rights Agent (Incorporated by reference to Exhibit F to the Schedule 13D filed by Explorer Holdings, L.P. on October 30, 2001 with respect to the Company).
- 4.5 Indenture, dated as of March 22, 2004, among Omega, each of the subsidiary guarantors named therein, and U.S. Bank National Association, as trustee (Incorporated by reference to Exhibit 10.2 to the Company's Form 8-K filed March 26, 2004).
- 4.6 Form of 7% Senior Notes due 2014 (Incorporated by reference to Exhibit 10.4 to the Company's Form 8-K filed March 26, 2004).

- 4.7 Form of Subsidiary Guarantee relating to the 7% Senior Notes due 2014 (Incorporated by reference to Exhibit 10.5 to the Company's Form 8-K filed March 26, 2004).
- 4.8 First Supplementation Indenture, dated July 20, 2004 among Omega and the subsidiary guarantors named therein, OHI Asset (TX), LLC and U.S. Bank National Association.
- 5.1 Opinion of Powell, Goldstein, Frazer & Murphy LLP.
- 10.1 Amended and Restated Secured Promissory Note between Omega Healthcare Investors, Inc. and Professional Health Care Management, Inc. dated as of September 1, 2001 (Incorporated by reference to Exhibit 10.6 to the Company's 10-Q for the quarterly period ended September 30, 2001).
- 10.2 Settlement Agreement between Omega Healthcare Investors, Inc. Professional Health Care Management, Inc., Living Centers—PHCM, Inc., GranCare, Inc., and Mariner Post-Acute Network, Inc. dated as of September 1, 2001 (Incorporated by reference to Exhibit 10.7 to the Company's 10-Q for the quarterly period ended September 30, 2001).
- 10.3 Form of Directors and Officers Indemnification Agreement (Incorporated by reference to Exhibit 10.11 to the Company's Form 10-Q for the quarterly period ended June 30, 2000).
- 10.4 1993 Amended and Restated Stock Option Plan (Incorporated by reference to Exhibit A to the Company's Proxy Statement dated April 6, 2003).†
- 10.5 2000 Stock Incentive Plan (as amended January 1, 2001) (Incorporated by reference to Exhibit 10.1 to the Company's Form 10-Q for the quarterly period ended September 30, 2003).†
- 10.6 Amendment to 2000 Stock Incentive Plan (Incorporated by reference to Exhibit 10.6 to the Company's Form 10-Q for the quarterly period ended June 30, 2000).†
- 10.7 Employment Agreement between Omega Healthcare Investors, Inc. and C. Taylor Pickett, dated June 12, 2001 (Incorporated by reference to Exhibit 10.2 to the Company's Form 10-Q for the quarterly period ended June 30, 2001).†
- 10.8 Employment Agreement between Omega Healthcare Investors, Inc. and R. Lee Crabill, Jr., dated July 30, 2001 (Incorporated by reference to Exhibit 10.1 to the Company's Form 10-Q for the quarterly period ended September 30, 2001).†
- 10.9 Employment Agreement between Omega Healthcare Investors, Inc. and Robert O. Stephenson, dated August 30, 2001 (Incorporated by reference to Exhibit 10.2 to the Company's Form 10-Q for the quarterly period ended September 30, 2001).†
- 10.10 Employment Agreement between Omega Healthcare Investors, Inc. and Daniel J. Booth, dated October 15, 2001 (Incorporated by reference to Exhibit 10.3 to the Company's Form 10-Q for the quarterly period ended September 30, 2001).†
- 10.11 Repurchase and Conversion Agreement by and between Omega Healthcare Investors, Inc. and Explorer Holdings, L.P. dated as of February 5, 2004 (Incorporated by reference to Exhibit 10.1 to the Company's Form 8-K filed February 5, 2003).
- 10.12 Form of Purchase Agreement dated as of February 5, 2004 by and between Omega Healthcare Investors, Inc. and the purchasers of the 8.375% Series D cumulative redeemable preferred shares (Incorporated by reference to Exhibit 10.1 to the Company's Form 8-K filed February 10, 2004).

- 10.13 Placement Agent Agreement by and between the Omega Healthcare Investors, Inc. and Cohen & Steers Capital Advisors, Inc. dated as of February 5, 2004 (Incorporated by reference to Exhibit 10.2 to the Company's Form 8-K filed February 10, 2004).
- 10.14 Purchase Agreement, dated as of March 15, 2004, among Omega, Deutsche Bank Securities Inc., UBS Securities LLC, Banc of America Securities LLC and the subsidiary guarantors named therein (Incorporated by reference to Exhibit 10.1 to the Company's Form 8-K filed March 26, 2004).
- 10.15 Registration Rights Agreement, dated as of March 22, 2004, among Omega, Deutsche Bank Securities Inc., UBS Securities LLC, Banc of America Securities LLC and the subsidiary guarantors named therein (Incorporated by reference to Exhibit 10.3 to the Company's Form 8-K filed March 26, 2004).
- 10.16 Credit Agreement, dated as of March 22, 2004, among OHI Asset, LLC, OHI Asset (ID), LLC, OHI Asset (LA), LLC, OHI Asset (TX), LLC, OHI Asset (CA), LLC, Delta Investors I, LLC, Delta Investors II, LLC, the lenders named therein, and Bank of America, N.A. (Incorporated by reference to Exhibit 10.6 to the Company's Form 8-K filed March 26, 2004).
- 10.17 Guaranty, dated as of March 22, 2004, given by Omega and the subsidiary guarantors named therein in favor of the Bank of America, N.A. (Incorporated by reference to Exhibit 10.7 to the Company's Form 8-K filed March 26, 2004).
- 10.18 Security Agreement, dated as of March 22, 2004, made by OHI Asset, LLC, OHI Asset (ID), LLC, OHI Asset (LA), LLC, OHI Asset (TX), LLC, OHI Asset (CA), LLC, Delta Investors I, LLC, Delta Investors II, LLC, in favor of Bank of America, N.A. (Incorporated by reference to Exhibit 10.8 to the Company's Form 8-K filed March 26, 2004).
- 12.1 Ratio of Earnings to Fixed Charges.**
 - 21 Subsidiaries of the Company (Incorporated herein by reference to Exhibit 21 to the Company's Form 10-K for the year ended December 31, 2003 filed on February 20, 2004).
- 23.1 Consent of Ernst & Young LLP.
- 23.2 Consent of Powell, Goldstein, Frazer & Murphy LLP (contained in Exhibit 5).
- 24 Power of attorney.**
- 25 Form T-1 Statement of Eligibility under the Trust Indenture Act of 1939 of U.S. Bank National Association.**
- 99.1 Form of Letter to Clients.
- 99.2 Form of Letter to Brokers.

** Previously filed.

† Management contract or compensatory plan, contract or arrangement.

Item 22. Undertakings.

- (a) Insofar as indemnification for liabilities arising under the Securities Act of 1933("Securities Act") may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a

claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

- (b) The undersigned registrant hereby undertakes to respond to requests for information that is incorporated by reference into the prospectus pursuant to Item 4, 10(b), 11, or 13 of this form, within one business day of receipt of such request, and to send the incorporated documents by first class mail or other equally prompt means. This includes information contained in documents filed subsequent to the effective date of the registration statement through the date of responding to the request.
- (c) The undersigned registrant hereby undertakes to supply by means of a post-effective amendment all information concerning a transaction, and the company being acquired involved therein, that was not the subject of and included in the registration statement when it became effective.
- (d) The undersigned registrant hereby undertakes that, for purposes of determining any liability under the Securities Act, each filing of the registrant's annual report pursuant to section 13(a) or section 15(d) of the Securities Exchange Act of 1934 ("Exchange Act") (and, where applicable, each filing of an employee benefit plan's annual report pursuant to section 15(d) of the Exchange Act) that is incorporated by reference in the registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.
- (e) The undersigned registrant hereby undertakes to deliver or cause to be delivered with the prospectus, to each person to whom the prospectus is sent or given, the latest annual report to security holders that is incorporated by reference in the prospectus and furnished pursuant to and meeting the requirements of Rule 14a-3 or Rule 14c-3 under the Exchange Act; and, where interim financial information required to be presented by Article 3 of Regulation S-X are not set forth in the prospectus, to deliver, or cause to be delivered to each person to whom the prospectus is sent or given, the latest quarterly report that is specifically incorporated by reference in the prospectus to provide such interim financial information.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, as amended, the C. Taylor Pickett has duly caused this Amendment No. 1 to the Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Timonium, Maryland on this 23rd day of July, 2004.

Arizona Lessor—Infinia, Inc.
Bayside Alabama Healthcare Second, Inc.
Bayside Arizona Healthcare Associates, Inc.
Bayside Arizona Healthcare Second, Inc.
Bayside Colorado Healthcare Associates, Inc.
Bayside Colorado Healthcare Second, Inc.
Bayside Indiana Healthcare Associates, Inc.
Bayside Street II, Inc.
Bayside Street, Inc.
Center Healthcare Associates, Inc.
Cherry Street—Skilled Nursing, Inc.
Colorado Lessor—Conifer, Inc.
Dallas Skilled Nursing, Inc.
Delta Investors, I, LLC
Delta Investor II, LLC
Florida Lessor—Crystal Springs, Inc.
Florida Lessor—Emerald, Inc.
Florida Lessor—Five Facilities, Inc.
Florida Lessor—Lakeland, Inc.
Florida Lessor—Meadowview, Inc.
Florida Lessor—West Palm Beach and Southpoint, Inc.
Georgia Lessor—Bonterra/Parkview, Inc.
Heritage Texarkana Healthcare Associates, Inc.
Indiana Lessor—Jeffersonville, Inc.
Indiana Lessor—Wellington Manor, Inc.
Jefferson Clark, Inc.
Lake Park Skilled Nursing, Inc.
Long Term Care—Michigan, Inc.
Long Term Care—North Carolina, Inc.
Long Term Care Associates—Illinois, Inc.
Long Term Care Associates—Indiana, Inc.
Long Term Care Associates—Texas, Inc.
NRS Ventures, LLC
OHI (Connecticut), Inc.
OHI (Florida), Inc.
OHI (Illinois), Inc.
OHI (Indiana), Inc.
OHI (Iowa), Inc.
OHI (Kansas), Inc.
OHI Asset (CA), LLC
OHI Asset (FL) Tarpon Springs, Pinellas Park & Gainesville, LLC
OHI Asset (FL), LLC
OHI Asset (ID), LLC

OHI Asset (IN), LLC
OHI Asset (LA), LLC
OHI Asset (MI/NC), LLC
OHI Asset (MO), LLC
OHI Asset (OH), LLC
OHI Asset (TX), LLC
OHI Asset II (CA), LLC
OHI Asset II (TX), LLC
OHI Asset, LLC
Ohio Lessor Waterford & Crestwood, Inc.
OHI of Kentucky, Inc.
OHI of Texas, Inc.
OHI Sunshine, Inc.
OHIMA, Inc.
Omega (Kansas), Inc.
Omega Acquisition Facility I, LLC
Omega TRS I, Inc.
OS Leasing Company
Parkview—Skilled Nursing, Inc.
Pine Texarkana Healthcare Associates, Inc.
Reunion Texarkana Healthcare Associates, Inc.
San Augustine Healthcare Associates, Inc.
Skilled Nursing—Gaston, Inc.
Skilled Nursing—Herrin, Inc.
Skilled Nursing—Hicksville, Inc.
Skilled Nursing—Paris, Inc.
South Athens Healthcare Associates, Inc.
Sterling Acquisition Corp.
Sterling Acquisition Corp. II
Texas Lessor—Stonegate GP, Inc.
Texas Lessor—Stonegate Limited, Inc.
Texas Lessor—Stonegate, L.P.
Texas Lessor—Treemont, Inc.

Washington Lessor—Silverdale, Inc.
Waxahachie Healthcare Associates, Inc.
West Athens Healthcare Associates, Inc.

By: /s/ C. TAYLOR PICKETT

C. Taylor Pickett
Chief Executive Officer

Pursuant to the requirements of the Securities Act of 1933, as amended, this Amendment No. 1 to the Registration Statement has been signed by the following persons in the capacity indicated below with respect to the subsidiaries listed above and on the dates indicated below.

Signature	Title	Date
/s/ C. TAYLOR PICKETT	Chief Executive Officer (Principal Executive Officer)	July 23, 2004
C. Taylor Pickett		
/s/ ROBERT O. STEPHENSON	Chief Financial Officer (Principal Financial and Accounting Officer)	July 23, 2004
Robert O. Stephenson		
..]/s/ ROBERT O. STEPHENSON	Sole Director, Officer of General Partner or Sole Member	July 23, 2004
Robert O. Stephenson		

EXHIBIT LIST

Exhibit Number	Exhibit
3.1	Articles of Incorporation, as amended (Incorporated by reference to the Registrant's Form 10-Q for the quarterly period ended March 31, 1995).
3.2	Articles of Amendment to the Company's Articles of Incorporation, as amended (Incorporated by reference to Exhibit 3(i) of the Company's Form 10-Q for the quarterly period ended June 30, 2002).
3.3	Amended and Restated Bylaws, as amended as of May 2002 (Incorporated by reference to Exhibit 3(ii) to the Company's Form 10-Q/A for the quarterly period ended June 30, 2002).
3.4	Form of Articles Supplementary for Series A Preferred Stock (Incorporated by reference to Exhibit 4.1 of the Company's Form 10-Q for the quarterly period ended March 31, 1997).
3.5	Articles Supplementary for Series B Preferred Stock (Incorporated by reference to Exhibit 4 to the Company's Form 8-K dated April 27, 1998).
3.6	Articles of Amendment amending and restating the terms of the Company's Series C Convertible Preferred Stock (Incorporated by reference to Exhibit 4.1 to the Company's Form 8-K dated March 4, 2002).
3.7	Form of Articles Supplementary relating to 8.375% Series D Cumulative Redeemable Preferred Stock (Incorporated by reference to Exhibit 4.1 of the Company's Form 8-K filed February 10, 2004).
3.8	Articles of Incorporation of Bayside Alabama Healthcare Second, Inc.
3.9	Bylaws of Bayside Alabama Healthcare Second, Inc.
3.10	Form of Articles of Incorporation for the following subsidiaries of Omega Healthcare Investors, Inc. incorporated in the state of Arizona: Bayside Arizona Healthcare Associates, Inc. Bayside Arizona Healthcare Second, Inc.
3.11	Form of Bylaws for the following subsidiaries of Omega Healthcare Investors, Inc. incorporated in the state of Arizona: Bayside Arizona Healthcare Associates, Inc. Bayside Arizona Healthcare Second, Inc.
3.12	Form of Articles of Incorporation for the following subsidiaries of Omega Healthcare Investors, Inc. incorporated in the state of Colorado: Bayside Colorado Healthcare Associates, Inc. Bayside Colorado Healthcare Second, Inc.
3.13	Form of Bylaws for the following subsidiaries of Omega Healthcare Investors, Inc. incorporated in the state of Colorado: Bayside Colorado Healthcare Associates, Inc. Bayside Colorado Healthcare Second, Inc.
3.14	Articles of Incorporation of OHI (Connecticut), Inc.
3.15	Bylaws of OHI (Connecticut), Inc.
3.16	Certificate of Incorporation of Bayside Street II, Inc.
3.17	Bylaws of Bayside Street II, Inc.

- 3.18 Form of Certificate of Formation for the following subsidiaries of Omega Healthcare Investors, Inc. formed in the state of Delaware:
OHI Asset (CA), LLC
OHI Asset (FL), LLC
OHI Asset (ID), LLC
OHI Asset (IN), LLC
OHI Asset (LA), LLC
OHI Asset (MI/NC), LLC
OHI Asset (MO), LLC
OHI Asset (OH), LLC
OHI Asset (TX), LLC
OHI Asset, LLC
Omega Acquisition Facility I, LLC
- 3.19 Form of Operating Agreement for the following subsidiaries of Omega Healthcare Investors, Inc. formed in the state of Delaware:
OHI Asset (CA), LLC
OHI Asset (FL), LLC
OHI Asset (ID), LLC
OHI Asset (IN), LLC
OHI Asset (LA), LLC
OHI Asset (MI/NC), LLC
OHI Asset (MO), LLC
OHI Asset (OH), LLC
OHI Asset (TX), LLC
OHI Asset, LLC
Omega Acquisition Facility I, LLC
- 3.20 Certificate of Formation of OHI Asset (FL) Tarpon Springs, Pinellas Park & Gainesville, LLC
- 3.21 Operating Agreement for OHI Asset (FL) Tarpon Springs, Pinellas Park & Gainesville, LLC
- 3.22 Form of Certificate of Formation for the following subsidiaries of Omega Healthcare Investors, Inc. formed in the state of Delaware:
OHI Asset II (CA), LLC
OHI Asset II (TX), LLC
- 3.23 Form of Operating Agreement for the following subsidiaries of Omega Healthcare Investors, Inc. formed in the state of Delaware:
OHI Asset II (CA), LLC
OHI Asset II (TX), LLC
- 3.24 Articles of Incorporation of OHI (Florida), Inc.
- 3.25 Bylaws of OHI (Florida), Inc.
- 3.26 Articles of Incorporation of OHI Sunshine, Inc.
- 3.27 Bylaws of OHI Sunshine, Inc.
- 3.28 Form of Articles of Incorporation for each of the following subsidiaries of Omega Healthcare Investors, Inc. incorporated in the state of Illinois:
Long Term Care Associates—Illinois, Inc.
Skilled Nursing—Herrin, Inc.
Skilled Nursing—Paris, Inc.
-

- 3.29 Form of Bylaws for each of the following subsidiaries of Omega Healthcare Investors, Inc. incorporated in the state of Illinois:
 - Long Term Care Associates—Illinois, Inc.
 - Skilled Nursing—Herrin, Inc.
 - Skilled Nursing—Paris, Inc.
 - 3.30 Articles of Incorporation of OHI (Illinois), Inc.
 - 3.31 Bylaws of OHI (Illinois), Inc.
 - 3.32 Articles of Incorporation of Bayside Indiana Healthcare Associates, Inc.
 - 3.33 Bylaws of Bayside Indiana Healthcare Associates, Inc.
 - 3.34 Form of Articles of Incorporation for each of the following subsidiaries of Omega Healthcare Investors, Inc. incorporated in the state of Indiana:
 - Long Term Care Associates—Indiana, Inc.
 - OHI (Indiana), Inc.
 - Skilled Nursing—Gaston, Inc.
 - 3.35 Form of Bylaws for each of the following subsidiaries of Omega Healthcare Investors, Inc. incorporated in the state of Indiana:
 - Long Term Care Associates—Indiana, Inc.
 - OHI (Indiana), Inc.
 - Skilled Nursing—Gaston, Inc.
 - 3.36 Articles of Incorporation of OHI (Iowa), Inc.
 - 3.37 Bylaws of OHI (Iowa), Inc.
 - 3.38 Articles of Incorporation of OHI (Kansas), Inc.
 - 3.39 Bylaws of OHI (Kansas), Inc.
 - 3.40 Articles of Incorporation of Omega (Kansas), Inc.
 - 3.41 Bylaws of Omega (Kansas), Inc.
 - 3.42 Certificate of Formation of NRS Ventures, LLC
 - 3.43 Operating Agreement for NRS Ventures, LLC
 - 3.44 Form of Articles of Incorporation for each of the following subsidiaries of Omega Healthcare Investors, Inc. incorporated in the state of Kentucky:
 - OS Leasing Company
 - Sterling Acquisition Corp.
 - Sterling Acquisition Corp, II
 - 3.45 Form of Bylaws for each of the following subsidiaries of Omega Healthcare Investors, Inc. incorporated in the state of Kentucky:
 - OS Leasing Company
 - Sterling Acquisition Corp.
 - Sterling Acquisition Corp, II
-

- 3.46 Form of Articles of Incorporation for each of the following subsidiaries of Omega Healthcare Investors, Inc. incorporated in the state of Maryland:
- Arizona Lessor—Infinia, Inc.
 - Colorado Lessor—Conifer, Inc.
 - Florida Lessor—Crystal Springs, Inc.
 - Florida Lessor—Emerald, Inc.
 - Florida Lessor—Five Facilities, Inc.
 - Florida Lessor—Lakeland, Inc.
 - Florida Lessor—Meadowview, Inc.
 - Florida Lessor—West Palm Beach and Southpoint, Inc.
 - Georgia Lessor—Bonterra/Parkview, Inc.
 - Indiana Lessor—Jeffersonville, Inc.
 - Indiana Lessor—Wellington Manor, Inc.
 - Ohio Lessor Waterford & Crestwood, Inc.
 - Texas Lessor—Stonegate GP, Inc.
 - Texas Lessor—Stonegate Limited, Inc.
 - Texas Lessor—Treemont, Inc.
 - Washington Lessor—Silverdale, Inc.
- 3.47 Form of Bylaws for each of the following subsidiaries of Omega Healthcare Investors, Inc. incorporated in the state of Maryland:
- Arizona Lessor—Infinia, Inc.
 - Colorado Lessor—Conifer, Inc.
 - Florida Lessor—Crystal Springs, Inc.
 - Florida Lessor—Emerald, Inc.
 - Florida Lessor—Five Facilities, Inc.
 - Florida Lessor—Lakeland, Inc.
 - Florida Lessor—Meadowview, Inc.
 - Florida Lessor—West Palm Beach and Southpoint, Inc.
 - Georgia Lessor—Bonterra/Parkview, Inc.
 - Indiana Lessor—Jeffersonville, Inc.
 - Indiana Lessor—Wellington Manor, Inc.
 - Ohio Lessor Waterford & Crestwood, Inc.
 - Texas Lessor—Stonegate GP, Inc.
 - Texas Lessor—Stonegate Limited, Inc.
 - Texas Lessor—Treemont, Inc.
 - Washington Lessor—Silverdale, Inc.
- 3.48 Articles of Incorporation of Bayside Street, Inc.
- 3.49 Bylaws of Bayside Street, Inc.
- 3.50 Form of Certificate of Formation for each of the following subsidiaries of Omega Healthcare Investors, Inc. formed in the state of Maryland:
- Delta Investors I, LLC
 - Delta Investors II, LLC
- 3.51 Form of Operating Agreement for each of the following subsidiaries of Omega Healthcare Investors, Inc. formed in the state of Maryland:
- Delta Investors I, LLC
 - Delta Investors II, LLC
- 3.52 Articles of Incorporation of Jefferson Clark, Inc.
- 3.53 Bylaws of Jefferson Clark, Inc.
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- 3.54 Form of Articles of Incorporation for each of the following subsidiaries of Omega Healthcare Investors, Inc. incorporated in the state of Maryland:
OHI of Kentucky, Inc.
OHI of Texas, Inc.
- 3.55 Form of Bylaws for each of the following subsidiaries of Omega Healthcare Investors, Inc. incorporated in the state of Maryland:
OHI of Kentucky, Inc.
OHI of Texas, Inc.
- 3.56 Articles of Incorporation of Omega TRS I, Inc.
- 3.57 Bylaws of Omega TRS I, Inc.
- 3.58 Certificate of Formation of Texas Lessor—Stonegate, L.P.
- 3.59 Partnership Agreement for Texas Lessor—Stonegate, L.P.
- 3.60 Articles of Incorporation of OHIMA, Inc.
- 3.61 Bylaws of OHIMA, Inc.
- 3.62 Articles of Incorporation of Long Term Care—Michigan, Inc.
- 3.63 Bylaws of Long Term Care—Michigan, Inc.
- 3.64 Articles of Incorporation of Long Term Care—North Carolina, Inc.
- 3.65 Bylaws of Long Term Care—North Carolina, Inc.
- 3.66 Articles of Incorporation of Skilled Nursing—Hicksville, Inc.
- 3.67 Bylaws of Skilled Nursing—Hicksville, Inc.
- 3.68 Form of Articles of Incorporation for each of the following subsidiaries of Omega Healthcare Investors, Inc. incorporated in the state of Texas:
Center Healthcare Associates, Inc.
Heritage Texarkana Healthcare Associates, Inc.
Pine Texarkana Healthcare Associates, Inc.
Reunion Texarkana Healthcare Associates, Inc.
San Augustine Healthcare Associates, Inc.
South Athens Healthcare Associates, Inc.
Waxahachie Healthcare Associates, Inc.
West Athens Healthcare Associates, Inc.
- 3.69 Form of Bylaws for each of the following subsidiaries of Omega Healthcare Investors, Inc. incorporated in the state of Texas:
Center Healthcare Associates, Inc.
Heritage Texarkana Healthcare Associates, Inc.
Pine Texarkana Healthcare Associates, Inc.
Reunion Texarkana Healthcare Associates, Inc.
San Augustine Healthcare Associates, Inc.
South Athens Healthcare Associates, Inc.
Waxahachie Healthcare Associates, Inc.
West Athens Healthcare Associates, Inc.
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- 3.70 Form of Articles of Incorporation for each of the following subsidiaries of Omega Healthcare Investors, Inc. incorporated in the state of Texas:
Cherry Street—Skilled Nursing Center, Inc.
Dallas Skilled Nursing, Inc.
Lake Park Skilled Nursing, Inc.
Long Term Care Associates—Texas, Inc.
Parkview—Skilled Nursing, Inc.
- 3.71 Form of Bylaws for each of the following subsidiaries of Omega Healthcare Investors, Inc. incorporated in the state of Texas:
Cherry Street—Skilled Nursing Center, Inc.
Dallas Skilled Nursing, Inc.
Lake Park Skilled Nursing, Inc.
Long Term Care Associates—Texas, Inc.
Parkview—Skilled Nursing, Inc.
- 4.0 See Exhibits 3.1 to 3.71.
- 4.1 Form of Indenture (Incorporated by reference to Exhibit 4.2 to the Company's Form S-3 dated February 3, 1997).
- 4.2 Rights Agreement, dated as of May 12, 1999, between Omega Healthcare Investors, Inc. and First Chicago Trust Company, as Rights Agent, including Exhibit A thereto (Form of Articles Supplementary relating to the Series A Junior Participating Preferred Stock) and Exhibit B thereto (Form of Rights Certificate) (Incorporated by reference to Exhibit 4 to the Company's Form 8-K dated April 20, 1999).
- 4.3 Amendment No. 1, dated May 11, 2000 to Rights Agreement, dated as of May 12, 1999, between Omega Healthcare Investors, Inc. and First Chicago Trust Company, as Rights Agent (Incorporated by reference to Exhibit 4.1 to the Company's Form 10-Q for the quarterly period ended March 31, 2000).
- 4.4 Amendment No. 2 to Rights Agreement between Omega Healthcare Investors, Inc. and First Chicago Trust Company, as Rights Agent (Incorporated by reference to Exhibit F to the Schedule 13D filed by Explorer Holdings, L.P. on October 30, 2001 with respect to the Company).
- 4.5 Indenture, dated as of March 22, 2004, among Omega, each of the subsidiary guarantors named therein, and U.S. Bank National Association, as trustee (Incorporated by reference to Exhibit 10.2 to the Company's Form 8-K filed March 26, 2004).
- 4.6 Form of 7% Senior Notes due 2014 (Incorporated by reference to Exhibit 10.4 to the Company's Form 8-K filed March 26, 2004).
- 4.7 Form of Subsidiary Guarantee relating to the 7% Senior Notes due 2014 (Incorporated by reference to Exhibit 10.5 to the Company's Form 8-K filed March 26, 2004).
- 4.8 First Supplementation Indenture, dated July 20, 2004 among Omega and the subsidiary guarantors named therein, OHI Asset (TX), LLC and U.S. Bank National Association.
- 5 Opinion of Powell, Goldstein, Frazer & Murphy LLP.
- 10.1 Amended and Restated Secured Promissory Note between Omega Healthcare Investors, Inc. and Professional Health Care Management, Inc. dated as of September 1, 2001 (Incorporated by reference to Exhibit 10.6 to the Company's 10-Q for the quarterly period ended September 30, 2001).
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- 10.2 Settlement Agreement between Omega Healthcare Investors, Inc. Professional Health Care Management, Inc., Living Centers—PHCM, Inc., GranCare, Inc., and Mariner Post-Acute Network, Inc. dated as of September 1, 2001 (Incorporated by reference to Exhibit 10.7 to the Company's 10-Q for the quarterly period ended September 30, 2001).
 - 10.3 Form of Directors and Officers Indemnification Agreement (Incorporated by reference to Exhibit 10.11 to the Company's Form 10-Q for the quarterly period ended June 30, 2000).
 - 10.4 1993 Amended and Restated Stock Option Plan (Incorporated by reference to Exhibit A to the Company's Proxy Statement dated April 6, 2003).†
 - 10.5 2000 Stock Incentive Plan (as amended January 1, 2001) (Incorporated by reference to Exhibit 10.1 to the Company's Form 10-Q for the quarterly period ended September 30, 2003).†
 - 10.6 Amendment to 2000 Stock Incentive Plan (Incorporated by reference to Exhibit 10.6 to the Company's Form 10-Q for the quarterly period ended June 30, 2000).†
 - 10.7 Employment Agreement between Omega Healthcare Investors, Inc. and C. Taylor Pickett, dated June 12, 2001 (Incorporated by reference to Exhibit 10.2 to the Company's Form 10-Q for the quarterly period ended June 30, 2001).†
 - 10.8 Employment Agreement between Omega Healthcare Investors, Inc. and R. Lee Crabill, Jr., dated July 30, 2001 (Incorporated by reference to Exhibit 10.1 to the Company's Form 10-Q for the quarterly period ended September 30, 2001).†
 - 10.9 Employment Agreement between Omega Healthcare Investors, Inc. and Robert O. Stephenson, dated August 30, 2001 (Incorporated by reference to Exhibit 10.2 to the Company's Form 10-Q for the quarterly period ended September 30, 2001).†
 - 10.10 Employment Agreement between Omega Healthcare Investors, Inc. and Daniel J. Booth, dated October 15, 2001 (Incorporated by reference to Exhibit 10.3 to the Company's Form 10-Q for the quarterly period ended September 30, 2001).†
 - 10.11 Repurchase and Conversion Agreement by and between Omega Healthcare Investors, Inc. and Explorer Holdings, L.P. dated as of February 5, 2004 (Incorporated by reference to Exhibit 10.1 to the Company's Form 8-K filed February 5, 2003).
 - 10.12 Form of Purchase Agreement dated as of February 5, 2004 by and between Omega Healthcare Investors, Inc. and the purchasers of the 8.375% Series D cumulative redeemable preferred shares (Incorporated by reference to Exhibit 10.1 to the Company's Form 8-K filed February 10, 2004).
 - 10.13 Placement Agent Agreement by and between the Omega Healthcare Investors, Inc. and Cohen & Steers Capital Advisors, Inc. dated as of February 5, 2004 (Incorporated by reference to Exhibit 10.2 to the Company's Form 8-K filed February 10, 2004).
 - 10.14 Purchase Agreement, dated as of March 15, 2004, among Omega, Deutsche Bank Securities Inc., UBS Securities LLC, Banc of America Securities LLC and the subsidiary guarantors named therein (Incorporated by reference to Exhibit 10.1 to the Company's Form 8-K filed March 26, 2004).
 - 10.15 Registration Rights Agreement, dated as of March 22, 2004, among Omega, Deutsche Bank Securities Inc., UBS Securities LLC, Banc of America Securities LLC and the subsidiary guarantors named therein (Incorporated by reference to Exhibit 10.3 to the Company's Form 8-K filed March 26, 2004).
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- 10.16 Credit Agreement, dated as of March 22, 2004, among OHI Asset, LLC, OHI Asset (ID), LLC, OHI Asset (LA), LLC, OHI Asset (TX), LLC, OHI Asset (CA), LLC, Delta Investors I, LLC, Delta Investors II, LLC, the lenders named therein, and Bank of America, N.A. (Incorporated by reference to Exhibit 10.6 to the Company's Form 8-K filed March 26, 2004).
- 10.17 Guaranty, dated as of March 22, 2004, given by Omega and the subsidiary guarantors named therein in favor of the Bank of America, N.A. (Incorporated by reference to Exhibit 10.7 to the Company's Form 8-K filed March 26, 2004).
- 10.18 Security Agreement, dated as of March 22, 2004, made by OHI Asset, LLC, OHI Asset (ID), LLC, OHI Asset (LA), LLC, OHI Asset (TX), LLC, OHI Asset (CA), LLC, Delta Investors I, LLC, Delta Investors II, LLC, in favor of Bank of America, N.A. (Incorporated by reference to Exhibit 10.8 to the Company's Form 8-K filed March 26, 2004).
- 12.1 Ratio of Earnings to Fixed Charges.**
- 21 Subsidiaries of the Company (Incorporated herein by reference to Exhibit 21 to the Company's Form 10-K for the year ended December 31, 2003 filed on February 20, 2004).
- 23.1 Consent of Ernst & Young LLP.
- 23.2 Consent of Powell, Goldstein, Frazer & Murphy LLP (contained in Exhibit 5).
- 24 Power of attorney.**
- 25 Form T-1 Statement of Eligibility under the Trust Indenture Act of 1939 of U.S. Bank National Association.**
- 99.1 Form of Letter to Clients.
- 99.2 Form of Letter to Brokers.

** Previously filed.

† Management contract or compensatory plan, contract or arrangement.

QuickLinks

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STATE OF ALABAMA

FOR-PROFIT CORPORATION
ARTICLES OF AMENDMENT TO ARTICLES OF INCORPORATION

THIS FORM MAY BE USED TO:

- CHANGE THE CORPORATE TITLE
- CHANGE THE PERIOD OF DURATION
- CHANGE, ENLARGE OR DIMINISH CORPORATE PURPOSES
- INCREASE OR DECREASE AUTHORIZED CAPITAL STOCK
- EXCHANGE, CLASSIFY, RECLASSIFY OR CANCEL SHARES OF STOCK

INSTRUCTIONS

STEP 1: IF CHANGING THE CORPORATION'S NAME, CONTACT THE OFFICE OF THE SECRETARY OF STATE AT (334) 242-5324 TO RESERVE A CORPORATE NAME.

STEP 2: FILE THE ORIGINAL AND ONE COPY IN THE COUNTY WHERE THE ORIGINAL ARTICLES OF INCORPORATION ARE FILED (IF THE AMENDMENT CHANGES THE NAME, THE CERTIFICATE OF NAME RESERVATION MUST BE ATTACHED). IF CHANGING THE NAME, THE SECRETARY OF STATE'S FILING FEE IS \$20.

PURSUANT TO THE PROVISIONS OF THE ALABAMA BUSINESS CORPORATION ACT, THE UNDERSIGNED HEREBY ADOPTS THE FOLLOWING ARTICLES OF AMENDMENT.

Article I The name of the corporation
Bayside Alabama Healthcare Associates, Inc.

Article II The following amendment was adopted in the manner provided for by the Alabama Business Corporation Act.
Bayside Alabama Healthcare Second, Inc.

Article III The amendment was adopted by the shareholders or directors in the manner prescribed by law on March 7, 2000.

Article IV The number of shares outstanding at the time of the adoption was 100; the number of shares entitled to vote thereon was 100. (If the shares of any class are entitled to vote thereon as a class; the designation and number of outstanding shares entitled to vote thereon of each such class.)

Answer V The number of shares voted for the amendment was 100 and the number of shares voted against such amendment was 100. (If no shares have been issued write a statement to that effect.)

Date: March 13, 2000

/s/ LAURENCE D. RICH, Vice President

Type or Print Corporate Officer's Name and Title

The foregoing document was prepared by:

Name of Individual: Dykema Gossett
1577 N. Woodward Av.

/s/

Signature of Officer

Address of Individual:

Suite 300
Bloomfield Hills, Michigan 48304-2820

STATE OF ALABAMA

I, Jim Bennett, Secretary of State of the State of Alabama, having custody of the Great and Principal Seal of said State, do hereby certify that

pursuant to the provisions of Section 10-2B-4.02, Code of Alabama 1975, and upon an examination of the corporation records on file in this office, the following corporate name is reserved as available:

Bayside Alabama Healthcare Second, Inc.

This domestic corporation name is proposed to be incorporated in Montgomery County and is for the exclusive use of Ethleen Bazzell, PO Box 2069, Birmingham, AL 36102-2069 for a period of one hundred twenty days beginning March 16, 2000 and expiring July 15, 2000.

In Testimony Whereof, I have hereunto set my hand and affixed the Great Seal of the State, at the Capitol, in the City of Montgomery, on this day.

[ALABAMA GREAT SEAL]

March 16, 2000

Date

/s/ JIM BENNETT

Jim Bennett

Secretary of State

**ARTICLES OF INCORPORATION
OF
BAYSIDE ALABAMA HEALTHCARE ASSOCIATES, INC.**

To the Probate Judge
County of Montgomery
State of Alabama

The undersigned does hereby act as incorporator in adopting the following Articles of Incorporation for the purpose of organizing a business corporation, pursuant to the provisions of the Alabama Business Corporation Act.

FIRST: The corporate name for the corporation (hereinafter called the "corporation") is Bayside Alabama Healthcare Associates, Inc.

SECOND: The number of shares the corporation is authorized to issue is 1,000, all of which are of a par value of one dollar each, are of the same class, and are common shares.

THIRD: The street address of the initial registered office of the corporation in the State of Alabama is c/o CSC-Lawyers Incorporating Service Incorporated, 57 Adams Avenue, Montgomery, Alabama 36104-4045. The county in which the said registered office is located is the County of Montgomery. The name of the initial registered agent of the corporation at the said registered office is CSC-Lawyers Incorporating Service Incorporated.

FOURTH: The name and address of the incorporator is Stuart D. Logan, Esq., Dykema Gossett PLLC, 1577 N. Woodward Avenue, Suite 300, Bloomfield Hills, Michigan 48304-2820.

FIFTH: The individual who is to serve as the sole initial director of the corporation is Essel W. Bailey, Jr.. Mr. Bailey's address is 900 Victor's Way, Suite 350, Ann Arbor, Michigan 48108.

SIXTH: The purposes for which the corporation is organized are to transact any lawful business for which corporations may be incorporated under the Alabama Business Corporation Act.

SEVENTH: The corporation shall, to the fullest extent permitted by the provisions of the Alabama Business Corporation Act, as the same may be amended and supplemented, indemnify any and all persons whom it shall have power to indemnify under said provisions from and against any and all of the expenses, liabilities, or other matters referred to in or covered by said provisions, and the indemnification provided for herein shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any bylaw, vote of shareholders or disinterested directors, or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a director, officer, employee, or agent and shall inure to the benefit of the heirs, executors, and administrators of such a person.

EIGHTH: The personal liability of the directors of the corporation is hereby eliminated to the fullest extent permitted by the provisions of the Alabama Business Corporation Act, as the same may be amended and supplemented.

NINTH: Subject to the limitations of the Constitution of the State of Alabama, as the same may be amended and supplemented, whenever any provision of the Alabama Business Corporation Act, as the same may be amended and supplemented, shall otherwise require for the taking of any shareholders' action the affirmative vote of at least a two-thirds proportion of the votes entitled to be cast by any voting group of shareholders, the affirmative vote of a majority of the votes entitled to be cast by that voting group shall be sufficient for the taking of that action.

TENTH: The duration of the corporation shall be perpetual.

Signed on this 23rd day of February, 2000.

/s/ STUART D. LOGAN

Stuart D. Logan, Incorporator

The foregoing Articles of Incorporation of
was prepared by

Name of Individual: Stuart D. Logan, Esq.

Address of Individual: Dykema Gossett PLLC
1577 N. Woodward Avenue, Suite 300
Bloomfield Hills, Michigan 48304-2820

BYLAWS OF BAYSIDE ALABAMA HEALTHCARE SECOND, INC.**I.
Offices**

The principal office of Bayside Alabama Healthcare Second, Inc. (the "Company") shall be at such place within Alabama or Michigan as the Board of Directors of the Company (the "Board") shall from time to time determine. The Company also may have offices at such other places as the business of the Company may require.

**II.
Seal**

The Company may have a seal in such form as the Board may from time to time determine. The seal, if so authorized, may be used by causing it or a facsimile to be impressed, affixed or copied.

**III.
Capital**

3.01 *Issuance.* The shares of capital stock of the Company (the "Shares") shall be issued in such amounts, at such times, for such consideration and on such terms as the Board shall deem advisable, subject to the Company's Articles of Incorporation (the "Articles") and the laws of Alabama.

3.02 *Certificates.* The Shares shall be represented by certificates signed by the President. Each such certificate shall state upon its face that the Company is formed under the laws of Alabama, the person to whom it is issued, the number and class of Shares, and the designation of the series, if any, that the certificate represents, and such other provisions as may be required by Alabama law.

3.03 *Transfer.* The Shares are transferable only on the books of the Company upon surrender of the certificate therefor, properly endorsed for transfer, and the presentation of such evidences of ownership and validity of the assignment as the Company may require.

3.04 *Registration.* The Company shall be entitled to treat the person in whose name any Share is registered as the owner thereof for purposes of dividends and other distributions in the course of business, or in the course of recapitalization, merger, plan of share exchange, reorganization, sale of assets, liquidation or otherwise and for the purpose of votes, approvals and consents by shareholders of the Company ("Shareholders"), and for the purpose of notices to Shareholders, and for all other purposes whatever, and shall not be bound to recognize any equitable or other claim to or interest in such Shares on the part of any other person, whether or not the Company shall have notice thereof, save as expressly required by the laws of Alabama.

3.05 *Replacement.* Upon the presentation to the Company of a proper affidavit attesting the loss, destruction or mutilation of any certificate for Shares, the Board shall direct the issuance of a new certificate to replace the certificate so alleged to be lost, destroyed or mutilated. The Board may require as a condition precedent to the issuance of a new certificate a bond or agreement of indemnity, in such form and amount, and with such sureties as the Board may direct or approve.

**IV.
Shareholders**

4.01 *Meetings.* Meetings of Shareholders shall be held at the principal office of the Company or at such other place as determined by the Board and stated in the notice of meeting. The annual meeting of Shareholders shall be held on the first Monday of March at 10:30 o'clock in the morning. Directors shall be elected at each annual meeting and such other business transacted as may come before the meeting. Special meetings of Shareholders may be called by the Board, the CEO (if such office is filled), the President or any Director, and shall be called by the Secretary at the written

request of Shareholders holding a majority of the outstanding Shares and entitled to vote. The request shall state the purpose or purposes for which the meeting is to be called.

4.02 *Notice.* Except as otherwise provided by statute or the Articles, written notice of the time, place and purposes of a meeting of Shareholders shall be given not fewer than ten nor more than 60 days before the date of the meeting to each Shareholder of record entitled to vote at the meeting, either personally or by mailing such notice to his last address as it appears on the books of the Company. No notice need be given of an adjourned meeting of the Shareholders provided the time and place to which such meeting is adjourned are announced at the meeting at which the adjournment is taken and at the adjourned meeting only such business is transacted as might have been transacted at the original meeting. However, if after the adjournment a new record date is fixed for the adjourned meeting a notice of the adjourned meeting shall be given to each Shareholder of record on the new record date entitled to notice as provided in this Bylaw.

4.03 *Dates.* The Board may fix, in advance a date as the record date for the purpose of determining Shareholders entitled to notice of and to vote at a meeting of Shareholders or an adjournment thereof, or to express consent or to dissent from a proposal without a meeting, or for the purpose of determining Shareholders entitled to receive payment of a dividend or allotment of a right, or for the purpose of any other action. The date fixed shall not be more than 60 nor less than ten days before the date of the meeting, nor more than 60 days before any other action. In such case only such Shareholders as shall be Shareholders of record on the date so fixed shall be entitled to notice of and to vote at such meeting or adjournment thereof, or to express consent or to dissent from such proposal, or to receive payment of such dividend or to receive such allotment of rights, or to participate in any other action, as the case may be, notwithstanding any transfer of any stock on the books of the Company, or otherwise, after any such record date. Nothing in this Bylaw shall affect the rights of a Shareholder and his transferee or transferor as between themselves.

4.04 *Lists.* The Secretary of the Company or the agent of the Company having charge of the stock transfer records for Shares shall make and certify a complete list of the Shareholders entitled to vote at a Shareholders' meeting or any adjournment thereof. The list shall be arranged alphabetically within each class and series, with the address of, and the number of Shares held by, each Shareholder, be produced at the meeting, be subject to inspection by any Shareholder during the meeting, and be prima facie evidence of the Shareholders entitled to examine the list or vote.

4.05 *Quorum.* Unless a greater or lesser quorum is required in the Articles or by the laws of Alabama, the Shareholders present at a meeting in person or by proxy who, as of the record date for such meeting, were holders of a majority of the outstanding Shares entitled to vote at the meeting shall constitute a quorum. Whether or not a quorum is present, a meeting of Shareholders may be adjourned by a vote of the Shares present in person or by proxy. When the holders of a class or series of Shares are entitled to vote separately on an item of business, this Bylaw applies in determining the presence of a quorum of such class or series for transaction of such item of business.

4.06 *Proxies.* A Shareholder entitled to vote at a meeting of Shareholders or to express consent or dissent without a meeting may authorize other persons to act for the Shareholder by proxy. A proxy shall be signed by the Shareholder or the Shareholder's authorized agent or representative.

4.07 *Voting.* Each outstanding Share is entitled to one vote on each matter submitted to a vote, unless otherwise provided in the Articles. When an action, other than the election of directors, is to be taken by a vote of the Shareholders, it shall be authorized by a majority of the votes cast by the holders of Shares entitled to vote thereon, unless a greater vote is required by the Articles or by the laws of Alabama. Except as otherwise provided by the Articles, directors shall be elected by a plurality of the votes cast at any election.

V.
Directors

5.01 *Number.* The business and affairs of the Company shall be managed by a Board of one director. No director need be a resident of Alabama or Shareholder.

5.02 *Tenure.* Directors shall be elected at each annual meeting of the Shareholders, each to hold office until the next annual meeting of Shareholders and until the director's successor is elected and qualified, or until the director's resignation or removal. A director may resign by written notice to the Company. The resignation is effective upon its receipt by the Company or a subsequent time as set forth in the notice of resignation. A director or the entire Board may be removed, with or without cause, by vote of the holders of a majority of the Shares entitled to vote at an election of directors.

5.03 *Vacancies.* Vacancies in the Board occurring by reason of death, resignation, removal, increase, in the number of directors or otherwise shall be filled by the affirmative vote of a majority of the remaining directors though less than a quorum of the Board, unless filled by proper action of the Shareholders. Each person so elected shall be a director for a term of office continuing only until the next election of directors by the Shareholders. A vacancy that will occur at a specific date, by reason of a resignation effective at a later date or otherwise, may be filled before the vacancy occurs, but the newly elected director may not take office until the vacancy occurs.

5.04 *Meetings.* The Board shall meet each year immediately after the annual meeting of the Shareholders, or within three days of such time excluding Sundays and legal holidays if such later time is deemed advisable, at the place where such meeting of the Shareholders has been held or such other place as the Board may determine, for the purpose of election of officers and consideration of such business that may properly be brought before the meeting; provided, that if less than a majority of the directors appear for an annual meeting of the Board the holding of such annual meeting shall not be required and the matters which might have been taken up therein may be taken up at any later special or annual meeting, or by consent resolution. Regular meetings of the Board may be held at such times and places as the majority of the directors may from time to time determine at a prior meeting or as shall be directed or approved by the vote or written consent of all directors. Special meetings of the Board may be called by the President and shall be called by the Secretary upon the written request of any director.

5.05 *Notices.* No notice shall be required for annual or regular meetings of the Board or for adjourned meetings, whether regular or special. Three days' written notice shall be given for special meetings of the Board, and such notice shall state the time, place and purposes of the meeting.

5.06 *Quorum.* A majority of the Board then in office, or of the members of a committee thereof, constitutes a quorum for the transaction of business. The vote of a majority of the directors present at any meeting at which there is a quorum shall be the acts of the Board or of the committee, except as a larger vote may be required by the laws of Alabama. A member of the Board or of a committee designated by the Board may participate in a meeting by means of conference telephone by means of which all persons participating in the meeting can communicate with each other. Participation in a meeting in this manner constitutes presence in person at the meeting.

5.07 *Committees.* The Board may, by resolution passed by a majority of the whole Board, appoint three or more members of the Board as an executive committee to exercise all powers and authorities of the Board in management of the business and affairs of the Company, except that the committee shall not have power or authority to (a) amend the Articles; (b) adopt an agreement of merger or consolidation; (c) recommend to Shareholders the sale, lease or exchange of all or substantially all of the Company's property and assets; (d) recommend to Shareholders a dissolution of the Company or revocation of a dissolution; (e) amend these Bylaws; (f) fill vacancies in the Board; or (g) unless expressly authorized by the Board, declare a dividend or authorize the issuance of stock. The

Board from time to time may, by like resolution, appoint such other committees of one or more directors to have such authority as shall be specified by the Board in the resolution making such appointments. The Board may designate one or more directors as alternate members of any committee who may replace an absent or disqualified member at any meeting thereof.

5.08 *Dissent.* A director who is present at a meeting of the Board, or a committee thereof of which the director is a member, at which action on a corporate matter is taken is presumed to have concurred in that action unless the director's dissent is entered in the minutes of the meeting or unless the director files a written dissent to the action with the person acting as secretary of the meeting before the adjournment thereof or shall forward such dissent by registered mail to the Secretary of the Company promptly after the adjournment of the meeting. Such right to dissent does not apply to a director who voted in favor of such action. A director who is absent from a meeting of the Board, or a committee thereof of which the director is a member, at which any such action is taken is presumed to have concurred in the action unless the director files a written dissent with the Secretary of the Company within a reasonable time after the director has knowledge of the action.

5.09 *Compensation.* The Board, by affirmative vote of a majority of directors in office and irrespective of any personal interest of any of them, may establish reasonable compensation of directors for services to the Company as directors or officers.

VI. Procedures

6.01 *Notice.* All notices of meetings to be given to Shareholders, directors or any committee of directors may be given by mail, overnight courier, telefax or e-mail to any Shareholder, director or committee member at his last address as it appears on the books of the Company. Such notice shall be deemed to be given at the time when the same shall be mailed or otherwise dispatched.

6.02 *Waiver.* Notice of the time, place and purpose of any meeting of Shareholders, directors or committee of directors may be waived by mail, overnight courier, telefax or e-mail, either before or after the meeting, or in such other manner as may be permitted by the laws of Alabama. Attendance of a person at any meeting of Shareholders, in person or by proxy, or at any meeting of directors or of a committee of directors, constitutes a waiver of notice of the meeting except as follows:

(a) In the case of a Shareholder, unless the Shareholder at the beginning of the meeting objects to holding the meeting or transacting business at the meeting, or unless with respect to consideration of a particular matter at the meeting that is not within the purposes described in the meeting notice, the Shareholder objects to considering the matter when it is presented.

(b) In the case of a director, unless he or she at the beginning of the meeting, or upon his or her arrival, objects to the meeting or the transacting of business at the meeting and does not thereafter vote for or assent to any action taken at the meeting.

6.03 *Consent.* Any action required or permitted at any meeting of directors or committee thereof may be taken without a meeting, without prior notice and without a vote, if all directors or committee members entitled to vote thereon consent thereto in writing, before or after the action is taken. Any action required or permitted at any meeting of Shareholders may be taken without a meeting, without prior notice and without a vote, if all Shareholders entitled to vote thereon consent thereto in writing, before or after the action is taken or if such action otherwise satisfies the Articles and Alabama law.

VII.
Officers

7.01 *Number.* The Board shall elect or appoint a President, a Secretary and a Treasurer, and may elect a Chief Executive Officer (the "CEO"), a Chief Operating Officer (the "COO"), and/or one or more Vice Presidents, Assistant Secretaries or Assistant Treasurers. The CEO (if appointed) shall be a member of the Board. Any two or more of the above offices, except those of President and Vice President, may be held by the same person. No officer shall execute or verify an instrument in more than one capacity if the instrument is required by law, the Articles or these Bylaws to be executed, acknowledged, or verified by one or more officers.

7.02 *Term.* An officer shall hold office for the term for which he is elected or appointed and until his successor is elected or appointed and qualified, or until his resignation or removal. An officer may resign by written notice to the Company. The resignation is effective upon its receipt by the Company or at a subsequent time specified in the notice of resignation. An officer may be removed by the Board with or without cause. The removal of an officer shall be without prejudice to his contract rights, if any. The appointment of an officer does not of itself create contract rights.

7.03 *Vacancies.* The Board may fill any vacancies in any office occurring for whatever reason.

7.04 *Authority.* All officers, employees and agents of the Company shall have such authority and perform such duties in the conduct and management of the business and affairs of the Company as may be designated by the Board and these Bylaws.

VIII.
Duties

8.01 *CEO.* The CEO, if any is appointed, shall preside at all meetings of the Shareholders and of the Board at which the CEO is present. The CEO shall be the chief executive officer of the Company, shall see that all resolutions of the Board are carried into effect, and shall have the general powers of supervision usually vested in the chief executive officer of a corporation. Subject to any contrary directives by the Board, the CEO shall hold (a) authority to direct (and commit) the Company's resources toward the achievement of the Company's goals, (b) authority to vote all securities or other interests of other corporations and business organizations held by the Company, and (c) any further authority as may hereafter be vested in him by the Board.

8.02 *President.* In the absence of the CEO, the President shall hold and exercise all authority ascribed to the CEO. In addition, the President shall exercise any and all authority as may be granted to him by the Board, and, subject only to the directives of the CEO, shall ensure that all resolutions of the Board are carried into effect. In the absence of the COO, the President shall also shall hold and exercise all authority ascribed to the COO. In the absence of the Secretary and any Assistant Secretary, the President may exercise the authority otherwise reserved to the Secretary.

8.03 *COO.* The COO shall be the chief operating officer of the Company. The President shall have the general powers of management usually vested in the chief operating officer of a corporation, and, subject to any contrary directives by the Board, shall hold (a) authority to supervise corporation personnel and to implement the directives of the Board, the President and the CEO, and (b) any further authority as may hereafter be vested in him by the Board.

8.04 *Vice Presidents.* The Vice Presidents, in order of their seniority, shall, in the absence or disability of the President, perform the duties and exercise the powers of the President. The Vice Presidents shall in any event assume operating responsibility for those aspects of the Company's business referenced in any specific title of the particular Vice President, and shall perform such other duties as may be delegated by the Board, the CEO, the COO or the President. In any event, any Vice President whose title includes the phrase chief financial officer shall be deemed to have been charged

with the responsibility for the Company's finances, shall have been granted custody of corporate funds and securities, shall be obligated to keep full and accurate accounts of receipts and disbursements in books of the Company, and shall deposit all moneys and other value in the name and to the credit of the Company in such depositories as may be designated by the Board. Moreover, any Vice President whose title includes the phrase general counsel shall be deemed to have been charged with the responsibility for the Company's legal affairs and shall be deemed the Company's principal liaison with the Company's outside counsel and regulatory authorities.

8.05 *Secretary.* The Secretary shall record all votes and minutes of all proceedings in a book to be kept for that purpose, shall give or cause to be given notice of all meetings of the Shareholders and of the Board, and shall keep in safe custody the seal of the Company and, when authorized by the Board, affix the same to any instrument requiring it, and when so affixed it shall be attested by the signature of the Secretary, or by the signature of the Treasurer or an Assistant Secretary. The Secretary may delegate any of the duties, powers and authorities of the Secretary to one or more Assistant Secretaries, unless such delegation is disapproved by the Board.

8.06 *Treasurer.* Subject to the authority of any Vice President charged with the responsibility for the Company's finances, the Treasurer shall have the custody of corporate funds and securities, shall keep full and accurate accounts of receipts and disbursements in books of the Company and shall deposit all moneys and other value in the name and to the credit of the Company in such depositories as may be designated by the Board. The Treasurer shall render to the President and directors, whenever they may require it, an account of his or her transactions as Treasurer and of the financial condition of the Company. The Treasurer may delegate any of his or her duties, powers and authorities to one or more Assistant Treasurers unless such delegation is disapproved by the Board.

8.07 *Assistants.* The Assistant Secretaries, in order of their seniority, shall perform the duties and exercise the powers and authorities of the Secretary in case of the Secretary's absence or disability. The Assistant Treasurers, in the order of their seniority, shall perform the duties and exercise the powers and authorities of the Treasurer in case of the Treasurer's absence or disability. The Assistant Secretaries and Assistant Treasurers shall also perform such duties as may be delegated by the Secretary and Treasurer, respectively, and also such duties as the Board may prescribe.

IX. Actions

9.01 *Payment.* All checks, drafts, notes, bonds, bills of exchange and orders for payment of money of the Company may, subject to any contrary resolution adopted by the Board from time to time, be signed by the CEO, the President or any other officer as may be authorized by the Board.

9.02 *Contracts.* The Board may in any instance designate the officer and/or agent who shall have authority to execute any contract, conveyance, mortgage or other instrument on behalf of the Company, or may ratify or confirm any execution. When the execution of any instrument has been authorized without specification of the executing officers or agents, the CEO or President may execute the same in the name and on behalf of the Company and may affix the corporate seal thereto.

X. Records

10.01 *Maintenance.* The proper officers and agents of the Company shall keep and maintain such books, records and accounts of the Company's business and affairs, minutes of the proceedings of its Shareholders, Board and committees, if any, and such stock ledgers and lists of Shareholders, as the Board shall deem advisable, and as shall be required by the laws of Alabama and other states or jurisdictions empowered to impose such requirements. Books, records and minutes may be kept within or without Alabama in a place which the Board shall determine.

10.02 *Reliance.* In discharging his or her duties, a director or an officer of the Company, when acting in good faith, may rely upon information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by (a) one or more directors, officers, or employees of the Company, or of a business organization under joint control or common control, whom the director or officer reasonably believes to be reliable and competent in the matters presented, (b) legal counsel, public accountants, engineers, or other persons as to matters the director or officer reasonably believes are within the person's professional or expert competence, or (c) a committee of the board of which he or she is not a member if the director or officer reasonably believes the committee merits confidence. A director or officer may not rely on any information if he or she has knowledge concerning the matter that makes reliance otherwise permitted unwarranted.

XI. Indemnification

11.01 *Personal.* Subject to all of the other provisions of this Article XI, the Company shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative and whether formal or informal (other than an action by or in the right of the Company) by reason that the person is or was a director or officer of the Company, or is or was serving at the request of the Company as a director, officer, partner, trustee, employee, or agent of another entity or enterprise, against expenses (including reasonable attorneys' fees), judgments, penalties and amounts paid in settlement reasonably incurred by him or her in connection with such action, suit or proceeding, if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the Company or the Shareholders, and, with respect to any criminal action or proceeding, if the person had no reasonable cause to believe his or her conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which the person reasonably believed to be in or not opposed to the best interests of the Company or the Shareholders, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his or her conduct was unlawful.

11.02 *Derivative.* Subject to all of the provisions of this Article XI, the Company shall indemnify any person who was or is a party to or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Company to procure a judgment in its favor by reason of the fact that the person is or was a director or officer of the Company, or is or was serving at the request of the Company as a director, officer, partner, trustee, employee, or agent of another foreign or domestic corporation, partnership, joint venture, trust or other enterprise, whether for profit or not, against expenses (including attorneys' fees) and amounts paid in settlement reasonably incurred by the person in connection with such action or suit, if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the Company or the Shareholders. However, indemnification shall not be made for any claim, issue or matter in which such person has been found liable to the Company unless and only to the extent that the court in which such action or suit was brought has determined upon application that, despite the adjudication of liability but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnification for the reasonable expenses incurred.

11.03 *Expenses.* To the extent that a person has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Section 11.01 or 11.02 of these Bylaws, or in defense of any claim, issue or matter in the action, suit or proceeding, the person shall be indemnified against actual and reasonable expenses (including attorneys' fees) incurred by such person in connection with the action, suit or proceeding and any action, suit or proceeding brought to enforce the mandatory indemnification provided by this Section 11.03.

11.04 *Definitions.* For purposes of Sections 11.01 and 11.02, "other enterprises" shall include employee benefit plans; "fines" shall include any excise taxes assessed on a person with respect to an employee benefit plan; and "serving at the request of the Company" shall include any service as a director, officer, employee, or agent of the Company that imposes duties on, or involves services by, the director or officer with respect to an employee benefit plan, its participants or beneficiaries; and a person who acted in good faith and in a manner the person reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be considered to have acted in a manner "not opposed to the best interests of the Company or the Shareholders".

11.05 *Parameters.* The right to indemnification conferred in this Article XI shall be a contract right, and shall apply to services of a director or officer as an employee or agent of the Company as well as in such person's capacity as a director or officer. Except as provided in Section 11.03 of these Bylaws, the Company shall have no obligations under this Article XI to indemnify any person in connection with any proceeding, or part thereof, initiated by him or her without Board authorization.

11.06 *Determination.* Any indemnification under Section 11.01 or 11.02 of these Bylaws (unless ordered by a court) shall be made by the Company only as authorized in the specific case upon a determination that indemnification of the person is proper in the circumstances because the person has met the applicable standard of conduct set forth in Section 11.01 or 11.02, whichever is applicable, and upon an evaluation of the reasonableness of expenses and amount paid in settlement. Such determination and evaluation shall be made in any of the following ways:

(a) By a majority vote of a quorum of the Board consisting of directors who are not parties or threatened to be made parties to such proceeding.

(b) If the quorum described in clause (a) above is not obtainable, then by a majority vote of a committee of directors duly designated by the Board and consisting solely of two or more directors who are not at the time parties or threatened to be made parties to the proceeding.

(c) By independent legal counsel in a written opinion, so long as such counsel is selected (i) by the Board or its committee in the manner prescribed in subparagraph (a) or (b), or (ii) if a quorum of the Board cannot be obtained under subparagraph (a) and a committee cannot be designated under subparagraph (b), by the Board.

(d) By the Shareholders, but Shares held by directors or officers who are parties or threatened to be made parties to the action, suit or proceeding may not be voted.

11.07 *Proportionality.* If a person is entitled to indemnification under Section 11.01 or 11.02 of these Bylaws for a portion of expenses, including attorneys' fees, judgments, penalties, fines, and amounts paid in settlement, but not for the total amount thereof, the Company shall indemnify the person for the portion of the expenses, judgments, penalties, fines, or amounts paid in settlement for which the person is entitled to be indemnified.

11.08 *Advances.* The Company may pay or reimburse the reasonable expenses incurred by a person referred to in Section 11.01 or 11.02 of these bylaws who is a party or threatened to be made a party to an action, suit, or proceeding in advance of final disposition of the proceeding if (a) the person furnishes the Company a written affirmation of his or her good faith belief that he or she has met the applicable standard of conduct set forth in Section 11.01 or 11.02, (b) the person furnishes the Company a written undertaking executed to personally repay the advance if it is ultimately determined that he or she did not meet the standard of conduct, (c) the authorization of payment is made in the manner specified in Section 11.06, and (d) a determination is made that the facts then known to those making the determination would not preclude indemnification under Section 11.01 or 11.02. The undertaking shall be a general obligation of the person, but need not be secured.

11.09 *Scope.* The indemnification or advancement of expenses provided under this Article XI is not exclusive of other rights to which a person seeking indemnification or advancement of expenses may be entitled under a contractual arrangement with the Company. However, the total amount of expenses advanced or indemnified from all sources combined shall not exceed the amount of actual expenses incurred by the person seeking indemnification or advancement of expenses.

11.10 *Agents.* The Company may, to the extent authorized from time to time by the Board, grant rights to indemnification and to the advancement of expenses to any employee or agent of the Company to the fullest extent of the provisions of this Article XI with respect to the indemnification and advancement of expenses of directors and officers of the Company.

11.11 *Succession.* The indemnification provided in this Article XI continues as to a person who has ceased to be a director or officer and shall inure to the benefit of his or her successors.

11.12 *Insurance.* The Company may buy and maintain insurance on behalf of any person who is or was a director, officer, partner, trustee, employee or agent of the Company, or is or was serving at the request of the Company as a director, officer, employee or agent of another entity or enterprise against any liability asserted against the person and incurred by him or her in any such capacity or arising out of his or her status as such, whether or not the Company would have power to indemnify the person against such liability under these Bylaws or the laws of Alabama.

11.13 *Legislation.* Upon any change of the Alabama statutory provisions relating to the subject matter of this Article XI, the indemnification to which any person shall be entitled hereunder shall be determined by such changed provisions, but only to the extent that any such change permits the Company to provide broader indemnification rights than before any such change. Subject to Section 11.14, the Board may amend these Bylaws to conform to any such changed statutory provisions.

11.14 *Amendment.* No amendment or repeal of this Article XI shall apply to any director or officer of the Company for or with respect to any prior acts or omissions of such director or officer.

XII. Amendment

The Bylaws of the Company may be amended, altered or repealed, in whole or in part, by the Shareholders or by the Board at any meeting duly held in accordance with these Bylaws.

**ARTICLES OF INCORPORATION
OF**

The undersigned individual does hereby act as incorporator for the purpose of organizing a business corporation, pursuant to the provisions of Chapters 1 through 17 of Title 10, Arizona Revised Statutes.

FIRST: The corporate name for the corporation (hereinafter called the "corporation") is _____.

SECOND: The number of shares the corporation is authorized to issue is 1,000, all of which are common shares without par value.

THIRD: A brief statement of the character of business that the corporation initially intends actually to conduct in the State of Arizona is the provision of continuing-care accommodations to the elderly and infirm.

FOURTH: The individual who is to service as the sole .initial .director of the corporation is David Stover. Mr. Stover's address is 900 Victor's Way, Suite 350, Ann Arbor, MI 48108.

FIFTH: The name and the street address of the corporation's statutory agent, and the street address of the known place of business for the corporation in the State of Arizona, are Corporation Service Company, 3636 North Central Avenue, Phoenix, Arizona 85012.

SIXTH: The name and the address of the incorporator is Stuart D. Logan, Esq., Dykema Gossett PLLC, 1577 N. Woodward Avenue, Suite 300, Bloomfield Hills, Michigan 48304-2820.

SEVENTH: To the fullest extent permitted by the provisions of the Arizona Revised Statutes as the same exist or may hereafter be amended, the corporation shall indemnify any and all persons whom it shall have power to indemnify from and against any and all of the expenses, liabilities, or other matters referred to in or covered by said provisions.

EIGHTH: To the fullest extent permitted by the provisions of the Arizona Revised Statutes as the same exist or may hereafter be amended, a director of the corporation shall not be liable to the corporation or its shareholders for monetary damages for any action taken or any failure to take any action as a director. No repeal, amendment, or modification of this article, whether direct or indirect, shall eliminate or reduce its effect with respect to any act or omission of a director of the corporation occurring prior to such repeal, amendment, or modification.

Signed on this 23rd day of February, 2000.

/s/ STUART D. LOGAN

Stuart D. Logan, *Incorporator*

BYLAWS OF _____

**I.
Offices**

The principal office of _____ (the "Company") shall be at such place within Arizona or Michigan as the Board of Directors of the Company (the "Board") shall from time to time determine. The Company also may have offices at such other places as the business of the Company may require.

**II.
Seal**

The Company may have a seal in such form as the Board may from time to time determine. The seal, if so authorized, may be used by causing it or a facsimile to be impressed, affixed or copied.

**III.
Capital**

3.01 *Issuance.* The shares of capital stock of the Company (the "Shares") shall be issued in such amounts, at such times, for such consideration and on such terms as the Board shall deem advisable, subject to the Company's Articles of Incorporation (the "Articles") and the laws of Arizona.

3.02 *Certificates.* The Shares shall be represented by certificates signed by the President. Each such certificate shall state upon its face that the Company is formed under the laws of Arizona, the person to whom it is issued, the number and class of Shares, and the designation of the series, if any, that the certificate represents, and such other provisions as may be required by Arizona law.

3.03 *Transfer.* The Shares are transferable only on the books of the Company upon surrender of the certificate therefor, properly endorsed for transfer, and the presentation of such evidences of ownership and validity of the assignment as the Company may require.

3.04 *Registration.* The Company shall be entitled to treat the person in whose name any Share is registered as the owner thereof for purposes of dividends and other distributions in the course of business, or in the course of recapitalization, merger, plan of share exchange, reorganization, sale of assets, liquidation or otherwise and for the purpose of votes, approvals and consents by shareholders of the Company ("Shareholders"), and for the purpose of notices to Shareholders, and for all other purposes whatever, and shall not be bound to recognize any equitable or other claim to or interest in such Shares on the part of any other person, whether or not the Company shall have notice thereof, save as expressly required by the laws of Arizona.

3.05 *Replacement.* Upon the presentation to the Company of a proper affidavit attesting the loss, destruction or mutilation of any certificate for Shares, the Board shall direct the issuance of a new certificate to replace the certificate so alleged to be lost, destroyed or mutilated. The Board may require as a condition precedent to the issuance of a new certificate a bond or agreement of indemnity, in such form and amount, and with such sureties as the Board may direct or approve.

**IV.
Shareholders**

4.01 *Meetings.* Meetings of Shareholders shall be held at the principal office of the Company or at such other place as determined by the Board and stated in the notice of meeting. The annual meeting of Shareholders shall be held on the first Monday of March at 10:30 o'clock in the morning. Directors shall be elected at each annual meeting and such other business transacted as may come before the meeting. Special meetings of Shareholders may be called by the Board, the CEO (if such office is filled), the President or any Director, and shall be called by the Secretary at the written request of Shareholders holding a majority of the outstanding Shares and entitled to vote. The request shall state the purpose or purposes for which the meeting is to be called.

4.02 *Notice.* Except as otherwise provided by statute or the Articles, written notice of the time, place and purposes of a meeting of Shareholders shall be given not fewer than ten nor more than 60 days before the date of the meeting to each Shareholder of record entitled to vote at the meeting, either personally or by mailing such notice to his last address as it appears on the books of the Company. No notice need be given of an adjourned meeting of the Shareholders provided the time and place to which such meeting is adjourned are announced at the meeting at which the adjournment is taken and at the adjourned meeting only such business is transacted as might have been transacted at the original meeting. However, if after the adjournment a new record date is fixed for the adjourned meeting a notice of the adjourned meeting shall be given to each Shareholder of record on the new record date entitled to notice as provided in this Bylaw.

4.03 *Dues.* The Board may fix in advance a date as the record date for the purpose of determining Shareholders entitled to notice of and to vote at a meeting of Shareholders or an adjournment thereof, or to express consent or to dissent from a proposal without a meeting, or for the purpose of determining Shareholders entitled to receive payment of a dividend or allotment of a right, or for the purpose of any other action. The date fixed shall not be more than 60 nor less than ten days before the date of the meeting, nor more than 60 days before any other action. In such case only such Shareholders as shall be Shareholders of record on the date so fixed shall be entitled to notice of and to vote at such meeting or adjournment thereof, or to express consent or to dissent from such proposal, or to receive payment of such dividend or to receive such allotment of rights, or to participate in any other action, as the case may be, notwithstanding any transfer of any stock on the books of the Company, or otherwise, after any such record date. Nothing in this Bylaw shall affect the rights of a Shareholder and his transferee or transferor as between themselves.

4.04 *Lists.* The Secretary of the Company or the agent of the Company having charge of the stock transfer records for Shares shall make and certify a complete list of the Shareholders entitled to vote at a Shareholders' meeting or any adjournment thereof. The list shall be arranged alphabetically within each class and series, with the address of, and the number of Shares held by, each Shareholder, be produced at the meeting, be subject to inspection by any Shareholder during the meeting, and be prima facie evidence of the Shareholders entitled to examine the list or vote.

4.05 *Quorum.* Unless a greater or lesser quorum is required in the Articles or by the laws of Arizona, the Shareholders present at a meeting in person or by proxy who, as of the record date for such meeting, were holders of a majority of the outstanding Shares entitled to vote at the meeting shall constitute a quorum. Whether or not a quorum is present, a meeting of Shareholders may be adjourned by a vote of the Shares present in person or by proxy. When the holders of a class or series of Shares are entitled to vote separately on an item of business, this Bylaw applies in determining the presence of a quorum of such class or series for transaction of such item of business.

4.06 *Proxies.* A Shareholder entitled to vote at a meeting of Shareholders or to express consent or dissent without a meeting may authorize other persons to act for the Shareholder by proxy. A proxy shall be signed by the Shareholder or the Shareholder's authorized agent or representative.

4.07 *Voting.* Each outstanding Share is entitled to one vote on each matter submitted to a vote, unless otherwise provided in the Articles. When an action, other than the election of directors, is to be taken by a vote of the Shareholders, it shall be authorized by a majority of the votes cast by the holders of Shares entitled to vote thereon, unless a greater vote is required by the Articles or by the laws of Arizona. Except as otherwise provided by the Articles, directors shall be elected by a plurality of the votes cast at any election.

V.
Directors

5.01 *Number.* The business and affairs of the Company shall be managed by a Board of one director. No director need be a resident of Arizona or Shareholder.

5.02 *Tenure.* Directors shall be elected at each annual meeting of the Shareholders, each to hold office until the next annual meeting of Shareholders and until the director's successor is elected and qualified, or until the director's resignation or removal. A director may resign by written notice to the Company. The resignation is effective upon its receipt by the Company or a subsequent time as set forth in the notice of resignation. A director or the entire Board may be removed, with or without cause, by vote of the holders of a majority of the Shares entitled to vote at an election of directors.

5.03 *Vacancies.* Vacancies in the Board occurring by reason of death, resignation, removal, increase in the number of directors or otherwise shall be filled by the affirmative vote of a majority of the remaining directors though less than a quorum of the Board, unless filled by proper action of the Shareholders. Each person so elected shall be a director for a term of office continuing only until the next election of directors by the Shareholders. A vacancy that will occur at a specific date, by reason of a resignation effective at a later date or otherwise, may be filled before the vacancy occurs, but the newly elected director may not take office until the vacancy occurs.

5.04 *Meetings.* The Board shall meet each year immediately after the annual meeting of the Shareholders, or within three days of such time excluding Sundays and legal holidays if such later time is deemed advisable, at the place where such meeting of the Shareholders has been held or such other place as the Board may determine, for the purpose of election of officers and consideration of such business that may properly be brought before the meeting; provided, that if less than a majority of the directors appear for an annual meeting of the Board the holding of such annual meeting shall not be required and the matters which might have been taken up therein may be taken up at any later special or annual meeting, or by consent resolution. Regular meetings of the Board may be held at such times and places as the majority of the directors may from time to time determine at a prior meeting or as shall be directed or approved by the vote or written consent of all directors. Special meetings of the Board may be called by the President and shall be called by the Secretary upon the written request of any director.

5.05 *Notices.* No notice shall be required for annual or regular meetings of the Board or for adjourned meetings, whether regular or special. Three days' written notice shall be given for special meetings of the Board, and such notice shall state the time, place and purposes of the meeting.

5.06 *Quorum.* A majority of the Board then in office, or of the members of a committee thereof, constitutes a quorum for the transaction of business. The vote of a majority of the directors present at any meeting at which there is a quorum shall be the acts of the Board or of the committee, except as a larger vote may be required by the laws of Arizona. A member of the Board or of a committee designated by the Board may participate in a meeting by means of conference telephone by means of which all persons participating in the meeting can communicate with each other. Participation in a meeting in this manner constitutes presence in person at the meeting.

5.07 *Committees.* The Board may, by resolution passed by a majority of the whole Board, appoint three or more members of the Board as an executive committee to exercise all powers and authorities of the Board in management of the business and affairs of the Company, except that the committee shall not have power or authority to (a) amend the Articles; (b) adopt an agreement of merger or consolidation; (c) recommend to Shareholders the sale, lease or exchange of all or substantially all of the Company's property and assets; (d) recommend to Shareholders a dissolution of the Company or revocation of a dissolution; (e) amend these Bylaws; (f) fill vacancies in the Board; or (g) unless expressly authorized by the Board, declare a dividend or authorize the issuance of stock. The

Board from time to time may, by like resolution, appoint such other committees of one or more directors to have such authority as shall be specified by the Board in the resolution making such appointments. The Board may designate one or more directors as alternate members of any committee who may replace an absent or disqualified member at any meeting thereof.

5.08 *Dissent.* A director who is present at a meeting of the Board, or a committee thereof of which the director is a member, at which action on a corporate matter is taken is presumed to have concurred in that action unless the director's dissent is entered in the minutes of the meeting or unless the director files a written dissent to the action with the person acting as secretary of the meeting before the adjournment thereof or shall forward such dissent by registered mail to the Secretary of the Company promptly after the adjournment of the meeting. Such right to dissent does not apply to a director who voted in favor of such action. A director who is absent from a meeting of the Board, or a committee thereof of which the director is a member, at which any such action is taken is presumed to have concurred in the action unless the director files a written dissent with the Secretary of the Company within a reasonable time after the director has knowledge of the action.

5.09 *Compensation.* The Board, by affirmative vote of a majority of directors in office and irrespective of any personal interest of any of them, may establish reasonable compensation of directors for services to the Company as directors or officers.

VI. Procedures

6.01 *Notice.* All notices of meetings to be given to Shareholders, directors or any committee of directors may be given by mail, overnight courier, telefax or e-mail to any Shareholder, director or committee member at his last address as it appears on the books of the Company. Such notice shall be deemed to be given at the time when the same shall be mailed or otherwise dispatched.

6.02 *Waiver.* Notice of the time, place and purpose of any meeting of Shareholders, directors or committee of directors may be waived by mail, overnight courier, telefax or e-mail, either before or after the meeting, or in such other manner as may be permitted by the laws of Arizona. Attendance of a person at any meeting of Shareholders, in person or by proxy, or at any meeting of directors or of a committee of directors, constitutes a waiver of notice of the meeting except as follows:

(a) In the case of a Shareholder, unless the Shareholder at the beginning of the meeting objects to holding the meeting or transacting business at the meeting, or unless with respect to consideration of a particular matter at the meeting that is not within the purposes described in the meeting notice, the Shareholder objects to considering the matter when it is presented.

(b) In the case of a director, unless he or she at the beginning of the meeting, or upon his or her arrival, objects to the meeting or the transacting of business at the meeting and does not thereafter vote for or assent to any action taken at the meeting.

6.03 *Consent.* Any action required or permitted at any meeting of directors or committee thereof may be taken without a meeting, without prior notice and without a vote, if all directors or committee members entitled to vote thereon consent thereto in writing, before or after the action is taken. Any action required or permitted at any meeting of Shareholders may be taken without a meeting, without prior notice and without a vote, if all Shareholders entitled to vote thereon consent thereto in writing, before or after the action is taken or if such action otherwise satisfies the Articles and Arizona law.

VII.
Officers

7.01 *Number.* The Board shall elect or appoint a President, a Secretary and a Treasurer, and may elect a Chief Executive Officer (the "CEO"), a Chief Operating Officer (the "COO"), and/or one or more Vice Presidents, Assistant Secretaries or Assistant Treasurers. The CEO (if appointed) shall be a member of the Board. Any two or more of the above offices, except those of President and Vice President, may be held by the same person. No officer shall execute or verify an instrument in more than one capacity if the instrument is required by law, the Articles or these Bylaws to be executed, acknowledged, or verified by one or more officers.

7.02 *Term.* An officer shall hold office for the term for which he is elected or appointed and until his successor is elected or appointed and qualified, or until his resignation or removal. An officer may resign by written notice to the Company. The resignation is effective upon its receipt by the Company or at a subsequent time specified in the notice of resignation. An officer may be removed by the Board with or without cause. The removal of an officer shall be without prejudice to his contract rights, if any. The appointment of an officer does not of itself create contract rights.

7.03 *Vacancies.* The Board may fill any vacancies in any office occurring for whatever reason.

7.04 *Authority.* All officers, employees and agents of the Company shall have such authority and perform such duties in the conduct and management of the business and affairs of the Company as may be designated by the Board and these Bylaws.

VIII.
Duties

8.01 *CEO.* The CEO, if any is appointed, shall preside at all meetings of the Shareholders and of the Board at which the CEO is present. The CEO shall be the chief executive officer of the Company, shall see that all resolutions of the Board are carried into effect, and shall have the general powers of supervision usually vested in the chief executive officer of a corporation. Subject to any contrary directives by the Board, the CEO shall hold (a) authority to direct (and commit) the Company's resources toward the achievement of the Company's goals, (b) authority to vote all securities or other interests of other corporations and business organizations held by the Company, and (c) any further authority as may hereafter be vested in him by the Board.

8.02 *President.* In the absence of the CEO, the President shall hold and exercise all authority ascribed to the CEO. In addition, the President shall exercise any and all authority as may be granted to him by the Board, and, subject only to the directives of the CEO, shall ensure that all resolutions of the Board are carried into effect. In the absence of the COO, the President shall also shall hold and exercise all authority ascribed to the COO. In the absence of the Secretary and any Assistant Secretary, the President may exercise the authority otherwise reserved to the Secretary.

8.03 *COO.* The COO shall be the chief operating officer of the Company. The President shall have the general powers of management usually vested in the chief operating officer of a corporation, and, subject to any contrary directives by the Board, shall hold (a) authority to supervise corporation personnel and to implement the directives of the Board, the President and the CEO, and (b) any further authority as may hereafter be vested in him by the Board.

8.04 *Vice Presidents.* The Vice Presidents, in order of their seniority, shall, in the absence or disability of the President, perform the duties and exercise the powers of the President. The Vice Presidents shall in any event assume operating responsibility for those aspects of the Company's business referenced in any specific title of the particular Vice President, and shall perform such other duties as may be delegated by the Board, the CEO, the COO or the President. In any event, any Vice President whose title includes the phrase chief financial officer shall be deemed to have been charged

with the responsibility for the Company's finances, shall have been granted custody of corporate funds and securities, shall be obligated to keep full and accurate accounts of receipts and disbursements in books of the Company, and shall deposit all moneys and other value in the name and to the credit of the Company in such depositories as may be designated by the Board. Moreover, any Vice President whose title includes the phrase general counsel shall be deemed to have been charged with the responsibility for the Company's legal affairs and shall be deemed the Company's principal liaison with the Company's outside counsel and regulatory authorities.

8.05 *Secretary.* The Secretary shall record all votes and minutes of all proceedings in a book to be kept for that purpose, shall give or cause to be given notice of all meetings of the Shareholders and of the Board, and shall keep in safe custody the seal of the Company and, when authorized by the Board, affix the same to any instrument requiring it, and when so affixed it shall be attested by the signature of the Secretary, or by the signature of the Treasurer or an Assistant Secretary. The Secretary may delegate any of the duties, powers and authorities of the Secretary to one or more Assistant Secretaries, unless such delegation is disapproved by the Board.

8.06 *Treasurer.* Subject to the authority of any Vice President charged with the responsibility for the Company's finances, the Treasurer shall have the custody of corporate funds and securities, shall keep full and accurate accounts of receipts and disbursements in books of the Company and shall deposit all moneys and other value in the name and to the credit of the Company in such depositories as may be designated by the Board. The Treasurer shall render to the President and directors, whenever they may require it, an account of his or her transactions as Treasurer and of the financial condition of the Company. The Treasurer may delegate any of his or her duties, powers and authorities to one or more Assistant Treasurers unless such delegation is disapproved by the Board.

8.07 *Assistants.* The Assistant Secretaries, in order of their seniority, shall perform the duties and exercise the powers and authorities of the Secretary in case of the Secretary's absence or disability. The Assistant Treasurers, in the order of their seniority, shall perform the duties and exercise the powers and authorities of the Treasurer in case of the Treasurer's absence or disability. The Assistant Secretaries and Assistant Treasurers shall also perform such duties as may be delegated by the Secretary and Treasurer, respectively, and also such duties as the Board may prescribe.

IX. Actions

9.01 *Payment.* All checks, drafts, notes, bonds, bills of exchange and orders for payment of money of the Company may, subject to any contrary resolution adopted by the Board from time to time, be signed by the CEO, the President or any other officer as may be authorized by the Board.

9.02 *Contracts.* The Board may in any instance designate the officer and/or agent who shall have authority to execute any contract, conveyance, mortgage or other instrument on behalf of the Company, or may ratify or confirm any execution. When the execution of any instrument has been authorized without specification of the executing officers or agents, the CEO or President may execute the same in the name and on behalf of the Company and may affix the corporate seal thereto.

X. Records

10.01 *Maintenance.* The proper officers and agents of the Company shall keep and maintain such books, records and accounts of the Company's business and affairs, minutes of the proceedings of its Shareholders, Board and committees, if any, and such stock ledgers and lists of Shareholders, as the Board shall deem advisable, and as shall be required by the laws of Arizona and other states or jurisdictions empowered to impose such requirements. Books, records and minutes may be kept within or without Arizona in a place which the Board shall determine.

10.02 *Reliance.* In discharging his or her duties, a director or an officer of the Company, when acting in good faith, may rely upon information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by (a) one or more directors, officers, or employees of the Company, or of a business organization under joint control or common control, whom the director or officer reasonably believes to be reliable and competent in the matters presented, (b) legal counsel, public accountants, engineers, or other persons as to matters the director or officer reasonably believes are within the person's professional or expert competence, or (c) a committee of the board of which he or she is not a member if the director or officer reasonably believes the committee merits confidence. A director or officer may not rely on any information if he or she has knowledge concerning the matter that makes reliance otherwise permitted unwarranted.

XI. Indemnification

11.01 *Personal.* Subject to all of the other provisions of this Article XI, the Company shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative and whether formal or informal (other than an action by or in the right of the Company) by reason that the person is or was a director or officer of the Company, or is or was serving at the request of the Company as a director, officer, partner, trustee, employee, or agent of another entity or enterprise, against expenses (including reasonable attorneys' fees), judgments, penalties and amounts paid in settlement reasonably incurred by him or her in connection with such action, suit or proceeding, if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the Company or the Shareholders, and, with respect to any criminal action or proceeding, if the person had no reasonable cause to believe his or her conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which the person reasonably believed to be in or not opposed to the best interests of the Company or the Shareholders, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his or her conduct was unlawful.

11.02 *Derivative.* Subject to all of the provisions of this Article XI, the Company shall indemnify any person who was or is a party to or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Company to procure a judgment in its favor by reason of the fact that the person is or was a director or officer of the Company, or is or was serving at the request of the Company as a director, officer, partner, trustee, employee, or agent of another foreign or domestic corporation, partnership, joint venture, trust or other enterprise, whether for profit or not, against expenses (including attorneys' fees) and amounts paid in settlement reasonably incurred by the person in connection with such action or suit, if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the Company or the Shareholders. However, indemnification shall not be made for any claim, issue or matter in which such person has been found liable to the Company unless and only to the extent that the court in which such action or suit was brought has determined upon application that, despite the adjudication of liability but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnification for the reasonable expenses incurred.

11.03 *Expenses.* To the extent that a person has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Section 11.01 or 11.02 of these Bylaws, or in defense of any claim, issue or matter in the action, suit or proceeding, the person shall be indemnified against actual and reasonable expenses (including attorneys' fees) incurred by such person in connection with the action, suit or proceeding and any action, suit or proceeding brought to enforce the mandatory indemnification provided by this Section 11.03.

11.04 *Definitions.* For purposes of Sections 11.01 and 11.02, "other enterprises" shall include employee benefit plans; "fines" shall include any excise taxes assessed on a person with respect to an employee benefit plan; and "serving at the request of the Company" shall include any service as a director, officer, employee, or agent of the Company that imposes duties on, or involves services by, the director or officer with respect to an employee benefit plan, its participants or beneficiaries; and a person who acted in good faith and in a manner the person reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be considered to have acted in a manner "not opposed to the best interests of the Company or the Shareholders".

11.05 *Parameters.* The right to indemnification conferred in this Article XI shall be a contract right, and shall apply to services of a director or officer as an employee or agent of the Company as well as in such person's capacity as a director or officer. Except as provided in Section 11.03 of these Bylaws, the Company shall have no obligations under this Article XI to indemnify any person in connection with any proceeding, or part thereof, initiated by him or her without Board authorization.

11.06 *Determination.* Any indemnification under Section 11.01 or 11.02 of these Bylaws (unless ordered by a court) shall be made by the Company only as authorized in the specific case upon a determination that indemnification of the person is proper in the circumstances because the person has met the applicable standard of conduct set forth in Section 11.01 or 11.02, whichever is applicable, and upon an evaluation of the reasonableness of expenses and amount paid in settlement. Such determination and evaluation shall be made in any of the following ways:

(a) By a majority vote of a quorum of the Board consisting of directors who are not parties or threatened to be made parties to such proceeding.

(b) If the quorum described in clause (a) above is not obtainable, then by a majority vote of a committee of directors duly designated by the Board and consisting solely of two or more directors who are not at the time parties or threatened to be made parties to the proceeding.

(c) By independent legal counsel in a written opinion, so long as such counsel is selected (i) by the Board or its committee in the manner prescribed in subparagraph (a) or (b), or (ii) if a quorum of the Board cannot be obtained under subparagraph (a) and a committee cannot be designated under subparagraph (b), by the Board.

(d) By the Shareholders, but Shares held by directors or officers who are parties or threatened to be made parties to the action, suit or proceeding may not be voted.

11.07 *Proportionality.* If a person is entitled to indemnification under Section 11.01 or 11.02 of these Bylaws for a portion of expenses, including attorneys' fees, judgments, penalties, fines, and amounts paid in settlement, but not for the total amount thereof, the Company shall indemnify the person for the portion of the expenses, judgments, penalties, fines, or amounts paid in settlement for which the person is entitled to be indemnified.

11.08 *Advances.* The Company may pay or reimburse the reasonable expenses incurred by a person referred to in Section 11.01 or 11.02 of these bylaws who is a party or threatened to be made a party to an action, suit, or proceeding in advance of final disposition of the proceeding if (a) the person furnishes the Company a written affirmation of his or her good faith belief that he or she has met the applicable standard of conduct set forth in Section 11.01 or 11.02, (b) the person furnishes the Company a written undertaking executed to personally repay the advance if it is ultimately determined that he or she did not meet the standard of conduct, (c) the authorization of payment is made in the manner specified in Section 11.06, and (d) a determination is made that the facts then known to those making the determination would not preclude indemnification under Section 11.01 or 11.02. The undertaking shall be a general obligation of the person, but need not be secured.

11.09 *Scope.* The indemnification or advancement of expenses provided under this Article XI is not exclusive of other rights to which a person seeking indemnification or advancement of expenses may be entitled under a contractual arrangement with the Company. However, the total amount of expenses advanced or indemnified from all sources combined shall not exceed the amount of actual expenses incurred by the person seeking indemnification or advancement of expenses.

11.10 *Agents.* The Company may, to the extent authorized from time to time by the Board, grant rights to indemnification and to the advancement of expenses to any employee or agent of the Company to the fullest extent of the provisions of this Article XI with respect to the indemnification and advancement of expenses of directors and officers of the Company.

11.11 *Succession.* The indemnification provided in this Article XI continues as to a person who has ceased to be a director or officer and shall inure to the benefit of his or her successors.

11.12 *Insurance.* The Company may buy and maintain insurance on behalf of any person who is or was a director, officer, partner, trustee, employee or agent of the Company, or is or was serving at the request of the Company as a director, officer, employee or agent of another entity or enterprise against any liability asserted against the person and incurred by him or her in any such capacity or arising out of his or her status as such, whether or not the Company would have power to indemnify the person against such liability under these Bylaws or the laws of Arizona.

11.13 *Legislation.* Upon any change of the Arizona statutory provisions relating to the subject matter of this Article XI, the indemnification to which any person shall be entitled hereunder shall be determined by such changed provisions, but only to the extent that any such change permits the Company to provide broader indemnification rights than before any such change. Subject to Section 11.14, the Board may amend these Bylaws to conform to any such changed statutory provisions.

11.14 *Amendment.* No amendment or repeal of this Article XI shall apply to any director or officer of the Company for or with respect to any prior acts or omissions of such director or officer.

XII. Amendment

The Bylaws of the Company may be amended, altered or repealed, in whole or in part, by the Shareholders or by the Board at any meeting duly held in accordance with these Bylaws.

**ARTICLES OF INCORPORATION
OF**

The undersigned does hereby act as incorporator in adopting the following Articles of Incorporation for the purpose of organizing a business corporation, pursuant to the provisions of the Colorado Business Corporation Act.

FIRST: The corporate name for the corporation (hereinafter called the "corporation") is _____.

SECOND: The number of shares which the corporation is authorized to issue is 1,000, all of which are without par value, are of the same class, and are common shares.

THIRD: The street address of the initial registered office of the corporation in the State of Colorado is 1560 Broadway, Denver, Colorado 80202. The name of the initial registered agent of the corporation at the said registered office is Corporation Service Company.

FOURTH: The address of the corporation's initial principal office is 900 Victor's Way, Suite 350, Ann Arbor, MI 48108.

FIFTH: The name and address of the incorporator is Stuart D. Logan, Esq., Dykema Gossett PLLC, 1577 N. Woodward Avenue, Suite 300, Bloomfield Hills, Michigan 48304-2820.

SIXTH: The purposes for which the corporation is organized are to engage in any lawful business.

SEVENTH: The corporation shall, to the fullest extent permitted by the provisions of the Colorado Business Corporation Act, as the same may be amended and supplemented, indemnify any and all persons whom it shall have power to indemnify under said provisions from and against any and all of the expenses, liabilities, or other matters referred to in or covered by said provisions, and the indemnification provided for herein shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any Bylaw, vote of shareholders or disinterested directors, or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a director, officer, employee, or agent and shall inure to the benefit of the heirs, executors, and administrators of such a person.

EIGHTH: The personal liability of the directors of the corporation is eliminated to the fullest extent permitted by the provisions of the Colorado Business Corporation Act, as the same may be amended and supplemented.

NINTH: The duration of the corporation shall be perpetual.

TENTH: Cumulative voting is not desired in the election of directors.

Signed on this 23rd day of February, 2000.

/s/ STUART D. LOGAN

Stuart D. Logan, *Incorporator*

BYLAWS OF _____

**I.
OFFICES**

The principal office of _____ (the "Company") shall be at such place within Colorado or Michigan as the Board of Directors of the Company (the "Board") shall from time to time determine. The Company also may have offices at such other places as the business of the Company may require.

**II.
SEAL**

The Company may have a seal in such form as the Board may from time to time determine. The seal, if so authorized, may be used by causing it or a facsimile to be impressed, affixed or copied.

**III.
CAPITAL**

3.01 *Issuance.* The shares of capital stock of the Company (the "Shares") shall be issued in such amounts, at such times, for such consideration and on such terms as the Board shall deem advisable, subject to the Company's Articles of Incorporation (the "Articles") and the laws of Colorado.

3.02 *Certificates.* The Shares shall be represented by certificates signed by the President. Each such certificate shall state upon its face that the Company is formed under the laws of Colorado, the person to whom it is issued, the number and class of Shares, and the designation of the series, if any, that the certificate represents, and such other provisions as may be required by Colorado law.

3.03 *Transfer.* The Shares are transferable only on the books of the Company upon surrender of the certificate therefor, properly endorsed for transfer, and the presentation of such evidences of ownership and validity of the assignment as the Company may require.

3.04 *Registration.* The Company shall be entitled to treat the person in whose name any Share is registered as the owner thereof for purposes of dividends and other distributions in the course of business, or in the course of recapitalization, merger, plan of share exchange, reorganization, sale of assets, liquidation or otherwise and for the purpose of votes, approvals and consents by shareholders of the Company ("Shareholders"), and for the purpose of notices to Shareholders, and for all other purposes whatever, and shall not be bound to recognize any equitable or other claim to or interest in such Shares on the part of any other person, whether or not the Company shall have notice thereof, save as expressly required by the laws of Colorado.

3.05 *Replacement.* Upon the presentation to the Company of a proper affidavit attesting the loss, destruction or mutilation of any certificate for Shares, the Board shall direct the issuance of a new certificate to replace the certificate so alleged to be lost, destroyed or mutilated. The Board may require as a condition precedent to the issuance of a new certificate a bond or agreement of indemnity, in such form and amount, and with such sureties as the Board may direct or approve.

**IV.
SHAREHOLDERS**

4.01 *Meetings.* Meetings of Shareholders shall be held at the principal office of the Company or at such other place as determined by the Board and stated in the notice of meeting. The annual meeting of Shareholders shall be held on the first Monday of March at 10:30 o'clock in the morning. Directors shall be elected at each annual meeting and such other business transacted as may come before the meeting. Special meetings of Shareholders may be called by the Board, the CEO (if such office is filled), the President or any Director, and shall be called by the Secretary at the written

request of Shareholders holding a majority of the outstanding Shares and entitled to vote. The request shall state the purpose or purposes for which the meeting is to be called.

4.02 *Notice.* Except as otherwise provided by statute or the Articles, written notice of the time, place and purposes of a meeting of Shareholders shall be given not fewer than ten nor more than 60 days before the date of the meeting to each Shareholder of record entitled to vote at the meeting, either personally or by mailing such notice to his last address as it appears on the books of the Company. No notice need be given of an adjourned meeting of the Shareholders provided the time and place to which such meeting is adjourned are announced at the meeting at which the adjournment is taken and at the adjourned meeting only such business is transacted as might have been transacted at the original meeting. However, if after the adjournment a new record date is fixed for the adjourned meeting a notice of the adjourned meeting shall be given to each Shareholder of record on the new record date entitled to notice as provided in this Bylaw.

4.03 *Dates.* The Board may fix in advance a date as the record date for the purpose of determining Shareholders entitled to notice of and to vote at a meeting of Shareholders or an adjournment thereof, or to express consent or to dissent from a proposal without a meeting, or for the purpose of determining Shareholders entitled to receive payment of a dividend or allotment of a right, or for the purpose of any other action. The date fixed shall not be more than 60 nor less than ten days before the date of the meeting, nor more than 60 days before any other action. In such case only such Shareholders as shall be Shareholders of record on the date so fixed shall be entitled to notice of and to vote at such meeting or adjournment thereof, or to express consent or to dissent from such proposal, or to receive payment of such dividend or to receive such allotment of rights, or to participate in any other action, as the case may be, notwithstanding any transfer of any stock on the books of the Company, or otherwise, after any such record date. Nothing in this Bylaw shall affect the rights of a Shareholder and his transferee or transferor as between themselves.

4.04 *Lists.* The Secretary of the Company or the agent of the Company having charge of the stock transfer records for Shares shall make and certify a complete list of the Shareholders entitled to vote at a Shareholders' meeting or any adjournment thereof. The list shall be arranged alphabetically within each class and series, with the address of, and the number of Shares held by, each Shareholder, be produced at the meeting, be subject to inspection by any Shareholder during the meeting, and be prima facie evidence of the Shareholders entitled to examine the list or vote.

4.05 *Quorum.* Unless a greater or lesser quorum is required in the Articles or by the laws of Colorado, the Shareholders present at a meeting in person or by proxy who, as of the record date for such meeting, were holders of a majority of the outstanding Shares entitled to vote at the meeting shall constitute a quorum. Whether or not a quorum is present, a meeting of Shareholders may be adjourned by a vote of the Shares present in person or by proxy. When the holders of a class or series of Shares are entitled to vote separately on an item of business, this Bylaw applies in determining the presence of a quorum of such class or series for transaction of such item of business.

4.06 *Proxies.* A Shareholder entitled to vote at a meeting of Shareholders or to express consent or dissent without a meeting may authorize other persons to act for the Shareholder by proxy. A proxy shall be signed by the Shareholder or the Shareholder's authorized agent or representative.

4.07 *Voting.* Each outstanding Share is entitled to one vote on each matter submitted to a vote, unless otherwise provided in the Articles. When an action, other than the election of directors, is to be taken by a vote of the Shareholders, it shall be authorized by a majority of the votes cast by the holders of Shares entitled to vote thereon, unless a greater vote is required by the Articles or by the laws of Colorado. Except as otherwise provided by the Articles, directors shall be elected by a plurality of the votes cast at any election.

V.
DIRECTORS

5.01 *Number.* The business and affairs of the Company shall be managed by a Board of one director. No director need be a resident of Colorado or Shareholder.

5.02 *Tenure.* Directors shall be elected at each annual meeting of the Shareholders, each to hold office until the next annual meeting of Shareholders and until the director's successor is elected and qualified, or until the director's resignation or removal. A director may resign by written notice to the Company. The resignation is effective upon its receipt by the Company or a subsequent time as set forth in the notice of resignation. A director or the entire Board may be removed, with or without cause, by vote of the holders of a majority of the Shares entitled to vote at an election of directors.

5.03 *Vacancies.* Vacancies in the Board occurring by reason of death, resignation, removal, increase in the number of directors or otherwise shall be filled by the affirmative vote of a majority of the remaining directors though less than a quorum of the Board, unless filled by proper action of the Shareholders. Each person so elected shall be a director for a term of office continuing only until the next election of directors by the Shareholders. A vacancy that will occur at a specific date, by reason of a resignation effective at a later date or otherwise, may be filled before the vacancy occurs, but the newly elected director may not take office until the vacancy occurs.

5.04 *Meetings.* The Board shall meet each year immediately after the annual meeting of the Shareholders, or within three days of such time excluding Sundays and legal holidays if such later time is deemed advisable, at the place where such meeting of the Shareholders has been held or such other place as the Board may determine, for the purpose of election of officers and consideration of such business that may properly be brought before the meeting; provided, that if less than a majority of the directors appear for an annual meeting of the Board the holding of such annual meeting shall not be required and the matters which might have been taken up therein may be taken up at any later special or annual meeting, or by consent resolution. Regular meetings of the Board may be held at such times and places as the majority of the directors may from time to time determine at a prior meeting or as shall be directed or approved by the vote or written consent of all directors. Special meetings of the Board may be called by the President and shall be called by the Secretary upon the written request of any director.

5.05 *Notices.* No notice shall be required for annual or regular meetings of the Board or for adjourned meetings, whether regular or special. Three days' written notice shall be given for special meetings of the Board, and such notice shall state the time, place and purposes of the meeting.

5.06 *Quorum.* A majority of the Board then in office, or of the members of a committee thereof, constitutes a quorum for the transaction of business. The vote of a majority of the directors present at any meeting at which there is a quorum shall be the acts of the Board or of the committee, except as a larger vote may be required by the laws of Colorado. A member of the Board or of a committee designated by the Board may participate in a meeting by means of conference telephone by means of which all persons participating in the meeting can communicate with each other. Participation in a meeting in this manner constitutes presence in person at the meeting.

5.07 *Committees.* The Board may, by resolution passed by a majority of the whole Board, appoint three or more members of the Board as an executive committee to exercise all powers and authorities of the Board in management of the business and affairs of the Company, except that the committee shall not have power or authority to (a) amend the Articles; (b) adopt an agreement of merger or consolidation; (c) recommend to Shareholders the sale, lease or exchange of all or substantially all of the Company's property and assets; (d) recommend to Shareholders a dissolution of the Company or revocation of a dissolution; (e) amend these Bylaws; (f) fill vacancies in the Board; or (g) unless expressly authorized by the Board, declare a dividend or authorize the issuance of stock. The

Board from time to time may, by like resolution, appoint such other committees of one or more directors to have such authority as shall be specified by the Board in the resolution making such appointments. The Board may designate one or more directors as alternate members of any committee who may replace an absent or disqualified member at any meeting thereof.

5.08 *Dissent.* A director who is present at a meeting of the Board, or a committee thereof of which the director is a member, at which action on a corporate matter is taken is presumed to have concurred in that action unless the director's dissent is entered in the minutes of the meeting or unless the director files a written dissent to the action with the person acting as secretary of the meeting before the adjournment thereof or shall forward such dissent by registered mail to the Secretary of the Company promptly after the adjournment of the meeting. Such right to dissent does not apply to a director who voted in favor of such action. A director who is absent from a meeting of the Board, or a committee thereof of which the director is a member, at which any such action is taken is presumed to have concurred in the action unless the director files a written dissent with the Secretary of the Company within a reasonable time after the director has knowledge of the action.

5.09 *Compensation.* The Board, by affirmative vote of a majority of directors in office and irrespective of any personal interest of any of them, may establish reasonable compensation of directors for services to the Company as directors or officers.

VI. PROCEDURES

6.01 *Notice.* All notices of meetings to be given to Shareholders, directors or any committee of directors may be given by mail, overnight courier, telefax or e-mail to any Shareholder, director or committee member at his last address as it appears on the books of the Company. Such notice shall be deemed to be given at the time when the same shall be mailed or otherwise dispatched.

6.02 *Waiver.* Notice of the time, place and purpose of any meeting of Shareholders, directors or committee of directors may be waived by mail, overnight courier, telefax or e-mail, either before or after the meeting, or in such other manner as may be permitted by the laws of Colorado. Attendance of a person at any meeting of Shareholders, in person or by proxy, or at any meeting of directors or of a committee of directors, constitutes a waiver of notice of the meeting except as follows:

(a) In the case of a Shareholder, unless the Shareholder at the beginning of the meeting objects to holding the meeting or transacting business at the meeting, or unless with respect to consideration of a particular matter at the meeting that is not within the purposes described in the meeting notice, the Shareholder objects to considering the matter when it is presented.

(b) In the case of a director, unless he or she at the beginning of the meeting, or upon his or her arrival, objects to the meeting or the transacting of business at the meeting and does not thereafter vote for or assent to any action taken at the meeting.

6.03 *Consent.* Any action required or permitted at any meeting of directors or committee thereof may be taken without a meeting, without prior notice and without a vote, if all directors or committee members entitled to vote thereon consent thereto in writing, before or after the action is taken. Any action required or permitted at any meeting of Shareholders may be taken without a meeting, without prior notice and without a vote, if all Shareholders entitled to vote thereon consent thereto in writing, before or after the action is taken or if such action otherwise satisfies the Articles and Colorado law.

VII.
OFFICERS

7.01 *Number.* The Board shall elect or appoint a President, a Secretary and a Treasurer, and may elect a Chief Executive Officer (the "CEO"), a Chief Operating Officer (the "COO"), and/or one or more Vice Presidents, Assistant Secretaries or Assistant Treasurers. The CEO (if appointed) shall be a member of the Board. Any two or more of the above offices, except those of President and Vice President, may be held by the same person. No officer shall execute or verify an instrument in more than one capacity if the instrument is required by law, the Articles of these Bylaws to be executed, acknowledged, or verified by one or more officers.

7.02 *Term.* An officer shall hold office for the term for which he is elected or appointed and until his successor is elected or appointed and qualified, or until his resignation or removal. An officer may resign by written notice to the Company. The resignation is effective upon its receipt by the Company or at a subsequent time specified in the notice of resignation. An officer may be removed by the Board with or without cause. The removal of an officer shall be without prejudice to his contract rights, if any. The appointment of an officer does not of itself create contract rights.

7.03 *Vacancies.* The Board may fill any vacancies in any office occurring for whatever reason.

7.04 *Authority.* All officers, employees and agents of the Company shall have such authority and perform such duties in the conduct and management of the business and affairs of the Company as may be designated by the Board and these Bylaws.

VIII.
DUTIES

8.01 *CEO.* The CEO, if any is appointed, shall preside at all meetings of the Shareholders and of the Board at which the CEO is present. The CEO shall be the chief executive officer of the Company, shall see that all resolutions of the Board are carried into effect, and shall have the general powers of supervision usually vested in the chief executive officer of a corporation. Subject to any contrary directives by the Board, the CEO shall hold (a) authority to direct (and commit) the Company's resources toward the achievement of the Company's goals, (b) authority to vote all securities or other interests of other corporations and business organizations held by the Company, and (c) any further authority as may hereafter be vested in him by the Board.

8.02 *President.* In the absence of the CEO, the President shall hold and exercise all authority ascribed to the CEO. In addition, the President shall exercise any and all authority as may be granted to him by the Board, and, subject only to the directives of the CEO, shall ensure that all resolutions of the Board are carried into effect. In the absence of the COO, the President shall also shall hold and exercise all authority ascribed to the COO. In the absence of the Secretary and any Assistant Secretary, the President may exercise the authority otherwise reserved to the Secretary.

8.03 *COO.* The COO shall be the chief operating officer of the Company. The President shall have the general powers of management usually vested in the chief operating officer of a corporation, and, subject to any contrary directives by the Board, shall hold (a) authority to supervise corporation personnel and to implement the directives of the Board, the President and the CEO, and (b) any further authority as may hereafter be vested in him by the Board.

8.04 *Vice Presidents.* The Vice Presidents, in order of their seniority, shall, in the absence or disability of the President, perform the duties and exercise the powers of the President. The Vice Presidents shall in any event assume operating responsibility for those aspects of the Company's business referenced in any specific title of the particular Vice President, and shall perform such other duties as may be delegated by the Board, the CEO, the COO or the President. In any event, any Vice President whose title includes the phrase chief financial officer shall be deemed to have been charged

with the responsibility for the Company's finances, shall have been granted custody of corporate funds and securities, shall be obligated to keep full and accurate accounts of receipts and disbursements in books of the Company, and shall deposit all moneys and other value in the name and to the credit of the Company in such depositories as may be designated by the Board. Moreover, any Vice President whose title includes the phrase general counsel shall be deemed to have been charged with the responsibility for the Company's legal affairs and shall be deemed the Company's principal liaison with the Company's outside counsel and regulatory authorities.

8.05 *Secretary.* The Secretary shall record all votes and minutes of all proceedings in a book to be kept for that purpose, shall give or cause to be given notice of all meetings of the Shareholders and of the Board, and shall keep in safe custody the seal of the Company and, when authorized by the Board, affix the same to any instrument requiring it, and when so affixed it shall be attested by the signature of the Secretary, or by the signature of the Treasurer or an Assistant Secretary. The Secretary may delegate any of the duties, powers and authorities of the Secretary to one or more Assistant Secretaries, unless such delegation is disapproved by the Board.

8.06 *Treasurer.* Subject to the authority of any Vice President charged with the responsibility for the Company's finances, the Treasurer shall have the custody of corporate funds and securities, shall keep full and accurate accounts of receipts and disbursements in books of the Company and shall deposit all moneys and other value in the name and to the credit of the Company in such depositories as may be designated by the Board. The Treasurer shall render to the President and directors, whenever they may require it, an account of his or her transactions as Treasurer and of the financial condition of the Company. The Treasurer may delegate any of his or her duties, powers and authorities to one or more Assistant Treasurers unless such delegation is disapproved by the Board.

8.07 *Assistants.* The Assistant Secretaries, in order of their seniority, shall perform the duties and exercise the powers and authorities of the Secretary in case of the Secretary's absence or disability. The Assistant Treasurers, in the order of their seniority, shall perform the duties and exercise the powers and authorities of the Treasurer in case of the Treasurer's absence or disability. The Assistant Secretaries and Assistant Treasurers shall also perform such duties as may be delegated by the Secretary and Treasurer, respectively, and also such duties as the Board may prescribe.

IX. ACTIONS

9.01 *Payment.* All checks, drafts, notes, bonds, bills of exchange and orders for payment of money of the Company may, subject to any contrary resolution adopted by the Board from time to time, be signed by the CEO, the President or any other officer as may be authorized by the Board.

9.02 *Contracts.* The Board may in any instance designate the officer and/or agent who shall have authority to execute any contract, conveyance, mortgage or other instrument on behalf of the Company, or may ratify or confirm any execution. When the execution of any instrument has been authorized without specification of the executing officers or agents, the CEO or President may execute the same in the name and on behalf of the Company and may affix the corporate seal thereto.

X. RECORDS

10.01 *Maintenance.* The proper officers and agents of the Company shall keep and maintain such books, records and accounts of the Company's business and affairs, minutes of the proceedings of its Shareholders, Board and committees, if any, and such stock ledgers and lists of Shareholders, as the Board shall deem advisable, and as shall be required by the laws of Colorado and other states or jurisdictions empowered to impose such requirements. Books, records and minutes may be kept within or without Colorado in a place which the Board shall determine.

10.02 *Reliance.* In discharging his or her duties, a director or an officer of the Company, when acting in good faith, may rely upon information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by (a) one or more directors, officers, or employees of the Company, or of a business organization under joint control or common control, whom the director or officer reasonably believes to be reliable and competent in the matters presented, (b) legal counsel, public accountants, engineers, or other persons as to matters the director or officer reasonably believes are within the person's professional or expert competence, or (c) a committee of the board of which he or she is not a member if the director or officer reasonably believes the committee merits confidence. A director or officer may not rely on any information if he or she has knowledge concerning the matter that makes reliance otherwise permitted unwarranted.

XI. INDEMNIFICATION

11.01 *Personal.* Subject to all of the other provisions of this Article XI, the Company shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative and whether formal or informal (other than an action by or in the right of the Company) by reason that the person is or was a director or officer of the Company, or is or was serving at the request of the Company as a director, officer, partner, trustee, employee, or agent of another entity or enterprise, against expenses (including reasonable attorneys' fees), judgments, penalties and amounts paid in settlement reasonably incurred by him or her in connection with such action, suit or proceeding, if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the Company or the Shareholders, and, with respect to any criminal action or proceeding, if the person had no reasonable cause to believe his or her conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which the person reasonably believed to be in or not opposed to the best interests of the Company or the Shareholders, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his or her conduct was unlawful.

11.02 *Derivative.* Subject to all of the provisions of this Article XI, the Company shall indemnify any person who was or is a party to or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Company to procure a judgment in its favor by reason of the fact that the person is or was a director or officer of the Company, or is or was serving at the request of the Company as a director, officer, partner, trustee, employee, or agent of another foreign or domestic corporation, partnership, joint venture, trust or other enterprise, whether for profit or not, against expenses (including attorneys' fees) and amounts paid in settlement reasonably incurred by the person in connection with such action or suit, if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the Company or the Shareholders. However, indemnification shall not be made for any claim, issue or matter in which such person has been found liable to the Company unless and only to the extent that the court in which such action or suit was brought has determined upon application that, despite the adjudication of liability but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnification for the reasonable expenses incurred.

11.03 *Expenses.* To the extent that a person has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Section 11.01 or 11.02 of these Bylaws, or in defense of any claim, issue or matter in the action, suit or proceeding, the person shall be indemnified against actual and reasonable expenses (including attorneys' fees) incurred by such person in connection with the action, suit or proceeding and any action, suit or proceeding brought to enforce the mandatory indemnification provided by this Section 11.03.

11.04 *Definitions.* For purposes of Sections 11.01 and 11.02, "other enterprises" shall include employee benefit plans; "fines" shall include any excise taxes assessed on a person with respect to an employee benefit plan; and "serving at the request of the Company" shall include any service as a director, officer, employee, or agent of the Company that imposes duties on, or involves services by, the director or officer with respect to an employee benefit plan, its participants or beneficiaries; and a person who acted in good faith and in a manner the person reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be considered to have acted in a manner "not opposed to the best interests of the Company or the Shareholders".

11.05 *Parameters.* The right to indemnification conferred in this Article XI shall be a contract right, and shall apply to services of a director or officer as an employee or agent of the Company as well as in such person's capacity as a director or officer. Except as provided in Section 11.03 of these Bylaws, the Company shall have no obligations under this Article XI to indemnify any person in connection with any proceeding, or part thereof, initiated by him or her without Board authorization.

11.06 *Determination.* Any indemnification under Section 11.01 or 11.02 of these Bylaws (unless ordered by a court) shall be made by the Company only as authorized in the specific case upon a determination that indemnification of the person is proper in the circumstances because the person has met the applicable standard of conduct set forth in Section 11.01 or 11.02, whichever is applicable, and upon an evaluation of the reasonableness of expenses and amount paid in settlement. Such determination and evaluation shall be made in any of the following ways:

(a) By a majority vote of a quorum of the Board consisting of directors who are not parties or threatened to be made parties to such proceeding.

(b) If the quorum described in clause (a) above is not obtainable, then by a majority vote of a committee of directors duly designated by the Board and consisting solely of two or more directors who are not at the time parties or threatened to be made parties to the proceeding.

(c) By independent legal counsel in a written opinion, so long as such counsel is selected (i) by the Board or its committee in the manner prescribed in subparagraph (a) or (b), or (ii) if a quorum of the Board cannot be obtained under subparagraph (a) and a committee cannot be designated under subparagraph (b), by the Board.

(d) By the Shareholders, but Shares held by directors or officers who are parties or threatened to be made parties to the action, suit or proceeding may not be voted.

11.07 *Proportionality.* If a person is entitled to indemnification under Section 11.01 or 11.02 of these Bylaws for a portion of expenses, including attorneys' fees, judgments, penalties, fines, and amounts paid in settlement, but not for the total amount thereof, the Company shall indemnify the person for the portion of the expenses, judgments, penalties, fines, or amounts paid in settlement for which the person is entitled to be indemnified.

11.08 *Advances.* The Company may pay or reimburse the reasonable expenses incurred by a person referred to in Section 11.01 or 11.02 of these bylaws who is a party or threatened to be made a party to an action, suit, or proceeding in advance of final disposition of the proceeding if (a) the person furnishes the Company a written affirmation of his or her good faith belief that he or she has met the applicable standard of conduct set forth in Section 11.01 or 11.02, (b) the person furnishes the Company a written undertaking executed to personally repay the advance if it is ultimately determined that he or she did not meet the standard of conduct, (c) the authorization of payment is made in the manner specified in Section 11.06, and (d) a determination is made that the facts then known to those making the determination would not preclude indemnification under Section 11.01 or 11.02. The undertaking shall be a general obligation of the person, but need not be secured.

11.09 *Scope.* The indemnification or advancement of expenses provided under this Article XI is not exclusive of other rights to which a person seeking indemnification or advancement of expenses may be entitled under a contractual arrangement with the Company. However, the total amount of expenses advanced or indemnified from all sources combined shall not exceed the amount of actual expenses incurred by the person seeking indemnification or advancement of expenses.

11.10 *Agents.* The Company may, to the extent authorized from time to time by the Board, grant rights to indemnification and to the advancement of expenses to any employee or agent of the Company to the fullest extent of the provisions of this Article XI with respect to the indemnification and advancement of expenses of directors and officers of the Company.

11.11 *Succession.* The indemnification provided in this Article XI continues as to a person who has ceased to be a director or officer and shall inure to the benefit of his or her successors.

11.12 *Insurance.* The Company may buy and maintain insurance on behalf of any person who is or was a director, officer, partner, trustee, employee or agent of the Company, or is or was serving at the request of the Company as a director, officer, employee or agent of another entity or enterprise against any liability asserted against the person and incurred by him or her in any such capacity or arising out of his or her status as such, whether or not the Company would have power to indemnify the person against such liability under these Bylaws of the laws of Colorado.

11.13 *Legislation.* Upon any change of the Colorado statutory provisions relating to the subject matter of this Article XI, the indemnification to which any person shall be entitled hereunder shall be determined by such changed provisions, but only to the extent that any such change permits the Company to provide broader indemnification rights than before any such change. Subject to Section 11.14, the Board may amend these Bylaws to conform to any such changed statutory provisions.

11.14 *Amendment.* No amendment or repeal of this Article XI shall apply to any director or officer of the Company for or with respect to any prior acts or omissions of such director or officer.

XII. AMENDMENT

The Bylaws of the Company may be amended, altered or repealed, in whole or in part, by the Shareholders or by the Board at any meeting duly held in accordance with these Bylaws.

**CERTIFICATE OF INCORPORATION
STOCK CORPORATION
Office of the Secretary of the State
30 Trinity Street / P.O. Box 150470 / Hartford, CT 06115-04 / new 1-97**

FILING #0001998090 PG 01 OF 02 VOL B-00277
FILED 07/14/1999 11.04 AN PAGE 02873
SECRETARY OF THE STATE
CONNECTICUT SECRETARY OF THE STATE

1. **NAME OF CORPORATION:**
OHI (Connecticut), Inc.

2. **TOTAL NUMBER OF AUTHORIZED SHARES:** 20,000

If the corporation has more than one class of shares, it must designate each class and the number of shares authorized within each class below

Class	Number of shares per class

3. **TERM, LIMITATIONS, RELATIVE RIGHTS AND PREFERENCES OF EACH CLASS OF SHARES AND SERIES THEREOF PURSUANT TO CONN. GEN. STAT. SECTION 33-465:**
None

4. APPOINTMENT OF REGISTERED AGENT

Print or type name of agent:
C T CORPORATION SYSTEM

Business/Initial registered office address:
One Commercial Plaza
Hartford, Connecticut 06103

Residence address:

Acceptance of appointment
C T CORPORATION SYSTEMS

By: /s/ EDWARD GWIRDELL

Signature of agent

5. OTHER PROVISIONS:
None

6. EXECUTION

Dated this 12th day of July, 1999

Certificate must be signed by each incorporator.

PRINT OR TYPE NAME OF INCORPORATOR(S)	SIGNATURE(S)	COMPLETE ADDRESS(ES)
Jennifer Hennessey	/s/ JENNIFER HENNESSEY	2 Oliver Street, Boston, MA 02109
Tammy Fischer	/s/ TAMMY FISCHER	2 Oliver Street, Boston, MA 02109
Elizabeth Pryor	/s/ ELIZABETH PRYOR	2 Oliver Street, Boston, MA 02109

QuickLinks

[CERTIFICATE OF INCORPORATION STOCK CORPORATION Office of the Secretary of the State 30 Trinity Street / P.O. Box 150470 / Hartford, CT 06115-04 / new 1-97](#)

BYLAWS OF OHI (CONNECTICUT), INC.

I. Offices

The principal office of OHI (Connecticut), Inc. (the "Company") shall be at such place as the Board of Directors of the Company (the "Board") shall from time to time determine. The Company also may have additional offices at such other places as the business may require.

II. Capital

2.01 *Issuance.* The shares of capital stock of the Company (the "Shares") shall be issued in such amounts, at such times, for such consideration and on such terms as the Board shall deem advisable, subject to the Company's Articles of Incorporation (the "Articles") and the laws of Connecticut.

2.02 *Certificates.* The Shares shall be represented by certificates signed by the President. Each such certificate shall state upon its face that the Company is formed under the laws of Connecticut, the person to whom it is issued, the number and class of Shares, and the designation of the series, if any, that the certificate represents, and such other provisions as may be required by Connecticut law.

2.03 *Transfer.* The Shares are transferable only on the books of the Company upon surrender of the certificate therefor, properly endorsed for transfer, and the presentation of such evidences of ownership and validity of the assignment as the Company may require.

2.04 *Registration.* The Company shall be entitled to treat the person in whose name any Share is registered as the owner thereof for purposes of dividends and other distributions in the course of business, or in the course of recapitalization, merger, plan of share exchange, reorganization, sale of assets, liquidation or otherwise and for the purpose of votes, approvals and consents by shareholders of the Company ("Shareholders"), and for the purpose of notices to Shareholders, and for all other purposes whatever, and shall not be bound to recognize any equitable or other claim to or interest in such Shares on the part of any other person, whether or not the Company shall have notice thereof, save as expressly required by the laws of Connecticut.

2.05 *Replacement.* Upon the presentation to the Company of a proper affidavit attesting the loss, destruction or mutilation of any certificate for Shares, the Board shall direct the issuance of a new certificate to replace the certificate so alleged to be lost, destroyed or mutilated. The Board may require as a condition precedent to the issuance of a new certificate a bond or agreement of indemnity, in such form and amount, and with such sureties as the Board may direct or approve.

III. Shareholders

3.01 *Meetings.* Meetings of Shareholders shall be held at the principal office of the Company or at such other place as determined by the Board and stated in the notice of meeting. The annual meeting of Shareholders shall be held on the first Monday of March at 10:30 o'clock in the morning. Directors shall be elected at each annual meeting and such other business transacted as may come before the meeting. Special meetings of Shareholders may be called by the Board, the CEO (if such office is filled), the President or any Director, and shall be called by the Secretary at the written request of Shareholders holding a majority of the outstanding Shares and entitled to vote. The request shall state the purpose or purposes for which the meeting is to be called.

3.02 *Notice.* Except as otherwise provided by statute or the Articles, written notice of the time, place and purposes of a meeting of Shareholders shall be given not fewer than ten nor more than 60 days before the date of the meeting to each Shareholder of record entitled to vote at the meeting, either personally or by mailing such notice to his last address as it appears on the books of the Company. No notice need be given of an adjourned meeting of the Shareholders provided the time and

place to which such meeting is adjourned are announced at the meeting at which the adjournment is taken and at the adjourned meeting only such business is transacted as might have been transacted at the original meeting. However, if after the adjournment a new record date is fixed for the adjourned meeting a notice of the adjourned meeting shall be given to each Shareholder of record on the new record date entitled to notice as provided in this Bylaw.

3.03 *Dates.* The Board may fix in advance a date as the record date for the purpose of determining Shareholders entitled to notice of and to vote at a meeting of Shareholders or an adjournment thereof, or to express consent or to dissent from a proposal without a meeting, or for the purpose of determining Shareholders entitled to receive payment of a dividend or allotment of a right, or for the purpose of any other action. The date fixed shall not be more than 60 nor less than ten days before the date of the meeting, nor more than 60 days before any other action. In such case only such Shareholders as shall be Shareholders of record on the date so fixed shall be entitled to notice of and to vote at such meeting or adjournment thereof, or to express consent or to dissent from such proposal, or to receive payment of such dividend or to receive such allotment of rights, or to participate in any other action, as the case may be, notwithstanding any transfer of any stock on the books of the Company, or otherwise, after any such record date. Nothing in this Bylaw shall affect the rights of a Shareholder and his transferee or transferor as between themselves.

3.04 *Lists.* The Secretary of the Company or the agent of the Company having charge of the stock transfer records for Shares shall make and certify a complete list of the Shareholders entitled to vote at a Shareholders' meeting or any adjournment thereof. The list shall be arranged alphabetically within each class and series, with the address of, and the number of Shares held by, each Shareholder, be produced at the meeting, be subject to inspection by any Shareholder during the meeting, and be prima facie evidence of the Shareholders entitled to examine the list or vote.

3.05 *Quorum.* Unless a greater or lesser quorum is required in the Articles or by the laws of Connecticut, the Shareholders present at a meeting in person or by proxy who, as of the record date for such meeting, were holders of a majority of the outstanding Shares entitled to vote at the meeting shall constitute a quorum. Whether or not a quorum is present, a meeting of Shareholders may be adjourned by a vote of the Shares present in person or by proxy. When the holders of a class or series of Shares are entitled to vote separately on an item of business, this Bylaw applies in determining the presence of a quorum of such class or series for transaction of such item of business.

3.06 *Proxies.* A Shareholder entitled to vote at a meeting of Shareholders or to express consent or dissent without a meeting may authorize other persons to act for the Shareholder by proxy. A proxy shall be signed by the Shareholder or the Shareholder's authorized agent or representative.

3.07 *Voting.* Each outstanding Share is entitled to one vote on each matter submitted to a vote, unless otherwise provided in the Articles. When an action, other than the election of directors, is to be taken by a vote of the Shareholders, it shall be authorized by a majority of the votes cast by the holders of Shares entitled to vote thereon, unless a greater vote is required by the Articles or by the laws of Connecticut. Except as otherwise provided by the Articles, directors shall be elected by a plurality of the votes cast at any election.

IV. Directors

4.01 *Number.* Until the amendment of this Section 4.01, the business of the Company shall be managed by a Board of one director. No director need be a resident of Connecticut or a Shareholder.

4.02 *Tenure.* Directors shall be elected at each annual meeting of the Shareholders, each to hold office until the next annual meeting of Shareholders and until the director's successor is elected and qualified, or until the director's resignation or removal. A director may resign by written notice to the

Company. The resignation is effective upon its receipt by the Company or a subsequent time as set forth in the notice of resignation. A director or the entire Board may be removed, with or without cause, by vote of the holders of a majority of the Shares entitled to vote at an election of directors.

4.03 *Vacancies.* Vacancies in the Board occurring by reason of death, resignation, removal, increase in the number of directors or otherwise shall be filled by the affirmative vote of a majority of the remaining directors though less than a quorum of the Board, unless filled by proper action of the Shareholders. Each person so elected shall be a director for a term of office continuing only until the next election of directors by the Shareholders. A vacancy that will occur at a specific date, by reason of a resignation effective at a later date or otherwise, may be filled before the vacancy occurs, but the newly elected director may not take office until the vacancy occurs.

4.04 *Meetings.* The Board shall meet each year immediately after the annual meeting of the Shareholders, or within three days of such time excluding Sundays and legal holidays if such later time is deemed advisable, at the place where such meeting of the Shareholders has been held or such other place as the Board may determine, for the purpose of election of officers and consideration of such business that may properly be brought before the meeting; provided, that if less than a majority of the directors appear for an annual meeting of the Board the holding of such annual meeting shall not be required and the matters which might have been taken up therein may be taken up at any later special or annual meeting, or by consent resolution. Regular meetings of the Board may be held at such times and places as the majority of the directors may from time to time determine at a prior meeting or as shall be directed or approved by the vote or written consent of all directors. Special meetings of the Board may be called by the President and shall be called by the Secretary upon the written request of any director.

4.05 *Notices.* No notice shall be required for annual or regular meetings of the Board or for adjourned meetings, whether regular or special. Three days' written notice shall be given for special meetings of the Board, and such notice shall state the time, place and purposes of the meeting.

4.06 *Quorum.* A majority of the Board then in office, or of the members of a committee thereof, constitutes a quorum for the transaction of business. The vote of a majority of the directors present at any meeting at which there is a quorum shall be the acts of the Board or of the committee, except as a larger vote may be required by the laws of Connecticut. A member of the Board or of a committee designated by the Board may participate in a meeting by means of conference telephone by means of which all persons participating in the meeting can communicate with each other. Participation in a meeting in this manner constitutes presence in person at the meeting.

4.07 *Committees.* The Board may, by resolution passed by a majority of the whole Board, appoint three or more members of the Board as an executive committee to exercise all powers and authorities of the Board in management of the business and affairs of the Company, except that the committee shall not have power or authority to (a) amend the Articles; (b) adopt an agreement of merger or consolidation; (c) recommend to Shareholders the sale, lease or exchange of all or substantially all of the Company's property and assets; (d) recommend to Shareholders a dissolution of the Company or revocation of a dissolution; (e) amend these Bylaws; (f) fill vacancies in the Board; or (g) unless expressly authorized by the Board, declare a dividend or authorize the issuance of stock. The Board from time to time may, by like resolution, appoint such other committees of one or more directors to have such authority as shall be specified by the Board in the resolution making such appointments. The Board may designate one or more directors as alternate members of any committee who may replace an absent or disqualified member at any meeting thereof.

4.08 *Dissent.* A director who is present at a meeting of the Board, or a committee thereof of which the director is a member, at which action on a corporate matter is taken is presumed to have concurred in that action unless the director's dissent is entered in the minutes of the meeting or unless the director files a written dissent to the action with the person acting as secretary of the meeting

before the adjournment thereof or shall forward such dissent by registered mail to the Secretary of the Company promptly after the adjournment of the meeting. Such right to dissent does not apply to a director who voted in favor of such action. A director who is absent from a meeting of the Board, or a committee thereof of which the director is a member, at which any such action is taken is presumed to have concurred in the action unless the director files a written dissent with the Secretary of the Company within a reasonable time after the director has knowledge of the action.

4.09 *Compensation.* The Board, by affirmative vote of a majority of directors in office and irrespective of any personal interest of any of them, may establish reasonable compensation of directors for services to the Company as directors or officers.

V. Procedures

5.01 *Notice.* All notices of meetings to be given to Shareholders, directors or any committee of directors may be given by mail, overnight courier, telefax or e-mail to any Shareholder, director or committee member at his last address as it appears on the books of the Company. Such notice shall be deemed to be given at the time when the same shall be mailed or otherwise dispatched.

5.02 *Waiver.* Notice of the time, place and purpose of any meeting of Shareholders, directors or committee of directors may be waived by mail, overnight courier, telefax or e-mail, either before or after the meeting, or in such other manner as may be permitted by the laws of Connecticut. Attendance of a person at any meeting of Shareholders, in person or by proxy, or at any meeting of directors or of a committee of directors, constitutes a waiver of notice of the meeting except as follows:

(a) In the case of a Shareholder, unless the Shareholder at the beginning of the meeting objects to holding the meeting or transacting business at the meeting, or unless with respect to consideration of a particular matter at the meeting that is not within the purposes described in the meeting notice, the Shareholder objects to considering the matter when it is presented.

(b) In the case of a director, unless he or she at the beginning of the meeting, or upon his or her arrival, objects to the meeting or the transacting of business at the meeting and does not thereafter vote for or assent to any action taken at the meeting.

5.03 *Consent.* Any action required or permitted at any meeting of directors or committee thereof may be taken without a meeting, without prior notice and without a vote, if all directors or committee members entitled to vote thereon consent thereto in writing, before or after the action is taken. Any action required or permitted at any meeting of Shareholders may be taken without a meeting, without prior notice and without a vote, if all Shareholders entitled to vote thereon consent thereto in writing, before or after the action is taken or if such action otherwise satisfies the Articles and Connecticut law.

VI. Officers

6.01 *Number.* The Board shall elect or appoint a President, a Secretary and a Treasurer, and may elect a Chief Executive Officer (the "CEO"), a Chief Operating Officer (the "COO"), and/or one or more Vice Presidents, Assistant Secretaries or Assistant Treasurers. The CEO (if appointed) shall be a member of the Board. Any two or more of the above offices, except those of President and Vice President, may be held by the same person. No officer shall execute or verify an instrument in more than one capacity if the instrument is required by law, the Articles or these Bylaws to be executed, acknowledged, or verified by one or more officers.

6.02 *Term.* An officer shall hold office for the term for which he is elected or appointed and until his successor is elected or appointed and qualified, or until his resignation or removal. An officer

may resign by written notice to the Company. The resignation is effective upon its receipt by the Company or at a subsequent time specified in the notice of resignation. An officer may be removed by the Board with or without cause. The removal of an officer shall be without prejudice to his contract rights, if any. The appointment of an officer does not of itself create contract rights.

6.03 *Vacancies.* The Board may fill any vacancies in any office occurring for whatever reason.

6.04 *Authority.* All officers, employees and agents of the Company shall have such authority and perform such duties in the conduct and management of the business and affairs of the Company as may be designated by the Board and these Bylaws.

VII. Duties

7.01 *CEO.* The CEO, if any is appointed, shall preside at all meetings of the Shareholders and of the Board at which the CEO is present. The CEO shall be the chief executive officer of the Company, shall see that all resolutions of the Board are carried into effect, and shall have the general powers of supervision usually vested in the chief executive officer of a corporation. Subject to any contrary directives by the Board, the CEO shall hold (a) authority to direct (and commit) the Company's resources toward the achievement of the Company's goals, (b) authority to vote all securities or other interests of other corporations and business organizations held by the Company, and (c) any further authority as may hereafter be vested in him by the Board.

7.02 *President.* In the absence of the CEO, the President shall hold and exercise all authority ascribed to the CEO. In addition, the President shall exercise any and all authority as may be granted to him by the Board, and, subject only to the directives of the CEO, shall ensure that all resolutions of the Board are carried into effect. In the absence of the COO, the President shall also shall hold and exercise all authority ascribed to the COO. In the absence of the Secretary and any Assistant Secretary, the President may exercise the authority otherwise reserved to the Secretary.

7.03 *COO.* The COO shall be the chief operating officer of the Company. The President shall have the general powers of management usually vested in the chief operating officer of a corporation, and, subject to any contrary directives by the Board, shall hold (a) authority to supervise corporation personnel and to implement the directives of the Board, the President and the CEO, and (b) any further authority as may hereafter be vested in him by the Board.

7.04 *Vice Presidents.* The Vice Presidents, in order of their seniority, shall, in the absence or disability of the President, perform the duties and exercise the powers of the President. The Vice Presidents shall in any event assume operating responsibility for those aspects of the Company's business referenced in any specific title of the particular Vice President, and shall perform such other duties as may be delegated by the Board, the CEO, the COO or the President. In any event, any Vice President whose title includes the phrase chief financial officer shall be deemed to have been charged with the responsibility for the Company's finances, shall have been granted custody of corporate funds and securities, shall be obligated to keep full and accurate accounts of receipts and disbursements in books of the Company, and shall deposit all moneys and other value in the name and to the credit of the Company in such depositories as may be designated by the Board. Moreover, any Vice President whose title includes the phrase general counsel shall be deemed to have been charged with the responsibility for the Company's legal affairs and shall be deemed the Company's principal liaison with the Company's outside counsel and regulatory authorities.

7.05 *Secretary.* The Secretary shall record all votes and minutes of all proceedings in a book to be kept for that purpose, shall give or cause to be given notice of all meetings of the Shareholders and of the Board, and shall keep in safe custody the seal of the Company and, when authorized by the Board, affix the same to any instrument requiring it, and when so affixed it shall be attested by the

signature of the Secretary, or by the signature of the Treasurer or an Assistant Secretary. The Secretary may delegate any of the duties, powers and authorities of the Secretary to one or more Assistant Secretaries, unless such delegation is disapproved by the Board.

7.06 *Treasurer.* Subject to the authority of any Vice President charged with the responsibility for the Company's finances, the Treasurer shall have the custody of corporate funds and securities, shall keep full and accurate accounts of receipts and disbursements in books of the Company and shall deposit all moneys and other value in the name and to the credit of the Company in such depositories as may be designated by the Board. The Treasurer shall render to the President and directors, whenever they may require it, an account of his or her transactions as Treasurer and of the financial condition of the Company. The Treasurer may delegate any of his or her duties, powers and authorities to one or more Assistant Treasurers unless such delegation is disapproved by the Board.

7.07 *Assistants.* The Assistant Secretaries, in order of their seniority, shall perform the duties and exercise the powers and authorities of the Secretary in case of the Secretary's absence or disability. The Assistant Treasurers, in the order of their seniority, shall perform the duties and exercise the powers and authorities of the Treasurer in case of the Treasurer's absence or disability. The Assistant Secretaries and Assistant Treasurers shall also perform such duties as may be delegated by the Secretary and Treasurer, respectively, and also such duties as the Board may prescribe.

VIII. Actions

8.01 *Payment.* All checks, drafts, notes, bonds, bills of exchange and orders for payment of money of the Company may, subject to any contrary resolution adopted by the Board from time to time, be signed by the CEO, the President or any other officer as may be authorized by the Board.

8.02 *Contracts.* The Board may in any instance designate the officer and/or agent who shall have authority to execute any contract, conveyance, mortgage or other instrument on behalf of the Company, or may ratify or confirm any execution. When the execution of any instrument has been authorized without specification of the executing officers or agents, the CEO or President may execute the same in the name and on behalf of the Company and may affix the corporate seal thereto.

IX. Records

9.01 *Maintenance.* The proper officers and agents of the Company shall keep and maintain such books, records and accounts of the Company's business and affairs, minutes of the proceedings of its Shareholders, Board and committees, if any, and such stock ledgers and lists of Shareholders, as the Board shall deem advisable, and as shall be required by the laws of Connecticut and other states or jurisdictions empowered to impose such requirements. Books, records and minutes may be kept within or without Connecticut in a place which the Board shall determine.

9.02 *Reliance.* In discharging his or her duties, a director or an officer of the Company, when acting in good faith, may rely upon information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by (a) one or more directors, officers, or employees of the Company, or of a business organization under joint control or common control, whom the director or officer reasonably believes to be reliable and competent in the matters presented, (b) legal counsel, public accountants, engineers, or other persons as to matters the director or officer reasonably believes are within the person's professional or expert competence, or (c) a committee of the board of which he or she is not a member if the director or officer reasonably believes the committee merits confidence. A director or officer may not rely on any information if he or she has knowledge concerning the matter that makes reliance otherwise permitted unwarranted.

X.
Indemnification

10.01 *Personal.* Subject to all of the other provisions of this Article X, the Company shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative and whether formal or informal (other than an action by or in the right of the Company) by reason that the person is or was a director or officer of the Company, or is or was serving at the request of the Company as a director, officer, partner, trustee, employee, or agent of another entity or enterprise, against expenses (including reasonable attorneys' fees), judgments, penalties and amounts paid in settlement reasonably incurred by him or her in connection with such action, suit or proceeding, if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the Company or the Shareholders, and, with respect to any criminal action or proceeding, if the person had no reasonable cause to believe his or her conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which the person reasonably believed to be in or not opposed to the best interests of the Company or the Shareholders, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his or her conduct was unlawful.

10.02 *Derivative.* Subject to all of the provisions of this Article X, the Company shall indemnify any person who was or is a party to or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Company to procure a judgment in its favor by reason of the fact that the person is or was a director or officer of the Company, or is or was serving at the request of the Company as a director, officer, partner, trustee, employee, or agent of another foreign or domestic corporation, partnership, joint venture, trust or other enterprise, whether for profit or not, against expenses (including attorneys' fees) and amounts paid in settlement reasonably incurred by the person in connection with such action or suit, if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the Company or the Shareholders. However, indemnification shall not be made for any claim, issue or matter in which such person has been found liable to the Company unless and only to the extent that the court in which such action or suit was brought has determined upon application that, despite the adjudication of liability but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnification for the reasonable expenses incurred.

10.03 *Expenses.* To the extent that a person has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Section 10.01 or 10.02 of these Bylaws, or in defense of any claim, issue or matter in the action, suit or proceeding, the person shall be indemnified against actual and reasonable expenses (including attorneys' fees) incurred by such person in connection with the action, suit or proceeding and any action, suit or proceeding brought to enforce the mandatory indemnification provided by this Section 10.03.

10.04 *Definitions.* For purposes of Sections 10.01 and 10.02, "other enterprises" shall include employee benefit plans; "fines" shall include any excise taxes assessed on a person with respect to an employee benefit plan; and "serving at the request of the Company" shall include any service as a director, officer, employee, or agent of the Company that imposes duties on, or involves services by, the director or officer with respect to an employee benefit plan, its participants or beneficiaries; and a person who acted in good faith and in a manner the person reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be considered to have acted in a manner "not opposed to the best interests of the Company or the Shareholders".

10.05 *Parameters.* The right to indemnification conferred in this Article X shall be a contract right, and shall apply to services of a director or officer as an employee or agent of the Company as

well as in such person's capacity as a director or officer. Except as provided in Section 10.03 of these Bylaws, the Company shall have no obligations under this Article X to indemnify any person in connection with any proceeding, or part thereof, initiated by him or her without Board authorization.

10.06 *Determination.* Any indemnification under Section 10.01 or 10.02 of these Bylaws (unless ordered by a court) shall be made by the Company only as authorized in the specific case upon a determination that indemnification of the person is proper in the circumstances because the person has met the applicable standard of conduct set forth in Section 10.01 or 10.02, whichever is applicable, and upon an evaluation of the reasonableness of expenses and amount paid in settlement. Such determination and evaluation shall be made in any of the following ways:

(a) By a majority vote of a quorum of the Board consisting of directors who are not parties or threatened to be made parties to such proceeding.

(b) If the quorum described in clause (a) above is not obtainable, then by a majority vote of a committee of directors duly designated by the Board and consisting solely of two or more directors who are not at the time parties or threatened to be made parties to the proceeding.

(c) By independent legal counsel in a written opinion, so long as such counsel is selected (i) by the Board or its committee in the manner prescribed in subparagraph (a) or (b), or (ii) if a quorum of the Board cannot be obtained under subparagraph (a) and a committee cannot be designated under subparagraph (b), by the Board.

(d) By the Shareholders, but Shares held by directors or officers who are parties or threatened to be made parties to the action, suit or proceeding may not be voted.

10.07 *Proportionality.* If a person is entitled to indemnification under Section 10.01 or 10.02 of these Bylaws for a portion of expenses, including attorneys' fees, judgments, penalties, fines, and amounts paid in settlement, but not for the total amount thereof, the Company shall indemnify the person for the portion of the expenses, judgments, penalties, fines, or amounts paid in settlement for which the person is entitled to be indemnified.

10.08 *Advance.* The Company may pay or reimburse the reasonable expenses incurred by a person referred to in Section 10.01 or 10.02 of these bylaws who is a party or threatened to be made a party to an action, suit, or proceeding in advance of final disposition of the proceeding if (a) the person furnishes the Company a written affirmation of his or her good faith belief that he or she has met the applicable standard of conduct set forth in Section 10.01 or 10.02, (b) the person furnishes the Company a written undertaking executed to personally repay the advance if it is ultimately determined that he or she did not meet the standard of conduct, (c) the authorization of payment is made in the manner specified in Section 10.06, and (d) a determination is made that the facts then known to those making the determination would not preclude indemnification under Section 10.01 or 10.02. The undertaking shall be a general obligation of the person, but need not be secured.

10.09 *Scope.* The indemnification or advancement of expenses provided under this Article X is not exclusive of other rights to which a person seeking indemnification or advancement of expenses may be entitled under a contractual arrangement with the Company. However, the total amount of expenses advanced or indemnified from all sources combined shall not exceed the amount of actual expenses incurred by the person seeking indemnification or advancement of expenses.

10.10 *Agents.* The Company may, to the extent authorized from time to time by the Board, grant rights to indemnification and to the advancement of expenses to any employee or agent of the Company to the fullest extent of the provisions of this Article X with respect to the indemnification and advancement of expenses of directors and officers of the Company.

10.11 *Succession.* The indemnification provided in this Article X continues as to a person who has ceased to be a director or officer and shall inure to the benefit of his or her successors.

10.12 *Insurance.* The Company may buy and maintain insurance on behalf of any person who is or was a director, officer, partner, trustee, employee or agent of the Company, or is or was serving at the request of the Company as a director, officer, employee or agent of another entity or enterprise against any liability asserted against the person and incurred by him or her in any such capacity or arising out of his or her status as such, whether or not the Company would have power to indemnify the person against such liability under these Bylaws or the laws of Connecticut.

10.13 *Legislation.* Upon any change of the Connecticut statutory provisions relating to the subject matter of this Article X, the indemnification to which any person shall be entitled hereunder shall be determined by such changed provisions, but only to the extent that any such change permits the Company to provide broader indemnification rights than before any such change. Subject to Section 10.14, the Board may amend these Bylaws to conform to any such changed statutory provisions.

10.14 *Amendment.* No amendment or repeal of this Article X shall apply to any director or officer of the Company for or with respect to any prior acts or omissions of such director or officer.

XI. Amendment

The Bylaws of the Company may be amended, altered or repealed, in whole or in part, by the Shareholders or by the Board at any meeting duly held in accordance with these Bylaws.

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RESTATED CERTIFICATE OF INCORPORATION OF BAYSIDE STREET II, INC.

*This Certificate Is Executed And Submitted In Respect of Section 103 of
The General Corporation Law Of The State Of Delaware (the "Law")*

IT IS HEREBY CERTIFIED THAT:

1. The present name of the corporation is Bayside Street II, Inc. (the "Corporation"), which is the name under which the Corporation was originally incorporated.
2. March 6, 2000 is the date on which the Corporation's original certificate of incorporation (the "Certificate") was originally filed with the Delaware Secretary Of State (the "Secretary").
3. Duly acting in accordance with Section 103(a)(1), 241(b), and 245 of the Law, the sole incorporator of the Corporation hereby petitions the Secretary to accept this instrument for filing and to thereby effect the sole incorporator's amendment of the Certificate as hereby presented.
4. As so amended, the Certificate shall hereupon (a) be referenced as the Restated Certificate Of Incorporation Of Bayside Street II, Inc., and (b) be restated to read in its entirety as follows:

**ARTICLE I:
Name**

The name of the corporation is Bayside Street II, Inc. (the "Corporation").

**ARTICLE II:
Office**

The address of the Corporation's registered office is 1209 Orange Street, Wilmington, New Castle County, Delaware 19801. The registered agent at such office is The Corporation Trust Company.

**ARTICLE III:
Purposes**

The Corporation is formed to:

- (a) acquire title to, hold leasehold interests in, lease (or sublease) to other parties, and/or directly or indirectly operate (i) nursing homes, (ii) assisted-living residences, (iii) continuing-care facilities and/or (iv) similar businesses, and
- (b) engage in all activities and undertakings reasonably appropriate to the achievement of, or otherwise related to, any and all such commercial goals.

**ARTICLE IV:
Capital**

1. GENERALLY

The authorized capital stock of the Corporation includes (a) 1,000 shares of Common Stock ("C-Shares"), with each share having a par value of one cent, and (b) 1,000 shares of Preferred Stock ("P-Shares"), with each share having a par value of ten dollars. The Corporation has not received payment for its Stock. The relative rights, preferences and limitations of the shares of each class is as follows:

2. PREFERRED

The board of directors of the Corporation (the "Board") is, subject to the following sentence, authorized at any time and from time to time to provide for the issuance of P-Shares in one or more

series with such designations, preferences and relative participating, optional or other special rights, and qualifications, limitations or restrictions as shall be expressed in the resolution establishing such series and providing for the issuance of such series adopted by the Board. Notwithstanding any contrary provision of this Restated Certificate of Incorporation (this "Certificate"), however, (i) no holder of any P-Shares shall be entitled to vote the P-Shares held by him or her on any issue presented to the Corporation's shareholders (the "Shareholders") or to any one or more classes or sub-classes of the Shareholders (except to the extent, if any, that the issue voted upon entitles the holder of P-Shares to so participate as a matter of nonwaivable right guaranteed by the Law), and (ii) no series of P-Shares shall be exchangeable or convertible into any C-Shares. Subject to the foregoing sentence, the authorizing resolution creating the series of P-Shares may, *inter alia*, include:

- (a) the designation and number of shares of such series,
- (b) the dividend rate of such series, the conditions and dates upon which such dividends shall be payable, the preference or relation of such dividends to dividends payable on any other class or classes of capital stock, and whether such dividends shall be cumulative or noncumulative,
- (c) whether the shares of such series shall be subject to redemption by the Corporation, and, if made subject to such redemption, the times, prices, rates, adjustments and other terms thereof,
- (d) the terms of any sinking fund provided for the redemption of the shares of such series,
- (e) whether the shares of such series shall be convertible into or exchangeable for other securities of the Corporation or of any other corporation, and, if provision be made for conversion or exchange, the times, prices, rates, adjustments and other terms of such conversion or exchange, and
- (f) the rights of the holders of the shares of such series upon the dissolution of, or upon the distribution of assets of, the Corporation, which rights may be different in the case of voluntary dissolution than the case of involuntary dissolution.

The powers, preferences and relative rights of each series of P-Shares, and the qualifications or restrictions, if any, may differ from those of any and all other series at any time outstanding. All shares of any one series of P-Shares shall be identical in all respects with all other shares of such series, except that shares of any one series issued at different times may differ as to the dates from which dividends shall cumulate. Any P-Shares that are issued and reacquired, including shares redeemed by purchase, will have the status of authorized and unissued P-Shares, and may be reissued as a part of the series of which they were originally a part or may be reclassified into, and reissued as part of, any new series.

3. COMMON

Except as otherwise required by law or by this Certificate, each holder of C-Shares shall have one vote for each C-Share on all matters to be voted upon by the holders of Corporation capital stock. Subject to any preferential dividend rights applicable to P-Shares, and subject to any applicable requirements with respect to the setting aside of sums for purchase of, redemption of or sinking funds for, P-Shares, the holders of C-Shares shall be entitled to receive, to the extent permitted by the Law, such dividends as may be declared from time to time by the Board. In the event of any liquidation, dissolution or winding up of the Corporation, the holders of C-Shares shall be entitled, after payment or provision for payment of the debts and other liabilities of the Corporation and the amounts to which the holders of any P-Shares shall be entitled, to share ratably in the remaining net assets of the Corporation or the proceeds thereof.

**ARTICLE V:
Liability**

No member of the Board shall be liable to the Corporation or Shareholders for monetary damages for breach of fiduciary duty as a director. However, the foregoing sentence shall neither eliminate nor limit the liability of a director for any (a) breach of his or her duty of loyalty to the Corporation or shareholders, (b) acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law, (c) a violation of Section 174 of the Law, or (d) a transaction from which he or she derived an improper personal benefit. No amendment or repeal of this Article V shall affect the liability of any director for any act or omission preceding such amendment or repeal.

**ARTICLE VI:
Indemnity**

Any person, his heirs or personal representative made (or threatened to be made) a party to any threatened, pending or completed action or proceeding, whether civil, criminal, administrative or investigative, because he is or was a director or officer of the Corporation or serves or served any other corporation or other enterprise in any capacity at the request of the Corporation, shall be indemnified by the Corporation, and the Corporation may advance his related expenses to the full extent permitted by the Law. In discharging his duty, any director or officer, when acting in good faith, may rely upon information, opinions, reports or statements (including financial statements) that are prepared or presented by (a) one or more officers or employees of the Corporation whom the director or officer reasonably believes to be reliable and competent in the matters presented, (b) counsel, public accountants or other persons as to matters that the director or officer believes to be within that person's professional expert competence, or (c) in the case of a director, a committee of the Board upon which he does not serve, duly designated according to law, as to matters within its designated authority, if the director reasonably believes that the committee is competent. The foregoing right of indemnification or reimbursement shall not be exclusive of other rights to which all benefited persons may be entitled. The Corporation may buy insurance for the purpose of indemnifying such persons, which may be for the benefit of all directors, officers or employees.

**ARTICLE VII:
Incorporator**

The sole incorporator is Stuart D. Logan, and his address is 1577 North Woodward Avenue, Suite 300, Bloomfield Hills, Michigan 48304.

The undersigned, being the Corporation's sole incorporator, and acting in conformity with Section 103(a)(1) of the Law, hereby executes this Restated Certificate on this sixth day of March 2000.

/s/ STUART D. LOGAN

Stuart D. Logan, *Incorporator*

QuickLinks

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AMENDED AND RESTATED BYLAWS

OF BAYSIDE STREET II, INC.

**I.
OFFICES**

The principal office of BAYSIDE STREET II, INC. (the "Company") shall be at such place within Delaware or Maryland as the Board of Directors of the Company (the "Board") shall from time to time determine. The Company also may have offices at such other places as the business of the Company may require.

**II.
SEAL**

The Company may have a seal in such form as the Board may from time to time determine. The seal, if so authorized, may be used by causing it or a facsimile to be impressed, affixed or copied.

**III.
CAPITAL**

3.1 Issuance.

The shares of capital stock of the Company (the "Shares") shall be issued in such amounts, at such times, for such consideration and on such terms as the Board shall deem advisable, subject to the Company's Articles of Incorporation (the "Articles") and the laws of Delaware.

3.2 Certificates.

The Shares shall be represented by certificates signed by the President. Each such certificate shall state upon its face that the Company is formed under the laws of Delaware, the person to whom it is issued, the number and class of Shares, and the designation of the series, if any, that the certificate represents, and such other provisions as may be required by Delaware law.

3.3 Transfer.

The Shares are transferable only on the books of the Company upon surrender of the certificate therefor, properly endorsed for transfer, and the presentation of such evidences of ownership and validity of the assignment as the Company may require.

3.4 Registration.

The Company shall be entitled to treat the person in whose name any Share is registered as the owner thereof for purposes of dividends and other distributions in the course of business, or in the course of recapitalization, merger, plan of share exchange, reorganization, sale of assets, liquidation or otherwise and for the purpose of votes, approvals and consents by shareholders of the Company ("Shareholders"), and for the purpose of notices to Shareholders, and for all other purposes whatever, and shall not be bound to recognize any equitable or other claim to or interest in such Shares on the part of any other person, whether or not the Company shall have notice thereof, save as expressly required by the laws of Delaware.

3.5 Replacement.

Upon the presentation to the Company of a proper affidavit attesting the loss, destruction or mutilation of any certificate for Shares, the Board shall direct the issuance of a new certificate to replace the certificate so alleged to be lost, destroyed or mutilated. The Board may require as a condition precedent to the issuance of a new certificate a bond or agreement of indemnity, in such form and amount, and with such sureties as the Board may direct or approve.

IV. SHAREHOLDERS

4.1 Meetings.

Meetings of Shareholders shall be held at the principal office of the Company or at such other place as determined by the Board and stated in the notice of meeting. The annual meeting of Shareholders shall be held on the first Monday of March at 10:30 o'clock in the morning. Directors shall be elected at each annual meeting and such other business transacted as may come before the meeting. Special meetings of Shareholders may be called by the Board, the CEO (if such office is filled), the President or any Director, and shall be called by the Secretary at the written request of Shareholders holding a majority of the outstanding Shares and entitled to vote. The request shall state the purpose or purposes for which the meeting is to be called.

4.2 Notice.

Except as otherwise provided by statute or the Articles, written notice of the time, place and purposes of a meeting of Shareholders shall be given not fewer than ten nor more than 60 days before the date of the meeting to each Shareholder of record entitled to vote at the meeting, either personally or by mailing such notice to his last address as it appears on the books of the Company. No notice need be given of an adjourned meeting of the Shareholders provided the time and place to which such meeting is adjourned are announced at the meeting at which the adjournment is taken and at the adjourned meeting only such business is transacted as might have been transacted at the original meeting. However, if after the adjournment a new record date is fixed for the adjourned meeting a notice of the adjourned meeting shall be given to each Shareholder of record on the new record date entitled to notice as provided in this Bylaw.

4.3 Dates.

The Board may fix in advance a date as the record date for the purpose of determining Shareholders entitled to notice of and to vote at a meeting of Shareholders or an adjournment thereof, or to express consent or to dissent from a proposal without a meeting, or for the purpose of determining Shareholders entitled to receive payment of a dividend or allotment of a right, or for the purpose of any other action. The date fixed shall not be more than 60 nor less than ten days before the date of the meeting, nor more than 60 days before any other action. In such case only such Shareholders as shall be Shareholders of record on the date so fixed shall be entitled to notice of and to vote at such meeting or adjournment thereof, or to express consent or to dissent from such proposal, or to receive payment of such dividend or to receive such allotment of rights, or to participate in any other action, as the case may be, notwithstanding any transfer of any stock on the books of the Company, or otherwise, after any such record date. Nothing in this Bylaw shall affect the rights of a Shareholder and his transferee or transferor as between themselves.

4.4 Lists.

The Secretary of the Company or the agent of the Company having charge of the stock transfer records for Shares shall make and certify a complete list of the Shareholders entitled to vote at a Shareholders' meeting or any adjournment thereof. The list shall be arranged alphabetically within each class and series, with the address of, and the number of Shares held by, each Shareholder, be available for inspection by shareholders at the offices of the Company at least five (5) days prior to the date of such meeting, be produced at the meeting, be subject to inspection by any Shareholder during the meeting, and be prima facie evidence of the Shareholders entitled to examine the list or vote.

4.5 Quorum.

Unless a greater or lesser quorum is required in the Articles or by the laws of Delaware, the Shareholders present at a meeting in person or by proxy who, as of the record date for such meeting,

were holders of a majority of the outstanding Shares entitled to vote at the meeting shall constitute a quorum. Whether or not a quorum is present, a meeting of Shareholders may be adjourned by a vote of the Shares present in person or by proxy. When the holders of a class or series of Shares are entitled to vote separately on an item of business, this Bylaw applies in determining the presence of a quorum of such class or series for transaction of such item of business.

4.6 Proxies.

A Shareholder entitled to vote at a meeting of Shareholders or to express consent or dissent without a meeting may authorize other persons to act for the Shareholder by proxy. A proxy shall be signed by the Shareholder or the Shareholder's authorized agent or representative.

4.7 Voting.

Each outstanding Share is entitled to one vote on each matter submitted to a vote, unless otherwise provided in the Articles. When an action, other than the election of directors, is to be taken by a vote of the Shareholders, it shall be authorized by a majority of the votes cast by the holders of Shares entitled to vote thereon, unless a greater vote is required by the Articles or by the laws of Delaware. Except as otherwise provided by the Articles, directors shall be elected by a plurality of the votes cast at any election.

V. DIRECTORS

5.1 Number.

The business and affairs of the Company shall be managed by a Board of one director. No director need be a resident of Delaware or a Shareholder.

5.2 Tenure.

Directors shall be elected at each annual meeting of the Shareholders, each to hold office until the next annual meeting of Shareholders and until the director's successor is elected and qualified, or until the director's resignation or removal. A director may resign by written notice to the Company. The resignation is effective upon its receipt by the Company or a subsequent time as set forth in the notice of resignation. A director or the entire Board may be removed, with or without cause, by vote of the holders of a majority of the Shares entitled to vote at an election of directors.

5.3 Vacancies.

Vacancies in the Board occurring by reason of death, resignation, removal, increase in the number of directors or otherwise shall be filled by the affirmative vote of a majority of the remaining directors though less than a quorum of the Board, unless filled by proper action of the Shareholders. Each person so elected shall be a director for a term of office continuing only until the next election of directors by the Shareholders. A vacancy that will occur at a specific date, by reason of a resignation effective at a later date or otherwise, may be filled before the vacancy occurs, but the newly elected director may not take office until the vacancy occurs.

5.4 Meetings.

The Board shall meet each year immediately after the annual meeting of the Shareholders, or within three days of such time excluding Sundays and legal holidays if such later time is deemed advisable, at the place where such meeting of the Shareholders has been held or such other place as the Board may determine, for the purpose of election of officers and consideration of such business that may properly be brought before the meeting; provided, that if less than a majority of the directors appear for an annual meeting of the Board the holding of such annual meeting shall not be required and the matters which might have been taken up therein may be taken up at any later special or

annual meeting, or by consent resolution. Regular meetings of the Board may be held at such times and places as the majority of the directors may from time to time determine at a prior meeting or as shall be directed or approved by the vote or written consent of all directors. Special meetings of the Board may be called by the President and shall be called by the Secretary upon the written request of any director.

5.5 Notices.

No notice shall be required for annual or regular meetings of the Board or for adjourned meetings, whether regular or special. Three days' written notice shall be given for special meetings of the Board, and such notice shall state the time, place and purposes of the meeting.

5.6 Quorum.

A majority of the Board then in office, or of the members of a committee thereof, constitutes a quorum for the transaction of business. The vote of a majority of the directors present at any meeting at which there is a quorum shall be the acts of the Board or of the committee, except as a larger vote may be required by the laws of Delaware. A member of the Board or of a committee designated by the Board may participate in a meeting by means of conference telephone by means of which all persons participating in the meeting can communicate with each other. Participation in a meeting in this manner constitutes presence in person at the meeting.

5.7 Committees.

The Board may, by resolution passed by a majority of the whole Board, appoint three or more members of the Board as an executive committee to exercise all powers and authorities of the Board in management of the business and affairs of the Company, except that the committee shall not have power or authority to (a) amend the Articles; (b) adopt an agreement of merger or consolidation; (c) recommend to Shareholders the sale, lease or exchange of all or substantially all of the Company's property and assets; (d) recommend to Shareholders a dissolution of the Company or revocation of a dissolution; (e) amend these Bylaws; (f) fill vacancies in the Board; or (g) unless expressly authorized by the Board, declare a dividend or authorize the issuance of stock. The Board from time to time may, by like resolution, appoint such other committees of one or more directors to have such authority as shall be specified by the Board in the resolution making such appointments. The Board may designate one or more directors as alternate members of any committee who may replace an absent or disqualified member at any meeting thereof.

5.8 Dissent.

A director who is present at a meeting of the Board, or a committee thereof of which the director is a member, at which action on a corporate matter is taken is presumed to have concurred in that action unless the director's dissent is entered in the minutes of the meeting or unless the director files a written dissent to the action with the person acting as secretary of the meeting before the adjournment thereof or shall forward such dissent by registered mail to the Secretary of the Company promptly after the adjournment of the meeting. Such right to dissent does not apply to a director who voted in favor of such action. A director who is absent from a meeting of the Board, or a committee thereof of which the director is a member, at which any such action is taken is presumed to have concurred in the action unless the director files a written dissent with the Secretary of the Company within a reasonable time after the director has knowledge of the action.

5.9 Compensation.

The Board, by affirmative vote of a majority of directors in office and irrespective of any personal interest of any of them, may establish reasonable compensation of directors for services to the Company as directors or officers.

VI. PROCEDURES

6.1 **Notice.**

All notices of meetings to be given to Shareholders, directors or any committee of directors may be given by mail, overnight courier, telefax or e-mail to any Shareholder, director or committee member at his last address as it appears on the books of the Company. Such notice shall be deemed to be given at the time when the same shall be mailed or otherwise dispatched.

6.2 **Waiver.**

Notice of the time, place and purpose of any meeting of Shareholders, directors or committee of directors may be waived by mail, overnight courier, telefax or e-mail, either before or after the meeting, or in such other manner as may be permitted by the laws of Delaware. Attendance of a person at any meeting of Shareholders, in person or by proxy, or at any meeting of directors or of a committee of directors, constitutes a waiver of notice of the meeting except as follows:

(a) In the case of a Shareholder, unless the Shareholder at the beginning of the meeting objects to holding the meeting or transacting business at the meeting, or unless with respect to consideration of a particular matter at the meeting that is not within the purposes described in the meeting notice, the Shareholder objects to considering the matter when it is presented.

(b) In the case of a director, unless he or she at the beginning of the meeting, or upon his or her arrival, objects to the meeting or the transacting of business at the meeting and does not thereafter vote for or assent to any action taken at the meeting.

6.3 **Consent.**

Any action required or permitted at any meeting of directors or committee thereof may be taken without a meeting, without prior notice and without a vote, if all directors or committee members entitled to vote thereon consent thereto in writing, before or after the action is taken. Any action required or permitted at any meeting of Shareholders may be taken without a meeting, without prior notice and without a vote, if all Shareholders entitled to vote thereon consent thereto in writing, before or after the action is taken or if such action otherwise satisfies the Articles and Delaware law.

VII. OFFICERS

7.1 **Number.**

The Board shall elect or appoint a President, a Secretary and a Treasurer, and may elect a Chief Executive Officer (the "CEO"), a Chief Operating Officer (the "COO"), and/or one or more Vice Presidents, Assistant Secretaries or Assistant Treasurers. The CEO (if appointed) shall be a member of the Board. Any two or more of the above offices, except those of President and Vice President, may be held by the same person. No officer shall execute or verify an instrument in more than one capacity if the instrument is required by law, the Articles or these Bylaws to be executed, acknowledged, or verified by one or more officers.

7.2 **Term.**

An officer shall hold office for the term for which he is elected or appointed and until his successor is elected or appointed and qualified, or until his resignation or removal. An officer may resign by written notice to the Company. The resignation is effective upon its receipt by the Company or at a subsequent time specified in the notice of resignation. An officer may be removed by the Board with or without cause. The removal of an officer shall be without prejudice to his contract rights, if any. The appointment of an officer does not of itself create contract rights.

7.3 **Vacancies.**

The Board may fill any vacancies in any office occurring for whatever reason.

7.4 **Authority.**

All officers, employees and agents of the Company shall have such authority and perform such duties in the conduct and management of the business and affairs of the Company as may be designated by the Board and these Bylaws.

VIII. DUTIES

8.1 **CEO.**

The CEO, if any is appointed, shall preside at all meetings of the Shareholders and of the Board at which the CEO is present. The CEO shall be the chief executive officer of the Company, shall see that all resolutions of the Board are carried into effect, and shall have the general powers of supervision usually vested in the chief executive officer of a corporation. Subject to any contrary directives by the Board, the CEO shall hold (a) authority to direct (and commit) the Company's resources toward the achievement of the Company's goals, (b) authority to vote all securities or other interests of other corporations and business organizations held by the Company, and (c) any further authority as may hereafter be vested in him by the Board.

8.2 **President.**

In the absence of the CEO, the President shall hold and exercise all authority ascribed to the CEO. In addition, the President shall exercise any and all authority as may be granted to him by the Board, and, subject only to the directives of the CEO, shall ensure that all resolutions of the Board are carried into effect. In the absence of the COO, the President shall also hold and exercise all authority ascribed to the COO. In the absence of the Secretary and any Assistant Secretary, the President may exercise the authority otherwise reserved to the Secretary.

8.3 **COO.**

The COO shall be the chief operating officer of the Company. The President shall have the general powers of management usually vested in the chief operating officer of a corporation, and, subject to any contrary directives by the Board, shall hold (a) authority to supervise corporation personnel and to implement the directives of the Board, the President and the CEO, and (b) any further authority as may hereafter be vested in him by the Board.

8.4 **Vice Presidents.**

The Vice Presidents, in order of their seniority, shall, in the absence or disability of the President, perform the duties and exercise the powers of the President. The Vice Presidents shall in any event assume operating responsibility for those aspects of the Company's business referenced in any specific title of the particular Vice President, and shall perform such other duties as may be delegated by the Board, the CEO, the COO or the President. In any event, any Vice President whose title includes the phrase chief financial officer shall be deemed to have been charged with the responsibility for the Company's finances, shall have been granted custody of corporate funds and securities, shall be obligated to keep full and accurate accounts of receipts and disbursements in books of the Company, and shall deposit all moneys and other value in the name and to the credit of the Company in such depositories as may be designated by the Board. Moreover, any Vice President whose title includes the phrase general counsel shall be deemed to have been charged with the responsibility for the Company's legal affairs and shall be deemed the Company's principal liaison with the Company's outside counsel and regulatory authorities.

8.5 Secretary.

The Secretary shall record all votes and minutes of all proceedings in a book to be kept for that purpose, shall give or cause to be given notice of all meetings of the Shareholders and of the Board, and shall keep in safe custody the seal of the Company and, when authorized by the Board, affix the same to any instrument requiring it, and when so affixed it shall be attested by the signature of the Secretary, or by the signature of the Treasurer or an Assistant Secretary. The Secretary may delegate any of the duties, powers and authorities of the Secretary to one or more Assistant Secretaries, unless such delegation is disapproved by the Board.

8.6 Treasurer.

Subject to the authority of any Vice President charged with the responsibility for the Company's finances, the Treasurer shall have the custody of corporate funds and securities, shall keep full and accurate accounts of receipts and disbursements in books of the Company and shall deposit all moneys and other value in the name and to the credit of the Company in such depositories as may be designated by the Board. The Treasurer shall render to the President and directors, whenever they may require it, an account of his or her transactions as Treasurer and of the financial condition of the Company. The Treasurer may delegate any of his or her duties, powers and authorities to one or more Assistant Treasurers unless such delegation is disapproved by the Board.

8.7 Assistants.

The Assistant Secretaries, in order of their seniority, shall perform the duties and exercise the powers and authorities of the Secretary in case of the Secretary's absence or disability. The Assistant Treasurers, in the order of their seniority, shall perform the duties and exercise the powers and authorities of the Treasurer in case of the Treasurer's absence or disability. The Assistant Secretaries and Assistant Treasurers shall also perform such duties as may be delegated by the Secretary and Treasurer, respectively, and also such duties as the Board may prescribe.

IX. ACTIONS

9.1 Payment.

All checks, drafts, notes, bonds, bills of exchange and orders for payment of money of the Company may, subject to any contrary resolution adopted by the Board from time to time, be signed by the CEO, the President or any other officer as may be authorized by the Board.

9.2 Contracts.

The Board may in any instance designate the officer and/or agent who shall have authority to execute any contract, conveyance, mortgage or other instrument on behalf of the Company, or may ratify or confirm any execution. When the execution of any instrument has been authorized without specification of the executing officers or agents, the CEO or President may execute the same in the name and on behalf of the Company and may affix the corporate seal thereto.

X. RECORDS

10.1 Maintenance.

The proper officers and agents of the Company shall keep and maintain such books, records and accounts of the Company's business and affairs, minutes of the proceedings of its Shareholders, Board and committees, if any, and such stock ledgers and lists of Shareholders, as the Board shall deem advisable, and as shall be required by the laws of Delaware and other states or jurisdictions empowered

to impose such requirements. Books, records and minutes may be kept within or without Delaware in a place which the Board shall determine.

10.2 Reliance.

In discharging his or her duties, a director or an officer of the Company, when acting in good faith, may rely upon information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by (a) one or more directors, officers, or employees of the Company, or of a business organization under joint control or common control, whom the director or officer reasonably believes to be reliable and competent in the matters presented, (b) legal counsel, public accountants, engineers, or other persons as to matters the director or officer reasonably believes are within the person's professional or expert competence, or (c) a committee of the board of which he or she is not a member if the director or officer reasonably believes the committee merits confidence. A director or officer may not rely on any information if he or she has knowledge concerning the matter that makes reliance otherwise permitted unwarranted.

XI. INDEMNIFICATION

11.1 Personal.

Subject to all of the other provisions of this Article XI, the Company shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative and whether formal or informal (other than an action by or in the right of the Company) by reason that the person is or was a director or officer of the Company, or is or was serving at the request of the Company as a director, officer, partner, trustee, employee, or agent of another entity or enterprise, against expenses (including reasonable attorneys' fees), judgments, penalties and amounts paid in settlement reasonably incurred by him or her in connection with such action, suit or proceeding, if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the Company or the Shareholders, and, with respect to any criminal action or proceeding, if the person had no reasonable cause to believe his or her conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which the person reasonably believed to be in or not opposed to the best interests of the Company or the Shareholders, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his or her conduct was unlawful.

11.2 Derivative.

Subject to all of the provisions of this Article XI, the Company shall indemnify any person who was or is a party to or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Company to procure a judgment in its favor by reason of the fact that the person is or was a director or officer of the Company, or is or was serving at the request of the Company as a director, officer, partner, trustee, employee, or agent of another foreign or domestic corporation, partnership, joint venture, trust or other enterprise, whether for profit or not, against expenses (including attorneys' fees) and amounts paid in settlement reasonably incurred by the person in connection with such action or suit, if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the Company or the Shareholders. However, indemnification shall not be made for any claim, issue or matter in which such person has been found liable to the Company unless and only to the extent that the court in which such action or suit was brought has determined upon application that, despite the adjudication of liability but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnification for the reasonable expenses incurred.

11.3 Expenses.

To the extent that a person has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Section 11.1 or 11.2 of these Bylaws, or in defense of any claim, issue or matter in the action, suit or proceeding, the person shall be indemnified against actual and reasonable expenses (including attorneys' fees) incurred by such person in connection with the action, suit or proceeding and any action, suit or proceeding brought to enforce the mandatory indemnification provided by this Section 11.3.

11.4 Definitions.

For purposes of Sections 11.1 and 11.2, "other enterprises" shall include employee benefit plans; "fines" shall include any excise taxes assessed on a person with respect to an employee benefit plan; and "serving at the request of the Company" shall include any service as a director, officer, employee, or agent of the Company that imposes duties on, or involves services by, the director or officer with respect to an employee benefit plan, its participants or beneficiaries; and a person who acted in good faith and in a manner the person reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be considered to have acted in a manner "not opposed to the best interests of the Company or the Shareholders".

11.5 Parameters.

The right to indemnification conferred in this Article XI shall be a contract right, and shall apply to services of a director or officer as an employee or agent of the Company as well as in such person's capacity as a director or officer. Except as provided in Section 11.3 of these Bylaws, the Company shall have no obligations under this Article XI to indemnify any person in connection with any proceeding, or part thereof, initiated by him or her without Board authorization.

11.6 Determination.

Any indemnification under Section 11.1 or 11.2 of these Bylaws (unless ordered by a court) shall be made by the Company only as authorized in the specific case upon a determination that indemnification of the person is proper in the circumstances because the person has met the applicable standard of conduct set forth in Section 11.1 or 11.2, whichever is applicable, and upon an evaluation of the reasonableness of expenses and amount paid in settlement. Such determination and evaluation shall be made in any of the following ways:

- (a) By a majority vote of a quorum of the Board consisting of directors who are not parties or threatened to be made parties to such proceeding.
- (b) If the quorum described in clause (a) above is not obtainable, then by a majority vote of a committee of directors duly designated by the Board and consisting solely of two or more directors who are not at the time parties or threatened to be made parties to the proceeding.
- (c) By independent legal counsel in a written opinion, so long as such counsel is selected (i) by the Board or its committee in the manner prescribed in subparagraph (a) or (b), or (ii) if a quorum of the Board cannot be obtained under subparagraph (a) and a committee cannot be designated under subparagraph (b), by the Board.
- (d) By the Shareholders, but Shares held by directors or officers who are parties or threatened to be made parties to the action, suit or proceeding may not be voted.

11.7 Proportionality.

If a person is entitled to indemnification under Section 11.1 or 11.2 of these Bylaws for a portion of expenses, including attorneys' fees, judgments, penalties, fines, and amounts paid in settlement, but not for the total amount thereof, the Company shall indemnify the person for the portion of the

expenses, judgments, penalties, fines, or amounts paid in settlement for which the person is entitled to be indemnified.

11.8 Advances.

The Company may pay or reimburse the reasonable expenses incurred by a person referred to in Section 11.1 or 11.2 of these bylaws who is a party or threatened to be made a party to an action, suit, or proceeding in advance of final disposition of the proceeding if (a) the person furnishes the Company a written affirmation of his or her good faith belief that he or she has met the applicable standard of conduct set forth in Section 11.1 or 11.2, (b) the person furnishes the Company a written undertaking executed to personally repay the advance if it is ultimately determined that he or she did not meet the standard of conduct, (c) the authorization of payment is made in the manner specified in Section 11.6, and (d) a determination is made that the facts then known to those making the determination would not preclude indemnification under Section 11.1 or 11.2. The undertaking shall be a general obligation of the person, but need not be secured.

11.9 Scope.

The indemnification or advancement of expenses provided under this Article XI is not exclusive of other rights to which a person seeking indemnification or advancement of expenses may be entitled under a contractual arrangement with the Company. However, the total amount of expenses advanced or indemnified from all sources combined shall not exceed the amount of actual expenses incurred by the person seeking indemnification or advancement of expenses.

11.10 Agents.

The Company may, to the extent authorized from time to time by the Board, grant rights to indemnification and to the advancement of expenses to any employee or agent of the Company to the fullest extent of the provisions of this Article XI with respect to the indemnification and advancement of expenses of directors and officers of the Company.

11.11 Succession.

The indemnification provided in this Article XI continues as to a person who has ceased to be a director or officer and shall inure to the benefit of his or her successors.

11.12 Insurance.

The Company may buy and maintain insurance on behalf of any person who is or was a director, officer, partner, trustee, employee or agent of the Company, or is or was serving at the request of the Company as a director, officer, employee or agent of another entity or enterprise against any liability asserted against the person and incurred by him or her in any such capacity or arising out of his or her status as such, whether or not the Company would have power to indemnify the person against such liability under these Bylaws or the laws of Delaware.

11.13 Legislation.

Upon any change of the Delaware statutory provisions relating to the subject matter of this Article XI, the indemnification to which any person shall be entitled hereunder shall be determined by such changed provisions, but only to the extent that any such change permits the Company to provide broader indemnification rights than before any such change. Subject to Section 11.14, the Board may amend these Bylaws to conform to any such changed statutory provisions.

11.14 Amendment.

No amendment or repeal of this Article XI shall apply to any director or officer of the Company for or with respect to any prior acts or omissions of such director or officer.

**XII.
AMENDMENT**

The Bylaws of the Company may be amended, altered or repealed, in whole or in part, by the Shareholders or by the Board at any meeting duly held in accordance with these Bylaws.

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**CERTIFICATE OF FORMATION
OF**

This Certificate of Formation of _____ dated as of May 30, 2003, is being duly executed and filed by the undersigned, as an authorized person, to form a limited liability company under the Delaware Limited Liability Company Act, (6 *Del.C.* §§ 18-101, *et. seq.*)

FIRST. The name of the limited liability company formed hereby is _____ .

SECOND. The address of its registered office in the State of Delaware is c/o The Corporation Trust Center, 1209 Orange Street, Wilmington, New Castle County, Delaware, 19801. The name of the registered agent at such address is The Corporate Trust Company.

IN WITNESS WEREOF, the undersigned has executed this Certificate of Formation as of the date first above written.

/s/ GLENN B. CALLISON

Glenn B. Callison
Authorized Person

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[CERTIFICATE OF FORMATION OF](#)

**LIMITED LIABILITY COMPANY AGREEMENT
OF**

This Limited Liability Company Agreement (the "Agreement") of _____ (the "Company"), is entered into by Omega Healthcare Investors, Inc., a Maryland corporation (the "Member"), as the sole member of the Company. As used in this Agreement, "Act" means the Delaware Limited Liability Company Act, as the same may be amended from time to time.

RECITALS:

WHEREAS, there has heretofore been filed a Certificate of Formation with the Secretary of State of the State of Delaware to form the Company under and pursuant to the Act;

WHEREAS, the Member desires to form a limited liability company pursuant to the provisions of the Act;

WHEREAS, the Member hereby constitutes the Company as a limited liability company for the purposes and on the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the agreements and obligations set forth herein and for other good -and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Member hereto hereby agrees as follows:

Section 1. *Name.* The name of the limited liability company is _____.

Section 2. *Principal Business Office.* The principal business office of the Company shall be located at 9690 Deereco Road, Suite 100, Timonium, Maryland 21093.

Section 3. *Registered Office.* The address of the registered office of the Company in the State of Delaware is c/o The Corporation Trust Company, 1209 Orange Street, Wilmington, New Castle County, Delaware 19801.

Section 4. *Registered Agent.* The name and address of the registered agent of the Company for service of process on the Company in the State of Delaware is The Corporation Trust Company, 1209 Orange Street, Wilmington, New Castle County, Delaware 19801.

Section 5. *Member.* The mailing address of the Member is set forth on *Schedule A* attached hereto. Upon its execution of a counterpart signature page to this Agreement, Omega Healthcare Investors, Inc. is hereby admitted to the Company as the sole member of the Company.

Section 6. *Certificates.* Glenn B. Callison is hereby designated as an "authorized person" within the meaning of the Act, and has executed, delivered and filed the Certificate of Formation of the Company with the Secretary of State of the State of Delaware (such filing being hereby approved and ratified in all respects). Upon the filing of the Certificate of Formation with the Secretary of State of the State of Delaware, Glenn B. Callison's powers as an "authorized person" ceased, and the Member and each Officer thereupon became a designated "authorized person" and shall continue as a designated "authorized person" within the meaning of the Act. The Member or any Officer shall execute, deliver and file any certificates (and any amendments and/or restatements thereof) necessary for the Company to qualify to do business in any jurisdiction in which the Company may wish to conduct business.

The existence of the Company as a separate legal entity shall continue until cancellation of the Certificate of formation as provided in the Act.

Section 7. *Purposes.* The Company has been formed for the purposes of (a) acquiring, selling, investing in, holding, owning, leasing, managing, operating, granting mortgages on and security interests in, and acquiring and making loans secured by, real property and personal property and all rights and interests in any manner appertaining or incidental thereto, and

(b) engaging in any lawful business, action or activity in which a limited liability company organized formed pursuant to the Act may engage.

Section 8. *Powers.* The Company, and the Member and the Officers on behalf of the Company, (a) shall have and exercise all powers necessary, convenient or incidental to accomplish its purposes as set forth in *Section 7* and (b) shall have and exercise all of the powers and rights conferred upon limited liability companies formed pursuant to the Act.

Section 9. *Management.* In accordance with Section 18-402 of the Act, management of the Company shall be vested in the Member. The Member shall have the power to do any and all acts necessary, convenient or incidental to or for the furtherance of the purposes described herein, including all powers, statutory or otherwise, possessed by members of a limited liability company under the laws of the State of Delaware. The Member has the authority to bind the Company within the meaning of Section 18-402 of the Act.

Section 10. *Officers.*

(a) *Officers.* The Member may, from time to time, designate one or more persons to be officers of the Company (each an "Officer"). Any Officer so designated shall have such title and authority and perform such duties as the Member may, from time to time, delegate to them; *provided, however,* that except as otherwise delegated by the Member, the Officers shall have such authority and perform such duties as officers with similar titles of business corporations organized under the General Corporation Law of the State of Delaware. Each Officer shall hold office for the term for which such Officer is designated and until its qualified successor shall be duly designated or until such officer's death, resignation or removal as provided herein. Any Officer may be removed as such, with or without cause, by the Member at any time. Any Officer may resign at any time upon written notice to the Company. Such resignation shall be in writing and shall take effect at the time specified therein or, if no time is specified therein, at the time the Member receives such written resignation. The initial Officers of the Company designated by the Member are listed on *Schedule B* attached hereto. The Member may from time to time by resolution authorize a person who is not an Officer to act on behalf of the Company and to execute and/or attest documents as an authorized representative of the Company, subject to such specific authority and such specific limitations as the Member shall in its sole discretion determine and as shall be set forth in the resolution, and such person shall have such title as shall be set forth in the resolution. The action of such person taken in accordance with the authority granted to such person in the resolution shall bind the Company, and such person shall have the same fiduciary duty of loyalty and care as the Officers.

(b) *Officers as Agents.* The Officers, to the extent of their powers set forth in this Agreement or otherwise vested in them by the Member not inconsistent with this Agreement, are agents of the Company for the purpose of the Company's business and, the actions of the Officers taken in accordance with such powers shall bind the Company.

(c) *Duties of Officers.* Except to the extent otherwise provided herein, each Officer shall have a fiduciary duty of loyalty and care similar to that of officers of business corporations organized under the General Corporation Law of the State of Delaware.

Section 11. *Limited Liability.* Except as otherwise expressly provided by the Act, the debts, obligations and liabilities of the Company, whether arising in contract, tort or otherwise, shall be the debts, obligations and liabilities solely of the Company, and the Member shall not be obligated personally for any such debt, obligation, or liability of the Company solely by reason of being a Member of the Company.

Section 12. *Capital Contributions.* The Member has contributed to the Company property of an agreed value as listed on Schedule A attached hereto.

Section 13. *Additional Contributions.* The Member is not required to make any additional capital contribution to the Company. However, the Member may make additional capital contributions to the Company at any time at its sole discretion. To the extent that the Member makes an additional capital contribution to the Company, the Member shall revise *Schedule A* of this Agreement. The provisions of this Agreement, including this *Section 13*, are intended to benefit the Member and, to the fullest extent permitted by law, shall not be construed as conferring any benefit upon any creditor of the Company and the Member shall not have any duty or obligation to any creditor of the Company to make any contribution to the Company or to issue any call for capital pursuant to this Agreement.

Section 14. *Allocation of Profits and Losses.* The Company's profits and losses shall be allocated to the Member.

Section 15. *Distributions.* Distributions shall be made to the Member at the times and in the aggregate amounts determined by the Member. Notwithstanding any other provision of this Agreement, the Company shall not be required to make a distribution to the Member on account of its limited liability company interests in the Company if such distribution would violate Section 18-607 of the Act or any other applicable law.

Section 16. *Exculpation and Indemnification.*

(a) Neither the Member nor any Officer, employee or agent of the Company nor any employee, representative, agent or Affiliate of the Member (collectively, the "*Covered Persons*") shall be liable to the Company or any other Person who has an interest in or claim against the Company for any loss, damage or claim incurred by reason of any act or omission performed or omitted by such Covered Person in good faith on behalf of the Company.

(b) To the fullest extent permitted by applicable law, a Covered Person shall be entitled to indemnification from the Company for any loss, damage or claim incurred by such Covered Person by reason of any act or omission performed or omitted by such Covered Person in good faith on behalf of the Company, except that no Covered Person shall be entitled to be indemnified in respect of any loss, damage or claim incurred by such Covered Person by reason of such Covered Person's gross negligence or willful misconduct with respect to such acts or omissions; *provided, however*, that any Indemnity under this *Section 16* by the Company shall be provided out of and to the extent of Company assets only, and the Member shall not have personal liability on account thereof.

(c) To the fullest extent permitted by applicable law, expenses (including legal fees) incurred by a Covered Person defending any claim, demand, action, suit or proceeding shall, from time to time, be advanced by the Company prior to the final disposition of such claim, demand, action, suit or proceeding upon receipt by the Company of an undertaking by or on behalf of the Covered Person to repay such amount if it shall be finally determined that the Covered Person is not entitled to be indemnified as authorized in this *Section 16*.

(d) A Covered Person shall be fully protected in relying in good faith upon the records of the Company and upon such information, opinions, reports or statements presented to the Company by any Person as to matters the Covered Person reasonably believes are within such other Person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Company, including information, opinions, reports or statements as to the value and amount of the assets, liabilities, or any other facts pertinent to the existence and amount of assets from which distributions to the Member might properly be paid.

(e) To the extent that, at law or in equity, a Covered Person has duties (including fiduciary duties) and liabilities relating thereto to the Company or to any other Covered Person, a Covered Person acting under this Agreement shall not be liable to the Company or to any other Covered

Person for its good faith reliance on the provisions of this Agreement. The provisions of this Agreement, to the extent that they restrict the duties and liabilities of a Covered Person otherwise existing at law or in equity, are agreed by the Member to replace such other duties and liabilities of such Covered Person.

(f) The foregoing provisions of this *Section 16* shall survive any termination of this Agreement.

Section 17. *Resignation.* The Member has the right to resign from the Company at any time.

Section 18. *Dissolution.*

(a) The Company shall be dissolved, and its affairs shall be wound up upon the first to occur of the following: (i) the occurrence of any event which terminates the continued membership of the last remaining member of the Company in the Company unless the Company is continued without dissolution in a manner permitted by this Agreement or the Act, or (ii) the entry of a decree of judicial dissolution under Section 18-802 of the Act. Upon the occurrence of any event that causes the last remaining member of the Company to cease to be a member of the Company or that causes the Member to cease to be a member of the Company, to the fullest extent permitted by law, the personal representative of such member is hereby authorized to, and shall, within 90 days after the occurrence of the event that terminated the continued membership of such member in the Company, agree (x) to continue the Company and (y) to the admission of the personal representative or its nominee or designee, as the case may be, as a substitute member of the Company, effective as of the occurrence of the event that terminated the continued membership of the last remaining member of the Company or the Member in the Company.

(b) Notwithstanding any other provision of this Agreement, the Bankruptcy of the Member shall not cause the Member to cease to be a member of the Company and upon the occurrence of such an event, the Company shall continue without dissolution.

(c) In the event of dissolution, the Company shall conduct only such activities as are necessary to wind up its affairs (including the sale of the assets of the Company in an orderly manner), and the assets of the Company shall be applied in the manner, and in the order of priority, set forth in Section 18-804 of the Act.

(d) The Company shall terminate when (i) all of the assets of the Company, after payment of or due provision for all debts, liabilities and obligations of the Company, shall have been distributed to the Member in the manner provided for in this Agreement and (ii) the Certificate of Formation shall have been canceled in the manner required by the Act.

(e) Upon the cancellation of the Certificate of Formation by the filing of a certificate of cancellation or otherwise in accordance with the Act, this Agreement shall terminate.

Section 19. *Effectiveness.* Pursuant to Section 18-201(d) of the Act, this Agreement shall be effective as of the time of the filing of the Certificate of Formation with the Office of the Delaware Secretary of State.

Section 20. *Severability of Provisions.* Each provision of this Agreement shall be considered severable and if for any reason any provision or provisions herein are determined to be invalid, unenforceable or illegal under any existing or future law, such invalidity, unenforceability or illegality shall not impair the operation of or affect those portions of this Agreement which are valid, enforceable and legal.

Section 21. *Entire Agreement.* This Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof.

Section 22. *Governing Law.* This Agreement shall be governed by and construed under the laws of the State of Delaware (without regard to conflict of laws principles), all rights and remedies being governed by said laws.

Section 23. *Counterparts.* This Agreement may be executed in any number of counterparts, each of which shall be deemed an original of this Agreement and all of which together shall constitute one and the same instrument.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the undersigned, Intending to be legally bound hereby, have duly executed this Limited Liability Company Agreement as of the ____ day of June, 2003.

MEMBER:

Omega Healthcare Investors, Inc., a Maryland corporation

By: /s/ DANIEL J. BOOTH

Name: Daniel J. Booth
Title: *Chief Operating Officer*

6

SCHEDULE A

Member

Name	Mailing Address	Agreed Value of Capital Contribution	Membership Interest
Omega Healthcare Investors, Inc.	9690 Deereco Road Suite 100 Timonium, Maryland 21093		100%

SCHEDULE B

OFFICERS

TITLE

	President and Chief Executive Officer
	Chief Operating Officer and Secretary
	Chief Financial Officer and Treasurer

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[LIMITED LIABILITY COMPANY AGREEMENT OF
SCHEDULE A Member](#)
[SCHEDULE B](#)

**CERTIFICATE OF FORMATION
OF
OHI ASSET (FL) TARPON SPRINGS, PINELLAS PARK & GAINESVILLE, LLC**

This Certificate of Formation of **OHI ASSET (FL) TARPON SPRINGS, PINELLAS PARK & GAINESVILLE, LLC**, dated as of January 22, 2004, is being duly executed and filed by the undersigned, as an authorized person, to form a limited liability company under the Delaware Limited Liability Company Act, (6 *Del.C.* §§ 18-101, *et. seq.*)

FIRST. The name of the limited liability company formed hereby is **OHI ASSET (FL) TARPON SPRINGS, PINELLAS PARK & GAINESVILLE, LLC**.

SECOND. The address of its registered office in the State of Delaware is c/o The Corporation Trust Center, 1209 Orange Street, Wilmington, New Castle County, Delaware, 19801. The name of the registered agent at such address is The Corporate Trust Company.

IN WITNESS WHEREOF, the undersigned has executed this Certificate of Formation as of the date first above written.

/s/ GLENN B. CALLISON

Glenn B. Callison
Authorized Person

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[CERTIFICATE OF FORMATION OF OHI ASSET \(FL\) TARPON SPRINGS, PINELLAS PARK & GAINESVILLE, LLC](#)

**LIMITED LIABILITY COMPANY AGREEMENT
OF
OHI ASSET (FL) TARPON SPRINGS, PINELLAS PARK & GAINESVILLE, LLC**

This Limited Liability Company Agreement (the "Agreement") of OHI Asset (FL) Tarpon Springs, Pinellas Park & Gainesville, LLC (the "Company"), is entered into by Omega Healthcare Investors, Inc., a Maryland corporation (the "Member"), as the sole member of the Company. As used in this Agreement, "Act" means the Delaware Limited Liability Company Act, as the same may be amended from time to time.

RECITALS:

WHEREAS, there has heretofore been filed a Certificate of Formation with the Secretary of State of the State of Delaware to form the Company under and pursuant to the Act;

WHEREAS, the Member desires to form a limited liability company pursuant to the provisions of the Act;

WHEREAS, the Member hereby constitutes the Company as a limited liability company for the purposes and on the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the agreements and obligations set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Member hereto hereby agrees as follows:

Section 1. *Name.* The name of the limited liability company is OHI Asset (FL) Tarpon Springs, Pinellas Park & Gainesville, LLC.

Section 2. *Principal Business Office.* The principal business office of the Company shall be located at 9690 Deereco Road, Suite 100, Timonium, Maryland 21093.

Section 3. *Registered Office.* The address of the registered office of the Company in the State of Delaware is c/o The Corporation Trust Company, 1209 Orange Street, Wilmington, New Castle County, Delaware 19801.

Section 4. *Registered Agent.* The name and address of the registered agent of the Company for service of process on the Company in the State of Delaware is The Corporation Trust Company, 1209 Orange Street, Wilmington, New Castle County, Delaware 19801.

Section 5. *Member.* The mailing address of the Member is set forth on *Schedule A* attached hereto. Upon its execution of a counterpart signature page to this Agreement, Omega Healthcare Investors, Inc. is hereby admitted to the Company as the sole member of the Company.

Section 6. *Certificates.* Glenn B. Callison is hereby designated as an "authorized person" within the meaning of the Act, and has executed, delivered and filed the Certificate of Formation of the Company with the Secretary of State of the State of Delaware (such filing being hereby approved and ratified in all respects). Upon the filing of the Certificate of Formation with the Secretary of State of the State of Delaware, Glenn B. Callison's powers as an "authorized person" ceased, and the Member and each Officer thereupon became a designated "authorized person" and shall continue as a designated "authorized person" within the meaning of the Act. The Member or any Officer shall execute, deliver and file any certificates (and any amendments and/or restatements thereof) necessary for the Company to qualify to do business in any jurisdiction in which the Company may wish to conduct business.

The existence of the Company as a separate legal entity shall continue until cancellation of the Certificate of Formation as provided in the Act.

Section 7. *Purposes.* The Company has been formed for the purposes of (a) acquiring, selling, investing in, holding, owning, leasing, managing, operating, granting mortgages on and

security interests in, and acquiring and making loans secured by, real property and personal property and all rights and interests in any manner appertaining or incidental thereto, and (b) engaging in any lawful business, action or activity in which a limited liability company organized and formed pursuant to the Act may engage.

Section 8. *Powers.* The Company, and the Member and the Officers on behalf of the Company, (a) shall have and exercise all powers necessary, convenient or incidental to accomplish its purposes as set forth in *Section 7* and (b) shall have and exercise all of the powers and rights conferred upon limited liability companies formed pursuant to the Act.

Section 9. *Management.* In accordance with Section 18-402 of the Act, management of the Company shall be vested in the Member. The Member shall have the power to do any and all acts necessary, convenient or incidental to or for the furtherance of the purposes described herein, including all powers, statutory or otherwise, possessed by members of a limited liability company under the laws of the State of Delaware. The Member has the authority to bind the Company within the meaning of Section 18-402 of the Act.

Section 10. *Officers.*

(a) *Officers.* The Member may, from time to time, designate one or more persons to be officers of the Company (each an "Officer"). Any Officer so designated shall have such title and authority and perform such duties as the Member may, from time to time, delegate to them; *provided, however*, that except as otherwise delegated by the Member, the Officers shall have such authority and perform such duties as officers with similar titles of business corporations organized under the General Corporation Law of the State of Delaware. Each Officer shall hold office for the term for which such Officer is designated and until such Officer's qualified successor shall be duly designated or until such Officer's death, resignation or removal as provided herein. Any Officer may be removed as such, with or without cause, by the Member at any time. Any Officer may resign at any time upon written notice to the Company. Such resignation shall be in writing and shall take effect at the time specified therein or, if no time is specified therein, at the time the Member receives such written resignation. The initial Officers of the Company designated by the Member are listed on *Schedule B* attached hereto. The Member may from time to time by resolution authorize a person who is not an Officer to act on behalf of the Company and to execute and/or attest documents as an authorized representative of the Company, subject to such specific authority and such specific limitations as the Member shall in its sole discretion determine and as shall be set forth in the resolution, and such person shall have such title as shall be set forth in the resolution. The action of such person taken in accordance with the authority granted to such person in the resolution shall bind the Company, and such person shall have the same fiduciary duty of loyalty and care as the Officers.

(b) *Officers as Agents.* The Officers, to the extent of their powers set forth in this Agreement or otherwise vested in them by the Member not inconsistent with this Agreement, are agents of the Company for the purpose of the Company's business and, the actions of the Officers taken in accordance with such powers shall bind the Company.

(c) *Duties of Officers.* Except to the extent otherwise provided herein, each Officer shall have a fiduciary duty of loyalty and care similar to that of officers of business corporations organized under the General Corporation Law of the State of Delaware.

Section 11. *Limited Liability.* Except as otherwise expressly provided by the Act, the debts, obligations and liabilities of the Company, whether arising in contract, tort or otherwise, shall be the debts, obligations and liabilities solely of the Company, and the Member shall not be obligated personally for any such debt, obligation, or liability of the Company solely by reason of being a Member of the Company.

Section 12. *Capital Contributions.* The Member has contributed to the Company property of an agreed value as listed on *Schedule A* attached hereto.

Section 13. *Additional Contributions.* The Member is not required to make any additional capital contribution to the Company. However, the Member may make additional capital contributions to the Company at any time at its sole discretion. To the extent that the Member makes an additional capital contribution to the Company, the Member shall revise *Schedule A* of this Agreement. The provisions of this Agreement, including this *Section 13*, are intended to benefit the Member and, to the fullest extent permitted by law, shall not be construed as conferring any benefit upon any creditor of the Company and the Member shall not have any duty or obligation to any creditor of the Company to make any contribution to the Company or to issue any call for capital pursuant to this Agreement.

Section 14. *Allocation of Profits and Losses.* The Company's profits and losses shall be allocated to the Member.

Section 15. *Distributions.* Distributions shall be made to the Member at the times and in the aggregate amounts determined by the Member. Notwithstanding any other provision of this Agreement, the Company shall not be required to make a distribution to the Member on account of its limited liability company interests in the Company if such distribution would violate Section 18-607 of the Act or any other applicable law.

Section 16. *Exculpation and Indemnification.*

(a) Neither the Member nor any Officer, employee or agent of the Company nor any employee, representative, agent or Affiliate of the Member (collectively, the "*Covered Persons*") shall be liable to the Company or any other Person who has an interest in or claim against the Company for any loss, damage or claim incurred by reason of any act or omission performed or omitted by such Covered Person in good faith on behalf of the Company.

(b) To the fullest extent permitted by applicable law, a Covered Person shall be entitled to indemnification from the Company for any loss, damage or claim incurred by such Covered Person by reason of any act or omission performed or omitted by such Covered Person in good faith on behalf of the Company, except that no Covered Person shall be entitled to be indemnified in respect of any loss, damage or claim incurred by such Covered Person by reason of such Covered Person's gross negligence or willful misconduct with respect to such acts or omissions; *provided, however*, that any indemnity under this *Section 16* by the Company shall be provided out of and to the extent of Company assets only, and the Member shall not have personal liability on account thereof.

(c) To the fullest extent permitted by applicable law, expenses (including legal fees) incurred by a Covered Person defending any claim, demand, action, suit or proceeding shall, from time to time, be advanced by the Company prior to the final disposition of such claim, demand, action, suit or proceeding upon receipt by the Company of an undertaking by or on behalf of the Covered Person to repay such amount if it shall be finally determined that the Covered Person is not entitled to be indemnified as authorized in this *Section 16*.

(d) A Covered Person shall be fully protected in relying in good faith upon the records of the Company and upon such information, opinions, reports or statements presented to the Company by any Person as to matters the Covered Person reasonably believes are within such other Person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Company, including information, opinions, reports or statements as to the value and amount of the assets, liabilities, or any other facts pertinent to the existence and amount of assets from which distributions to the Member might properly be paid.

(e) To the extent that, at law or in equity, a Covered Person has duties (including fiduciary duties) and liabilities relating thereto to the Company or to any other Covered Person, a Covered Person acting under this Agreement shall not be liable to the Company or to any other Covered Person for its good faith reliance on the provisions of this Agreement. The provisions of this Agreement, to the extent that they restrict the duties and liabilities of a Covered Person otherwise existing at law or in equity, are agreed by the Member to replace such other duties and liabilities of such Covered Person.

(f) The foregoing provisions of this *Section 16* shall survive any termination of this Agreement.

Section 17. *Resignation.* The Member has the right to resign from the Company at any time.

Section 18. *Dissolution.*

(a) The Company shall be dissolved, and its affairs shall be wound up upon the first to occur of the following: (i) the occurrence of any event which terminates the continued membership of the last remaining member of the Company in the Company unless the Company is continued without dissolution in a manner permitted by this Agreement or the Act, or (ii) the entry of a decree of judicial dissolution under Section 18-802 of the Act. Upon the occurrence of any event that causes the last remaining member of the Company to cease to be a member of the Company or that causes the Member to cease to be a member of the Company, to the fullest extent permitted by law, the personal representative of such member is hereby authorized to, and shall, within 90 days after the occurrence of the event that terminated the continued membership of such member in the Company, agree (x) to continue the Company and (y) to the admission of the personal representative or its nominee or designee, as the case may be, as a substitute member of the Company, effective as of the occurrence of the event that terminated the continued membership of the last remaining member of the Company or the Member in the Company.

(b) Notwithstanding any other provision of this Agreement, the bankruptcy or insolvency of the Member shall not cause the Member to cease to be a member of the Company and upon the occurrence of such an event, the Company shall continue without dissolution.

(c) In the event of dissolution, the Company shall conduct only such activities as are necessary to wind up its affairs (including the sale of the assets of the Company in an orderly manner), and the assets of the Company shall be applied in the manner, and in the order of priority, set forth in Section 18-804 of the Act.

(d) The Company shall terminate when (i) all of the assets of the Company, after payment of or due provision for all debts, liabilities and obligations of the Company, shall have been distributed to the Member in the manner provided for in this Agreement and (ii) the Certificate of Formation shall have been canceled in the manner required by the Act.

(e) Upon the cancellation of the Certificate of Formation by the filing of a certificate of cancellation or otherwise in accordance with the Act, this Agreement shall terminate.

Section 19. *Effectiveness.* Pursuant to Section 18-201 (d) of the Act, this Agreement shall be effective as of the time of the filing of the Certificate of Formation with the Office of the Delaware Secretary of State.

Section 20. *Severability of Provisions.* Each provision of this Agreement shall be considered severable and if for any reason any provision or provisions herein are determined to be invalid, unenforceable or illegal under any existing or future law, such invalidity, unenforceability or illegality shall not impair the operation of or affect those portions of this Agreement which are valid, enforceable and legal.

Section 21. *Entire Agreement.* This Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof.

Section 22. *Governing Law.* This Agreement shall be governed by and construed under the laws of the State of Delaware (without regard to conflict of laws principles), all rights and remedies being governed by said laws.

Section 23. *Counterparts.* This Agreement may be executed in any number of counterparts, each of which shall be deemed an original of this Agreement and all of which together shall constitute one and the same instrument.

Section 24. *Definitions.* In addition to those terms introduced and defined elsewhere in this Agreement, the following terms have the respective meanings ascribed to such terms:

"Affiliate" shall mean, when used with reference to a specified Person, any other Person that directly or indirectly, through one or more intermediaries, Controls, is Controlled by, or is under common Control with, the specified Person.

"Control", "Controls" and "Controlled" shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through ownership of voting securities, by contract, or otherwise.

"Person" means any individual, sole proprietorship, joint venture, corporation, business unit, partnership, governmental body, regulatory agency or other entity of any nature.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the undersigned, intending to be legally bound hereby, have duly executed this Limited Liability Company Agreement as of the 23rd day of January, 2004.

MEMBER:

Omega Healthcare Investors, Inc.,
a Maryland corporation

By: /s/ DANIEL W. BOOTH

Daniel W. Booth
Chief Operating Officer & Secretary

SCHEDULE A

Member

Name	Mailing Address	Agreed Value of Capital Contribution	Membership Interest
Omega Healthcare Investors, Inc.	9690 Deereco Road Suite 100 Timonium, Maryland 21093	[]	100%

SCHEDULE B

OFFICERS

TITLE

	President and Chief Executive Officer
	Chief Operating Officer and Secretary
	Chief Financial Officer and Treasurer

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**CERTIFICATE OF FORMATION
OF**

This Certificate of Formation of _____ dated as of March 4, 2003, is being duly executed and filed by the undersigned, as an authorized person, to form a limited liability company under the Delaware Limited Liability Company Act, (6 *Del.C.* §§ 18-101, *et seq.*)

FIRST: The name of the limited liability company formed hereby is _____ .

SECOND: The address of its registered office in the State of Delaware is c/o The Corporation Trust Center, 1209 Orange Street, Wilmington, New Castle County, Delaware, 19801. The name of its registered agent at such address is The Corporation Trust Company.

IN WITNESS WHEREOF, the undersigned has executed this Certificate of Formation as of the date first above written.

/s/ MARK E. DERWENT

Mark E. Derwent
Authorized Person

**LIMITED LIABILITY COMPANY AGREEMENT
OF**

This Limited Liability Company Agreement (the "Agreement") _____ (the "Company"), is entered into by Omega Healthcare Investors, Inc., a Maryland corporation (the "Member"), as the sole member of the Company as used in this Agreement, "Act" means the Delaware Limited Liability Company Act, as the same may be amended from time to time.

RECITALS:

WHEREAS, there has heretofore been filed a Certificate of Formation with the Secretary of State of the State of Delaware to form the Company under and pursuant to the Act;

WHEREAS, the Member desires to form a limited liability company pursuant to the provisions of the Act;

WHEREAS, the Member hereby constitutes the Company as a limited liability company for the purposes and on the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the agreements and obligations set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Member hereto hereby agrees as follows:

Section 1. *Name.* The name of the limited liability company is _____.

Section 2. *Principal Business Office.* The principal business office of the Company shall be located at 9690 Deereco Road, Suite 100, Timonium, Maryland 21093.

Section 3. *Registered Office.* The address of the registered office of the Company in the State of Delaware is c/o The Corporation Trust Company, 1209 Orange Street, Wilmington, New Castle County, Delaware 19801.

Section 4. *Registered Agent.* The name and address of the registered agent of the Company for service of process on the Company in the State of Delaware is The Corporation Trust Company, 1209 Orange Street, Wilmington, New Castle County, Delaware 19801.

Section 5. *Member.* The mailing address of the Member is set forth on Schedule A attached hereto. Upon its execution of a counterpart signature page to this Agreement, Omega Healthcare Investors, Inc. is hereby admitted to the Company as the sole member of the Company.

Section 6. *Certificates.* Mark E. Derwent is hereby designated as an "authorized person" within the meaning of the Act, and has executed, delivered and filed the Certificate of Formation of the Company with the Secretary of State of the State of Delaware (such filing being hereby approved and ratified in all respects). Upon the filing of the Certificate of Formation with the Secretary of State of the State of Delaware, Mark E. Derwent's powers as an "authorized person" ceased, and the Member and each Officer thereupon became a designated "authorized person" and shall continue as a designated "authorized person" within the meaning of the Act. The Member or any Officer shall execute, deliver and file any certificates (and any amendments and/or restatements thereof) necessary for the Company to qualify to do business in any jurisdiction in which the Company may wish to conduct business.

The existence of the Company as a separate legal entity shall continue until cancellation of the Certificate of Formation as provided in the Act.

Section 7. *Purposes.* The Company has been formed for the purposes of (a) acquiring, selling, investing in, holding, owning, leasing, managing, operating, granting mortgages on and security interests in, and acquiring and making loans secured by, real property and personal property and all rights and interests in any manner appertaining or incidental thereto, and

(b) engaging in any lawful business, action or activity in which a limited liability company organized formed pursuant to the Act may engage.

Section 8. *Powers.* The Company, and the Member and the Officers on behalf of the Company, (a) shall have and exercise all powers necessary, convenient or incidental to accomplish its purposes as set forth in Section 7 and (b) shall have and exercise all of the powers and rights conferred upon limited liability companies formed pursuant to the Act.

Section 9. *Management.* In accordance with Section 18-402 of the Act, management of the Company shall be vested in the Member. The Member shall have the power to do any and all acts necessary, convenient or incidental to or for the furtherance of the purposes described herein, including all powers, statutory or otherwise, possessed by members of a limited liability company under the laws of the State of Delaware. The Member has the authority to bind the Company within the meaning of Section 18-402 of the Act.

Section 10. *Officers.*

(a) *Officers.* The Member may, from time to time, designate one or more persons to be officers of the Company (each an "Officer"). Any Officer so designated shall have such title and authority and perform such duties as the Member may, from time to time, delegate to them; *provided, however,* that except as otherwise delegated by the Member, the Officers shall have such authority and perform such duties as officers with similar titles of business corporations organized under the General Corporation Law of the State of Delaware. Each Officer shall hold office for the term for which such Officer is designated and until its qualified successor shall be duly designated or until such officer's death, resignation or removal as provided herein. Any Officer may be removed as such, with or without cause, by the Member at any time. Any Officer may resign at any time upon written notice to the Company. Such resignation shall be in writing and shall take effect at the time specified therein or, if no time is specified therein, at the time the Member receives such written resignation. The initial Officers of the Company designated by the Member are listed on *Schedule B* attached hereto. The Member may from time to time by resolution authorize a person who is not an Officer to act on behalf of the Company and to execute and/or attest documents as an authorized representative of the Company, subject to such specific authority and such specific limitations as the Member shall in its sole discretion determine and as shall be set forth in the resolution, and such person shall have such title as shall be set forth in the resolution. The action of such person taken in accordance with the authority granted to such person in the resolution shall bind the Company, and such person shall have the same fiduciary duty of loyalty and care as the Officers.

(b) *Officers as Agents.* The Officers, to the extent of their powers set forth in this Agreement or otherwise vested in them by the Member not inconsistent with this Agreement, are agents of the Company for the purpose of the Company's business and, the actions of the Officers taken in accordance with such powers shall bind the Company.

(c) *Duties of Officers.* Except to the extent otherwise provided herein, each Officer shall have a fiduciary duty of loyalty and care similar to that of officers of business corporations organized under the General Corporation Law of the State of Delaware.

Section 11. *Limited Liability.* Except as otherwise expressly provided by the Act, the debts, obligations and liabilities of the Company, whether arising in contract, tort or otherwise, shall be the debts, obligations and liabilities solely of the Company, and the Member shall not be obligated personally for any such debt, obligation, or liability of the Company solely by reason of being a Member of the Company.

Section 12. *Capital Contributions.* The Member has contributed to the Company property of an agreed value as listed on Schedule A attached hereto.

Section 13. *Additional Contributions.* The Member is not required to make any additional capital contribution to the Company. However, the Member may make additional capital contributions to the Company at any time at its sole discretion. To the extent that the Member makes an additional capital contribution to the Company, the Member shall revise *Schedule A* of this Agreement. The provisions of this Agreement, including this Section 1 are intended to benefit the Member and, to the fullest extent permitted by law, shall not be construed as conferring any benefit upon any creditor of the Company and the Member shall not have any duty or obligation to any creditor of the Company to make any contribution to the Company or to issue any call for capital pursuant to this Agreement.

Section 14. *Allocation of Profits and Losses.* The Company's profits and losses shall be allocated to the Member.

Section 15. *Distributions.* Distributions shall be made to the Member at the times and in the aggregate amounts determined by the Member. Notwithstanding any other provision of this Agreement, the Company shall not be required to make a distribution to the Member on account of its limited liability company interests in the Company if such distribution would violate Section 18-607 of the Act or any other applicable law.

Section 16. *Exculpation and Indemnification.*

(a) Neither the Member nor any Officer, employee or agent of the Company nor any employee, representative, agent or Affiliate of the Member (collectively, the "Covered Persons") shall be liable to the Company or any other Person who has an interest in or claim against the Company for any loss, damage or claim incurred by reason of any act or omission performed or omitted by such Covered Person in good faith on behalf of the Company.

(b) To the fullest extent permitted by applicable law, a Covered Person shall be entitled to indemnification from the Company for any loss, damage or claim incurred by such Covered Person by reason of any act or omission performed or omitted by such Covered Person in good faith on behalf of the Company, except that no Covered Person shall be entitled to be indemnified in respect of any loss, damage or claim incurred by such Covered Person by reason of such Covered Person's gross negligence or willful misconduct with respect to such acts or omissions; *provided, however*, that any indemnity under this Section 16 by the Company shall be provided out of and to the extent of Company assets only, and the Member shall not have personal liability on account thereof.

(c) To the fullest extent permitted by applicable law, expenses (including legal fees) incurred by a Covered Person defending any claim, demand, action, suit or proceeding shall, from time to time, be advanced by the Company prior to the final disposition of such claim, demand, action, suit or proceeding upon receipt by the Company of an undertaking by or on behalf of the Covered Person to repay such amount if it shall be finally determined that the Covered Person is not entitled to be indemnified as authorized in this *Section 16*.

(d) A Covered Person shall be fully protected in relying in good faith upon the records of the Company and upon such information, opinions, reports or statements presented to the Company by any Person as to matters the Covered Person reasonably believes are within such other Person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Company, including information, opinions, reports or statements as to the value and amount of the assets, liabilities, or any other facts pertinent to the existence and amount of assets from which distributions to the Member might properly be paid.

(e) To the extent that, at law or in equity, a Covered Person has duties (including fiduciary duties) and liabilities relating thereto to the Company or to any other Covered Person, a Covered Person acting under this Agreement shall not be liable to the Company or to any other Covered

Person for its good faith reliance on the provisions of this Agreement. The provisions of this Agreement, to the extent that they restrict the duties and liabilities of a Covered Person otherwise existing at law or in equity, are agreed by the Member to replace such other duties and liabilities of such Covered Person.

(f) The foregoing provisions of this *Section 16* shall survive any termination of this Agreement.

Section 17. *Resignation.* The Member has the right to resign from the Company at any time.

Section 18. *Dissolution.*

(a) The Company shall be dissolved, and its affairs shall be wound up upon the first to occur of the following: (i) the occurrence of any event which terminates the continued membership of the last remaining member of the Company in the Company unless the Company is continued without dissolution in a manner permitted by this Agreement or the Act, or (ii) the entry of a decree of judicial dissolution under Section 18-802 of the Act. Upon the occurrence of any event that causes the last remaining member of the Company to cease to be a member of the Company or that causes the Member to cease to be a member of the Company, to the fullest extent permitted by law, the personal representative of such member is hereby authorized to, and shall, within 90 days after the occurrence of the event that terminated the continued membership of such member in the Company, agree (x) to continue the Company and (y) to the admission of the personal representative or its nominee or designee, as the case may be, as a substitute member of the Company, effective as of the occurrence of the event that terminated the continued membership of the last remaining member of the Company or the Member in the Company.

(b) Notwithstanding any other provision of this Agreement, the Bankruptcy of the Member shall not cause the Member to cease to be a member of the Company and upon the occurrence of such an event, the Company shall continue without dissolution.

(c) In the event of dissolution, the Company shall conduct only such activities as are necessary to wind up its affairs (including the sale of the assets of the Company in an orderly manner), and the assets of the Company shall be applied in the manner, and in the order of priority, set forth in Section 18-804 of the Act.

(d) The Company shall terminate when (i) all of the assets of the Company, after payment of or due provision for all debts, liabilities and obligations of the Company, shall have been distributed to the Member in the manner provided for in this Agreement and (ii) the Certificate of Formation shall have been canceled in the manner required by the Act.

(e) Upon the cancellation of the Certificate of Formation by the filing of a certificate of cancellation or otherwise in accordance with the Act, this Agreement shall terminate.

Section 19. *Effectiveness.* Pursuant to Section 18-201 (d) of the Act, this Agreement shall be effective as of the time of the filing of the Certificate of Formation with the Office of the Delaware Secretary of State.

Section 20. *Severability of Provisions.* Each provision of this Agreement shall be considered severable and if for any reason any provision or provisions herein are determined to be invalid, unenforceable or illegal under any existing or future law, such invalidity, unenforceability or illegality shall not impair the operation of or affect those portions of this Agreement which are valid, enforceable and legal.

Section 21. *Entire Agreement.* This Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof.

Section 22. *Governing Law.* This Agreement shall be governed by and construed under the laws of the State of Delaware (without regard to conflict of laws principles), all rights and remedies being governed by said laws.

Section 23. *Counterparts.* This Agreement may be executed in any number of counterparts, each of which shall be deemed an original of this Agreement and all of which together shall constitute one and the same instrument.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the undersigned, intending to be legally bound hereby, have duly executed this Limited Liability Company Agreement as of the _____ day of March, 2004.

MEMBER:

Omega Healthcare Investors, Inc., a Maryland corporation

By: /s/ DANIEL J. BOOTH

Name: Daniel J. Booth

Title: *Chief Operating Officer*

SCHEDULE A

Member

Name	Mailing Address	Agreed Value of Capital Contribution	Membership Interest
Omega Healthcare Investors, Inc.	9690 Deereco Road Suite 100 Timonium, Maryland 21093	[]	100%

SCHEDULE B

OFFICERS

TITLE

	President and Chief Executive Officer
	Chief Operating Officer and Secretary
	Chief Financial Officer and Treasurer

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[SCHEDULE A Member](#)

STATE OF FLORIDA
ARTICLES OF INCORPORATION
OF
OHI (FLORIDA), INC.

FIRST: THE CORPORATE NAME THAT SATISFIES THE REQUIREMENTS OF SECTION 607.0401 IS: OHI (FLORIDA), INC.

SECOND: THE ADDRESS OF THE PRINCIPAL OFFICE, AND THE MAILING ADDRESS OF THE CORPORATION IS: 905 WEST EISENHOWER, SUITE 110, ANN ARBOR, MI 48103

THIRD: THE NUMBER OF SHARES THE CORPORATION IS AUTHORIZED TO ISSUE IS: 1,000

*FOURTH: (a) IF THE SHARES ARE TO BE DIVIDED INTO CLASSES, THE DESIGNATION OF EACH CLASS IS:

N/A

_____	_____
_____	_____
_____	_____

(b) STATEMENT OF THE PREFERENCES, LIMITATIONS AND RELATIVE RIGHTS IN RESPECT OF THE SHARES OF EACH CLASS:

CLASS	PREFERENCES	LIMITATIONS	RELATIVE RIGHTS
N/A			
_____	_____	_____	_____
_____	_____	_____	_____

*FIFTH: (a) IF THE CORPORATION IS TO ISSUE THE SHARES OF ANY PREFERRED OR SPECIAL CLASS IN SERIES, THE DESIGNATION OF EACH SERIES IS:

N/A

_____	_____
_____	_____
_____	_____

(*Optional)

(b) STATEMENT OF THE VARIATIONS IN THE RELATIVE RIGHTS AND PREFERENCES AS BETWEEN SERIES INsofar AS THE SAME ARE TO BE FIXED IN THE ARTICLES OF INCORPORATION:

SERIES	RELATIVE RIGHTS	PREFERENCES
N/A		

(c) STATEMENT OF ANY AUTHORITY TO BE VESTED IN THE BOARD OF DIRECTORS TO ESTABLISH SERIES AND FIX AND DETERMINE THE VARIATIONS IN THE RELATIVE RIGHTS AND PREFERENCES BETWEEN SERIES:

N/A

SIXTH: PROVISIONS GRANTING PREEMPTIVE RIGHTS ARE:

NONE

SEVENTH: PROVISIONS FOR THE REGULATION OF THE INTERNAL AFFAIRS OF THE CORPORATION ARE:

To the fullest extent permitted by applicable law, as it now exists or may hereafter be amended, the Corporation shall indemnify all persons serving as directors of the Corporation against all liability and litigation expense, including but not limited to reasonable attorneys' fees, arising out of their status as such or their activities in the foregoing capacity, regardless of when such status existed or activity occurred and regardless of whether or not they are directors of the Corporation at the time such indemnification is sought or obtained. Without limiting the generality of the foregoing indemnity, such persons may also recover from the Corporation all reasonable costs, expenses and attorneys' fees in connection with the enforcement of rights to indemnification granted by this Article. The provisions of this Article are in addition to and not in limitation of the power of the Corporation with respect to, and the rights of any director of the Corporation to receive the benefits of, any other or further indemnification, insurance, elimination of liability or other right or benefit which is either required by the Florida Corporation Act or permitted thereby and duly adopted by the Corporation in accordance therewith.

To the fullest extent permitted by applicable law, as it now exists or may hereafter be amended, no director of the Corporation shall have any personal liability arising out of any action, whether by or in the right of the Corporation or otherwise, for monetary damages for breach of his or her duty as a director. This Article shall not impair any right to receive indemnity or insurance from the Corporation or any third party which any director may now or hereafter have. Any repeal or modification of this Article shall not impair or otherwise adversely affect any limitation on, or elimination of, the personal liability of a director effected hereby with respect to acts or omissions occurring prior to such repeal or modification.

EIGHTH: THE STREET ADDRESS OF THE INITIAL REGISTERED OFFICE OF THE CORPORATION IS 1200 South Pine Island Rd, Plantation, Florida 33324, AND THE NAME OF ITS INITIAL REGISTERED AGENT AT SUCH ADDRESS IS CT CORPORATION SYSTEM

*NINTH: THE NUMBER OF DIRECTORS CONSTITUTING THE INITIAL BOARD OF DIRECTORS OF THE CORPORATION IS _____, AND THE NAMES AND ADDRESSES OF THE PERSONS WHO ARE TO SERVE AS DIRECTORS UNTIL THE FIRST ANNUAL MEETING OF SHAREHOLDERS OR UNTIL THEIR SUCCESSORS ARE ELECTED AND SHALL QUALIFY ARE:

TENTH: THE NAME AND ADDRESS OF EACH INCORPORATOR IS:

Michael R. Dalida 30600 Telegraph Rd., Bingham Farms, MI 48025

Marc A. Gillis 30600 Telegraph Rd., Bingham Farms, MI 48025

THE UNDERSIGNED HAS (HAVE) EXECUTED THESE ARTICLES OF INCORPORATION

THIS 9th DAY OF September, 19 94.

/s/ Marc A. Gillis

SIGNATURE/TITLE

/s/ Michael R. Dalida

SIGNATURE/TITLE

SIGNATURE/TITLE

ACCEPTANCE BY THE REGISTERED AGENT AS REQUIRED IN SECTION 607.0501 (3) F.S.: CT CORPORATION SYSTEM IS FAMILIAR WITH AND ACCEPTS THE OBLIGATIONS PROVIDED FOR IN SECTION 607.0505.

DATED: 9-9, 19 94.

CT CORPORATION SYSTEM

BY /s/ Sharon L. Gahlau

SHARON L. GAHLAU

(TYPE NAME OF OFFICER)

ASSISTANT VICE PRESIDENT

(TITLE OF OFFICER)

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[STATE OF FLORIDA ARTICLES OF INCORPORATION OF OHI \(FLORIDA\), INC.](#)

**AMENDED AND RESTATED BYLAWS
OF OHI (FLORIDA), INC.**

**I.
OFFICES**

The principal office of OHI (FLORIDA), Inc. (the "Company") shall be at such place within Florida or Maryland as the Board of Directors of the Company (the "Board") shall from time to time determine. The Company also may have offices at such other places as the business of the Company may require.

**II.
SEAL**

The Company may have a seal in such form as the Board may from time to time determine. The seal, if so authorized, may be used by causing it or a facsimile to be impressed, affixed or copied.

**III.
CAPITAL**

3.1 Issuance.

The shares of capital stock of the Company (the "Shares") shall be issued in such amounts, at such times, for such consideration and on such terms as the Board shall deem advisable, subject to the Company's Articles of Incorporation (the "Articles") and the laws of Florida.

3.2 Certificates.

The Shares shall be represented by certificates signed by the President. Each such certificate shall state upon its face that the Company is formed under the laws of Florida, the person to whom it is issued, the number and class of Shares, and the designation of the series, if any, that the certificate represents, and such other provisions as may be required by Florida law.

3.3 Transfer.

The Shares are transferable only on the books of the Company upon surrender of the certificate therefor, properly endorsed for transfer, and the presentation of such evidences of ownership and validity of the assignment as the Company may require.

3.4 Registration.

The Company shall be entitled to treat the person in whose name any Share is registered as the owner thereof for purposes of dividends and other distributions in the course of business, or in the course of recapitalization, merger, plan of share exchange, reorganization, sale of assets, liquidation or otherwise and for the purpose of votes, approvals and consents by shareholders of the Company ("Shareholders"), and for the purpose of notices to Shareholders, and for all other purposes whatever, and shall not be bound to recognize any equitable or other claim to or interest in such Shares on the part of any other person, whether or not the Company shall have notice thereof, save as expressly required by the laws of Florida.

3.5 Replacement.

Upon the presentation to the Company of a proper affidavit attesting the loss, destruction or mutilation of any certificate for Shares, the Board shall direct the issuance of a new certificate to replace the certificate so alleged to be lost, destroyed or mutilated. The Board may require as a condition precedent to the issuance of a new certificate a bond or agreement of indemnity, in such form and amount, and with such sureties as the Board may direct or approve.

IV. SHAREHOLDERS

4.1 Meetings.

Meetings of Shareholders shall be held at the principal office of the Company or at such other place as determined by the Board and stated in the notice of meeting. The annual meeting of Shareholders shall be held on the first Monday of March at 10:30 o'clock in the morning. Directors shall be elected at each annual meeting and such other business transacted as may come before the meeting. Special meetings of Shareholders may be called by the Board, the CEO (if such office is filled), the President or any Director, and shall be called by the Secretary at the written request of Shareholders holding a majority of the outstanding Shares and entitled to vote. The request shall state the purpose or purposes for which the meeting is to be called.

4.2 Notice.

Except as otherwise provided by statute or the Articles, written notice of the time, place and purposes of a meeting of Shareholders shall be given not fewer than ten nor more than 60 days before the date of the meeting to each Shareholder of record entitled to vote at the meeting, either personally or by mailing such notice to his last address as it appears on the books of the Company. No notice need be given of an adjourned meeting of the Shareholders provided the time and place to which such meeting is adjourned are announced at the meeting at which the adjournment is taken and at the adjourned meeting only such business is transacted as might have been transacted at the original meeting. However, if after the adjournment a new record date is fixed for the adjourned meeting a notice of the adjourned meeting shall be given to each Shareholder of record on the new record date entitled to notice as provided in this Bylaw.

4.3 Dates.

The Board may fix in advance a date as the record date for the purpose of determining Shareholders entitled to notice of and to vote at a meeting of Shareholders or an adjournment thereof, or to express consent or to dissent from a proposal without a meeting, or for the purpose of determining Shareholders entitled to receive payment of a dividend or allotment of a right, or for the purpose of any other action. The date fixed shall not be more than 60 nor less than ten days before the date of the meeting, nor more than 60 days before any other action. In such case only such Shareholders as shall be Shareholders of record on the date so fixed shall be entitled to notice of and to vote at such meeting or adjournment thereof, or to express consent or to dissent from such proposal, or to receive payment of such dividend or to receive such allotment of rights, or to participate in any other action, as the case may be, notwithstanding any transfer of any stock on the books of the Company, or otherwise, after any such record date. Nothing in this Bylaw shall affect the rights of a Shareholder and his transferee or transferor as between themselves.

4.4 Lists.

The Secretary of the Company or the agent of the Company having charge of the stock transfer records for Shares shall make and certify a complete list of the Shareholders entitled to vote at a Shareholders' meeting or any adjournment thereof. The list shall be arranged alphabetically within each class and series, with the address of, and the number of Shares held by, each Shareholder, be available for inspection by the Shareholders at the offices of the Company following the establishment of a record date in connection with such meeting, be produced at the meeting, be subject to inspection by any Shareholder during the meeting, and be prima facie evidence of the Shareholders entitled to examine the list or vote.

4.5 Quorum.

Unless a greater or lesser quorum is required in the Articles or by the laws of Florida, the Shareholders present at a meeting in person or by proxy who, as of the record date for such meeting, were holders of a majority of the outstanding Shares entitled to vote at the meeting shall constitute a quorum. Whether or not a quorum is present, a meeting of Shareholders may be adjourned by a vote of the Shares present in person or by proxy. When the holders of a class or series of Shares are entitled to vote separately on an item of business, this Bylaw applies in determining the presence of a quorum of such class or series for transaction of such item of business.

4.6 Proxies.

A Shareholder entitled to vote at a meeting of Shareholders or to express consent or dissent without a meeting may authorize other persons to act for the Shareholder by proxy. A proxy shall be signed by the Shareholder or the Shareholder's authorized agent or representative.

4.7 Voting.

Each outstanding Share is entitled to one vote on each matter submitted to a vote, unless otherwise provided in the Articles. When an action, other than the election of directors, is to be taken by a vote of the Shareholders, it shall be authorized by a majority of the votes cast by the holders of Shares entitled to vote thereon, unless a greater vote is required by the Articles or by the laws of Florida. Except as otherwise provided by the Articles, directors shall be elected by a plurality of the votes cast at any election.

V. DIRECTORS

5.1 Number.

The business and affairs of the Company shall be managed by a Board of one director. No director need be a resident of Florida or a Shareholder.

5.2 Tenure.

Directors shall be elected at each annual meeting of the Shareholders, each to hold office until the next annual meeting of Shareholders and until the director's successor is elected and qualified, or until the director's resignation or removal. A director may resign by written notice to the Company. The resignation is effective upon its receipt by the Company or a subsequent time as set forth in the notice of resignation. A director or the entire Board may be removed, with or without cause, by vote of the holders of a majority of the Shares entitled to vote at an election of directors.

5.3 Vacancies.

Vacancies in the Board occurring by reason of death, resignation, removal, increase in the number of directors or otherwise shall be filled by the affirmative vote of a majority of the remaining directors though less than a quorum of the Board, unless filled by proper action of the Shareholders. Each person so elected shall be a director for a term of office continuing only until the next election of directors by the Shareholders. A vacancy that will occur at a specific date, by reason of a resignation effective at a later date or otherwise, may be filled before the vacancy occurs, but the newly elected director may not take office until the vacancy occurs.

5.4 Meetings.

The Board shall meet each year immediately after the annual meeting of the Shareholders, or within three days of such time excluding Sundays and legal holidays if such later time is deemed advisable, at the place where such meeting of the Shareholders has been held or such other place as

the Board may determine, for the purpose of election of officers and consideration of such business that may properly be brought before the meeting; provided, that if less than a majority of the directors appear for an annual meeting of the Board the holding of such annual meeting shall not be required and the matters which might have been taken up therein may be taken up at any later special or annual meeting, or by consent resolution. Regular meetings of the Board may be held at such times and places as the majority of the directors may from time to time determine at a prior meeting or as shall be directed or approved by the vote or written consent of all directors. Special meetings of the Board may be called by the President and shall be called by the Secretary upon the written request of any director.

5.5 Notices.

No notice shall be required for annual or regular meetings of the Board or for adjourned meetings, whether regular or special. Three days' written notice shall be given for special meetings of the Board, and such notice shall state the time, place and purposes of the meeting.

5.6 Quorum.

A majority of the Board then in office, or of the members of a committee thereof, constitutes a quorum for the transaction of business. The vote of a majority of the directors present at any meeting at which there is a quorum shall be the acts of the Board or of the committee, except as a larger vote may be required by the laws of Florida. A member of the Board or of a committee designated by the Board may participate in a meeting by means of conference telephone by means of which all persons participating in the meeting can communicate with each other. Participation in a meeting in this manner constitutes presence in person at the meeting.

5.7 Committees.

The Board may, by resolution passed by a majority of the whole Board, appoint three or more members of the Board as an executive committee to exercise all powers and authorities of the Board in management of the business and affairs of the Company, except that the committee shall not have power or authority to (a) amend the Articles; (b) adopt an agreement of merger or consolidation; (c) recommend to Shareholders the sale, lease or exchange of all or substantially all of the Company's property and assets; (d) recommend to Shareholders a dissolution of the Company or revocation of a dissolution; (e) amend these Bylaws; (f) fill vacancies in the Board; or (g) unless expressly authorized by the Board, declare a dividend or authorize the issuance of stock. The Board from time to time may, by like resolution, appoint such other committees of one or more directors to have such authority as shall be specified by the Board in the resolution making such appointments. The Board may designate one or more directors as alternate members of any committee who may replace an absent or disqualified member at any meeting thereof.

5.8 Dissent.

A director who is present at a meeting of the Board, or a committee thereof of which the director is a member, at which action on a corporate matter is taken is presumed to have concurred in that action unless the director's dissent is entered in the minutes of the meeting or unless the director files a written dissent to the action with the person acting as secretary of the meeting before the adjournment thereof or shall forward such dissent by registered mail to the Secretary of the Company promptly after the adjournment of the meeting. Such right to dissent does not apply to a director who voted in favor of such action. A director who is absent from a meeting of the Board, or a committee thereof of which the director is a member, at which any such action is taken is presumed to have concurred in the action unless the director files a written dissent with the Secretary of the Company within a reasonable time after the director has knowledge of the action.

5.9 Compensation.

The Board, by affirmative vote of a majority of directors in office and irrespective of any personal interest of any of them, may establish reasonable compensation of directors for services to the Company as directors or officers.

VI. PROCEDURES

6.1 Notice.

All notices of meetings to be given to Shareholders, directors or any committee of directors may be given by mail, overnight courier, telefax or e-mail to any Shareholder, director or committee member at his last address as it appears on the books of the Company. Such notice shall be deemed to be given at the time when the same shall be mailed or otherwise dispatched.

6.2 Waiver.

Notice of the time, place and purpose of any meeting of Shareholders, directors or committee of directors may be waived by mail, overnight courier, telefax or e-mail, either before or after the meeting, or in such other manner as may be permitted by the laws of Florida. Attendance of a person at any meeting of Shareholders, in person or by proxy, or at any meeting of directors or of a committee of directors, constitutes a waiver of notice of the meeting except as follows:

(a) In the case of a Shareholder, unless the Shareholder at the beginning of the meeting objects to holding the meeting or transacting business at the meeting, or unless with respect to consideration of a particular matter at the meeting that is not within the purposes described in the meeting notice, the Shareholder objects to considering the matter when it is presented.

(b) In the case of a director, unless he or she at the beginning of the meeting, or upon his or her arrival, objects to the meeting or the transacting of business at the meeting and does not thereafter vote for or assent to any action taken at the meeting.

6.3 Consent.

Any action required or permitted at any meeting of directors or committee thereof may be taken without a meeting, without prior notice and without a vote, if all directors or committee members entitled to vote thereon consent thereto in writing, before or after the action is taken. Any action required or permitted at any meeting of Shareholders may be taken without a meeting, without prior notice and without a vote, if all Shareholders entitled to vote thereon consent thereto in writing, before or after the action is taken or if such action otherwise satisfies the Articles and Florida law.

VII. OFFICERS

7.1 Number.

The Board shall elect or appoint a President, a Secretary and a Treasurer, and may elect a Chief Executive Officer (the "CEO"), a Chief Operating Officer (the "COO"), and/or one or more Vice Presidents, Assistant Secretaries or Assistant Treasurers. The CEO (if appointed) shall be a member of the Board. Any two or more of the above offices, except those of President and Vice President, may be held by the same person. No officer shall execute or verify an instrument in more than one capacity if the instrument is required by law, the Articles or these Bylaws to be executed, acknowledged, or verified by one or more officers.

7.2 **Term.**

An officer shall hold office for the term for which he is elected or appointed and until his successor is elected or appointed and qualified, or until his resignation or removal. An officer may resign by written notice to the Company. The resignation is effective upon its receipt by the Company or at a subsequent time specified in the notice of resignation. An officer may be removed by the Board with or without cause. The removal of an officer shall be without prejudice to his contract rights, if any. The appointment of an officer does not of itself create contract rights.

7.3 **Vacancies.**

The Board may fill any vacancies in any office occurring for whatever reason.

7.4 **Authority.**

All officers, employees and agents of the Company shall have such authority and perform such duties in the conduct and management of the business and affairs of the Company as may be designated by the Board and these Bylaws.

VIII. DUTIES

8.1 **CEO.**

The CEO, if any is appointed, shall preside at all meetings of the Shareholders and of the Board at which the CEO is present. The CEO shall be the chief executive officer of the Company, shall see that all resolutions of the Board are carried into effect, and shall have the general powers of supervision usually vested in the chief executive officer of a corporation. Subject to any contrary directives by the Board, the CEO shall hold (a) authority to direct (and commit) the Company's resources toward the achievement of the Company's goals, (b) authority to vote all securities or other interests of other corporations and business organizations held by the Company, and (c) any further authority as may hereafter be vested in him by the Board.

8.2 **President.**

In the absence of the CEO, the President shall hold and exercise all authority ascribed to the CEO. In addition, the President shall exercise any and all authority as may be granted to him by the Board, and, subject only to the directives of the CEO, shall ensure that all resolutions of the Board are carried into effect. In the absence of the COO, the President shall also shall hold and exercise all authority ascribed to the COO. In the absence of the Secretary and any Assistant Secretary, the President may exercise the authority otherwise reserved to the Secretary.

8.3 **COO.**

The COO shall be the chief operating officer of the Company. The President shall have the general powers of management usually vested in the chief operating officer of a corporation, and, subject to any contrary directives by the Board, shall hold (a) authority to supervise corporation personnel and to implement the directives of the Board, the President and the CEO, and (b) any further authority as may hereafter be vested in him by the Board.

8.4 **Vice Presidents.**

The Vice Presidents, in order of their seniority, shall, in the absence or disability of the President, perform the duties and exercise the powers of the President. The Vice Presidents shall in any event assume operating responsibility for those aspects of the Company's business referenced in any specific title of the particular Vice President, and shall perform such other duties as may be delegated by the Board, the CEO, the COO or the President. In any event, any Vice President whose title includes the

phrase chief financial officer shall be deemed to have been charged with the responsibility for the Company's finances, shall have been granted custody of corporate funds and securities, shall be obligated to keep full and accurate accounts of receipts and disbursements in books of the Company, and shall deposit all moneys and other value in the name and to the credit of the Company in such depositories as may be designated by the Board. Moreover, any Vice President whose title includes the phrase general counsel shall be deemed to have been charged with the responsibility for the Company's legal affairs and shall be deemed the Company's principal liaison with the Company's outside counsel and regulatory authorities.

8.5 Secretary.

The Secretary shall record all votes and minutes of all proceedings in a book to be kept for that purpose, shall give or cause to be given notice of all meetings of the Shareholders and of the Board, and shall keep in safe custody the seal of the Company and, when authorized by the Board, affix the same to any instrument requiring it, and when so affixed it shall be attested by the signature of the Secretary, or by the signature of the Treasurer or an Assistant Secretary. The Secretary may delegate any of the duties, powers and authorities of the Secretary to one or more Assistant Secretaries, unless such delegation is disapproved by the Board.

8.6 Treasurer.

Subject to the authority of any Vice President charged with the responsibility for the Company's finances, the Treasurer shall have the custody of corporate funds and securities, shall keep full and accurate accounts of receipts and disbursements in books of the Company and shall deposit all moneys and other value in the name and to the credit of the Company in such depositories as may be designated by the Board. The Treasurer shall render to the President and directors, whenever they may require it, an account of his or her transactions as Treasurer and of the financial condition of the Company. The Treasurer may delegate any of his or her duties, powers and authorities to one or more Assistant Treasurers unless such delegation is disapproved by the Board.

8.7 Assistants.

The Assistant Secretaries, in order of their seniority, shall perform the duties and exercise the powers and authorities of the Secretary in case of the Secretary's absence or disability. The Assistant Treasurers, in the order of their seniority, shall perform the duties and exercise the powers and authorities of the Treasurer in case of the Treasurer's absence or disability. The Assistant Secretaries and Assistant Treasurers shall also perform such duties as may be delegated by the Secretary and Treasurer, respectively, and also such duties as the Board may prescribe.

IX. ACTIONS

9.1 Payment.

All checks, drafts, notes, bonds, bills of exchange and orders for payment of money of the Company may, subject to any contrary resolution adopted by the Board from time to time, be signed by the CEO, the President or any other officer as may be authorized by the Board.

9.2 Contracts.

The Board may in any instance designate the officer and/or agent who shall have authority to execute any contract, conveyance, mortgage or other instrument on behalf of the Company, or may ratify or confirm any execution. When the execution of any instrument has been authorized without specification of the executing officers or agents, the CEO or President may execute the same in the name and on behalf of the Company and may affix the corporate seal thereto.

**X.
RECORDS**

10.1 Maintenance.

The proper officers and agents of the Company shall keep and maintain such books, records and accounts of the Company's business and affairs, minutes of the proceedings of its Shareholders, Board and committees, if any, and such stock ledgers and lists of Shareholders, as the Board shall deem advisable, and as shall be required by the laws of Florida and other states or jurisdictions empowered to impose such requirements. Books, records and minutes may be kept within or without Florida in a place which the Board shall determine.

10.2 Reliance.

In discharging his or her duties, a director or an officer of the Company, when acting in good faith, may rely upon information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by (a) one or more directors, officers, or employees of the Company, or of a business organization under joint control or common control, whom the director or officer reasonably believes to be reliable and competent in the matters presented, (b) legal counsel, public accountants, engineers, or other persons as to matters the director or officer reasonably believes are within the person's professional or expert competence, or (c) a committee of the board of which he or she is not a member if the director or officer reasonably believes the committee merits confidence. A director or officer may not rely on any information if he or she has knowledge concerning the matter that makes reliance otherwise permitted unwarranted.

**XI.
INDEMNIFICATION**

11.1 Personal.

Subject to all of the other provisions of this Article XI, the Company shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative and whether formal or informal (other than an action by or in the right of the Company) by reason that the person is or was a director or officer of the Company, or is or was serving at the request of the Company as a director, officer, partner, trustee, employee, or agent of another entity or enterprise, against expenses (including reasonable attorneys' fees), judgments, penalties and amounts paid in settlement reasonably incurred by him or her in connection with such action, suit or proceeding, if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the Company or the Shareholders, and, with respect to any criminal action or proceeding, if the person had no reasonable cause to believe his or her conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which the person reasonably believed to be in or not opposed to the best interests of the Company or the Shareholders, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his or her conduct was unlawful.

11.2 Derivative.

Subject to all of the provisions of this Article XI, the Company shall indemnify any person who was or is a party to or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Company to procure a judgment in its favor by reason of the fact that the person is or was a director or officer of the Company, or is or was serving at the request of the Company as a director, officer, partner, trustee, employee, or agent of another foreign or domestic corporation, partnership, joint venture, trust or other enterprise, whether for profit or not,

against expenses (including attorneys' fees) and amounts paid in settlement reasonably incurred by the person in connection with such action or suit, if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the Company or the Shareholders. However, indemnification shall not be made for any claim, issue or matter in which such person has been found liable to the Company unless and only to the extent that the court in which such action or suit was brought has determined upon application that, despite the adjudication of liability but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnification for the reasonable expenses incurred.

11.3 Expenses.

To the extent that a person has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Section 11.1 or 11.2 of these Bylaws, or in defense of any claim, issue or matter in the action, suit or proceeding, the person shall be indemnified against actual and reasonable expenses (including attorneys' fees) incurred by such person in connection with the action, suit or proceeding and any action, suit or proceeding brought to enforce the mandatory indemnification provided by this Section 11.3.

11.4 Definitions.

For purposes of Sections 11.1 and 11.2, "other enterprises" shall include employee benefit plans; "fines" shall include any excise taxes assessed on a person with respect to an employee benefit plan; and "serving at the request of the Company" shall include any service as a director, officer, employee, or agent of the Company that imposes duties on, or involves services by, the director or officer with respect to an employee benefit plan, its participants or beneficiaries; and a person who acted in good faith and in a manner the person reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be considered to have acted in a manner "not opposed to the best interests of the Company or the Shareholders".

11.5 Parameters.

The right to indemnification conferred in this Article XI shall be a contract right, and shall apply to services of a director or officer as an employee or agent of the Company as well as in such person's capacity as a director or officer. Except as provided in Section 11.3 of these Bylaws, the Company shall have no obligations under this Article XI to indemnify any person in connection with any proceeding, or part thereof, initiated by him or her without Board authorization.

11.6 Determination.

Any indemnification under Section 11.1 or 11.2 of these Bylaws (unless ordered by a court) shall be made by the Company only as authorized in the specific case upon a determination that indemnification of the person is proper in the circumstances because the person has met the applicable standard of conduct set forth in Section 11.1 or 11.2, whichever is applicable, and upon an evaluation of the reasonableness of expenses and amount paid in settlement. Such determination and evaluation shall be made in any of the following ways:

- (a) By a majority vote of a quorum of the Board consisting of directors who are not parties or threatened to be made parties to such proceeding.
- (b) If the quorum described in clause (a) above is not obtainable, then by a majority vote of a committee of directors duly designated by the Board and consisting solely of two or more directors who are not at the time parties or threatened to be made parties to the proceeding.
- (c) By independent legal counsel in a written opinion, so long as such counsel is selected (i) by the Board or its committee in the manner prescribed in subparagraph (a) or (b), or (ii) if a

quorum of the Board cannot be obtained under subparagraph (a) and a committee cannot be designated under subparagraph (b), by the Board.

(d) By the Shareholders, but Shares held by directors or officers who are parties or threatened to be made parties to the action, suit or proceeding may not be voted.

11.7 Proportionality.

If a person is entitled to indemnification under Section 11.1 or 11.2 of these Bylaws for a portion of expenses, including attorneys' fees, judgments, penalties, fines, and amounts paid in settlement, but not for the total amount thereof, the Company shall indemnify the person for the portion of the expenses, judgments, penalties, fines, or amounts paid in settlement for which the person is entitled to be indemnified.

11.8 Advances.

The Company may pay or reimburse the reasonable expenses incurred by a person referred to in Section 11.1 or 11.2 of these bylaws who is a party or threatened to be made a party to an action, suit, or proceeding in advance of final disposition of the proceeding if (a) the person furnishes the Company a written affirmation of his or her good faith belief that he or she has met the applicable standard of conduct set forth in Section 11.1 or 11.2, (b) the person furnishes the Company a written undertaking executed to personally repay the advance if it is ultimately determined that he or she did not meet the standard of conduct, (c) the authorization of payment is made in the manner specified in Section 11.6, and (d) a determination is made that the facts then known to those making the determination would not preclude indemnification under Section 11.1 or 11.2. The undertaking shall be a general obligation of the person, but need not be secured.

11.9 Scope.

The indemnification or advancement of expenses provided under this Article XI is not exclusive of other rights to which a person seeking indemnification or advancement of expenses may be entitled under a contractual arrangement with the Company. However, the total amount of expenses advanced or indemnified from all sources combined shall not exceed the amount of actual expenses incurred by the person seeking indemnification or advancement of expenses.

11.10 Agents.

The Company may, to the extent authorized from time to time by the Board, grant rights to indemnification and to the advancement of expenses to any employee or agent of the Company to the fullest extent of the provisions of this Article XI with respect to the indemnification and advancement of expenses of directors and officers of the Company.

11.11 Succession.

The indemnification provided in this Article XI continues as to a person who has ceased to be a director or officer and shall inure to the benefit of his or her successors.

11.12 Insurance.

The Company may buy and maintain insurance on behalf of any person who is or was a director, officer, partner, trustee, employee or agent of the Company, or is or was serving at the request of the Company as a director, officer, employee or agent of another entity or enterprise against any liability asserted against the person and incurred by him or her in any such capacity or arising out of his or her status as such, whether or not the Company would have power to indemnify the person against such liability under these Bylaws or the laws of Florida.

11.13 Legislation.

Upon any change of the Florida statutory provisions relating to the subject matter of this Article XI, the indemnification to which any person shall be entitled hereunder shall be determined by such changed provisions, but only to the extent that any such change permits the Company to provide broader indemnification rights than before any such change. Subject to Section 11.14, the Board may amend these Bylaws to conform to any such changed statutory provisions.

11.14 Amendment.

No amendment or repeal of this Article XI shall apply to any director or officer of the Company for or with respect to any prior acts or omissions of such director or officer.

XII. AMENDMENT

The Bylaws of the Company may be amended, altered or repealed, in whole or in part, by the Shareholders or by the Board at any meeting duly held in accordance with these Bylaws.

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ARTICLES OF INCORPORATION
OF
OHI SUNSHINE, INC.

The undersigned does hereby act as incorporator in adopting the following Articles of Incorporation for the purpose of organizing a corporation for profit, pursuant to the provisions of the Florida Business Corporation Act.

FIRST: The corporate name for the corporation (hereinafter called the "corporation") is OHI Sunshine, Inc.

SECOND: The street address, wherever located, of the principal office of the corporation is 900 Victors Way, Suite 350, Ann Arbor, Michigan 48108.

The mailing address, wherever located, of the corporation is 900 Victors Way, Suite 350, Ann Arbor, Michigan 48108.

THIRD: The street address of the initial registered office of the corporation in the State of Florida is c/o Corporation Service Company, 1201 Hays Street, Tallahassee, Florida 32301.

The name of the initial registered agent of the corporation at the said registered office is Corporation Service Company.

The written acceptance of the said initial registered agent, as required by the provisions of Section 607.0501(3) of the Florida Business Corporation Act, is set forth following the signature of the incorporator and is made a part of these articles of incorporation.

FOURTH: The number of shares that the *corporation* is authorized to issue is 1,000, all of which are without par value and are of the same class and are Common shares.

FIFTH: The name and the address of the incorporator are:

NAME	ADDRESS
Stuart D. Logan	39577 Woodward Avenue, Suite 300, Bloomfield Hills, Michigan 48416

SIXTH: The purposes for which the corporation is organized are as follows: To engage in any lawful business for which corporations may be organized under the Florida Business Corporation Act.

To have all of the general powers granted to corporations organized under the Florida Business Corporation Act, whether granted by specific statutory authority or by construction of law.

SEVENTH: The duration of the corporation shall be perpetual

EIGHTH: The corporation shall, to the fullest extent permitted by the provisions of the Florida Business Corporation Act, as the same may be amended and supplemented, indemnify any and all persons whom it shall have power to indemnify under said provisions from and against any and all of the expenses, liabilities, or other matters referred to in or covered by said provisions, and the indemnification provided for herein shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any Bylaw, vote of shareholders or disinterested directors, or

otherwise, both as to action in his official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a director, officer, employee, or agent and shall inure to the benefit of the heirs, executors, and administrators of such a person.

NINTH: The corporate existence of the corporation shall begin on May 31, 2001.

Signed on May 30, 2001

/s/ STUART D. LOGAN

Stuart D. Logan, *Incorporator*

Having been named as registered agent and to accept service of process for the above-named corporation at the place designated in these Articles of Incorporation, I hereby accept the appointment as registered agent and agree to act in this capacity. I further agree to comply with the provisions of all statutes relating to the proper and complete performance of my duties, and I am familiar with and accept the obligations of my position as registered agent.

CORPORATION SERVICE COMPANY

By: /s/ BRIAN COURTNEY

Brian Courtney, *Assistant Vice President*

Date: May 31, 2001

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[ARTICLES OF INCORPORATION OF OHI SUNSHINE, INC.](#)

BYLAWS OF OHI SUNSHINE, INC.

I. Offices

The principal office of OHI Sunshine, Inc. (the "Company") shall be at such place within Florida or Michigan as the Company's Board of Directors (the "Board") shall select from time to time. The Company may have offices at such other places as the Company's business may require.

II. Capital

2.01 *Issuance.* The shares of capital stock of the Company (the "Shares") shall be issued in such amounts, at such times, for such consideration and on such terms as the Board shall deem advisable, subject to the Company's Articles of Incorporation (the "Articles") and the laws of Florida.

2.02 *Certificates.* The Shares shall be represented by certificates signed by the President. Each such certificate shall state upon its face that the Company is formed under the laws of Florida, the person to whom it is issued, the number and class of Shares, and the designation of the series, if any, that the certificate represents, and such other provisions as may be required by Florida law.

2.03 *Transfer.* The Shares are transferable only on the books of the Company upon surrender of the certificate therefor, properly endorsed for transfer, and the presentation of such evidences of ownership and validity of the assignment as the Company may require.

2.04 *Registration.* The Company shall be entitled to treat the person in whose name any Share is registered as the owner thereof for purposes of dividends and other distributions in the course of business, or in the course of recapitalization, merger, plan of share exchange, reorganization, sale of assets, liquidation or otherwise and for the purpose of votes, approvals and consents by shareholders of the Company ("Shareholders"), and for the purpose of notices to Shareholders, and for all other purposes whatever, and shall not be bound to recognize any equitable or other claim to or interest in such Shares on the part of any other person, whether or not the Company shall have notice thereof, save as expressly required by the laws of Florida.

2.05 *Replacement.* Upon the presentation to the Company of a proper affidavit attesting the loss, destruction or mutilation of any certificate for Shares, the Board shall direct the issuance of a new certificate to replace the certificate so alleged to be lost, destroyed or mutilated. The Board may require as a condition precedent to the issuance of a new certificate a bond or agreement of indemnity, in such form and amount, and with such sureties as the Board may direct or approve.

III. Shareholders

3.01 *Meetings.* Meetings of Shareholders shall be held at the principal office of the Company or at such other place as determined by the Board and stated in the notice of meeting. The annual meeting of Shareholders shall be held on the first Monday of March at 10:30 o'clock in the morning. Directors shall be elected at each annual meeting and such other business transacted as may come before the meeting. Special meetings of Shareholders may be called by the Board, the Chairman (if such office is filled), the President or any Director, and shall be called by the Secretary at the written request of Shareholders holding a majority of the outstanding Shares and entitled to vote. The request shall state the purpose or purposes for which the meeting is to be called.

3.02 *Notice.* Except as otherwise provided by statute or the Articles, written notice of the time, place and purposes of a meeting of Shareholders shall be given not fewer than ten nor more than 60 days before the date of the meeting to each Shareholder of record entitled to vote at the meeting, either personally or by mailing such notice to his last address as it appears on the books of the

Company. No notice need be given of an adjourned meeting of the Shareholders provided the time and place to which such meeting is adjourned are announced at the meeting at which the adjournment is taken and at the adjourned meeting only such business is transacted as might have been transacted at the original meeting. However, if after the adjournment a new record date is fixed for the adjourned meeting a notice of the adjourned meeting shall be given to each Shareholder of record on the new record date entitled to notice as provided in this Bylaw.

3.03 *Dates.* The Board may fix in advance a date as the record date for the purpose of determining Shareholders entitled to notice of and to vote at a meeting of Shareholders or an adjournment thereof, or to express consent or to dissent from a proposal without a meeting, or for the purpose of determining Shareholders entitled to receive payment of a dividend or allotment of a right, or for the purpose of any other action. The date fixed shall not be more than 60 nor fewer than ten days before the date of the meeting, nor more than 60 days before any other action. In such case only such Shareholders as shall be Shareholders of record on the date so fixed shall be entitled to notice of and to vote at such meeting or adjournment thereof, or to express consent or to dissent from such proposal, or to receive payment of such dividend or to receive such allotment of rights, or to participate in any other action, as the case may be, notwithstanding any transfer of any stock on the books of the Company, or otherwise, after any such record date. Nothing in this Bylaw shall affect the rights of a Shareholder and his transferee or transferor as between themselves.

3.04 *Lists.* The Secretary of the Company or the agent of the Company having charge of the stock transfer records for Shares shall make and certify a complete list of the Shareholders entitled to vote at a Shareholders' meeting or any adjournment thereof. The list shall be arranged alphabetically within each class and series, with the address of, and the number of Shares held by, each Shareholder, be produced at the meeting, be subject to inspection by any Shareholder during the meeting, and be prima facie evidence of the Shareholders entitled to examine the list or vote.

3.05 *Quorum.* Unless a greater or lesser quorum is required in the Articles or by the laws of Florida, the Shareholders present at a meeting in person or by proxy who, as of the record date for such meeting, were holders of a majority of the outstanding Shares entitled to vote at the meeting shall constitute a quorum. Whether or not a quorum is present, a meeting of Shareholders may be adjourned by a vote of the Shares present in person or by proxy. When the holders of a class or series of Shares are entitled to vote separately on an item of business, this Bylaw applies in determining the presence of a quorum of such class or series for transaction of such item of business.

3.06 *Proxies.* A Shareholder entitled to vote at a meeting of Shareholders or to express consent or dissent without a meeting may authorize other persons to act for the Shareholder by proxy. A proxy shall be signed by the Shareholder or the Shareholder's authorized agent or representative.

3.07 *Voting.* Each outstanding Share is entitled to one vote on each matter submitted to a vote. When an action, other than the election of directors, is to be taken by a vote of the Shareholders, it shall be authorized by a majority of the votes cast by the holders of Shares entitled to vote thereon, unless a greater vote is required by the Articles or by the laws of Florida. Except as otherwise provided by the Articles, directors shall be elected by a plurality of the votes cast at any election.

IV. Directors

5.01 *Number.* The business and affairs of the Company shall be managed by a Board of one director. No director need be a resident of Florida or a Shareholder.

5.02 *Tenure.* Directors shall be elected at each annual meeting of the Shareholders, each to hold office until the next annual meeting of Shareholders and until the director's successor is elected and qualified, or until the director's resignation or removal. A director may resign by written notice to the

Company. The resignation is effective upon its receipt by the Company or any later date as set forth in the notice of resignation. A director or the entire Board may be removed, with or without cause, by vote of the holders of a majority of the Shares entitled to vote at an election of directors.

5.03 *Vacancies.* Vacancies in the Board occurring by reason of death, resignation, removal, increase in the number of directors or otherwise shall be filled by the affirmative vote of a majority of the remaining directors though less than a quorum of the Board, unless filled by proper action of the Shareholders. Each person so elected shall be a director for a term of office continuing only until the next election of directors by the Shareholders. A vacancy that will occur at a specific date, by reason of a resignation effective at a later date or otherwise, may be filled before the vacancy occurs, but the newly elected director may not take office until the vacancy occurs.

5.04 *Meetings.* The Board shall meet each year immediately after the annual meeting of the Shareholders, or within two days of such time if such later time is deemed advisable, at the place where such meeting of the Shareholders has been held or such other place as the Board may determine, to elect officers and consider such business that may properly be brought before the meeting. If, however, less than a majority of the directors appear for an annual meeting of the Board, the annual meeting need not be held and the matters that might have been addressed therein may be addressed at any later meeting, or by consent resolution. Regular meetings of the Board may be held at such times and places as the majority of the directors may from time to time determine at a prior meeting or as shall be directed or approved by the vote or written consent of all directors. Special meetings of the Board may be called by the Corporation's president or any director.

5.05 *Notices.* No notice shall be required for annual or regular meetings of the Board or for adjourned meetings, whether regular or special. Three days' written notice shall be given for special meetings of the Board, and such notice shall state the time, place and purposes of the meeting.

5.06 *Quorum.* A majority of the Board then in office, or of the members of a committee thereof, constitutes a quorum for the transaction of business. The vote of a majority of the directors present at any meeting at which there is a quorum shall be the acts of the Board or of the committee, except as a larger vote may be required by the laws of Florida. A member of the Board or of a committee designated by the Board may participate in a meeting by means of conference telephone by means of which all persons participating in the meeting can communicate with each other. Participation in a meeting in this manner constitutes presence in person at the meeting.

5.07 *Committees.* The Board may, by resolution passed by a majority of the whole Board, appoint three or more members of the Board as an executive committee to exercise all powers and authorities of the Board in management of the business and affairs of the Company, except that the committee shall not have power or authority to (a) amend the Articles; (b) adopt an agreement of merger or consolidation; (c) recommend to Shareholders the sale, lease or exchange of all or substantially all of the Company's property and assets; (d) recommend to Shareholders a dissolution of the Company or revocation of a dissolution; (e) amend these Bylaws; (f) fill vacancies in the Board; or (g) unless expressly authorized by the Board, declare a dividend or authorize the issuance of stock. The Board from time to time may, by like resolution, appoint such other committees of one or more directors to have such authority as shall be specified by the Board in the resolution making such appointments. The Board may designate one or more directors as alternate members of any committee who may replace an absent or disqualified member at any meeting thereof.

5.08 *Dissent.* A director who is present at a meeting of the Board, or a committee thereof of which the director is a member, at which action on a corporate matter is taken is presumed to have concurred in that action unless the director's dissent is entered in the minutes of the meeting or unless the director files a written dissent to the action with the person acting as secretary of the meeting before the adjournment thereof or shall forward such dissent by registered mail to the Secretary of the Company promptly after the adjournment of the meeting. Such right to dissent does not apply to a

director who voted in favor of such action. A director who is absent from a meeting of the Board, or a committee thereof of which the director is a member, at which any such action is taken is presumed to have concurred in the action unless the director files a written dissent with the Secretary of the Company within a reasonable time after the director has knowledge of the action.

5.09 *Compensation.* The Board, by affirmative vote of a majority of directors in office and irrespective of any personal interest of any of them, may establish reasonable compensation of directors for services to the Company as directors or officers.

V. Procedures

5.01 *Notice.* All notices of meetings to be given to Shareholders, directors or any committee of directors may be given by mail, overnight courier, telefax or e-mail to any Shareholder, director or committee member at his last address as it appears on the books of the Company. Such notice shall be deemed to be given at the time when the same shall be mailed or otherwise dispatched.

5.02 *Waiver.* Notice of the time, place and purpose of any meeting of Shareholders, directors or committee of directors may be waived by mail, overnight courier, telefax or e-mail, either before or after the meeting, or in such other manner as may be permitted by the laws of Florida. Attendance of a person at any meeting of Shareholders, in person or by proxy, or at any meeting of directors or of a committee of directors, constitutes a waiver of notice of the meeting except as follows:

(a) In the case of a Shareholder, unless the Shareholder at the beginning of the meeting objects to holding the meeting or transacting business at the meeting, or unless with respect to consideration of a particular matter at the meeting that is not within the purposes described in the meeting notice, the Shareholder objects to considering the matter when it is presented.

(b) In the case of a director, unless he or she at the beginning of the meeting, or upon his or her arrival, objects to the meeting or the transacting of business at the meeting and does not thereafter vote for or assent to any action taken at the meeting.

5.03 *Consent.* Any action permitted at any meeting of directors or committee thereof may be taken without a meeting, without prior notice and without a vote, if all directors or committee members entitled to vote thereon consent thereto in writing, before or after the action is taken. Any action required or permitted at any meeting of Shareholders may be taken without a meeting, without prior notice and without a vote, if all Shareholders entitled to vote thereon consent thereto in writing, before or after the action is taken or if such action otherwise satisfies the Articles and Florida law.

VI. Officers

6.01 *Number.* The Board shall elect or appoint a President, a Chief Operating Officer, a Secretary and a Treasurer, and may elect a Chairman, and/or one or more Vice Presidents, Assistant Secretaries or Assistant Treasurers. The Chairman (if appointed) shall be a member of the Board. Any two or more of the above offices, except those of President and Vice President, may be held by the same person. Any person appointed by the Board to the office of Treasurer shall hold the equivalent title of *Chief Financial Officer*, and any person appointed by the Board to the office of *Vice President-Finance* or the office of *Chief Financial Officer* shall serve as Treasurer and shall forthwith succeed any incumbent holder of any such title. No officer shall execute an instrument in multiple capacities if the instrument is required by law to be acknowledged or verified by two or more officers.

6.02 *Term.* An officer shall hold office for the term for which he is elected or appointed and until his successor is elected or appointed and qualified, or until his resignation or removal. An officer may resign by written notice to the Company. The resignation is effective upon its receipt by the

Company or at a subsequent time specified in the notice of resignation. An officer may be removed by the Board with or without cause. The removal of an officer shall be without prejudice to his contract rights, if any. The appointment of an officer does not of itself create contract rights.

6.03 *Vacancies.* The Board may fill any vacancies in any office occurring for whatever reason.

6.04 *Authority.* All officers, employees and agents of the Company shall have such authority and perform such duties in the conduct and management of the business and affairs of the Company as may be designated by the Board and these Bylaws, and, in that regard,

(a) all checks, drafts, notes, bonds, bills of exchange and orders for payment by the Company may, subject to any contrary resolution adopted by the Board from time to time, be signed by the President, the Chief Operating Officer, the Chief Financial Officer or any Vice President, and

(b) the Board may in any instance designate the officer and/or agent who shall have authority to execute any contract, conveyance, mortgage or other instrument on behalf of the Company, or may ratify or confirm any execution (although when the execution of any instrument has been authorized without specification of the executing officers or agents, the President, Chief Executive Officer or any Vice President. may execute the same and on behalf of the Company).

VII. Duties

7.01 *Chairman.* The Chairman, if any is appointed, shall preside at all meetings of the Shareholders and of the Board at which the Chairman is present. The Chairman shall hold only such further authority as is expressly ascribed to him by these Bylaws and the resolutions of the Board.

7.02 *President.* The President shall be the chief executive officer of the Company, shall see that all resolutions of the Board are carried into effect, shall have the general powers of supervision usually vested in the chief executive officer of a corporation, and, subject to any contrary directives by the Board, shall hold authority (a) to direct (and commit) the Company's resources toward the achievement of the Company's goals, (b) to vote all securities or other interests of other business organizations held by the Company, and (c) to take such further actions to the extent approved by the Board. The President shall also hold authority equivalent to that held by the Chief Operating Officer, although, in the absence of a specific contrary directive by the Board or the President, such authority shall be left to the Chief Operating Officer. In the absence of the Secretary and any Assistant Secretary, the President may exercise the authority otherwise reserved to the Secretary.

7.03 *COO.* The Chief Operating Officer shall assume managerial responsibility over the day-to-day operations of the Company, shall exercise authority subject only to the directives of the President and the Board, and, subject to any contrary directive by the President or Board, shall hold (a) authority to supervise Company personnel, and (b) any further authority granted by the Board.

7.04 *Vice Presidents.* The Vice Presidents, in order of their seniority, shall, in the absence or disability of the President, perform the duties and exercise the powers of the President. Subject to the third sentence of Bylaw 6.01, the Vice Presidents shall in any event hold operating responsibility for those aspects of the Company's business referenced in any specific title of the particular Vice President, and shall perform such other duties as may be delegated by the Board or President.

7.05 *Secretary.* The Secretary shall record all votes and minutes of all proceedings in a book to be kept for that purpose, shall give or cause to be given notice of all meetings of the Shareholders and of the Board, and shall keep in safe custody the seal of the Company and, when authorized by the Board, affix the same to any instrument requiring it, and when so affixed it shall be attested by the signature of the Secretary, or by the signature of the Treasurer or an Assistant Secretary. The Secretary

may delegate any of the duties, powers and authorities of the Secretary to one or more Assistant Secretaries, unless such delegation is disapproved by the Board.

7.06 *Treasurer.* Subject to the authority of any Vice President charged with the responsibility for the Company's finances, the Treasurer shall have the custody of corporate funds and securities, shall keep full and accurate accounts of receipts and disbursements in books of the Company and shall deposit all moneys and other value in the name and to the credit of the Company in such depositories as may be designated by the Board. The Treasurer shall render to the President and directors, whenever they may require it, an account of his or her transactions as Treasurer and of the financial condition of the Company. The Treasurer may delegate any of his or her duties, powers and authorities to one or more Assistant Treasurers unless such delegation is disapproved by the Board.

7.07 *Assistants.* The Assistant Secretaries, in order of their seniority, shall perform the duties and exercise the powers and authorities of the Secretary in case of the Secretary's absence or disability. The Assistant Treasurers, in the order of their seniority, shall perform the duties and exercise the powers and authorities of the Treasurer in case of the Treasurer's absence or disability. The Assistant Secretaries and Assistant Treasurers shall also perform such duties as may be delegated by the Secretary and Treasurer, respectively, and also such duties as the Board may prescribe.

VIII. Records

8.01 *Maintenance.* The proper officers and agents of the Company shall keep and maintain such books, records and accounts of the Company's business and affairs, minutes of the proceedings of its Shareholders, Board and committees, if any, and such stock ledgers and lists of Shareholders, as the Board shall deem advisable, and as shall be required by the laws of Florida and other states or jurisdictions empowered to impose such requirements. Books, records and minutes may be kept within or without Florida in a place which the Board shall determine.

8.02 *Reliance.* In discharging his or her duties, a director or an officer of the Company, when acting in good faith, may rely upon information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by (a) one or more directors, officers, or employees of the Company, or of a business organization under joint control or common control, whom the director or officer reasonably believes to be reliable and competent in the matters presented, (b) legal counsel, public accountants, engineers, or other persons as to matters the director or officer reasonably believes are within the person's professional or expert competence, or (c) a committee of the board of which he or she is not a member if the director or officer reasonably believes the committee merits confidence. A director or officer may not rely on any information if he or she has knowledge concerning the matter that makes reliance otherwise permitted unwarranted.

IX. Indemnification

9.01 *Personal.* Subject to all of the other provisions of this Article IX, the Company shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative and whether formal or informal (other than an action by or in the right of the Company) by reason that the person is or was a director or officer of the Company, or is or was serving at the request of the Company as a director, officer, partner, trustee, employee, or agent of another entity or enterprise, against expenses (including reasonable attorneys' fees), judgments, penalties and amounts paid in settlement reasonably incurred by him or her in connection with such action, suit or proceeding, if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the Company or the Shareholders, and, with respect to any criminal action or

proceeding, if the person had no reasonable cause to believe his or her conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which the person reasonably believed to be in or not opposed to the best interests of the Company or the Shareholders, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his or her conduct was unlawful.

9.02 *Derivative.* Subject to all of the provisions of this Article IX, the Company shall indemnify any person who was or is a party to or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Company to procure a judgment in its favor by reason of the fact that the person is or was a director or officer of the Company, or is or was serving at the request of the Company as a director, officer, partner, trustee, employee, or agent of another foreign or domestic corporation, partnership, joint venture, trust or other enterprise, whether for profit or not, against expenses (including attorneys' fees) and amounts paid in settlement reasonably incurred by the person in connection with such action or suit, if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the Company or the Shareholders. However, indemnification shall not be made for any claim, issue or matter in which such person has been found liable to the Company unless and only to the extent that the court in which such action or suit was brought has determined upon application that, despite the adjudication of liability but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnification for the reasonable expenses incurred.

9.03 *Expenses.* To the extent that a person has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Section 9.01 or 9.02 of these Bylaws, or in defense of any claim, issue or matter in the action, suit or proceeding, the person shall be indemnified against actual and reasonable expenses (including attorneys' fees) incurred by such person in connection with the action, suit or proceeding and any action, suit or proceeding brought to enforce the mandatory indemnification provided by this Section 9.03.

9.04 *Definitions.* For purposes of Sections 9.01 and 9.02, "other enterprises" shall include employee benefit plans; "fines" shall include any excise taxes assessed on a person with respect to an employee benefit plan; and "serving at the request of the Company" shall include any service as a director, officer, employee, or agent of the Company that imposes duties on, or involves services by, the director or officer with respect to an employee benefit plan, its participants or beneficiaries; and a person who acted in good faith and in a manner the person reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be considered to have acted in a manner "not opposed to the best interests of the Company or the Shareholders".

9.05 *Parameters.* The right to indemnification conferred in this Article IX shall be a contract right, and shall apply to services of a director or officer as an employee or agent of the Company as well as in such person's capacity as a director or officer. Except as provided in Section 9.03 of these Bylaws, the Company shall have no obligations under this Article IX to indemnify any person in connection with any proceeding, or part thereof, initiated by him or her without Board authorization.

9.06 *Determination.* Any indemnification under Section 9.01 or 9.02 of these Bylaws (unless ordered by a court) shall be made by the Company only as authorized in the specific case upon a determination that indemnification of the person is proper in the circumstances because the person has met the applicable standard of conduct set forth in Section 9.01 or 9.02, whichever is applicable, and upon an evaluation of the reasonableness of expenses and amount paid in settlement. Such determination and evaluation shall be made in any of the following ways:

- (a) By a majority vote of a quorum of the Board consisting of directors who are not parties or threatened to be made parties to such proceeding.

(b) If the quorum described in clause (a) above is not obtainable, then by a majority vote of a committee of directors duly designated by the Board and consisting solely of two or more directors who are not at the time parties or threatened to be made parties to the proceeding.

(c) By independent legal counsel in a written opinion, so long as such counsel is selected (i) by the Board or its committee in the manner prescribed in subparagraph (a) or (b), or (ii) if a quorum of the Board cannot be obtained under subparagraph (a) and a committee cannot be designated under subparagraph (b), by the Board.

(d) By the Shareholders, but Shares held by directors or officers who are parties or threatened to be made parties to the action, suit or proceeding may not be voted.

9.07 *Proportionality.* If a person is entitled to indemnification under Section 9.01 or 9.02 of these Bylaws for a portion of expenses, including attorneys' fees, judgments, penalties, fines, and amounts paid in settlement, but not for the total amount thereof, the Company shall indemnify the person for the portion of the expenses, judgments, penalties, fines, or amounts paid in settlement for which the person is entitled to be indemnified.

9.08 *Advances.* The Company may pay or reimburse the reasonable expenses incurred by a person referred to in Section 9.01 or 9.02 of these bylaws who is a party or threatened to be made a party to an action, suit, or proceeding in advance of final disposition of the proceeding if (a) the person furnishes the Company a written affirmation of his or her good faith belief that he or she has met the applicable standard of conduct set forth in Section 9.01 or 9.02, (b) the person furnishes the Company a written undertaking executed to personally repay the advance if it is ultimately determined that he or she did not meet the standard of conduct, (c) the authorization of payment is made in the manner specified in Section 9.06, and (d) a determination is made that the facts then known to those making the determination would not preclude indemnification under Section 9.01 or 9.02. The undertaking shall be a general obligation of the person, but need not be secured.

9.09 *Scope.* The indemnification or advancement of expenses provided under this Article IX is not exclusive of other rights to which a person seeking indemnification or advancement of expenses may be entitled under a contractual arrangement with the Company. However, the total amount of expenses advanced or indemnified from all sources combined shall not exceed the amount of actual expenses incurred by the person seeking indemnification or advancement of expenses.

9.10 *Agents.* The Company may, to the extent authorized from time to time by the Board, grant rights to indemnification and to the advancement of expenses to any employee or agent of the Company to the fullest extent of the provisions of this Article IX with respect to the indemnification and advancement of expenses of directors and officers of the Company.

9.11 *Succession.* The indemnification provided in this Article IX continues as to a person who has ceased to be a director or officer and shall inure to the benefit of his or her successors.

9.12 *Insurance.* The Company may buy and maintain insurance on behalf of any person who is or was a director, officer, partner, trustee, employee or agent of the Company, or is or was serving at the request of the Company as a director, officer, employee or agent of another entity or enterprise against any liability asserted against the person and incurred by him or her in any such capacity or arising out of his or her status as such, whether or not the Company would have power to indemnify the person against such liability under these Bylaws or the laws of Florida.

9.13 *Legislation.* Upon any change of the Florida statutory provisions relating to the subject matter of this Article IX, the indemnification to which any person shall be entitled hereunder shall be determined by such changed provisions, but only to the extent that any such change permits the Company to provide broader indemnification rights than before any such change. Subject to Section 9.14, the Board may amend these Bylaws to conform to any such changed statutory provisions.

9.14 *Amendment.* No amendment or repeal of this Article IX shall apply to any director or officer of the Company for or with respect to any prior acts or omissions of such director or officer.

X.
Amendment

The Bylaws of the Company may be amended, altered or repealed, in whole or in part, by the Shareholders or by the Board at any meeting duly held in accordance with these Bylaws.

QuickLinks

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Form **BCA-2.10**

ARTICLES OF INCORPORATION

(_____. Jan. 1999)

This space for use by Secretary of State

SUBMIT IN DUPLICATE!

Jesse White
 Secretary of State
 Department of Business Services
 Springfield, IL 62756
 http://www.sos.state.il.us

Payment must be made by certified check, cashier's check, Illinois attorney's check, Illinois C.P.A.'s check or money order, payable to "Secretary of State."

This space for use by Secretary of State

Date	4-3-01		
Franchise Tax		\$	25.00
Filing Fee		\$	75.00
Approved:		\$	100.00

1. CORPORATE NAME:

(The corporate name must contain the word "corporation", "company", "Incorporated," "limited" or an abbreviation thereof.)

2. Initial Registered Agent:

Illinois Corporation Service Company

<i>First Name</i>	<i>Middle Initial</i>	<i>Last name</i>
-------------------	-----------------------	------------------

Initial Registered Office:

700 South Second Street

<i>Number</i>	<i>Street</i>	<i>Suite #</i>
Springfield,	IL Sangamon	62704
<i>City</i>	<i>County</i>	<i>Zip Code</i>

3. Purpose or purposes for which the corporation is organized:

(If not sufficient space to cover this point, add one or more sheets of this size.)

The purpose for which the corporation is organized is to transact any or all lawful business for which corporations may be incorporated under the Act.

4. Paragraph 1: Authorized Shares, Issued Shares and Consideration Received:

Class	Par Value Per Share	Number of Shares Authorized	Number of Shares Proposed to be Issued	Consideration to be Received Therefor
Common	\$ 0	1,000	1,000	\$ 1,000
				TOTAL = \$1,000

Paragraph 2: The preferences, qualifications, limitations, restrictions and special or relative rights in respect of the shares of each class are:
 (If not sufficient space to cover this point, add one or more sheets of this size.)

(over)

5. *OPTIONAL*: (a) Number of directors constituting the Initial board of directors of the corporation: _____
 (b) Names and addresses of the persons who are to serve as directors until the first annual meeting of shareholders or until their successors are elected and qualify:

Name	Residential Address	City, State, ZIP

6. *OPTIONAL*: (a) It is estimated that the value of all property to be owned by the corporation for the following year wherever located will be: \$ _____
 (b) It is estimated that the value of the property to be located within the State of Illinois during the following year will be: \$ _____
 (c) It is estimated that the gross amount of business that will be transacted by the corporation during the following year will be: \$ _____
 (d) It is estimated that the gross amount of business that will be transacted from places of business in the State of Illinois during the following year will be: \$ _____

7. *OPTIONAL*: **OTHER PROVISIONS**
 Attach a separate sheet of this size for any other provision to be included in the Articles of Incorporation, e.g., authorizing preemptive rights, denying cumulative voting, regulating internal affairs, voting majority requirements, fixing a duration other than perpetual, etc.

8. NAME(S) & ADDRESS(ES) OF INCORPORATOR(S)

The undersigned incorporator(s) hereby declare(s), under penalties of perjury, that the statements made in the foregoing Articles of Incorporation are true.

Dated APRIL 2 , 2001
(Month & Day)

- | | |
|---|--|
| 1. _____
<i>Signature</i>

<u> STUART D. LOGAN </u>
<i>(Type or Print Name)</i> | 1. <u> 39577 WOODWARD AVENUE, SUITE 300 </u>
<i>Street</i>

<u> BLOOMFIELD HILLS MICHIGAN 48304 </u>
<i>City/Town State ZIP Code</i> |
| 2. _____
<i>Signature</i>

<i>(Type or Print Name)</i> | 2. _____
<i>Street</i>

<i>City/Town State ZIP Code</i> |
| 3. _____
<i>Signature</i>

<i>(Type or Print Name)</i> | 3. _____
<i>Street</i>

<i>City/Town State ZIP Code</i> |

(Signatures must be in **BLACK INK** on original document. Carbon copy, photocopy or rubber stamp signatures may only be used on conformed copies.)
 NOTE: If a corporation acts as incorporator, the name of the corporation and the state of incorporation shall be shown and the execution shall be by its president or vice president and verified by him, and attested by its secretary or assistant secretary.

BYLAWS OF _____

**I.
Offices**

The principal office of _____ (the "Company") shall be at such place within Michigan or Illinois as the Company's Board of Directors (the "Board") shall select from time to time. The Company may have offices at such other places as the Company's business may require.

**II.
Capital**

2.01 *Issuance.* The shares of capital stock of the Company (the "Shares") shall be issued in such amounts, at such times, for such consideration and on such terms as the Board shall deem advisable, subject to the Company's Articles of Incorporation (the "Articles") and the laws of Illinois.

2.02 *Certificates.* The Shares shall be represented by certificates signed by the President. Each such certificate shall state upon its face that the Company is formed under the laws of Illinois, the person to whom it is issued, the number and class of Shares, and the designation of the series, if any, that the certificate represents, and such other provisions as may be required by Illinois law.

2.03 *Transfer.* The Shares are transferable only on the books of the Company upon surrender of the certificate therefor, properly endorsed for transfer, and the presentation of such evidences of ownership and validity of the assignment as the Company may require.

2.04 *Registration.* The Company shall be entitled to treat the person in whose name any Share is registered as the owner thereof for purposes of dividends and other distributions in the course of business, or in the course of recapitalization, merger, plan of share exchange, reorganization, sale of assets, liquidation or otherwise and for the purpose of votes, approvals and consents by shareholders of the Company ("Shareholders"), and for the purpose of notices to Shareholders, and for all other purposes whatever, and shall not be bound to recognize any equitable or other claim to or interest in such Shares on the part of any other person, whether or not the Company shall have notice thereof, save as expressly required by the laws of Illinois.

2.05 *Replacement.* Upon the presentation to the Company of a proper affidavit attesting the loss, destruction or mutilation of any certificate for Shares, the Board shall direct the issuance of a new certificate to replace the certificate so alleged to be lost, destroyed or mutilated. The Board may require as a condition precedent to the issuance of a new certificate a bond or agreement of indemnity, in such form and amount, and with such sureties as the Board may direct or approve.

**III.
Shareholders**

3.01 *Meetings.* Meetings of Shareholders shall be held at the principal office of the Company or at such other place as determined by the Board and stated in the notice of meeting. The annual meeting of Shareholders shall be held on the first Monday of March at 10:30 o'clock in the morning. Directors shall be elected at each annual meeting and such other business transacted as may come before the meeting. Special meetings of Shareholders may be called by the Board, the Chairman (if such office is filled), the President or any Director, and shall be called by the Secretary at the written request of Shareholders holding a majority of the outstanding Shares and entitled to vote. The request shall state the purpose or purposes for which the meeting is to be called.

3.02 *Notice.* Except as otherwise provided by statute or the Articles, written notice of the time, place and purposes of a meeting of Shareholders shall be given not fewer than ten nor more than 60 days before the date of the meeting to each Shareholder of record entitled to vote at the meeting, either personally or by mailing such notice to his last address as it appears on the books of the

Company. No notice need be given of an adjourned meeting of the Shareholders provided the time and place to which such meeting is adjourned are announced at the meeting at which the adjournment is taken and at the adjourned meeting only such business is transacted as might have been transacted at the original meeting. However, if after the adjournment a new record date is fixed for the adjourned meeting a notice of the adjourned meeting shall be given to each Shareholder of record on the new record date entitled to notice as provided in this Bylaw.

3.03 *Dates.* The Board may fix in advance a date as the record date for the purpose of determining Shareholders entitled to notice of and to vote at a meeting of Shareholders or an adjournment thereof, or to express consent or to dissent from a proposal without a meeting, or for the purpose of determining Shareholders entitled to receive payment of a dividend or allotment of a right, or for the purpose of any other action. The date fixed shall not be more than 60 nor fewer than ten days before the date of the meeting, nor more than 60 days before any other action. In such case only such Shareholders as shall be Shareholders of record on the date so fixed shall be entitled to notice of and to vote at such meeting or adjournment thereof, or to express consent or to dissent from such proposal, or to receive payment of such dividend or to receive such allotment of rights, or to participate in any other action, as the case may be, notwithstanding any transfer of any stock on the books of the Company, or otherwise, after any such record date. Nothing in this Bylaw shall affect the rights of a Shareholder and his transferee or transferor as between themselves.

3.04 *Lists.* The Secretary of the Company or the agent of the Company having charge of the stock transfer records for Shares shall make and certify a complete list of the Shareholders entitled to vote at a Shareholders' meeting or any adjournment thereof. The list shall be arranged alphabetically within each class and series, with the address of, and the number of Shares held by, each Shareholder, be produced at the meeting, be subject to inspection by any Shareholder during the meeting, and be prima facie evidence of the Shareholders entitled to examine the list or vote.

3.05 *Quorum.* Unless a greater or lesser quorum is required in the Articles or by the laws of Illinois, the Shareholders present at a meeting in person or by proxy who, as of the record date for such meeting, were holders of a majority of the outstanding Shares entitled to vote at the meeting shall constitute a quorum. Whether or not a quorum is present, a meeting of Shareholders may be adjourned by a vote of the Shares present in person or by proxy. When the holders of a class or series of Shares are entitled to vote separately on an item of business, this Bylaw applies in determining the presence of a quorum of such class or series for transaction of such item of business.

3.06 *Proxies.* A Shareholder entitled to vote at a meeting of Shareholders or to express consent or dissent without a meeting may authorize other persons to act for the Shareholder by proxy. A proxy shall be signed by the Shareholder or the Shareholder's authorized agent or representative.

3.07 *Voting.* Each outstanding Share is entitled to one vote on each matter submitted to a vote. When an action, other than the election of directors, is to be taken by a vote of the Shareholders, it shall be authorized by a majority of the votes cast by the holders of Shares entitled to vote thereon, unless a greater vote is required by the Articles or by the laws of Illinois. Except as otherwise provided by the Articles, directors shall be elected by a plurality of the votes cast at any election.

IV. Directors

4.01 *Number.* The business and affairs of the Company shall be managed by a Board of one director. No director need be a resident of Illinois or a Shareholder.

4.02 *Tenure.* Directors shall be elected at each annual meeting of the Shareholders, each to hold office until the next annual meeting of Shareholders and until the director's successor is elected and qualified, or until the director's resignation or removal. A director may resign by written notice to the

Company. The resignation is effective upon its receipt by the Company or any later date as set forth in the notice of resignation. A director or the entire Board may be removed, with or without cause, by vote of the holders of a majority of the Shares entitled to vote at an election of directors.

4.03 *Vacancies.* Vacancies in the Board occurring by reason of death, resignation, removal, increase in the number of directors or otherwise shall be filled by the affirmative vote of a majority of the remaining directors though less than a quorum of the Board, unless filled by proper action of the Shareholders. Each person so elected shall be a director for a term of office continuing only until the next election of directors by the Shareholders. A vacancy that will occur at a specific date, by reason of a resignation effective at a later date or otherwise, may be filled before the vacancy occurs, but the newly elected director may not take office until the vacancy occurs.

4.04 *Meetings.* The Board shall meet each year immediately after the annual meeting of the Shareholders, or within two days of such time if such later time is deemed advisable, at the place where such meeting of the Shareholders has been held or such other place as the Board may determine, to elect officers and consider such business that may properly be brought before the meeting. If, however, less than a majority of the directors appear for an annual meeting of the Board, the annual meeting need not be held and the matters that might have been addressed therein may be addressed at any later meeting, or by consent resolution. Regular meetings of the Board may be held at such times and places as the majority of the directors may from time to time determine at a prior meeting or as shall be directed or approved by the vote or written consent of all directors. Special meetings of the Board may be called by the Corporation's president or any director.

4.05 *Notices.* No notice shall be required for annual or regular meetings of the Board or for adjourned meetings, whether regular or special. Three days' written notice shall be given for special meetings of the Board, and such notice shall state the time, place and purposes of the meeting.

4.06 *Quorum.* A majority of the Board then in office, or of the members of a committee thereof, constitutes a quorum for the transaction of business. The vote of a majority of the directors present at any meeting at which there is a quorum shall be the acts of the Board or of the committee, except as a larger vote may be required by the laws of Illinois. A member of the Board or of a committee designated by the Board may participate in a meeting by means of conference telephone by means of which all persons participating in the meeting can communicate with each other. Participation in a meeting in this manner constitutes presence in person at the meeting.

4.07 *Committees.* The Board may, by resolution passed by a majority of the whole Board, appoint three or more members of the Board as an executive committee to exercise all powers and authorities of the Board in management of the business and affairs of the Company, except that the committee shall not have power or authority to (a) amend the Articles; (b) adopt an agreement of merger or consolidation; (c) recommend to Shareholders the sale, lease or exchange of all or substantially all of the Company's property and assets; (d) recommend to Shareholders a dissolution of the Company or revocation of a dissolution; (e) amend these Bylaws; (f) fill vacancies in the Board; or (g) unless expressly authorized by the Board, declare a dividend or authorize the issuance of stock. The Board from time to time may, by like resolution, appoint such other committees of one or more directors to have such authority as shall be specified by the Board in the resolution making such appointments. The Board may designate one or more directors as alternate members of any committee who may replace an absent or disqualified member at any meeting thereof.

4.08 *Dissent.* A director who is present at a meeting of the Board, or a committee thereof of which the director is a member, at which action on a corporate matter is taken is presumed to have concurred in that action unless the director's dissent is entered in the minutes of the meeting or unless the director files a written dissent to the action with the person acting as secretary of the meeting before the adjournment thereof or shall forward such dissent by registered mail to the Secretary of the Company promptly after the adjournment of the meeting. Such right to dissent does not apply to a

director who voted in favor of such action. A director who is absent from a meeting of the Board, or a committee thereof of which the director is a member, at which any such action is taken is presumed to have concurred in the action unless the director files a written dissent with the Secretary of the Company within a reasonable time after the director has knowledge of the action.

4.09 *Compensation.* The Board, by affirmative vote of a majority of directors in office and irrespective of any personal interest of any of them, may establish reasonable compensation of directors for services to the Company as directors or officers.

V. Procedures

5.01 *Notice.* All notices of meetings to be given to Shareholders, directors or any committee of directors may be given by mail, overnight courier, telefax or e-mail to any Shareholder, director or committee member at his last address as it appears on the books of the Company. Such notice shall be deemed to be given at the time when the same shall be mailed or otherwise dispatched.

5.02 *Waiver.* Notice of the time, place and purpose of any meeting of Shareholders, directors or committee of directors may be waived by mail, overnight courier, telefax or e-mail, either before or after the meeting, or in such other manner as may be permitted by the laws of Illinois. Attendance of a person at any meeting of Shareholders, in person or by proxy, or at any meeting of directors or of a committee of directors, constitutes a waiver of notice of the meeting except as follows:

(a) In the case of a Shareholder, unless the Shareholder at the beginning of the meeting objects to holding the meeting or transacting business at the meeting, or unless with respect to consideration of a particular matter at the meeting that is not within the purposes described in the meeting notice, the Shareholder objects to considering the matter when it is presented.

(b) In the case of a director, unless he or she at the beginning of the meeting, or upon his or her arrival, objects to the meeting or the transacting of business at the meeting and does not thereafter vote for or assent to any action taken at the meeting.

5.03 *Consent.* Any action permitted at any meeting of directors or committee thereof may be taken without a meeting, without prior notice and without a vote, if all directors or committee members entitled to vote thereon consent thereto in writing, before or after the action is taken. Any action required or permitted at any meeting of Shareholders may be taken without a meeting, without prior notice and without a vote, if all Shareholders entitled to vote thereon consent thereto in writing, before or after the action is taken or if such action otherwise satisfies the Articles and Illinois law.

VI. Officers

6.01 *Number.* The Board shall elect or appoint a President, a Chief Operating Officer, a Secretary and a Treasurer, and may elect a Chairman, and/or one or more Vice Presidents, Assistant Secretaries or Assistant Treasurers. The Chairman (if appointed) shall be a member of the Board. Any two or more of the above offices, except those of President and Vice President, may be held by the same person. Any person appointed by the Board to the office of Treasurer shall hold the equivalent title of *Chief Financial Officer*, and any person appointed by the Board to the office of *Vice President-Finance* or the office of *Chief Financial Officer* shall serve as Treasurer and shall forthwith succeed any incumbent holder of any such title. No officer shall execute an instrument in multiple capacities if the instrument is required by law to be acknowledged or verified by two or more officers.

6.02 *Term.* An officer shall hold office for the term for which he is elected or appointed and until his successor is elected or appointed and qualified, or until his resignation or removal. An officer may resign by written notice to the Company. The resignation is effective upon its receipt by the

Company or at a subsequent time specified in the notice of resignation. An officer may be removed by the Board with or without cause. The removal of an officer shall be without prejudice to his contract rights, if any. The appointment of an officer does not of itself create contract rights.

6.03 *Vacancies.* The Board may fill any vacancies in any office occurring for whatever reason.

6.04 *Authority.* All officers, employees and agents of the Company shall have such authority and perform such duties in the conduct and management of the business and affairs of the Company as may be designated by the Board and these Bylaws, and, in that regard,

(a) all checks, drafts, notes, bonds, bills of exchange and orders for payment by the Company may, subject to any contrary resolution adopted by the Board from time to time, be signed by the President, the Chief Operating Officer, the Chief Financial Officer or any Vice President, and

(b) the Board may in any instance designate the officer and/or agent who shall have authority to execute any contract, conveyance, mortgage or other instrument on behalf of the Company, or may ratify or confirm any execution (although when the execution of any instrument has been authorized without specification of the executing officers or agents, the President, Chief Executive Officer or any Vice President, may execute the same and on behalf of the Company).

VII. Duties

7.01 *Chairman.* The Chairman, if any is appointed, shall preside at all meetings of the Shareholders and of the Board at which the Chairman is present. The Chairman shall hold only such further authority as is expressly ascribed to him by these Bylaws and the resolutions of the Board.

7.02 *President.* The President shall be the chief executive officer of the Company, shall see that all resolutions of the Board are carried into effect, shall have the general powers of supervision usually vested in the chief executive officer of a corporation, and, subject to any contrary directives by the Board, shall hold authority (a) to direct (and commit) the Company's resources toward the achievement of the Company's goals, (b) to vote all securities or other interests of other business organizations held by the Company, and (c) to take such further actions to the extent approved by the Board. The President shall also hold authority equivalent to that held by the Chief Operating Officer, although, in the absence of a specific contrary directive by the Board or the President, such authority shall be left to the Chief Operating Officer. In the absence of the Secretary and any Assistant Secretary, the President may exercise the authority otherwise reserved to the Secretary.

7.03 *COO.* The Chief Operating Officer shall assume managerial responsibility over the day-to-day operations of the Company, shall exercise authority subject only to the directives of the President and the Board, and, subject to any contrary directive by the President or Board, shall hold (a) authority to supervise Company personnel, and (b) any further authority granted by the Board.

7.04 *Vice Presidents.* The Vice Presidents, in order of their seniority, shall, in the absence or disability of the President, perform the duties and exercise the powers of the President. Subject to the third sentence of Bylaw 6.01, the Vice Presidents shall in any event hold operating responsibility for those aspects of the Company's business referenced in any specific title of the particular Vice President, and shall perform such other duties as may be delegated by the Board or President.

7.05 *Secretary.* The Secretary shall record all votes and minutes of all proceedings in a book to be kept for that purpose, shall give or cause to be given notice of all meetings of the Shareholders and of the Board, and shall keep in safe custody the seal of the Company and, when authorized by the Board, affix the same to any instrument requiring it, and when so affixed it shall be attested by the signature of the Secretary, or by the signature of the Treasurer or an Assistant Secretary. The Secretary

may delegate any of the duties, powers and authorities of the Secretary to one or more Assistant Secretaries, unless such delegation is disapproved by the Board.

7.06 *Treasurer.* Subject to the authority of any Vice President charged with the responsibility for the Company's finances, the Treasurer shall have the custody of corporate funds and securities, shall keep full and accurate accounts of receipts and disbursements in books of the Company and shall deposit all moneys and other value in the name and to the credit of the Company in such depositories as may be designated by the Board. The Treasurer shall render to the President and directors, whenever they may require it, an account of his or her transactions as Treasurer and of the financial condition of the Company. The Treasurer may delegate any of his or her duties, powers and authorities to one or more Assistant Treasurers unless such delegation is disapproved by the Board.

7.07 *Assistants.* The Assistant Secretaries, in order of their seniority, shall perform the duties and exercise the powers and authorities of the Secretary in case of the Secretary's absence or disability. The Assistant Treasurers, in the order of their seniority, shall perform the duties and exercise the powers and authorities of the Treasurer in case of the Treasurer's absence or disability. The Assistant Secretaries and Assistant Treasurers shall also perform such duties as may be delegated by the Secretary and Treasurer, respectively, and also such duties as the Board may prescribe.

VIII. Records

8.01 *Maintenance.* The proper officers and agents of the Company shall keep and maintain such books, records and accounts of the Company's business and affairs, minutes of the proceedings of its Shareholders, Board and committees, if any, and such stock ledgers and lists of Shareholders, as the Board shall deem advisable, and as shall be required by the laws of Illinois and other states or jurisdictions empowered to impose such requirements. Books, records and minutes may be kept within or without Illinois in a place which the Board shall determine.

8.02 *Reliance.* In discharging his or her duties, a director or an officer of the Company, when acting in good faith, may rely upon information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by (a) one or more directors, officers, or employees of the Company, or of a business organization under joint control or common control, whom the director or officer reasonably believes to be reliable and competent in the matters presented, (b) legal counsel, public accountants, engineers, or other persons as to matters the director or officer reasonably believes are within the person's professional or expert competence, or (c) a committee of the board of which he or she is not a member if the director or officer reasonably believes the committee merits confidence. A director or officer may not rely on any information if he or she has knowledge concerning the matter that makes reliance otherwise permitted unwarranted.

IX. Indemnification

9.01 *Personal.* Subject to all of the other provisions of this Article IX, the Company shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative and whether formal or informal (other than an action by or in the right of the Company) by reason that the person is or was a director or officer of the Company, or is or was serving at the request of the Company as a director, officer, partner, trustee, employee, or agent of another entity or enterprise, against expenses (including reasonable attorneys' fees), judgments, penalties and amounts paid in settlement reasonably incurred by him or her in connection with such action, suit or proceeding, if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the Company or the Shareholders, and, with respect to any criminal action or

proceeding, if the person had no reasonable cause to believe his or her conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which the person reasonably believed to be in or not opposed to the best interests of the Company or the Shareholders, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his or her conduct was unlawful.

9.02 *Derivative.* Subject to all of the provisions of this Article IX, the Company shall indemnify any person who was or is a party to or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Company to procure a judgment in its favor by reason of the fact that the person is or was a director or officer of the Company, or is or was serving at the request of the Company as a director, officer, partner, trustee, employee, or agent of another foreign or domestic corporation, partnership, joint venture, trust or other enterprise, whether for profit or not, against expenses (including attorneys' fees) and amounts paid in settlement reasonably incurred by the person in connection with such action or suit, if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the Company or the Shareholders. However, indemnification shall not be made for any claim, issue or matter in which such person has been found liable to the Company unless and only to the extent that the court in which such action or suit was brought has determined upon application that, despite the adjudication of liability but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnification for the reasonable expenses incurred.

9.03 *Expenses.* To the extent that a person has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Section 9.01 or 9.02 of these Bylaws, or in defense of any claim, issue or matter in the action, suit or proceeding, the person shall be indemnified against actual and reasonable expenses (including attorneys' fees) incurred by such person in connection with the action, suit or proceeding and any action, suit or proceeding brought to enforce the mandatory indemnification provided by this Section 9.03.

9.04 *Definitions.* For purposes of Sections 9.01 and 9.02, "other enterprises" shall include employee benefit plans; "fines" shall include any excise taxes assessed on a person with respect to an employee benefit plan; and "serving at the request of the Company" shall include any service as a director, officer, employee, or agent of the Company that imposes duties on, or involves services by, the director or officer with respect to an employee benefit plan, its participants or beneficiaries; and a person who acted in good faith and in a manner the person reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be considered to have acted in a manner "not opposed to the best interests of the Company or the Shareholders".

9.05 *Parameters.* The right to indemnification conferred in this Article IX shall be a contract right, and shall apply to services of a director or officer as an employee or agent of the Company as well as in such person's capacity as a director or officer. Except as provided in Section 9.03 of these Bylaws, the Company shall have no obligations under this Article IX to indemnify any person in connection with any proceeding, or part thereof, initiated by him or her without Board authorization.

9.06 *Determination.* Any indemnification under Section 9.01 or 9.02 of these Bylaws (unless ordered by a court) shall be made by the Company only as authorized in the specific case upon a determination that indemnification of the person is proper in the circumstances because the person has met the applicable standard of conduct set forth in Section 9.01 or 9.02, whichever is applicable, and upon an evaluation of the reasonableness of expenses and amount paid in settlement. Such determination and evaluation shall be made in any of the following ways:

- (a) By a majority vote of a quorum of the Board consisting of directors who are not parties or threatened to be made parties to such proceeding.

(b) If the quorum described in clause (a) above is not obtainable, then by a majority vote of a committee of directors duly designated by the Board and consisting solely of two or more directors who are not at the time parties or threatened to be made parties to the proceeding.

(c) By independent legal counsel in a written opinion, so long as such counsel is selected (i) by the Board or its committee in the manner prescribed in subparagraph (a) or (b), or (ii) if a quorum of the Board cannot be obtained under subparagraph (a) and a committee cannot be designated under subparagraph (b), by the Board.

(d) By the Shareholders, but Shares held by directors or officers who are parties or threatened to be made parties to the action, suit or proceeding may not be voted.

9.07 *Proportionality.* If a person is entitled to indemnification under Section 9.01 or 9.02 of these Bylaws for a portion of expenses, including attorneys' fees, judgments, penalties, fines, and amounts paid in settlement, but not for the total amount thereof, the Company shall indemnify the person for the portion of the expenses, judgments, penalties, fines, or amounts paid in settlement for which the person is entitled to be indemnified.

9.08 *Advances.* The Company may pay or reimburse the reasonable expenses incurred by a person referred to in Section 9.01 or 9.02 of these bylaws who is a party or threatened to be made a party to an action, suit, or proceeding in advance of final disposition of the proceeding if (a) the person furnishes the Company a written affirmation of his or her good faith belief that he or she has met the applicable standard of conduct set forth in Section 9.01 or 9.02, (b) the person furnishes the Company a written undertaking executed to personally repay the advance if it is ultimately determined that he or she did not meet the standard of conduct, (c) the authorization of payment is made in the manner specified in Section 9.06, and (d) a determination is made that the facts then known to those making the determination would not preclude indemnification under Section 9.01 or 9.02. The undertaking shall be a general obligation of the person, but need not be secured.

9.09 *Scope.* The indemnification or advancement of expenses provided under this Article IX is not exclusive of other rights to which a person seeking indemnification or advancement of expenses may be entitled under a contractual arrangement with the Company. However, the total amount of expenses advanced or indemnified from all sources combined shall not exceed the amount of actual expenses incurred by the person seeking indemnification or advancement of expenses.

9.10 *Agents.* The Company may, to the extent authorized from time to time by the Board, grant rights to indemnification and to the advancement of expenses to any employee or agent of the Company to the fullest extent of the provisions of this Article IX with respect to the indemnification and advancement of expenses of directors and officers of the Company.

9.11 *Succession.* The indemnification provided in this Article IX continues as to a person who has ceased to be a director or officer and shall inure to the benefit of his or her successors.

9.12 *Insurance.* The Company may buy and maintain insurance on behalf of any person who is or was a director, officer, partner, trustee, employee or agent of the Company, or is or was serving at the request of the Company as a director, officer, employee or agent of another entity or enterprise against any liability asserted against the person and incurred by him or her in any such capacity or arising out of his or her status as such, whether or not the Company would have power to indemnify the person against such liability under these Bylaws or the laws of Illinois.

9.13 *Legislation.* Upon any change of the Illinois statutory provisions relating to the subject matter of this Article IX, the indemnification to which any person shall be entitled hereunder shall be determined by such changed provisions, but only to the extent that any such change permits the Company to provide broader indemnification rights than before any such change. Subject to Section 9.14, the Board may amend these Bylaws to conform to any such changed statutory provisions.

9.14 *Amendment.* No amendment or repeal of this Article IX shall apply to any director or officer of the Company for or with respect to any prior acts or omissions of such director or officer.

**X.
Amendment**

The Bylaws of the Company may be amended, altered or repealed, in whole or in part, by the Shareholders or by the Board at any meeting duly held in accordance with these Bylaws.

Form **BCA-2.10**

ARTICLES OF INCORPORATION

(_____, Jan. 1991)

This space for use by Secretary of State

George H. Ryan
Secretary of State
Department of Business Services
Springfield, IL 62756
Telephone (217)782-6961

SUBMIT IN DUPLICATE!

Payment must be made by certified check, cashier's check, Illinois attorney's check, Illinois C.P.A.'s check or money order, payable to "Secretary of State."

This space for use by Secretary of State

Date		
Franchise Tax	\$	25.00
Filing Fee	\$	75.00
Approved:	\$	100.00

1. CORPORATE NAME: OHI (Illinois), Inc.

(The corporate name must contain the word "corporation", "company", "Incorporated," "limited" or an abbreviation thereof.)

2. Initial Registered Agent: CT Corporation System

<i>First Name</i>	<i>Middle Initial</i>	<i>Last name</i>
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Initial Registered Office: C/O CT Corporation System, 208 S. LaSalle Street

<i>Number</i>	<i>Street</i>	<i>Suite #</i>
Chicago, IL	Cook	60604
<i>City</i>	<i>County</i>	<i>Zip Code</i>

3. Purpose or purposes for which the corporation is organized:
(If not sufficient space to cover this point, add one or more sheets of this size.)

The transaction of any or all lawful business for which corporations may be incorporated under the Illinois Business Corporation Act.

4. Paragraph 1: Authorized Shares, Issued Shares and Consideration Received:

Class	Par Value Per Share	Number of Shares Authorized	Number of Shares Proposed to be Issued	Consideration to be Received Therefor
Common	\$ 0	1,000	1,000	\$ 1,000

TOTAL = \$ 1,000

Paragraph 2: The preferences, qualifications, limitations, restrictions and special or relative rights in respect of the shares of each class are:
(If not sufficient space to cover this point, add one or more sheets of this size.)

(over)

5. *OPTIONAL:* (a) Number of directors constituting the Initial board of directors of the corporation: _____
 (b) Names and addresses of the persons who are to serve as directors until the first annual meeting of shareholders or until their successors are elected and qualify:

Name	Residential Address	City, State, ZIP

6. *OPTIONAL:* (a) It is estimated that the value of all property to be owned by the corporation for the following year wherever located will be: \$ _____
 (b) It is estimated that the value of the property to be located within the State of Illinois during the following year will be: \$ _____
 (c) It is estimated that the gross amount of business that will be transacted by the corporation during the following year will be: \$ _____
 (d) It is estimated that the gross amount of business that will be transacted from places of business in the State of Illinois during the following year will be: \$ _____

7. *OPTIONAL:* **OTHER PROVISIONS**
 Attach a separate sheet of this size for any other provision to be included in the Articles of Incorporation, e.g., authorizing preemptive rights, denying cumulative voting, regulating internal affairs, voting majority requirements, fixing a duration other than perpetual, etc.

8. NAME(S) & ADDRESS(ES) OF INCORPORATOR(S)

The undersigned incorporator(s) hereby declare(s), under penalties of perjury, that the statements made in the foregoing Articles of Incorporation are true.

Dated _____, September 9, _____, 1994

 (Month & Day)

<p>1. /s/ MICHAEL R. DALIDA _____ <i>Signature</i> Michael R. Dalida _____ (Type or Print Name)</p>	<p>1. 30600 Telegraph Road _____ <i>Street</i> Bingham Farms MICHIGAN 48025 _____ City/Town State ZIP Code</p>
<p>2. /s/ MARC A. GILLIS _____ <i>Signature</i> Marc A. Gillis _____ (Type or Print Name)</p>	<p>2. 30600 Telegraph Road _____ <i>Street</i> Bingham Farms MICHIGAN 48205 _____ City/Town State ZIP Code</p>
<p>3. _____ _____ <i>Signature</i> _____ (Type or Print Name)</p>	<p>3. _____ _____ <i>Street</i> _____ City/Town State ZIP Code</p>

(Signatures must be in **BLACK INK** on original document. Carbon copy, photocopy or rubber stamp signatures may only be used on conformed copies.)
 NOTE: If a corporation acts as incorporator, the name of the corporation and the state of incorporation shall be shown and the execution shall be by its president or vice president and verified by him, and attested by its secretary or assistant secretary.

RIDER

To the fullest extent permitted by applicable law, as it now exists or may hereafter be amended, the Corporation shall indemnify all persons serving as directors of the Corporation against all liability and litigation expense, including but not limited to reasonable attorneys' fees, arising out of their status as such or their activities in the foregoing capacity, regardless of when such status existed or activity occurred and regardless of whether or not they are directors of the Corporation at the time such indemnification is sought or obtained. Without limiting the generality of the foregoing indemnity, such persons may also recover from the Corporation all reasonable costs, expenses and attorneys' fees in connection with the enforcement of rights to indemnification granted by this Article. The provisions of this Article are in addition to and not in limitation of the power of the Corporation with respect to, and the rights of any director of the Corporation to receive the benefits of, any other or further indemnification, insurance, elimination of liability or other right or benefit which is either required by the Florida Corporation Act or permitted thereby and duly adopted by the Corporation in accordance therewith.

To the fullest extent permitted by applicable law, as it now exists or may hereafter be amended, no director of the Corporation shall have any personal liability arising out of any action, whether by or in the right of the Corporation or otherwise, for monetary damages for breach of his or her duty as a director. This Article shall not impair any right to receive indemnity or insurance from the Corporation or any third party which any director may now or hereafter have. Any repeal or modification of this Article shall not impair or otherwise adversely affect any limitation on, or elimination of, the personal liability of a director effected hereby with respect to acts or omissions occurring prior to such repeal or modification.

QuickLinks

[RIDER](#)

AMENDED AND RESTATED BYLAWS**OF OHI (ILLINOIS), INC.****I.
OFFICES**

The principal office of OHI (ILLINOIS), Inc. (the "Company") shall be at such place within Illinois or Maryland as the Board of Directors of the Company (the "Board") shall from time to time determine. The Company also may have offices at such other places as the business of the Company may require.

**II.
SEAL**

The Company may have a seal in such form as the Board may from time to time determine. The seal, if so authorized, may be used by causing it or a facsimile to be impressed, affixed or copied.

**III.
CAPITAL****3.1 Issuance.**

The shares of capital stock of the Company (the "Shares") shall be issued in such amounts, at such times, for such consideration and on such terms as the Board shall deem advisable, subject to the Company's Articles of Incorporation (the "Articles") and the laws of Illinois.

3.2 Certificates.

The Shares shall be represented by certificates signed by the President. Each such certificate shall state upon its face that the Company is formed under the laws of Illinois, the person to whom it is issued, the number and class of Shares, and the designation of the series, if any, that the certificate represents, and such other provisions as may be required by Illinois law.

3.3 Transfer.

The Shares are transferable only on the books of the Company upon surrender of the certificate therefor, properly endorsed for transfer, and the presentation of such evidences of ownership and validity of the assignment as the Company may require.

3.4 Registration.

The Company shall be entitled to treat the person in whose name any Share is registered as the owner thereof for purposes of dividends and other distributions in the course of business, or in the course of recapitalization, merger, plan of share exchange, reorganization, sale of assets, liquidation or otherwise and for the purpose of votes, approvals and consents by shareholders of the Company ("Shareholders"), and for the purpose of notices to Shareholders, and for all other purposes whatever, and shall not be bound to recognize any equitable or other claim to or interest in such Shares on the part of any other person, whether or not the Company shall have notice thereof, save as expressly required by the laws of Illinois.

3.5 Replacement.

Upon the presentation to the Company of a proper affidavit attesting the loss, destruction or mutilation of any certificate for Shares, the Board shall direct the issuance of a new certificate to replace the certificate so alleged to be lost, destroyed or mutilated. The Board may require as a condition precedent to the issuance of a new certificate a bond or agreement of indemnity, in such form and amount, and with such sureties as the Board may direct or approve.

**IV.
SHAREHOLDERS**

4.1 Meetings.

Meetings of Shareholders shall be held at the principal office of the Company or at such other place as determined by the Board and stated in the notice of meeting. The annual meeting of Shareholders shall be held on the first Monday of March at 10:30 o'clock in the morning. Directors shall be elected at each annual meeting and such other business transacted as may come before the meeting. Special meetings of Shareholders may be called by the Board, the CEO (if such office is filled), the President or any Director, and shall be called by the Secretary at the written request of Shareholders holding a majority of the outstanding Shares and entitled to vote. The request shall state the purpose or purposes for which the meeting is to be called.

4.2 Notice.

Except as otherwise provided by statute or the Articles, written notice of the time, place and purposes of a meeting of Shareholders shall be given not fewer than ten nor more than 60 days before the date of the meeting to each Shareholder of record entitled to vote at the meeting, either personally or by mailing such notice to his last address as it appears on the books of the Company. No notice need be given of an adjourned meeting of the Shareholders provided the time and place to which such meeting is adjourned are announced at the meeting at which the adjournment is taken and at the adjourned meeting only such business is transacted as might have been transacted at the original meeting. However, if after the adjournment a new record date is fixed for the adjourned meeting a notice of the adjourned meeting shall be given to each Shareholder of record on the new record date entitled to notice as provided in this Bylaw.

4.3 Dates.

The Board may fix in advance a date as the record date for the purpose of determining Shareholders entitled to notice of and to vote at a meeting of Shareholders or an adjournment thereof, or to express consent or to dissent from a proposal without a meeting, or for the purpose of determining Shareholders entitled to receive payment of a dividend or allotment of a right, or for the purpose of any other action. The date fixed shall not be more than 60 nor less than ten days before the date of the meeting, nor more than 60 days before any other action. In such case only such Shareholders as shall be Shareholders of record on the date so fixed shall be entitled to notice of and to vote at such meeting or adjournment thereof, or to express consent or to dissent from such proposal, or to receive payment of such dividend or to receive such allotment of rights, or to participate in any other action, as the case may be, notwithstanding any transfer of any stock on the books of the Company, or otherwise, after any such record date. Nothing in this Bylaw shall affect the rights of a Shareholder and his transferee or transferor as between themselves.

4.4 Lists.

The Secretary of the Company or the agent of the Company having charge of the stock transfer records for Shares shall make and certify a complete list of the Shareholders entitled to vote at a Shareholders' meeting or any adjournment thereof. The list shall be arranged alphabetically within each class and series, with the address of, and the number of Shares held by, each Shareholder, be available for inspection by Shareholders at least ten (10) days prior to the date of the meeting at the offices of the Company be produced at the meeting, be subject to inspection by any Shareholder during the meeting, and be prima facie evidence of the Shareholders entitled to examine the list or vote.

4.5 Quorum.

Unless a greater or lesser quorum is required in the Articles or by the laws of Illinois, the Shareholders present at a meeting in person or by proxy who, as of the record date for such meeting,

were holders of a majority of the outstanding Shares entitled to vote at the meeting shall constitute a quorum. Whether or not a quorum is present, a meeting of Shareholders may be adjourned by a vote of the Shares present in person or by proxy. When the holders of a class or series of Shares are entitled to vote separately on an item of business, this Bylaw applies in determining the presence of a quorum of such class or series for transaction of such item of business.

4.6 Proxies.

A Shareholder entitled to vote at a meeting of Shareholders or to express consent or dissent without a meeting may authorize other persons to act for the Shareholder by proxy. A proxy shall be signed by the Shareholder or the Shareholder's authorized agent or representative.

4.7 Voting.

Each outstanding Share is entitled to one vote on each matter submitted to a vote, unless otherwise provided in the Articles. When an action, other than the election of directors, is to be taken by a vote of the Shareholders, it shall be authorized by a majority of the votes cast by the holders of Shares entitled to vote thereon, unless a greater vote is required by the Articles or by the laws of Illinois. Except as otherwise provided by the Articles, directors shall be elected by a plurality of the votes cast at any election.

V. DIRECTORS

5.1 Number.

The business and affairs of the Company shall be managed by a Board of one director. No director need be a resident of Illinois or a Shareholder.

5.2 Tenure.

Directors shall be elected at each annual meeting of the Shareholders, each to hold office until the next annual meeting of Shareholders and until the director's successor is elected and qualified, or until the director's resignation or removal. A director may resign by written notice to the Company. The resignation is effective upon its receipt by the Company or a subsequent time as set forth in the notice of resignation. A director or the entire Board may be removed, with or without cause, by vote of the holders of a majority of the Shares entitled to vote at an election of directors.

5.3 Vacancies.

Vacancies in the Board occurring by reason of death, resignation, removal, increase in the number of directors or otherwise shall be filled by the affirmative vote of a majority of the remaining directors though less than a quorum of the Board, unless filled by proper action of the Shareholders. Each person so elected shall be a director for a term of office continuing only until the next election of directors by the Shareholders. A vacancy that will occur at a specific date, by reason of a resignation effective at a later date or otherwise, may be filled before the vacancy occurs, but the newly elected director may not take office until the vacancy occurs.

5.4 Meetings.

The Board shall meet each year immediately after the annual meeting of the Shareholders, or within three days of such time excluding Sundays and legal holidays if such later time is deemed advisable, at the place where such meeting of the Shareholders has been held or such other place as the Board may determine, for the purpose of election of officers and consideration of such business that may properly be brought before the meeting; provided, that if less than a majority of the directors appear for an annual meeting of the Board the holding of such annual meeting shall not be required and the matters which might have been taken up therein may be taken up at any later special or

annual meeting, or by consent resolution. Regular meetings of the Board may be held at such times and places as the majority of the directors may from time to time determine at a prior meeting or as shall be directed or approved by the vote or written consent of all directors. Special meetings of the Board may be called by the President and shall be called by the Secretary upon the written request of any director.

5.5 Notices.

No notice shall be required for annual or regular meetings of the Board or for adjourned meetings, whether regular or special. Three days' written notice shall be given for special meetings of the Board, and such notice shall state the time, place and purposes of the meeting.

5.6 Quorum.

A majority of the Board then in office, or of the members of a committee thereof, constitutes a quorum for the transaction of business. The vote of a majority of the directors present at any meeting at which there is a quorum shall be the acts of the Board or of the committee, except as a larger vote may be required by the laws of Illinois. A member of the Board or of a committee designated by the Board may participate in a meeting by means of conference telephone by means of which all persons participating in the meeting can communicate with each other. Participation in a meeting in this manner constitutes presence in person at the meeting.

5.7 Committees.

The Board may, by resolution passed by a majority of the whole Board, appoint three or more members of the Board as an executive committee to exercise all powers and authorities of the Board in management of the business and affairs of the Company, except that the committee shall not have power or authority to (a) amend the Articles; (b) adopt an agreement of merger or consolidation; (c) recommend to Shareholders the sale, lease or exchange of all or substantially all of the Company's property and assets; (d) recommend to Shareholders a dissolution of the Company or revocation of a dissolution; (e) amend these Bylaws; (f) fill vacancies in the Board; or (g) unless expressly authorized by the Board, declare a dividend or authorize the issuance of stock. The Board from time to time may, by like resolution, appoint such other committees of one or more directors to have such authority as shall be specified by the Board in the resolution making such appointments. The Board may designate one or more directors as alternate members of any committee who may replace an absent or disqualified member at any meeting thereof.

5.8 Dissent.

A director who is present at a meeting of the Board, or a committee thereof of which the director is a member, at which action on a corporate matter is taken is presumed to have concurred in that action unless the director's dissent is entered in the minutes of the meeting or unless the director files a written dissent to the action with the person acting as secretary of the meeting before the adjournment thereof or shall forward such dissent by registered mail to the Secretary of the Company promptly after the adjournment of the meeting. Such right to dissent does not apply to a director who voted in favor of such action. A director who is absent from a meeting of the Board, or a committee thereof of which the director is a member, at which any such action is taken is presumed to have concurred in the action unless the director files a written dissent with the Secretary of the Company within a reasonable time after the director has knowledge of the action.

5.9 Compensation.

The Board, by affirmative vote of a majority of directors in office and irrespective of any personal interest of any of them, may establish reasonable compensation of directors for services to the Company as directors or officers.

VI. PROCEDURES

6.1 Notice.

All notices of meetings to be given to Shareholders, directors or any committee of directors may be given by mail, overnight courier, telefax or e-mail to any Shareholder, director or committee member at his last address as it appears on the books of the Company. Such notice shall be deemed to be given at the time when the same shall be mailed or otherwise dispatched.

6.2 Waiver.

Notice of the time, place and purpose of any meeting of Shareholders, directors or committee of directors may be waived by mail, overnight courier, telefax or e-mail, either before or after the meeting, or in such other manner as may be permitted by the laws of Illinois. Attendance of a person at any meeting of Shareholders, in person or by proxy, or at any meeting of directors or of a committee of directors, constitutes a waiver of notice of the meeting except as follows:

(a) In the case of a Shareholder, unless the Shareholder at the beginning of the meeting objects to holding the meeting or transacting business at the meeting, or unless with respect to consideration of a particular matter at the meeting that is not within the purposes described in the meeting notice, the Shareholder objects to considering the matter when it is presented.

(b) In the case of a director, unless he or she at the beginning of the meeting, or upon his or her arrival, objects to the meeting or the transacting of business at the meeting and does not thereafter vote for or assent to any action taken at the meeting.

6.3 Consent.

Any action required or permitted at any meeting of directors or committee thereof may be taken without a meeting, without prior notice and without a vote, if all directors or committee members entitled to vote thereon consent thereto in writing, before or after the action is taken. Any action required or permitted at any meeting of Shareholders may be taken without a meeting, without prior notice and without a vote, if all Shareholders entitled to vote thereon consent thereto in writing, before or after the action is taken or if such action otherwise satisfies the Articles and Illinois law.

VII. OFFICERS

7.1 Number.

The Board shall elect or appoint a President, a Secretary and a Treasurer, and may elect a Chief Executive Officer (the "CEO"), a Chief Operating Officer (the "COO"), and/or one or more Vice Presidents, Assistant Secretaries or Assistant Treasurers. The CEO (if appointed) shall be a member of the Board. Any two or more of the above offices, except those of President and Vice President, may be held by the same person. No officer shall execute or verify an instrument in more than one capacity if the instrument is required by law, the Articles or these Bylaws to be executed, acknowledged, or verified by one or more officers.

7.2 Term.

An officer shall hold office for the term for which he is elected or appointed and until his successor is elected or appointed and qualified, or until his resignation or removal. An officer may resign by written notice to the Company. The resignation is effective upon its receipt by the Company or at a subsequent time specified in the notice of resignation. An officer may be removed by the Board with or without cause. The removal of an officer shall be without prejudice to his contract rights, if any. The appointment of an officer does not of itself create contract rights.

7.3 Vacancies.

The Board may fill any vacancies in any office occurring for whatever reason.

7.4 Authority.

All officers, employees and agents of the Company shall have such authority and perform such duties in the conduct and management of the business and affairs of the Company as may be designated by the Board and these Bylaws.

VIII. DUTIES

8.1 CEO.

The CEO, if any is appointed, shall preside at all meetings of the Shareholders and of the Board at which the CEO is present. The CEO shall be the chief executive officer of the Company, shall see that all resolutions of the Board are carried into effect, and shall have the general powers of supervision usually vested in the chief executive officer of a corporation. Subject to any contrary directives by the Board, the CEO shall hold (a) authority to direct (and commit) the Company's resources toward the achievement of the Company's goals, (b) authority to vote all securities or other interests of other corporations and business organizations held by the Company, and (c) any further authority as may hereafter be vested in him by the Board.

8.2 President.

In the absence of the CEO, the President shall hold and exercise all authority ascribed to the CEO. In addition, the President shall exercise any and all authority as may be granted to him by the Board, and, subject only to the directives of the CEO, shall ensure that all resolutions of the Board are carried into effect. In the absence of the COO, the President shall also shall hold and exercise all authority ascribed to the COO. In the absence of the Secretary and any Assistant Secretary, the President may exercise the authority otherwise reserved to the Secretary.

8.3 COO.

The COO shall be the chief operating officer of the Company. The President shall have the general powers of management usually vested in the chief operating officer of a corporation, and, subject to any contrary directives by the Board, shall hold (a) authority to supervise corporation personnel and to implement the directives of the Board, the President and the CEO, and (b) any further authority as may hereafter be vested in him by the Board.

8.4 Vice Presidents.

The Vice Presidents, in order of their seniority, shall, in the absence or disability of the President, perform the duties and exercise the powers of the President. The Vice Presidents shall in any event assume operating responsibility for those aspects of the Company's business referenced in any specific title of the particular Vice President, and shall perform such other duties as may be delegated by the Board, the CEO, the COO or the President. In any event, any Vice President whose title includes the phrase chief financial officer shall be deemed to have been charged with the responsibility for the Company's finances, shall have been granted custody of corporate funds and securities, shall be obligated to keep full and accurate accounts of receipts and disbursements in books of the Company, and shall deposit all moneys and other value in the name and to the credit of the Company in such depositories as may be designated by the Board. Moreover, any Vice President whose title includes the phrase general counsel shall be deemed to have been charged with the responsibility for the Company's legal affairs and shall be deemed the Company's principal liaison with the Company's outside counsel and regulatory authorities.

8.5 Secretary.

The Secretary shall record all votes and minutes of all proceedings in a book to be kept for that purpose, shall give or cause to be given notice of all meetings of the Shareholders and of the Board, and shall keep in safe custody the seal of the Company and, when authorized by the Board, affix the same to any instrument requiring it, and when so affixed it shall be attested by the signature of the Secretary, or by the signature of the Treasurer or an Assistant Secretary. The Secretary may delegate any of the duties, powers and authorities of the Secretary to one or more Assistant Secretaries, unless such delegation is disapproved by the Board.

8.6 Treasurer.

Subject to the authority of any Vice President charged with the responsibility for the Company's finances, the Treasurer shall have the custody of corporate funds and securities, shall keep full and accurate accounts of receipts and disbursements in books of the Company and shall deposit all moneys and other value in the name and to the credit of the Company in such depositories as may be designated by the Board. The Treasurer shall render to the President and directors, whenever they may require it, an account of his or her transactions as Treasurer and of the financial condition of the Company. The Treasurer may delegate any of his or her duties, powers and authorities to one or more Assistant Treasurers unless such delegation is disapproved by the Board.

8.7 Assistants.

The Assistant Secretaries, in order of their seniority, shall perform the duties and exercise the powers and authorities of the Secretary in case of the Secretary's absence or disability. The Assistant Treasurers, in the order of their seniority, shall perform the duties and exercise the powers and authorities of the Treasurer in case of the Treasurer's absence or disability. The Assistant Secretaries and Assistant Treasurers shall also perform such duties as may be delegated by the Secretary and Treasurer, respectively, and also such duties as the Board may prescribe.

IX. ACTIONS

9.1 Payment.

All checks, drafts, notes, bonds, bills of exchange and orders for payment of money of the Company may, subject to any contrary resolution adopted by the Board from time to time, be signed by the CEO, the President or any other officer as may be authorized by the Board.

9.2 Contracts.

The Board may in any instance designate the officer and/or agent who shall have authority to execute any contract, conveyance, mortgage or other instrument on behalf of the Company, or may ratify or confirm any execution. When the execution of any instrument has been authorized without specification of the executing officers or agents, the CEO or President may execute the same in the name and on behalf of the Company and may affix the corporate seal thereto.

X. RECORDS

10.1 Maintenance.

The proper officers and agents of the Company shall keep and maintain such books, records and accounts of the Company's business and affairs, minutes of the proceedings of its Shareholders, Board and committees, if any, and such stock ledgers and lists of Shareholders, as the Board shall deem advisable, and as shall be required by the laws of Illinois and other states or jurisdictions empowered to

impose such requirements. Books, records and minutes may be kept within or without Illinois in a place which the Board shall determine.

10.2 **Reliance.**

In discharging his or her duties, a director or an officer of the Company, when acting in good faith, may rely upon information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by (a) one or more directors, officers, or employees of the Company, or of a business organization under joint control or common control, whom the director or officer reasonably believes to be reliable and competent in the matters presented, (b) legal counsel, public accountants, engineers, or other persons as to matters the director or officer reasonably believes are within the person's professional or expert competence, or (c) a committee of the board of which he or she is not a member if the director or officer reasonably believes the committee merits confidence. A director or officer may not rely on any information if he or she has knowledge concerning the matter that makes reliance otherwise permitted unwarranted.

XI. INDEMNIFICATION

11.1 **Personal.**

Subject to all of the other provisions of this Article XI, the Company shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative and whether formal or informal (other than an action by or in the right of the Company) by reason that the person is or was a director or officer of the Company, or is or was serving at the request of the Company as a director, officer, partner, trustee, employee, or agent of another entity or enterprise, against expenses (including reasonable attorneys' fees), judgments, penalties and amounts paid in settlement reasonably incurred by him or her in connection with such action, suit or proceeding, if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the Company or the Shareholders, and, with respect to any criminal action or proceeding, if the person had no reasonable cause to believe his or her conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which the person reasonably believed to be in or not opposed to the best interests of the Company or the Shareholders, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his or her conduct was unlawful.

11.2 **Derivative.**

Subject to all of the provisions of this Article XI, the Company shall indemnify any person who was or is a party to or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Company to procure a judgment in its favor by reason of the fact that the person is or was a director or officer of the Company, or is or was serving at the request of the Company as a director, officer, partner, trustee, employee, or agent of another foreign or domestic corporation, partnership, joint venture, trust or other enterprise, whether for profit or not, against expenses (including attorneys' fees) and amounts paid in settlement reasonably incurred by the person in connection with such action or suit, if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the Company or the Shareholders. However, indemnification shall not be made for any claim, issue or matter in which such person has been found liable to the Company unless and only to the extent that the court in which such action or suit was brought has determined upon application that, despite the adjudication of liability but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnification for the reasonable expenses incurred.

11.3 Expenses.

To the extent that a person has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Section 11.1 or 11.2 of these Bylaws, or in defense of any claim, issue or matter in the action, suit or proceeding, the person shall be indemnified against actual and reasonable expenses (including attorneys' fees) incurred by such person in connection with the action, suit or proceeding and any action, suit or proceeding brought to enforce the mandatory indemnification provided by this Section 11.3.

11.4 Definitions.

For purposes of Sections 11.1 and 11.2, "other enterprises" shall include employee benefit plans; "fines" shall include any excise taxes assessed on a person with respect to an employee benefit plan; and "serving at the request of the Company" shall include any service as a director, officer, employee, or agent of the Company that imposes duties on, or involves services by, the director or officer with respect to an employee benefit plan, its participants or beneficiaries; and a person who acted in good faith and in a manner the person reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be considered to have acted in a manner "not opposed to the best interests of the Company or the Shareholders".

11.5 Parameters.

The right to indemnification conferred in this Article XI shall be a contract right, and shall apply to services of a director or officer as an employee or agent of the Company as well as in such person's capacity as a director or officer. Except as provided in Section 11.3 of these Bylaws, the Company shall have no obligations under this Article XI to indemnify any person in connection with any proceeding, or part thereof, initiated by him or her without Board authorization.

11.6 Determination.

Any indemnification under Section 11.1 or 11.2 of these Bylaws (unless ordered by a court) shall be made by the Company only as authorized in the specific case upon a determination that indemnification of the person is proper in the circumstances because the person has met the applicable standard of conduct set forth in Section 11.1 or 11.2, whichever is applicable, and upon an evaluation of the reasonableness of expenses and amount paid in settlement. Such determination and evaluation shall be made in any of the following ways:

- (a) By a majority vote of a quorum of the Board consisting of directors who are not parties or threatened to be made parties to such proceeding.
- (b) If the quorum described in clause (a) above is not obtainable, then by a majority vote of a committee of directors duly designated by the Board and consisting solely of two or more directors who are not at the time parties or threatened to be made parties to the proceeding.
- (c) By independent legal counsel in a written opinion, so long as such counsel is selected (i) by the Board or its committee in the manner prescribed in subparagraph (a) or (b), or (ii) if a quorum of the Board cannot be obtained under subparagraph (a) and a committee cannot be designated under subparagraph (b), by the Board.
- (d) By the Shareholders, but Shares held by directors or officers who are parties or threatened to be made parties to the action, suit or proceeding may not be voted.

11.7 Proportionality.

If a person is entitled to indemnification under Section 11.1 or 11.2 of these Bylaws for a portion of expenses, including attorneys' fees, judgments, penalties, fines, and amounts paid in settlement, but not for the total amount thereof, the Company shall indemnify the person for the portion of the

expenses, judgments, penalties, fines, or amounts paid in settlement for which the person is entitled to be indemnified.

11.8 Advances.

The Company may pay or reimburse the reasonable expenses incurred by a person referred to in Section 11.1 or 11.2 of these bylaws who is a party or threatened to be made a party to an action, suit, or proceeding in advance of final disposition of the proceeding if (a) the person furnishes the Company a written affirmation of his or her good faith belief that he or she has met the applicable standard of conduct set forth in Section 11.1 or 11.2, (b) the person furnishes the Company a written undertaking executed to personally repay the advance if it is ultimately determined that he or she did not meet the standard of conduct, (c) the authorization of payment is made in the manner specified in Section 11.6, and (d) a determination is made that the facts then known to those making the determination would not preclude indemnification under Section 11.1 or 11.2. The undertaking shall be a general obligation of the person, but need not be secured.

11.9 Scope.

The indemnification or advancement of expenses provided under this Article XI is not exclusive of other rights to which a person seeking indemnification or advancement of expenses may be entitled under a contractual arrangement with the Company. However, the total amount of expenses advanced or indemnified from all sources combined shall not exceed the amount of actual expenses incurred by the person seeking indemnification or advancement of expenses.

11.10 Agents.

The Company may, to the extent authorized from time to time by the Board, grant rights to indemnification and to the advancement of expenses to any employee or agent of the Company to the fullest extent of the provisions of this Article XI with respect to the indemnification and advancement of expenses of directors and officers of the Company.

11.11 Succession.

The indemnification provided in this Article XI continues as to a person who has ceased to be a director or officer and shall inure to the benefit of his or her successors.

11.12 Insurance.

The Company may buy and maintain insurance on behalf of any person who is or was a director, officer, partner, trustee, employee or agent of the Company, or is or was serving at the request of the Company as a director, officer, employee or agent of another entity or enterprise against any liability asserted against the person and incurred by him or her in any such capacity or arising out of his or her status as such, whether or not the Company would have power to indemnify the person against such liability under these Bylaws or the laws of Illinois.

11.13 Legislation.

Upon any change of the Illinois statutory provisions relating to the subject matter of this Article XI, the indemnification to which any person shall be entitled hereunder shall be determined by such changed provisions, but only to the extent that any such change permits the Company to provide broader indemnification rights than before any such change. Subject to Section 11.14, the Board may amend these Bylaws to conform to any such changed statutory provisions.

11.14 Amendment.

No amendment or repeal of this Article XI shall apply to any director or officer of the Company for or with respect to any prior acts or omissions of such director or officer.

**XII.
AMENDMENT**

The Bylaws of the Company may be amended, altered or repealed, in whole or in part, by the Shareholders or by the Board at any meeting duly held in accordance with these Bylaws.

State of Indiana
Office of the Secretary of State

ARTICLES OF INCORPORATION

of

BAYSIDE INDIANA HEALTHCARE ASSOCIATES, INC.

I, SUE ANNE GILROY, Secretary of State of Indiana, hereby certify that Articles of Incorporation of the above For-Profit Domestic Corporation have been presented to me at my office, accompanied by the fees prescribed by law and that the documentation presented conforms to law as prescribed by the provisions of the Indiana Business Corporation Law.

NOW, THEREFORE, with this document I certify that said transaction will become effective Thursday, February 24, 2000.

[SEAL]

In Witness Whereof, I have caused to be affixed my signature and the seal of the State of Indiana, at the City of Indianapolis, February 24, 2000.

SUE ANNE GILROY,
SECRETARY OF STATE

**ARTICLES OF INCORPORATION
OF
BAYSIDE INDIANA HEALTHCARE ASSOCIATES, INC.**

The undersigned does hereby act as incorporator in adopting the following Articles of Incorporation for the purpose of organizing a corporation for profit, pursuant to the provisions of the Indiana Business Corporation Law.

FIRST: The corporate name for the corporation (hereinafter called the "corporation") is Bayside Indiana Healthcare Associates, Inc.

SECOND: The number of shares the corporation is authorized to issue is 1,000, all of which are without par value, are of the same class, and are common shares.

THIRD: The street address of the initial registered office of the corporation in the State of Indiana is 251 East Ohio Street, Suite 500, Indianapolis, Indiana 46204. The name of the initial registered agent of the corporation at the said registered office is Corporation Service Company.

FOURTH: The name and address of the incorporator is Stuart D. Logan, Esq., Dykema Gossett PLLC, 1577 N. Woodward Avenue, Suite 300, Bloomfield Hills, Michigan 48304-2820.

FIFTH: The purposes for which the corporation is organized are to engage in any lawful business.

SIXTH: The corporation shall, to the fullest extent permitted by the provisions of the Indiana Business Corporation Law, as the same may be amended and supplemented, indemnify any and all persons whom it shall have power to indemnify under said provisions from and against any and all of the expenses, liabilities, or other matters referred to in or covered by said provisions, and the indemnification provided for herein shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any Bylaw, vote of shareholders or disinterested directors, or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a director, officer, employee, or agent and shall inure to the benefit of the heirs, executors, and administrators of such a person.

SEVENTH: The duration of the corporation shall be perpetual.

Signed on this 23rd day of February, 2000.

/s/ STUART D. LOGAN

Stuart D. Logan, *Incorporator*

The undersigned agent named in the foregoing document hereby consents to its appointment as such registered agent.

Corporation Service Company

By _____

BYLAWS OF BAYSIDE INDIANA HEALTHCARE ASSOCIATES, INC.**I.
Offices**

The principal office of Bayside Indiana Healthcare Associates, Inc. (the "Company") shall be at such place within Indiana or Michigan as the Board of Directors of the Company (the "Board") shall from time to time determine. The Company also may have offices at such other places as the business of the Company may require.

**II.
Seal**

The Company may have a seal in such form as the Board may from time to time determine. The seal, if so authorized, may be used by causing it or a facsimile to be impressed, affixed or copied.

**III.
Capital**

3.01 *Issuance.* The shares of capital stock of the Company (the "Shares") shall be issued in such amounts, at such times, for such consideration and on such terms as the Board shall deem advisable, subject to the Company's Articles of Incorporation (the "Articles") and the laws of Indiana.

3.02 *Certificates.* The Shares shall be represented by certificates signed by the President. Each such certificate shall state upon its face that the Company is formed under the laws of Indiana, the person to whom it is issued, the number and class of Shares, and the designation of the series, if any, that the certificate represents, and such other provisions as may be required by Indiana law.

3.03 *Transfer.* The Shares are transferable only on the books of the Company upon surrender of the certificate therefor, properly endorsed for transfer, and the presentation of such evidences of ownership and validity of the assignment as the Company may require.

3.04 *Registration.* The Company shall be entitled to treat the person in whose name any Share is registered as the owner thereof for purposes of dividends and other distributions in the course of business, or in the course of recapitalization, merger, plan of share exchange, reorganization, sale of assets, liquidation or otherwise and for the purpose of votes, approvals and consents by shareholders of the Company ("Shareholders"), and for the purpose of notices to Shareholders, and for all other purposes whatever, and shall not be bound to recognize any equitable or other claim to or interest in such Shares on the part of any other person, whether or not the Company shall have notice thereof, save as expressly required by the laws of Indiana.

3.05 *Replacement.* Upon the presentation to the Company of a proper affidavit attesting the loss, destruction or mutilation of any certificate for Shares, the Board shall direct the issuance of a new certificate to replace the certificate so alleged to be lost, destroyed or mutilated. The Board may require as a condition precedent to the issuance of a new certificate a bond or agreement of indemnity, in such form and amount, and with such sureties as the Board may direct or approve.

**IV.
Shareholders**

4.01 *Meetings.* Meetings of Shareholders shall be held at the principal office of the Company or at such other place as determined by the Board and stated in the notice of meeting. The annual meeting of Shareholders shall be held on the first Monday of March at 10:30 o'clock in the morning. Directors shall be elected at each annual meeting and such other business transacted as may come before the meeting. Special meetings of Shareholders may be called by the Board, the CEO (if such office is filled), the President or any Director, and shall be called by the Secretary at the written

request of Shareholders holding a majority of the outstanding Shares and entitled to vote. The request shall state the purpose or purposes for which the meeting is to be called.

4.02 *Notice.* Except as otherwise provided by statute or the Articles, written notice of the time, place and purposes of a meeting of Shareholders shall be given not fewer than ten nor more than 60 days before the date of the meeting to each Shareholder of record entitled to vote at the meeting, either personally or by mailing such notice to his last address as it appears on the books of the Company. No notice need be given of an adjourned meeting of the Shareholders provided the time and place to which such meeting is adjourned are announced at the meeting at which the adjournment is taken and at the adjourned meeting only such business is transacted as might have been transacted at the original meeting. However, if after the adjournment a new record date is fixed for the adjourned meeting a notice of the adjourned meeting shall be given to each Shareholder of record on the new record date entitled to notice as provided in this Bylaw.

4.03 *Dates.* The Board may fix in advance a date as the record date for the purpose of determining Shareholders entitled to notice of and to vote at a meeting of Shareholders or an adjournment thereof, or to express consent or to dissent from a proposal without a meeting, or for the purpose of determining Shareholders entitled to receive payment of a dividend or allotment of a right, or for the purpose of any other action. The date fixed shall not be more than 60 nor less than ten days before the date of the meeting, nor more than 60 days before any other action. In such case only such Shareholders as shall be Shareholders of record on the date so fixed shall be entitled to notice of and to vote at such meeting or adjournment thereof, or to express consent or to dissent from such proposal, or to receive payment of such dividend or to receive such allotment of rights, or to participate in any other action, as the case may be, notwithstanding any transfer of any stock on the books of the Company, or otherwise, after any such record date. Nothing in this Bylaw shall affect the rights of a Shareholder and his transferee or transferor as between themselves.

4.04 *Lists.* The Secretary of the Company or the agent of the Company having charge of the stock transfer records for Shares shall make and certify a complete list of the Shareholders entitled to vote at a Shareholders' meeting or any adjournment thereof. The list shall be arranged alphabetically within each class and series, with the address of, and the number of Shares held by, each Shareholder, be produced at the meeting, be subject to inspection by any Shareholder during the meeting, and be prima facie evidence of the Shareholders entitled to examine the list or vote.

4.05 *Quorum.* Unless a greater or lesser quorum is required in the Articles or by the laws of Indiana, the Shareholders present at a meeting in person or by proxy who, as of the record date for such meeting, were holders of a majority of the outstanding Shares entitled to vote at the meeting shall constitute a quorum. Whether or not a quorum is present, a meeting of Shareholders may be adjourned by a vote of the Shares present in person or by proxy. When the holders of a class or series of Shares are entitled to vote separately on an item of business, this Bylaw applies in determining the presence of a quorum of such class or series for transaction of such item of business.

4.06 *Proxies.* A Shareholder entitled to vote at a meeting of Shareholders or to express consent or dissent without a meeting may authorize other persons to act for the Shareholder by proxy. A proxy shall be signed by the Shareholder or the Shareholder's authorized agent or representative.

4.07 *Voting.* Each outstanding Share is entitled to one vote on each matter submitted to a vote, unless otherwise provided in the Articles. When an action, other than the election of directors, is to be taken by a vote of the Shareholders, it shall be authorized by a majority of the votes cast by the holders of Shares entitled to vote thereon, unless a greater vote is required by the Articles or by the laws of Indiana. Except as otherwise provided by the Articles, directors shall be elected by a plurality of the votes cast at any election.

V.
Directors

5.01 *Number.* The business and affairs of the Company shall be managed by a Board of one director. No director need be a resident of Indiana or Shareholder.

5.02 *Tenure.* Directors shall be elected at each annual meeting of the Shareholders, each to hold office until the next annual meeting of Shareholders and until the director's successor is elected and qualified, or until the director's resignation or removal. A director may resign by written notice to the Company. The resignation is effective upon its receipt by the Company or a subsequent time as set forth in the notice of resignation. A director or the entire Board may be removed, with or without cause, by vote of the holders of a majority of the Shares entitled to vote at an election of directors.

5.03 *Vacancies.* Vacancies in the Board occurring by reason of death, resignation, removal, increase in the number of directors or otherwise shall be filled by the affirmative vote of a majority of the remaining directors though less than a quorum of the Board, unless filled by proper action of the Shareholders. Each person so elected shall be a director for a term of office continuing only until the next election of directors by the Shareholders. A vacancy that will occur at a specific date, by reason of a resignation effective at a later date or otherwise, may be filled before the vacancy occurs, but the newly elected director may not take office until the vacancy occurs.

5.04 *Meetings.* The Board shall meet each year immediately after the annual meeting of the Shareholders, or within three days of such time excluding Sundays and legal holidays if such later time is deemed advisable, at the place where such meeting of the Shareholders has been held or such other place as the Board may determine, for the purpose of election of officers and consideration of such business that may properly be brought before the meeting; provided, that if less than a majority of the directors appear for an annual meeting of the Board the holding of such annual meeting shall not be required and the matters which might have been taken up therein may be taken up at any later special or annual meeting, or by consent resolution. Regular meetings of the Board may be held at such times and places as the majority of the directors may from time to time determine at a prior meeting or as shall be directed or approved by the vote or written consent of all directors. Special meetings of the Board may be called by the President and shall be called by the Secretary upon the written request of any director.

5.05 *Notices.* No notice shall be required for annual or regular meetings of the Board or for adjourned meetings, whether regular or special. Three days' written notice shall be given for special meetings of the Board, and such notice shall state the time, place and purposes of the meeting.

5.06 *Quorum.* A majority of the Board then in office, or of the members of a committee thereof, constitutes a quorum for the transaction of business. The vote of a majority of the directors present at any meeting at which there is a quorum shall be the acts of the Board or of the committee, except as a larger vote may be required by the laws of Indiana. A member of the Board or of a committee designated by the Board may participate in a meeting by means of conference telephone by means of which all persons participating in the meeting can communicate with each other. Participation in a meeting in this manner constitutes presence in person at the meeting.

5.07 *Committees.* The Board may, by resolution passed by a majority of the whole Board, appoint three or more members of the Board as an executive committee to exercise all powers and authorities of the Board in management of the business and affairs of the Company, except that the committee shall not have power or authority to (a) amend the Articles; (b) adopt an agreement of merger or consolidation; (c) recommend to Shareholders the sale, lease or exchange of all or substantially all of the Company's property and assets; (d) recommend to Shareholders a dissolution of the Company or revocation of a dissolution; (e) amend these Bylaws; (f) fill vacancies in the Board; or (g) unless expressly authorized by the Board, declare a dividend or authorize the issuance of stock. The

Board from time to time may, by like resolution, appoint such other committees of one or more directors to have such authority as shall be specified by the Board in the resolution making such appointments. The Board may designate one or more directors as alternate members of any committee who may replace an absent or disqualified member at any meeting thereof.

5.08 *Dissent.* A director who is present at a meeting of the Board, or a committee thereof of which the director is a member, at which action on a corporate matter is taken is presumed to have concurred in that action unless the director's dissent is entered in the minutes of the meeting or unless the director files a written dissent to the action with the person acting as secretary of the meeting before the adjournment thereof or shall forward such dissent by registered mail to the Secretary of the Company promptly after the adjournment of the meeting. Such right to dissent does not apply to a director who voted in favor of such action. A director who is absent from a meeting of the Board, or a committee thereof of which the director is a member, at which any such action is taken is presumed to have concurred in the action unless the director files a written dissent with the Secretary of the Company within a reasonable time after the director has knowledge of the action.

5.09 *Compensation.* The Board, by affirmative vote of a majority of directors in office and irrespective of any personal interest of any of them, may establish reasonable compensation of directors for services to the Company as directors or officers.

VI. Procedures

6.01 *Notice.* All notices of meetings to be given to Shareholders, directors or any committee of directors may be given by mail, overnight courier, telefax or e-mail to any Shareholder, director or committee member at his last address as it appears on the books of the Company. Such notice shall be deemed to be given at the time when the same shall be mailed or otherwise dispatched.

6.02 *Waiver.* Notice of the time, place and purpose of any meeting of Shareholders, directors or committee of directors may be waived by mail, overnight courier, telefax or e-mail, either before or after the meeting, or in such other manner as may be permitted by the laws of Indiana. Attendance of a person at any meeting of Shareholders, in person or by proxy, or at any meeting of directors or of a committee of directors, constitutes a waiver of notice of the meeting except as follows:

(a) In the case of a Shareholder, unless the Shareholder at the beginning of the meeting objects to holding the meeting or transacting business at the meeting, or unless with respect to consideration of a particular matter at the meeting that is not within the purposes described in the meeting notice, the Shareholder objects to considering the matter when it is presented.

(b) In the case of a director, unless he or she at the beginning of the meeting, or upon his or her arrival, objects to the meeting or the transacting of business at the meeting and does not thereafter vote for or assent to any action taken at the meeting.

6.03 *Consent.* Any action required or permitted at any meeting of directors or committee thereof may be taken without a meeting, without prior notice and without a vote, if all directors or committee members entitled to vote thereon consent thereto in writing, before or after the action is taken. Any action required or permitted at any meeting of Shareholders may be taken without a meeting, without prior notice and without a vote, if all Shareholders entitled to vote thereon consent thereto in writing, before or after the action is taken or if such action otherwise satisfies the Articles and Indiana law.

VII.
Officers

7.01 *Number.* The Board shall elect or appoint a President, a Secretary and a Treasurer, and may elect a Chief Executive Officer (the "CEO"), a Chief Operating Officer (the "COO"), and/or one or more Vice Presidents, Assistant Secretaries or Assistant Treasurers. The CEO (if appointed) shall be a member of the Board. Any two or more of the above offices, except those of President and Vice President, may be held by the same person. No officer shall execute or verify an instrument in more than one capacity if the instrument is required by law, the Articles or these Bylaws to be executed, acknowledged, or verified by one or more officers.

7.02 *Term.* An officer shall hold office for the term for which he is elected or appointed and until his successor is elected or appointed and qualified, or until his resignation or removal. An officer may resign by written notice to the Company. The resignation is effective upon its receipt by the Company or at a subsequent time specified in the notice of resignation. An officer may be removed by the Board with or without cause. The removal of an officer shall be without prejudice to his contract rights, if any. The appointment of an officer does not of itself create contract rights.

7.03 *Vacancies.* The Board may fill any vacancies in any office occurring for whatever reason.

7.04 *Authority.* All officers, employees and agents of the Company shall have such authority and perform such duties in the conduct and management of the business and affairs of the Company as may be designated by the Board and these Bylaws.

VIII.
Duties

8.01 *CEO.* The CEO, if any is appointed, shall preside at all meetings of the Shareholders and of the Board at which the CEO is present. The CEO shall be the chief executive officer of the Company, shall see that all resolutions of the Board are carried into effect, and shall have the general powers of supervision usually vested in the chief executive officer of a corporation. Subject to any contrary directives by the Board, the CEO shall hold (a) authority to direct (and commit) the Company's resources toward the achievement of the Company's goals, (b) authority to vote all securities or other interests of other corporations and business organizations held by the Company, and (c) any further authority as may hereafter be vested in him by the Board.

8.02 *President.* In the absence of the CEO, the President shall hold and exercise all authority ascribed to the CEO. In addition, the President shall exercise any and all authority as may be granted to him by the Board, and, subject only to the directives of the CEO, shall ensure that all resolutions of the Board are carried into effect. In the absence of the COO, the President shall also shall hold and exercise all authority ascribed to the COO. In the absence of the Secretary and any Assistant Secretary, the President may exercise the authority otherwise reserved to the Secretary.

8.03 *COO.* The COO shall be the chief operating officer of the Company. The President shall have the general powers of management usually vested in the chief operating officer of a corporation, and, subject to any contrary directives by the Board, shall hold (a) authority to supervise corporation personnel and to implement the directives of the Board, the President and the CEO, and (b) any further authority as may hereafter be vested in him by the Board.

8.04 *Vice Presidents.* The Vice Presidents, in order of their seniority, shall, in the absence or disability of the President, perform the duties and exercise the powers of the President. The Vice Presidents shall in any event assume operating responsibility for those aspects of the Company's business referenced in any specific title of the particular Vice President, and shall perform such other duties as may be delegated by the Board, the CEO, the COO or the President. In any event, any Vice President whose title includes the phrase chief financial officer shall be deemed to have been charged

with the responsibility for the Company's finances, shall have been granted custody of corporate funds and securities, shall be obligated to keep full and accurate accounts of receipts and disbursements in books of the Company, and shall deposit all moneys and other value in the name and to the credit of the Company in such depositories as may be designated by the Board. Moreover, any Vice President whose title includes the phrase general counsel shall be deemed to have been charged with the responsibility for the Company's legal affairs and shall be deemed the Company's principal liaison with the Company's outside counsel and regulatory authorities.

8.05 *Secretary.* The Secretary shall record all votes and minutes of all proceedings in a book to be kept for that purpose, shall give or cause to be given notice of all meetings of the Shareholders and of the Board, and shall keep in safe custody the seal of the Company and, when authorized by the Board, affix the same to any instrument requiring it, and when so affixed it shall be attested by the signature of the Secretary, or by the signature of the Treasurer or an Assistant Secretary. The Secretary may delegate any of the duties, powers and authorities of the Secretary to one or more Assistant Secretaries, unless such delegation is disapproved by the Board.

8.06 *Treasurer.* Subject to the authority of any Vice President charged with the responsibility for the Company's finances, the Treasurer shall have the custody of corporate funds and securities, shall keep full and accurate accounts of receipts and disbursements in books of the Company and shall deposit all moneys and other value in the name and to the credit of the Company in such depositories as may be designated by the Board. The Treasurer shall render to the President and directors, whenever they may require it, an account of his or her transactions as Treasurer and of the financial condition of the Company. The Treasurer may delegate any of his or her duties, powers and authorities to one or more Assistant Treasurers unless such delegation is disapproved by the Board.

8.07 *Assistants.* The Assistant Secretaries, in order of their seniority, shall perform the duties and exercise the powers and authorities of the Secretary in case of the Secretary's absence or disability. The Assistant Treasurers, in the order of their seniority, shall perform the duties and exercise the powers and authorities of the Treasurer in case of the Treasurer's absence or disability. The Assistant Secretaries and Assistant Treasurers shall also perform such duties as may be delegated by the Secretary and Treasurer, respectively, and also such duties as the Board may prescribe.

IX. Actions

9.01 *Payment.* All checks, drafts, notes, bonds, bills of exchange and orders for payment of money of the Company may, subject to any contrary resolution adopted by the Board from time to time, be signed by the CEO, the President or any other officer as may be authorized by the Board.

9.02 *Contracts.* The Board may in any instance designate the officer and/or agent who shall have authority to execute any contract, conveyance, mortgage or other instrument on behalf of the Company, or may ratify or confirm any execution. When the execution of any instrument has been authorized without specification of the executing officers or agents, the CEO or President may execute the same in the name and on behalf of the Company and may affix the corporate seal thereto.

X. Records

10.01 *Maintenance.* The proper officers and agents of the Company shall keep and maintain such books, records and accounts of the Company's business and affairs, minutes of the proceedings of its Shareholders, Board and committees, if any, and such stock ledgers and lists of Shareholders, as the Board shall deem advisable, and as shall be required by the laws of Indiana and other states or jurisdictions empowered to impose such requirements. Books, records and minutes may be kept within or without Indiana in a place which the Board shall determine.

10.02 *Reliance.* In discharging his or her duties, a director or an officer of the Company, when acting in good faith, may rely upon information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by (a) one or more directors, officers, or employees of the Company, or of a business organization under joint control or common control, whom the director or officer reasonably believes to be reliable and competent in the matters presented, (b) legal counsel, public accountants, engineers, or other persons as to matters the director or officer reasonably believes are within the person's professional or expert competence, or (c) a committee of the board of which he or she is not a member if the director or officer reasonably believes the committee merits confidence. A director or officer may not rely on any information if he or she has knowledge concerning the matter that makes reliance otherwise permitted unwarranted.

XI. Indemnification

11.01 *Personal.* Subject to all of the other provisions of this Article XI, the Company shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative and whether formal or informal (other than an action by or in the right of the Company) by reason that the person is or was a director or officer of the Company, or is or was serving at the request of the Company as a director, officer, partner, trustee, employee, or agent of another entity or enterprise, against expenses (including reasonable attorneys' fees), judgments, penalties and amounts paid in settlement reasonably incurred by him or her in connection with such action, suit or proceeding, if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the Company or the Shareholders, and, with respect to any criminal action or proceeding, if the person had no reasonable cause to believe his or her conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which the person reasonably believed to be in or not opposed to the best interests of the Company or the Shareholders, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his or her conduct was unlawful.

11.02 *Derivative.* Subject to all of the provisions of this Article XI, the Company shall indemnify any person who was or is a party to or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Company to procure a judgment in its favor by reason of the fact that the person is or was a director or officer of the Company, or is or was serving at the request of the Company as a director, officer, partner, trustee, employee, or agent of another foreign or domestic corporation, partnership, joint venture, trust or other enterprise, whether for profit or not, against expenses (including attorneys' fees) and amounts paid in settlement reasonably incurred by the person in connection with such action or suit, if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the Company or the Shareholders. However, indemnification shall not be made for any claim, issue or matter in which such person has been found liable to the Company unless and only to the extent that the court in which such action or suit was brought has determined upon application that, despite the adjudication of liability but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnification for the reasonable expenses incurred.

11.03 *Expenses.* To the extent that a person has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Section 11.01 or 11.02 of these Bylaws, or in defense of any claim, issue or matter in the action, suit or proceeding, the person shall be indemnified against actual and reasonable expenses (including attorneys' fees) incurred by such person in connection with the action, suit or proceeding and any action, suit or proceeding brought to enforce the mandatory indemnification provided by this Section 11.03.

11.04 *Definitions.* For purposes of Sections 11.01 and 11.02, "other enterprises" shall include employee benefit plans; "fines" shall include any excise taxes assessed on a person with respect to an employee benefit plan; and "serving at the request of the Company" shall include any service as a director, officer, employee, or agent of the Company that imposes duties on, or involves services by, the director or officer with respect to an employee benefit plan, its participants or beneficiaries; and a person who acted in good faith and in a manner the person reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be considered to have acted in a manner "not opposed to the best interests of the Company or the Shareholders".

11.05 *Parameters.* The right to indemnification conferred in this Article XI shall be a contract right, and shall apply to services of a director or officer as an employee or agent of the Company as well as in such person's capacity as a director or officer. Except as provided in Section 11.03 of these Bylaws, the Company shall have no obligations under this Article XI to indemnify any person in connection with any proceeding, or part thereof, initiated by him or her without Board authorization.

11.06 *Determination.* Any indemnification under Section 11.01 or 11.02 of these Bylaws (unless ordered by a court) shall be made by the Company only as authorized in the specific case upon a determination that indemnification of the person is proper in the circumstances because the person has met the applicable standard of conduct set forth in Section 11.01 or 11.02, whichever is applicable, and upon an evaluation of the reasonableness of expenses and amount paid in settlement. Such determination and evaluation shall be made in any of the following ways:

(a) By a majority vote of a quorum of the Board consisting of directors who are not parties or threatened to be made parties to such proceeding.

(b) If the quorum described in clause (a) above is not obtainable, then by a majority vote of a committee of directors duly designated by the Board and consisting solely of two or more directors who are not at the time parties or threatened to be made parties to the proceeding.

(c) By independent legal counsel in a written opinion, so long as such counsel is selected (i) by the Board or its committee in the manner prescribed in subparagraph (a) or (b), or (ii) if a quorum of the Board cannot be obtained under subparagraph (a) and a committee cannot be designated under subparagraph (b), by the Board.

(d) By the Shareholders, but Shares held by directors or officers who are parties or threatened to be made parties to the action, suit or proceeding may not be voted.

11.07 *Proportionality.* If a person is entitled to indemnification under Section 11.01 or 11.02 of these Bylaws for a portion of expenses, including attorneys' fees, judgments, penalties, fines, and amounts paid in settlement, but not for the total amount thereof, the Company shall indemnify the person for the portion of the expenses, judgments, penalties, fines, or amounts paid in settlement for which the person is entitled to be indemnified.

11.08 *Advances.* The Company may pay or reimburse the reasonable expenses incurred by a person referred to in Section 11.01 or 11.02 of these bylaws who is a party or threatened to be made a party to an action, suit, or proceeding in advance of final disposition of the proceeding if (a) the person furnishes the Company a written affirmation of his or her good faith belief that he or she has met the applicable standard of conduct set forth in Section 11.01 or 11.02, (b) the person furnishes the Company a written undertaking executed to personally repay the advance if it is ultimately determined that he or she did not meet the standard of conduct, (c) the authorization of payment is made in the manner specified in Section 11.06, and (d) a determination is made that the facts then known to those making the determination would not preclude indemnification under Section 11.01 or 11.02. The undertaking shall be a general obligation of the person, but need not be secured.

11.09 *Scope.* The indemnification or advancement of expenses provided under this Article XI is not exclusive of other rights to which a person seeking indemnification or advancement of expenses may be entitled under a contractual arrangement with the Company. However, the total amount of expenses advanced or indemnified from all sources combined shall not exceed the amount of actual expenses incurred by the person seeking indemnification or advancement of expenses.

11.10 *Agents.* The Company may, to the extent authorized from time to time by the Board, grant rights to indemnification and to the advancement of expenses to any employee or agent of the Company to the fullest extent of the provisions of this Article XI with respect to the indemnification and advancement of expenses of directors and officers of the Company.

11.11 *Succession.* The indemnification provided in this Article XI continues as to a person who has ceased to be a director or officer and shall inure to the benefit of his or her successors.

11.12 *Insurance.* The Company may buy and maintain insurance on behalf of any person who is or was a director, officer, partner, trustee, employee or agent of the Company, or is or was serving at the request of the Company as a director, officer, employee or agent of another entity or enterprise against any liability asserted against the person and incurred by him or her in any such capacity or arising out of his or her status as such, whether or not the Company would have power to indemnify the person against such liability under these Bylaws or the laws of Indiana.

11.13 *Legislation.* Upon any change of the Indiana statutory provisions relating to the subject matter of this Article XI, the indemnification to which any person shall be entitled hereunder shall be determined by such changed provisions, but only to the extent that any such change permits the Company to provide broader indemnification rights than before any such change. Subject to Section 11.14, the Board may amend these Bylaws to conform to any such changed statutory provisions.

11.14 *Amendment.* No amendment or repeal of this Article XI shall apply to any director or officer of the Company for or with respect to any prior acts or omissions of such director or officer.

XII. Amendment

The Bylaws of the Company may be amended, altered or repealed, in whole or in part, by the Shareholders or by the Board at any meeting duly held in accordance with these Bylaws.

[SEAL]

ARTICLES OF INCORPORATION

State Form 4159 (R10 /8-95)
Approved by State Board of Accounts 1995

SUE ANNE GILROY
SECRETARY OF STATE
CORPORATIONS DIVISION

Use "8 1/2 x 11" white paper for inserts
Present original and two (2) copies to address in upper right corner of this form.
Please TYPE or PRINT.
Upon completion of filing, the Secretary of State will issue a receipt.

ARTICLES OF INCORPORATION

The undersigned, desiring to form a corporation (hereinafter referred to as "Corporation") pursuant to the provisions of:

- Indiana Business Corporation Law
Indiana Professional Corporation Act 1983, Indiana Code 23-1.5-1-1, et seq.
(Professional corporations must include Certificate of Registration.)

As amended, executes the following Articles of Incorporation:

ARTICLE I—NAME AND PRINCIPAL OFFICE

Name of Corporation (the name must include the word "Corporation", "Incorporated", "Limited", "Company" or an abbreviation thereof.)

Principal Office: The address of the principal office of the corporation is: 900 Victors Way, Suite 350

Post office address: 900 Victors Way, Suite 350
City: Ann Arbor
State: MI
Zip Code: 48108

ARTICLE II—REGISTERED OFFICE AND AGENT

Registered Agent: The name and street address of the Corporation's Registered Agent and Registered office for service of process are:

Name of Registered Agent: Corporation Service Company

Address of Registered Office (street or building): 51 East Ohio Street, Suite 500
City: Indianapolis
State: Indiana
Zip Code: 46204

ARTICLE III—AUTHORIZED SHARES

Number of shares the Corporation is authorized to issue: 1,000
If there is more than one class of shares, shares with rights and preferences, list such information as "Exhibit A."

ARTICLE IV—INCORPORATORS
(the name(s) and address(es) of the incorporators of the corporation)

Table with 5 columns: NAME, NUMBER AND STREET OR BUILDING, CITY, STATE, ZIP CODE. Row 1: Stuart D. Logan, 39755 Woodward, Bloomfield Hills, MI, 48304.

In Witness Whereof, the undersigned being all the incorporators of said Corporation execute these Articles of Incorporation and verify, subject to penalties of perjury, that the statements contained herein are true. this 2nd day of APRIL, 2001.

Signature and Printed name fields for Stuart D. Logan and two other incorporators.

This instrument was prepared by: *(name)*
Stuart D. Logan, Esq.

Address *(number, street, city and state)*
39755 Woodward Avenue, Bloomfield Hills, Michigan

Zip Code
48304

BYLAWS OF _____

I.
Offices

The principal office of _____ (the "Company") shall be at such place within Michigan or Indiana as the Company's Board of Directors (the "Board") shall select from time to time. The Company may have offices at such other places as the Company's business may require.

II.
Capital

2.01 *Issuance.* The shares of capital stock of the Company (the "Shares") shall be issued in such amounts, at such times, for such consideration and on such terms as the Board shall deem advisable, subject to the Company's Articles of Incorporation (the "Articles") and the laws of Indiana.

2.02 *Certificates.* The Shares shall be represented by certificates signed by the President. Each such certificate shall state upon its face that the Company is formed under the laws of Indiana, the person to whom it is issued, the number and class of Shares, and the designation of the series, if any, that the certificate represents, and such other provisions as may be required by Indiana law.

2.03 *Transfer.* The Shares are transferable only on the books of the Company upon surrender of the certificate therefor, properly endorsed for transfer, and the presentation of such evidences of ownership and validity of the assignment as the Company may require.

2.04 *Registration.* The Company shall be entitled to treat the person in whose name any Share is registered as the owner thereof for purposes of dividends and other distributions in the course of business, or in the course of recapitalization, merger, plan of share exchange, reorganization, sale of assets, liquidation or otherwise and for the purpose of votes, approvals and consents by shareholders of the Company ("Shareholders"), and for the purpose of notices to Shareholders, and for all other purposes whatever, and shall not be bound to recognize any equitable or other claim to or interest in such Shares on the part of any other person, whether or not the Company shall have notice thereof, save as expressly required by the laws of Indiana.

2.05 *Replacement.* Upon the presentation to the Company of a proper affidavit attesting the loss, destruction or mutilation of any certificate for Shares, the Board shall direct the issuance of a new certificate to replace the certificate so alleged to be lost, destroyed or mutilated. The Board may require as a condition precedent to the issuance of a new certificate a bond or agreement of indemnity, in such form and amount, and with such sureties as the Board may direct or approve.

III.
Shareholders

3.01 *Meetings.* Meetings of Shareholders shall be held at the principal office of the Company or at such other place as determined by the Board and stated in the notice of meeting. The annual meeting of Shareholders shall be held on the first Monday of March at 10:30 o'clock in the morning. Directors shall be elected at each annual meeting and such other business transacted as may come before the meeting. Special meetings of Shareholders may be called by the Board, the Chairman (if such office is filled), the President or any Director, and shall be called by the Secretary at the written request of Shareholders holding a majority of the outstanding Shares and entitled to vote. The request shall state the purpose or purposes for which the meeting is to be called.

3.02 *Notice.* Except as otherwise provided by statute or the Articles, written notice of the time, place and purposes of a meeting of Shareholders shall be given not fewer than ten nor more than 60 days before the date of the meeting to each Shareholder of record entitled to vote at the meeting, either personally or by mailing such notice to his last address as it appears on the books of the Company. No notice need be given of an adjourned meeting of the Shareholders provided the time and

place to which such meeting is adjourned are announced at the meeting at which the adjournment is taken and at the adjourned meeting only such business is transacted as might have been transacted at the original meeting. However, if after the adjournment a new record date is fixed for the adjourned meeting a notice of the adjourned meeting shall be given to each Shareholder of record on the new record date entitled to notice as provided in this Bylaw.

3.03 *Dates.* The Board may fix in advance a date as the record date for the purpose of determining Shareholders entitled to notice of and to vote at a meeting of Shareholders or an adjournment thereof, or to express consent or to dissent from a proposal without a meeting, or for the purpose of determining Shareholders entitled to receive payment of a dividend or allotment of a right, or for the purpose of any other action. The date fixed shall not be more than 60 nor fewer than ten days before the date of the meeting, nor more than 60 days before any other action. In such case only such Shareholders as shall be Shareholders of record on the date so fixed shall be entitled to notice of and to vote at such meeting or adjournment thereof, or to express consent or to dissent from such proposal, or to receive payment of such dividend or to receive such allotment of rights, or to participate in any other action, as the case may be, notwithstanding any transfer of any stock on the books of the Company, or otherwise, after any such record date. Nothing in this Bylaw shall affect the rights of a Shareholder and his transferee or transferor as between themselves.

3.04 *Lists.* The Secretary of the Company or the agent of the Company having charge of the stock transfer records for Shares shall make and certify a complete list of the Shareholders entitled to vote at a Shareholders' meeting or any adjournment thereof. The list shall be arranged alphabetically within each class and series, with the address of, and the number of Shares held by, each Shareholder, be produced at the meeting, be subject to inspection by any Shareholder during the meeting, and be prima facie evidence of the Shareholders entitled to examine the list or vote.

3.05 *Quorum.* Unless a greater or lesser quorum is required in the Articles or by the laws of Illinois, the Shareholders present at a meeting in person or by proxy who, as of the record date for such meeting, were holders of a majority of the outstanding Shares entitled to vote at the meeting shall constitute a quorum. Whether or not a quorum is present, a meeting of Shareholders may be adjourned by a vote of the Shares present in person or by proxy. When the holders of a class or series of Shares are entitled to vote separately on an item of business, this Bylaw applies in determining the presence of a quorum of such class or series for transaction of such item of business.

3.06 *Proxies.* A Shareholder entitled to vote at a meeting of Shareholders or to express consent or dissent without a meeting may authorize other persons to act for the Shareholder by proxy. A proxy shall be signed by the Shareholder or the Shareholder's authorized agent or representative.

3.07 *Voting.* Each outstanding Share is entitled to one vote on each matter submitted to a vote. When an action, other than the election of directors, is to be taken by a vote of the Shareholders, it shall be authorized by a majority of the votes cast by the holders of Shares entitled to vote thereon, unless a greater vote is required by the Articles or by the laws of Illinois. Except as otherwise provided by the Articles, directors shall be elected by a plurality of the votes cast at any election.

IV. Directors

4.01 *Number.* The business and affairs of the Company shall be managed by a Board of one director. No director need be a resident of Illinois or a Shareholder.

4.02 *Tenure.* Directors shall be elected at each annual meeting of the Shareholders, each to hold office until the next annual meeting of Shareholders and until the director's successor is elected and qualified, or until the director's resignation or removal. A director may resign by written notice to the Company. The resignation is effective upon its receipt by the Company or any later date as set forth in

the notice of resignation. A director or the entire Board may be removed, with or without cause, by vote of the holders of a majority of the Shares entitled to vote at an election of directors.

4.03 *Vacancies.* Vacancies in the Board occurring by reason of death, resignation, removal, increase in the number of directors or otherwise shall be filled by the affirmative vote of a majority of the remaining directors though less than a quorum of the Board, unless filled by proper action of the Shareholders. Each person so elected shall be a director for a term of office continuing only until the next election of directors by the Shareholders. A vacancy that will occur at a specific date, by reason of a resignation effective at a later date or otherwise, may be filled before the vacancy occurs, but the newly elected director may not take office until the vacancy occurs.

4.04 *Meetings.* The Board shall meet each year immediately after the annual meeting of the Shareholders, or within two days of such time if such later time is deemed advisable, at the place where such meeting of the Shareholders has been held or such other place as the Board may determine, to elect officers and consider such business that may properly be brought before the meeting. If, however, less than a majority of the directors appear for an annual meeting of the Board, the annual meeting need not be held and the matters that might have been addressed therein may be addressed at any later meeting, or by consent resolution. Regular meetings of the Board may be held at such times and places as the majority of the directors may from time to time determine at a prior meeting or as shall be directed or approved by the vote or written consent of all directors. Special meetings of the Board may be called by the Corporation's president or any director.

4.05 *Notices.* No notice shall be required for annual or regular meetings of the Board or for adjourned meetings, whether regular or special. Three days' written notice shall be given for special meetings of the Board, and such notice shall state the time, place and purposes of the meeting.

4.06 *Quorum.* A majority of the Board then in office, or of the members of a committee thereof, constitutes a quorum for the transaction of business. The vote of a majority of the directors present at any meeting at which there is a quorum shall be the acts of the Board or of the committee, except as a larger vote may be required by the laws of Illinois. A member of the Board or of a committee designated by the Board may participate in a meeting by means of conference telephone by means of which all persons participating in the meeting can communicate with each other. Participation in a meeting in this manner constitutes presence in person at the meeting.

4.07 *Committees.* The Board may, by resolution passed by a majority of the whole Board, appoint three or more members of the Board as an executive committee to exercise all powers and authorities of the Board in management of the business and affairs of the Company, except that the committee shall not have power or authority to (a) amend the Articles; (b) adopt an agreement of merger or consolidation; (c) recommend to Shareholders the sale, lease or exchange of all or substantially all of the Company's property and assets; (d) recommend to Shareholders a dissolution of the Company or revocation of a dissolution; (e) amend these Bylaws; (f) fill vacancies in the Board; or (g) unless expressly authorized by the Board, declare a dividend or authorize the issuance of stock. The Board from time to time may, by like resolution, appoint such other committees of one or more directors to have such authority as shall be specified by the Board in the resolution making such appointments. The Board may designate one or more directors as alternate members of any committee who may replace an absent or disqualified member at any meeting thereof.

4.08 *Dissent.* A director who is present at a meeting of the Board, or a committee thereof of which the director is a member, at which action on a corporate matter is taken is presumed to have concurred in that action unless the director's dissent is entered in the minutes of the meeting or unless the director files a written dissent to the action with the person acting as secretary of the meeting before the adjournment thereof or shall forward such dissent by registered mail to the Secretary of the Company promptly after the adjournment of the meeting. Such right to dissent does not apply to a director who voted in favor of such action. A director who is absent from a meeting of the Board, or a

committee thereof of which the director is a member, at which any such action is taken is presumed to have concurred in the action unless the director files a written dissent with the Secretary of the Company within a reasonable time after the director has knowledge of the action.

4.09 *Compensation.* The Board, by affirmative vote of a majority of directors in office and irrespective of any personal interest of any of them, may establish reasonable compensation of directors for services to the Company as directors or officers.

V. Procedures

5.01 *Notice.* All notices of meetings to be given to Shareholders, directors or any committee of directors may be given by mail, overnight courier, telefax or e-mail to any Shareholder, director or committee member at his last address as it appears on the books of the Company. Such notice shall be deemed to be given at the time when the same shall be mailed or otherwise dispatched.

5.02 *Waiver.* Notice of the time, place and purpose of any meeting of Shareholders, directors or committee of directors may be waived by mail, overnight courier, telefax or e-mail, either before or after the meeting, or in such other manner as may be permitted by the laws of Illinois. Attendance of a person at any meeting of Shareholders, in person or by proxy, or at any meeting of directors or of a committee of directors, constitutes a waiver of notice of the meeting except as follows:

(a) In the case of a Shareholder, unless the Shareholder at the beginning of the meeting objects to holding the meeting or transacting business at the meeting, or unless with respect to consideration of a particular matter at the meeting that is not within the purposes described in the meeting notice, the Shareholder objects to considering the matter when it is presented.

(b) In the case of a director, unless he or she at the beginning of the meeting, or upon his or her arrival, objects to the meeting or the transacting of business at the meeting and does not thereafter vote for or assent to any action taken at the meeting.

5.03 *Consent.* Any action permitted at any meeting of directors or committee thereof may be taken without a meeting, without prior notice and without a vote, if all directors or committee members entitled to vote thereon consent thereto in writing, before or after the action is taken. Any action required or permitted at any meeting of Shareholders may be taken without a meeting, without prior notice and without a vote, if all Shareholders entitled to vote thereon consent thereto in writing, before or after the action is taken or if such action otherwise satisfies the Articles and Illinois law.

VI. Officers

6.01 *Number.* The Board shall elect or appoint a President, a Chief Operating Officer, a Secretary and a Treasurer, and may elect a Chairman, and/or one or more Vice Presidents, Assistant Secretaries or Assistant Treasurers. The Chairman (if appointed) shall be a member of the Board. Any two or more of the above offices, except those of President and Vice President, may be held by the same person. Any person appointed by the Board to the office of Treasurer shall hold the equivalent title of *Chief Financial Officer*, and any person appointed by the Board to the office of *Vice President-Finance* or the office of *Chief Financial Officer* shall serve as Treasurer and shall forthwith succeed any incumbent holder of any such title. No officer shall execute an instrument in multiple capacities if the instrument is required by law to be acknowledged or verified by two or more officers.

6.02 *Term.* An officer shall hold office for the term for which he is elected or appointed and until his successor is elected or appointed and qualified, or until his resignation or removal. An officer may resign by written notice to the Company. The resignation is effective upon its receipt by the Company or at a subsequent time specified in the notice of resignation. An officer may be removed by

the Board with or without cause. The removal of an officer shall be without prejudice to his contract rights, if any. The appointment of an officer does not of itself create contract rights.

6.03 *Vacancies.* The Board may fill any vacancies in any office occurring for whatever reason.

6.04 *Authority.* All officers, employees and agents of the Company shall have such authority and perform such duties in the conduct and management of the business and affairs of the Company as may be designated by the Board and these Bylaws, and, in that regard,

(a) all checks, drafts, notes, bonds, bills of exchange and orders for payment by the Company may, subject to any contrary resolution adopted by the Board from time to time, be signed by the President, the Chief Operating Officer, the Chief Financial Officer or any Vice President, and

(b) the Board may in any instance designate the officer and/or agent who shall have authority to execute any contract, conveyance, mortgage or other instrument on behalf of the Company, or may ratify or confirm any execution (although when the execution of any instrument has been authorized without specification of the executing officers or agents, the President, Chief Executive Officer or any Vice President, may execute the same and on behalf of the Company).

VII. Duties

7.01 *Chairman.* The Chairman, if any is appointed, shall preside at all meetings of the Shareholders and of the Board at which the Chairman is present. The Chairman shall hold only such further authority as is expressly ascribed to him by these Bylaws and the resolutions of the Board.

7.02 *President.* The President shall be the chief executive officer of the Company, shall see that all resolutions of the Board are carried into effect, shall have the general powers of supervision usually vested in the chief executive officer of a corporation, and, subject to any contrary directives by the Board, shall hold authority (a) to direct (and commit) the Company's resources toward the achievement of the Company's goals, (b) to vote all securities or other interests of other business organizations held by the Company, and (c) to take such further actions to the extent approved by the Board. The President shall also hold authority equivalent to that held by the Chief Operating Officer, although, in the absence of a specific contrary directive by the Board or the President, such authority shall be left to the Chief Operating Officer. In the absence of the Secretary and any Assistant Secretary, the President may exercise the authority otherwise reserved to the Secretary.

7.03 *COO.* The Chief Operating Officer shall assume managerial responsibility over the day-to-day operations of the Company, shall exercise authority subject only to the directives of the President and the Board, and, subject to any contrary directive by the President or Board, shall hold (a) authority to supervise Company personnel, and (b) any further authority granted by the Board.

7.04 *Vice Presidents.* The Vice Presidents, in order of their seniority, shall, in the absence or disability of the President, perform the duties and exercise the powers of the President. Subject to the third sentence of Bylaw 6.01, the Vice Presidents shall in any event hold operating responsibility for those aspects of the Company's business referenced in any specific title of the particular Vice President, and shall perform such other duties as may be delegated by the Board or President.

7.05 *Secretary.* The Secretary shall record all votes and minutes of all proceedings in a book to be kept for that purpose, shall give or cause to be given notice of all meetings of the Shareholders and of the Board, and shall keep in safe custody the seal of the Company and, when authorized by the Board, affix the same to any instrument requiring it, and when so affixed it shall be attested by the signature of the Secretary, or by the signature of the Treasurer or an Assistant Secretary. The Secretary may delegate any of the duties, powers and authorities of the Secretary to one or more Assistant Secretaries, unless such delegation is disapproved by the Board.

7.06 *Treasurer.* Subject to the authority of any Vice President charged with the responsibility for the Company's finances, the Treasurer shall have the custody of corporate funds and securities, shall keep full and accurate accounts of receipts and disbursements in books of the Company and shall deposit all moneys and other value in the name and to the credit of the Company in such depositories as may be designated by the Board. The Treasurer shall render to the President and directors, whenever they may require it, an account of his or her transactions as Treasurer and of the financial condition of the Company. The Treasurer may delegate any of his or her duties, powers and authorities to one or more Assistant Treasurers unless such delegation is disapproved by the Board.

7.07 *Assistants.* The Assistant Secretaries, in order of their seniority, shall perform the duties and exercise the powers and authorities of the Secretary in case of the Secretary's absence or disability. The Assistant Treasurers, in the order of their seniority, shall perform the duties and exercise the powers and authorities of the Treasurer in case of the Treasurer's absence or disability. The Assistant Secretaries and Assistant Treasurers shall also perform such duties as may be delegated by the Secretary and Treasurer, respectively, and also such duties as the Board may prescribe.

VIII. Records

8.01 *Maintenance.* The proper officers and agents of the Company shall keep and maintain such books, records and accounts of the Company's business and affairs, minutes of the proceedings of its Shareholders, Board and committees, if any, and such stock ledgers and lists of Shareholders, as the Board shall deem advisable, and as shall be required by the laws of Illinois and other states or jurisdictions empowered to impose such requirements. Books, records and minutes may be kept within or without Illinois in a place which the Board shall determine.

8.02 *Reliance.* In discharging his or her duties, a director or an officer of the Company, when acting in good faith, may rely upon information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by (a) one or more directors, officers, or employees of the Company, or of a business organization under joint control or common control, whom the director or officer reasonably believes to be reliable and competent in the matters presented, (b) legal counsel, public accountants, engineers, or other persons as to matters the director or officer reasonably believes are within the person's professional or expert competence, or (c) a committee of the board of which he or she is not a member if the director or officer reasonably believes the committee merits confidence. A director or officer may not rely on any information if he or she has knowledge concerning the matter that makes reliance otherwise permitted unwarranted.

IX. Indemnification

9.01 *Personal.* Subject to all of the other provisions of this Article IX, the Company shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative and whether formal or informal (other than an action by or in the right of the Company) by reason that the person is or was a director or officer of the Company, or is or was serving at the request of the Company as a director, officer, partner, trustee, employee, or agent of another entity or enterprise, against expenses (including reasonable attorneys' fees), judgments, penalties and amounts paid in settlement reasonably incurred by him or her in connection with such action, suit or proceeding, if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the Company or the Shareholders, and, with respect to any criminal action or proceeding, if the person had no reasonable cause to believe his or her conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere, shall not, of itself, create a presumption that the person did not act in good faith

and in a manner which the person reasonably believed to be in or not opposed to the best interests of the Company or the Shareholders, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his or her conduct was unlawful.

9.02 *Derivative.* Subject to all of the provisions of this Article IX, the Company shall indemnify any person who was or is a party to or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Company to procure a judgment in its favor by reason of the fact that the person is or was a director or officer of the Company, or is or was serving at the request of the Company as a director, officer, partner, trustee, employee, or agent of another foreign or domestic corporation, partnership, joint venture, trust or other enterprise, whether for profit or not, against expenses (including attorneys' fees) and amounts paid in settlement reasonably incurred by the person in connection with such action or suit, if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the Company or the Shareholders. However, indemnification shall not be made for any claim, issue or matter in which such person has been found liable to the Company unless and only to the extent that the court in which such action or suit was brought has determined upon application that, despite the adjudication of liability but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnification for the reasonable expenses incurred.

9.03 *Expenses.* To the extent that a person has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Section 9.01 or 9.02 of these Bylaws, or in defense of any claim, issue or matter in the action, suit or proceeding, the person shall be indemnified against actual and reasonable expenses (including attorneys' fees) incurred by such person in connection with the action, suit or proceeding and any action, suit or proceeding brought to enforce the mandatory indemnification provided by this Section 9.03.

9.04 *Definitions.* For purposes of Sections 9.01 and 9.02, "other enterprises" shall include employee benefit plans; "fines" shall include any excise taxes assessed on a person with respect to an employee benefit plan; and "serving at the request of the Company" shall include any service as a director, officer, employee, or agent of the Company that imposes duties on, or involves services by, the director or officer with respect to an employee benefit plan, its participants or beneficiaries; and a person who acted in good faith and in a manner the person reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be considered to have acted in a manner "not opposed to the best interests of the Company or the Shareholders".

9.05 *Parameters.* The right to indemnification conferred in this Article IX shall be a contract right, and shall apply to services of a director or officer as an employee or agent of the Company as well as in such person's capacity as a director or officer. Except as provided in Section 9.03 of these Bylaws, the Company shall have no obligations under this Article IX to indemnify any person in connection with any proceeding, or part thereof, initiated by him or her without Board authorization.

9.06 *Determination.* Any indemnification under Section 9.01 or 9.02 of these Bylaws (unless ordered by a court) shall be made by the Company only as authorized in the specific case upon a determination that indemnification of the person is proper in the circumstances because the person has met the applicable standard of conduct set forth in Section 9.01 or 9.02, whichever is applicable, and upon an evaluation of the reasonableness of expenses and amount paid in settlement. Such determination and evaluation shall be made in any of the following ways:

- (a) By a majority vote of a quorum of the Board consisting of directors who are not parties or threatened to be made parties to such proceeding.
- (b) If the quorum described in clause (a) above is not obtainable, then by a majority vote of a committee of directors duly designated by the Board and consisting solely of two or more directors who are not at the time parties or threatened to be made parties to the proceeding.

(c) By independent legal counsel in a written opinion, so long as such counsel is selected (i) by the Board or its committee in the manner prescribed in subparagraph (a) or (b), or (ii) if a quorum of the Board cannot be obtained under subparagraph (a) and a committee cannot be designated under subparagraph (b), by the Board.

(d) By the Shareholders, but Shares held by directors or officers who are parties or threatened to be made parties to the action, suit or proceeding may not be voted.

9.07 *Proportionality.* If a person is entitled to indemnification under Section 9.01 or 9.02 of these Bylaws for a portion of expenses, including attorneys' fees, judgments, penalties, fines, and amounts paid in settlement, but not for the total amount thereof, the Company shall indemnify the person for the portion of the expenses, judgments, penalties, fines, or amounts paid in settlement for which the person is entitled to be indemnified.

9.08 *Advances.* The Company may pay or reimburse the reasonable expenses incurred by a person referred to in Section 9.01 or 9.02 of these bylaws who is a party or threatened to be made a party to an action, suit, or proceeding in advance of final disposition of the proceeding if (a) the person furnishes the Company a written affirmation of his or her good faith belief that he or she has met the applicable standard of conduct set forth in Section 9.01 or 9.02, (b) the person furnishes the Company a written undertaking executed to personally repay the advance if it is ultimately determined that he or she did not meet the standard of conduct, (c) the authorization of payment is made in the manner specified in Section 9.06, and (d) a determination is made that the facts then known to those making the determination would not preclude indemnification under Section 9.01 or 9.02. The undertaking shall be a general obligation of the person, but need not be secured.

9.09 *Scope.* The indemnification or advancement of expenses provided under this Article IX is not exclusive of other rights to which a person seeking indemnification or advancement of expenses may be entitled under a contractual arrangement with the Company. However, the total amount of expenses advanced or indemnified from all sources combined shall not exceed the amount of actual expenses incurred by the person seeking indemnification or advancement of expenses.

9.10 *Agents.* The Company may, to the extent authorized from time to time by the Board, grant rights to indemnification and to the advancement of expenses to any employee or agent of the Company to the fullest extent of the provisions of this Article IX with respect to the indemnification and advancement of expenses of directors and officers of the Company.

9.11 *Succession.* The indemnification provided in this Article IX continues as to a person who has ceased to be a director or officer and shall inure to the benefit of his or her successors.

9.12 *Insurance.* The Company may buy and maintain insurance on behalf of any person who is or was a director, officer, partner, trustee, employee or agent of the Company, or is or was serving at the request of the Company as a director, officer, employee or agent of another entity or enterprise against any liability asserted against the person and incurred by him or her in any such capacity or arising out of his or her status as such, whether or not the Company would have power to indemnify the person against such liability under these Bylaws or the laws of Illinois.

9.13 *Legislation.* Upon any change of the Illinois statutory provisions relating to the subject matter of this Article IX, the indemnification to which any person shall be entitled hereunder shall be determined by such changed provisions, but only to the extent that any such change permits the Company to provide broader indemnification rights than before any such change. Subject to Section 9.14, the Board may amend these Bylaws to conform to any such changed statutory provisions.

9.14 *Amendment.* No amendment or repeal of this Article IX shall apply to any director or officer of the Company for or with respect to any prior acts or omissions of such director or officer.

**X.
Amendment**

The Bylaws of the Company may be amended, altered or repealed, in whole or in part, by the Shareholders or by the Board at any meeting duly held in accordance with these Bylaws.

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No. W00161993
Date: 10/15/1997

IOWA
SECRETARY OF STATE

490 DP-000210690
OHI (IOWA), INC.

ACKNOWLEDGMENT OF DOCUMENT FILED

The Secretary of State acknowledges receipt of the following document:

Articles of Incorporation

The document was filed on October 15, 1997, at 09:07 AM, to be effective as of October 15, 1997, at 09:07 AM.

The amount of \$50.00 was received in full payment of the filing fee.

[STATE OF IOWA
SEAL
SECRETARY OF STATE]

/s/ PAUL D. PATE

Secretary of State

ARTICLES OF INCORPORATION

OF

OHI (IOWA), INC.

ARTICLE I

Name of Corporation,

The name of the corporation is OHI (Iowa), Inc.

ARTICLE II

Duration

The corporation's existence shall begin on the date the Secretary of State of Iowa issues a certificate of incorporation and shall exist for a perpetual period.

ARTICLE III

Purposes and Powers

The corporation shall have unlimited power to engage in and to do any lawful act concerning any or all lawful businesses for which corporations may be organized under the Iowa Business Corporation Act.

ARTICLE IV

Stock

The number of shares which the corporation is authorized to issue is one thousand (1,000) shares of Common Stock of no par value, consisting of a single class, and of a single series.

ARTICLE V

Registered Office and Agent

The address of the initial registered office of the corporation is 2222 Grand Avenue, Des Moines, Iowa, 50312 and the name of the initial registered agent at such address is CT Corporation System.

ARTICLE VI

Limitation of Liability of Directors

A Director of this corporation shall not be personally liable to the corporation or its shareholders for monetary damages for breach of fiduciary duty as a Director, except for liability (i) for any breach of the duty of the Director of loyalty to the Corporation or its shareholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) for any transaction from which the Director derived an improper personal benefit, or (iv) under Section 490.833(1) of the Iowa Business Corporation Act for assenting to or voting for an unlawful distribution.

ARTICLE VII

Incorporator

The name and address of the Incorporator is Cynthia A. Moore, 525 North Woodward Avenue, Suite 2000, Bloomfield Hills, Michigan 48304.

ARTICLE VIII

Voting Rights

Each outstanding share of Common Stock shall be entitled to one vote on each matter submitted to a vote at a meeting of shareholders. The cumulative method of voting shall not be allowed in the election of Directors.

ARTICLE IX

Preemptive Rights

The Shareholders shall not have preemptive rights to acquire shares of the corporation.

ARTICLE X

Bylaws

Bylaws may be adopted for the corporation by the Board of Directors and/or by the Shareholders in lawful and proper meeting assembled. Any and all Bylaws adopted by the Shareholders shall be superior to and shall prevail over Bylaws adopted by the Board of Directors.

ARTICLE XI

Quorum

A majority of the shares entitled to vote, represented in person or by proxy, shall constitute a quorum at any meeting of the Shareholders. Once a share is represented for any purpose at a meeting, it is deemed present for quorum purposes for the remainder of the meeting and for any adjournment of that meeting, unless a new record date is or must be set for that adjourned meeting. If a quorum exists, action on a matter is approved if a majority of the votes actually cast favors the action, unless the vote of a greater number is required by the Iowa Business Corporation Act.

ARTICLE XII

SEAL

The corporation shall have no seal.

Dated at Bloomfield Hills, Michigan, this 14th day of October, 1997.

/s/ CYNTHIA A. MOORE

Cynthia A. Moore
525 North Woodward Avenue
Suite 2000
Bloomfield Hills, Michigan 48304

FILED
IOWA SECRETARY OF STATE
10/15/97
9:08 AM
W161993

**AMENDED AND RESTATED BYLAWS
OF OHI (IOWA), INC.**

**I.
OFFICES**

The principal office of OHI (IOWA), Inc. (the "Company") shall be at such place within Iowa or Maryland as the Board of Directors of the Company (the "Board") shall from time to time determine. The Company also may have offices at such other places as the business of the Company may require.

**II.
SEAL**

The Company may have a seal in such form as the Board may from time to time determine. The seal, if so authorized, may be used by causing it or a facsimile to be impressed, affixed or copied.

**III.
CAPITAL**

3.1 Issuance.

The shares of capital stock of the Company (the "Shares") shall be issued in such amounts, at such times, for such consideration and on such terms as the Board shall deem advisable, subject to the Company's Articles of Incorporation (the "Articles") and the laws of Iowa.

3.2 Certificates.

The Shares shall be represented by certificates signed by the President. Each such certificate shall state upon its face that the Company is formed under the laws of Iowa, the person to whom it is issued, the number and class of Shares, and the designation of the series, if any, that the certificate represents, and such other provisions as may be required by Iowa law.

3.3 Transfer.

The Shares are transferable only on the books of the Company upon surrender of the certificate therefor, properly endorsed for transfer, and the presentation of such evidences of ownership and validity of the assignment as the Company may require.

3.4 Registration.

The Company shall be entitled to treat the person in whose name any Share is registered as the owner thereof for purposes of dividends and other distributions in the course of business, or in the course of recapitalization, merger, plan of share exchange, reorganization, sale of assets, liquidation or otherwise and for the purpose of votes, approvals and consents by shareholders of the Company ("Shareholders"), and for the purpose of notices to Shareholders, and for all other purposes whatever, and shall not be bound to recognize any equitable or other claim to or interest in such Shares on the part of any other person, whether or not the Company shall have notice thereof, save as expressly required by the laws of Iowa.

3.5 Replacement.

Upon the presentation to the Company of a proper affidavit attesting the loss, destruction or mutilation of any certificate for Shares, the Board shall direct the issuance of a new certificate to replace the certificate so alleged to be lost, destroyed or mutilated. The Board may require as a condition precedent to the issuance of a new certificate a bond or agreement of indemnity, in such form and amount, and with such sureties as the Board may direct or approve.

IV. SHAREHOLDERS

4.1 Meetings.

Meetings of Shareholders shall be held at the principal office of the Company or at such other place as determined by the Board and stated in the notice of meeting. The annual meeting of Shareholders shall be held on the first Monday of March at 10:30 o'clock in the morning. Directors shall be elected at each annual meeting and such other business transacted as may come before the meeting. Special meetings of Shareholders may be called by the Board, the CEO (if such office is filled), the President or any Director, and shall be called by the Secretary at the written request of Shareholders holding a majority of the outstanding Shares and entitled to vote. The request shall state the purpose or purposes for which the meeting is to be called.

4.2 Notice.

Except as otherwise provided by statute or the Articles, written notice of the time, place and purposes of a meeting of Shareholders shall be given not fewer than ten nor more than 60 days before the date of the meeting to each Shareholder of record entitled to vote at the meeting, either personally or by mailing such notice to his last address as it appears on the books of the Company. No notice need be given of an adjourned meeting of the Shareholders provided the time and place to which such meeting is adjourned are announced at the meeting at which the adjournment is taken and at the adjourned meeting only such business is transacted as might have been transacted at the original meeting. However, if after the adjournment a new record date is fixed for the adjourned meeting a notice of the adjourned meeting shall be given to each Shareholder of record on the new record date entitled to notice as provided in this Bylaw.

4.3 Dates.

The Board may fix in advance a date as the record date for the purpose of determining Shareholders entitled to notice of and to vote at a meeting of Shareholders or an adjournment thereof, or to express consent or to dissent from a proposal without a meeting, or for the purpose of determining Shareholders entitled to receive payment of a dividend or allotment of a right, or for the purpose of any other action. The date fixed shall not be more than 60 nor less than ten days before the date of the meeting, nor more than 60 days before any other action. In such case only such Shareholders as shall be Shareholders of record on the date so fixed shall be entitled to notice of and to vote at such meeting or adjournment thereof, or to express consent or to dissent from such proposal, or to receive payment of such dividend or to receive such allotment of rights, or to participate in any other action, as the case may be, notwithstanding any transfer of any stock on the books of the Company, or otherwise, after any such record date. Nothing in this Bylaw shall affect the rights of a Shareholder and his transferee or transferor as between themselves.

4.4 Lists.

The Secretary of the Company or the agent of the Company having charge of the stock transfer records for Shares shall make and certify a complete list of the Shareholders entitled to vote at a Shareholders' meeting or any adjournment thereof. The list shall be arranged alphabetically within each class and series, with the address of, and the number of Shares held by, each Shareholder, be produced at the meeting, be subject to inspection by any Shareholder during the meeting, and be prima facie evidence of the Shareholders entitled to examine the list or vote.

4.5 Quorum.

Unless a greater or lesser quorum is required in the Articles or by the laws of Iowa, the Shareholders present at a meeting in person or by proxy who, as of the record date for such meeting, were holders of a majority of the outstanding Shares entitled to vote at the meeting shall constitute a

quorum. Whether or not a quorum is present, a meeting of Shareholders may be adjourned by a vote of the Shares present in person or by proxy. When the holders of a class or series of Shares are entitled to vote separately on an item of business, this Bylaw applies in determining the presence of a quorum of such class or series for transaction of such item of business.

4.6 Proxies.

A Shareholder entitled to vote at a meeting of Shareholders or to express consent or dissent without a meeting may authorize other persons to act for the Shareholder by proxy. A proxy shall be signed by the Shareholder or the Shareholder's authorized agent or representative.

4.7 Voting.

Each outstanding Share is entitled to one vote on each matter submitted to a vote, unless otherwise provided in the Articles. When an action, other than the election of directors, is to be taken by a vote of the Shareholders, it shall be authorized by a majority of the votes cast by the holders of Shares entitled to vote thereon, unless a greater vote is required by the Articles or by the laws of Iowa. Except as otherwise provided by the Articles, directors shall be elected by a plurality of the votes cast at any election.

V. DIRECTORS

5.1 Number.

The business and affairs of the Company shall be managed by a Board of one director. No director need be a resident of Iowa or a Shareholder.

5.2 Tenure.

Directors shall be elected at each annual meeting of the Shareholders, each to hold office until the next annual meeting of Shareholders and until the director's successor is elected and qualified, or until the director's resignation or removal. A director may resign by written notice to the Company. The resignation is effective upon its receipt by the Company or a subsequent time as set forth in the notice of resignation. A director or the entire Board may be removed, with or without cause, by vote of the holders of a majority of the Shares entitled to vote at an election of directors.

5.3 Vacancies.

Vacancies in the Board occurring by reason of death, resignation, removal, increase in the number of directors or otherwise shall be filled by the affirmative vote of a majority of the remaining directors though less than a quorum of the Board, unless filled by proper action of the Shareholders. Each person so elected shall be a director for a term of office continuing only until the next election of directors by the Shareholders. A vacancy that will occur at a specific date, by reason of a resignation effective at a later date or otherwise, may be filled before the vacancy occurs, but the newly elected director may not take office until the vacancy occurs.

5.4 Meetings.

The Board shall meet each year immediately after the annual meeting of the Shareholders, or within three days of such time excluding Sundays and legal holidays if such later time is deemed advisable, at the place where such meeting of the Shareholders has been held or such other place as the Board may determine, for the purpose of election of officers and consideration of such business that may properly be brought before the meeting; provided, that if less than a majority of the directors appear for an annual meeting of the Board the holding of such annual meeting shall not be required and the matters which might have been taken up therein may be taken up at any later special or annual meeting, or by consent resolution. Regular meetings of the Board may be held at such times

and places as the majority of the directors may from time to time determine at a prior meeting or as shall be directed or approved by the vote or written consent of all directors. Special meetings of the Board may be called by the President and shall be called by the Secretary upon the written request of any director.

5.5 Notices.

No notice shall be required for annual or regular meetings of the Board or for adjourned meetings, whether regular or special. Three days' written notice shall be given for special meetings of the Board, and such notice shall state the time, place and purposes of the meeting.

5.6 Quorum.

A majority of the Board then in office, or of the members of a committee thereof, constitutes a quorum for the transaction of business. The vote of a majority of the directors present at any meeting at which there is a quorum shall be the acts of the Board or of the committee, except as a larger vote may be required by the laws of Iowa. A member of the Board or of a committee designated by the Board may participate in a meeting by means of conference telephone by means of which all persons participating in the meeting can communicate with each other. Participation in a meeting in this manner constitutes presence in person at the meeting.

5.7 Committees.

The Board may, by resolution passed by a majority of the whole Board, appoint three or more members of the Board as an executive committee to exercise all powers and authorities of the Board in management of the business and affairs of the Company, except that the committee shall not have power or authority to (a) amend the Articles; (b) adopt an agreement of merger or consolidation; (c) recommend to Shareholders the sale, lease or exchange of all or substantially all of the Company's property and assets; (d) recommend to Shareholders a dissolution of the Company or revocation of a dissolution; (e) amend these Bylaws; (f) fill vacancies in the Board; or (g) unless expressly authorized by the Board, declare a dividend or authorize the issuance of stock. The Board from time to time may, by like resolution, appoint such other committees of one or more directors to have such authority as shall be specified by the Board in the resolution making such appointments. The Board may designate one or more directors as alternate members of any committee who may replace an absent or disqualified member at any meeting thereof.

5.8 Dissent.

A director who is present at a meeting of the Board, or a committee thereof of which the director is a member, at which action on a corporate matter is taken is presumed to have concurred in that action unless the director's dissent is entered in the minutes of the meeting or unless the director files a written dissent to the action with the person acting as secretary of the meeting before the adjournment thereof or shall forward such dissent by registered mail to the Secretary of the Company promptly after the adjournment of the meeting. Such right to dissent does not apply to a director who voted in favor of such action. A director who is absent from a meeting of the Board, or a committee thereof of which the director is a member, at which any such action is taken is presumed to have concurred in the action unless the director files a written dissent with the Secretary of the Company within a reasonable time after the director has knowledge of the action.

5.9 Compensation.

The Board, by affirmative vote of a majority of directors in office and irrespective of any personal interest of any of them, may establish reasonable compensation of directors for services to the Company as directors or officers.

VI. PROCEDURES

6.1 Notice.

All notices of meetings to be given to Shareholders, directors or any committee of directors may be given by mail, overnight courier, telefax or e-mail to any Shareholder, director or committee member at his last address as it appears on the books of the Company. Such notice shall be deemed to be given at the time when the same shall be mailed or otherwise dispatched.

6.2 Waiver.

Notice of the time, place and purpose of any meeting of Shareholders, directors or committee of directors may be waived by mail, overnight courier, telefax or e-mail, either before or after the meeting, or in such other manner as may be permitted by the laws of Iowa. Attendance of a person at any meeting of Shareholders, in person or by proxy, or at any meeting of directors or of a committee of directors, constitutes a waiver of notice of the meeting except as follows:

(a) In the case of a Shareholder, unless the Shareholder at the beginning of the meeting objects to holding the meeting or transacting business at the meeting, or unless with respect to consideration of a particular matter at the meeting that is not within the purposes described in the meeting notice, the Shareholder objects to considering the matter when it is presented.

(b) In the case of a director, unless he or she at the beginning of the meeting, or upon his or her arrival, objects to the meeting or the transacting of business at the meeting and does not thereafter vote for or assent to any action taken at the meeting.

6.3 Consent.

Any action required or permitted at any meeting of directors or committee thereof may be taken without a meeting, without prior notice and without a vote, if all directors or committee members entitled to vote thereon consent thereto in writing, before or after the action is taken. Any action required or permitted at any meeting of Shareholders may be taken without a meeting, without prior notice and without a vote, if all Shareholders entitled to vote thereon consent thereto in writing, before or after the action is taken or if such action otherwise satisfies the Articles and Iowa law.

VII. OFFICERS

7.1 Number.

The Board shall elect or appoint a President, a Secretary and a Treasurer, and may elect a Chief Executive Officer (the "CEO"), a Chief Operating Officer (the "COO"), and/or one or more Vice Presidents, Assistant Secretaries or Assistant Treasurers. The CEO (if appointed) shall be a member of the Board. Any two or more of the above offices, except those of President and Vice President, may be held by the same person. No officer shall execute or verify an instrument in more than one capacity if the instrument is required by law, the Articles or these Bylaws to be executed, acknowledged, or verified by one or more officers.

7.2 Term.

An officer shall hold office for the term for which he is elected or appointed and until his successor is elected or appointed and qualified, or until his resignation or removal. An officer may resign by written notice to the Company. The resignation is effective upon its receipt by the Company or at a subsequent time specified in the notice of resignation. An officer may be removed by the Board with or without cause. The removal of an officer shall be without prejudice to his contract rights, if any. The appointment of an officer does not of itself create contract rights.

7.3 **Vacancies.**

The Board may fill any vacancies in any office occurring for whatever reason.

7.4 **Authority.**

All officers, employees and agents of the Company shall have such authority and perform such duties in the conduct and management of the business and affairs of the Company as may be designated by the Board and these Bylaws.

VIII. DUTIES

8.1 **CEO.**

The CEO, if any is appointed, shall preside at all meetings of the Shareholders and of the Board at which the CEO is present. The CEO shall be the chief executive officer of the Company, shall see that all resolutions of the Board are carried into effect, and shall have the general powers of supervision usually vested in the chief executive officer of a corporation. Subject to any contrary directives by the Board, the CEO shall hold (a) authority to direct (and commit) the Company's resources toward the achievement of the Company's goals, (b) authority to vote all securities or other interests of other corporations and business organizations held by the Company, and (c) any further authority as may hereafter be vested in him by the Board.

8.2 **President.**

In the absence of the CEO, the President shall hold and exercise all authority ascribed to the CEO. In addition, the President shall exercise any and all authority as may be granted to him by the Board, and, subject only to the directives of the CEO, shall ensure that all resolutions of the Board are carried into effect. In the absence of the COO, the President shall also hold and exercise all authority ascribed to the COO. In the absence of the Secretary and any Assistant Secretary, the President may exercise the authority otherwise reserved to the Secretary.

8.3 **COO.**

The COO shall be the chief operating officer of the Company. The President shall have the general powers of management usually vested in the chief operating officer of a corporation, and, subject to any contrary directives by the Board, shall hold (a) authority to supervise corporation personnel and to implement the directives of the Board, the President and the CEO, and (b) any further authority as may hereafter be vested in him by the Board.

8.4 **Vice Presidents.**

The Vice Presidents, in order of their seniority, shall, in the absence or disability of the President, perform the duties and exercise the powers of the President. The Vice Presidents shall in any event assume operating responsibility for those aspects of the Company's business referenced in any specific title of the particular Vice President, and shall perform such other duties as may be delegated by the Board, the CEO, the COO or the President. In any event, any Vice President whose title includes the phrase chief financial officer shall be deemed to have been charged with the responsibility for the Company's finances, shall have been granted custody of corporate funds and securities, shall be obligated to keep full and accurate accounts of receipts and disbursements in books of the Company, and shall deposit all moneys and other value in the name and to the credit of the Company in such depositories as may be designated by the Board. Moreover, any Vice President whose title includes the phrase general counsel shall be deemed to have been charged with the responsibility for the Company's legal affairs and shall be deemed the Company's principal liaison with the Company's outside counsel and regulatory authorities.

8.5 Secretary.

The Secretary shall record all votes and minutes of all proceedings in a book to be kept for that purpose, shall give or cause to be given notice of all meetings of the Shareholders and of the Board, and shall keep in safe custody the seal of the Company and, when authorized by the Board, affix the same to any instrument requiring it, and when so affixed it shall be attested by the signature of the Secretary, or by the signature of the Treasurer or an Assistant Secretary. The Secretary may delegate any of the duties, powers and authorities of the Secretary to one or more Assistant Secretaries, unless such delegation is disapproved by the Board.

8.6 Treasurer.

Subject to the authority of any Vice President charged with the responsibility for the Company's finances, the Treasurer shall have the custody of corporate funds and securities, shall keep full and accurate accounts of receipts and disbursements in books of the Company and shall deposit all moneys and other value in the name and to the credit of the Company in such depositories as may be designated by the Board. The Treasurer shall render to the President and directors, whenever they may require it, an account of his or her transactions as Treasurer and of the financial condition of the Company. The Treasurer may delegate any of his or her duties, powers and authorities to one or more Assistant Treasurers unless such delegation is disapproved by the Board.

8.7 Assistants.

The Assistant Secretaries, in order of their seniority, shall perform the duties and exercise the powers and authorities of the Secretary in case of the Secretary's absence or disability. The Assistant Treasurers, in the order of their seniority, shall perform the duties and exercise the powers and authorities of the Treasurer in case of the Treasurer's absence or disability. The Assistant Secretaries and Assistant Treasurers shall also perform such duties as may be delegated by the Secretary and Treasurer, respectively, and also such duties as the Board may prescribe.

IX. ACTIONS

9.1 Payment.

All checks, drafts, notes, bonds, bills of exchange and orders for payment of money of the Company may, subject to any contrary resolution adopted by the Board from time to time, be signed by the CEO, the President or any other officer as may be authorized by the Board.

9.2 Contracts.

The Board may in any instance designate the officer and/or agent who shall have authority to execute any contract, conveyance, mortgage or other instrument on behalf of the Company, or may ratify or confirm any execution. When the execution of any instrument has been authorized without specification of the executing officers or agents, the CEO or President may execute the same in the name and on behalf of the Company and may affix the corporate seal thereto.

X. RECORDS

10.1 Maintenance.

The proper officers and agents of the Company shall keep and maintain such books, records and accounts of the Company's business and affairs, minutes of the proceedings of its Shareholders, Board and committees, if any, and such stock ledgers and lists of Shareholders, as the Board shall deem advisable, and as shall be required by the laws of Iowa and other states or jurisdictions empowered to

impose such requirements. Books, records and minutes may be kept within or without Iowa in a place which the Board shall determine.

10.2 Reliance.

In discharging his or her duties, a director or an officer of the Company, when acting in good faith, may rely upon information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by (a) one or more directors, officers, or employees of the Company, or of a business organization under joint control or common control, whom the director or officer reasonably believes to be reliable and competent in the matters presented, (b) legal counsel, public accountants, engineers, or other persons as to matters the director or officer reasonably believes are within the person's professional or expert competence, or (c) a committee of the board of which he or she is not a member if the director or officer reasonably believes the committee merits confidence. A director or officer may not rely on any information if he or she has knowledge concerning the matter that makes reliance otherwise permitted unwarranted.

XI. INDEMNIFICATION

11.1 Personal.

Subject to all of the other provisions of this Article XI, the Company shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative and whether formal or informal (other than an action by or in the right of the Company) by reason that the person is or was a director or officer of the Company, or is or was serving at the request of the Company as a director, officer, partner, trustee, employee, or agent of another entity or enterprise, against expenses (including reasonable attorneys' fees), judgments, penalties and amounts paid in settlement reasonably incurred by him or her in connection with such action, suit or proceeding, if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the Company or the Shareholders, and, with respect to any criminal action or proceeding, if the person had no reasonable cause to believe his or her conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which the person reasonably believed to be in or not opposed to the best interests of the Company or the Shareholders, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his or her conduct was unlawful.

11.2 Derivative.

Subject to all of the provisions of this Article XI, the Company shall indemnify any person who was or is a party to or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Company to procure a judgment in its favor by reason of the fact that the person is or was a director or officer of the Company, or is or was serving at the request of the Company as a director, officer, partner, trustee, employee, or agent of another foreign or domestic corporation, partnership, joint venture, trust or other enterprise, whether for profit or not, against expenses (including attorneys' fees) and amounts paid in settlement reasonably incurred by the person in connection with such action or suit, if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the Company or the Shareholders. However, indemnification shall not be made for any claim, issue or matter in which such person has been found liable to the Company unless and only to the extent that the court in which such action or suit was brought has determined upon application that, despite the adjudication of liability but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnification for the reasonable expenses incurred.

11.3 Expenses.

To the extent that a person has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Section 11.1 or 11.2 of these Bylaws, or in defense of any claim, issue or matter in the action, suit or proceeding, the person shall be indemnified against actual and reasonable expenses (including attorneys' fees) incurred by such person in connection with the action, suit or proceeding and any action, suit or proceeding brought to enforce the mandatory indemnification provided by this Section 11.3.

11.4 Definitions.

For purposes of Sections 11.1 and 11.2, "other enterprises" shall include employee benefit plans; "fines" shall include any excise taxes assessed on a person with respect to an employee benefit plan; and "serving at the request of the Company" shall include any service as a director, officer, employee, or agent of the Company that imposes duties on, or involves services by, the director or officer with respect to an employee benefit plan, its participants or beneficiaries; and a person who acted in good faith and in a manner the person reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be considered to have acted in a manner "not opposed to the best interests of the Company or the Shareholders".

11.5 Parameters.

The right to indemnification conferred in this Article XI shall be a contract right, and shall apply to services of a director or officer as an employee or agent of the Company as well as in such person's capacity as a director or officer. Except as provided in Section 11.3 of these Bylaws, the Company shall have no obligations under this Article XI to indemnify any person in connection with any proceeding, or part thereof, initiated by him or her without Board authorization.

11.6 Determination.

Any indemnification under Section 11.1 or 11.2 of these Bylaws (unless ordered by a court) shall be made by the Company only as authorized in the specific case upon a determination that indemnification of the person is proper in the circumstances because the person has met the applicable standard of conduct set forth in Section 11.1 or 11.2, whichever is applicable, and upon an evaluation of the reasonableness of expenses and amount paid in settlement. Such determination and evaluation shall be made in any of the following ways:

- (a) By a majority vote of a quorum of the Board consisting of directors who are not parties or threatened to be made parties to such proceeding.
- (b) If the quorum described in clause (a) above is not obtainable, then by a majority vote of a committee of directors duly designated by the Board and consisting solely of two or more directors who are not at the time parties or threatened to be made parties to the proceeding.
- (c) By independent legal counsel in a written opinion, so long as such counsel is selected (i) by the Board or its committee in the manner prescribed in subparagraph (a) or (b), or (ii) if a quorum of the Board cannot be obtained under subparagraph (a) and a committee cannot be designated under subparagraph (b), by the Board.
- (d) By the Shareholders, but Shares held by directors or officers who are parties or threatened to be made parties to the action, suit or proceeding may not be voted.

11.7 Proportionality.

If a person is entitled to indemnification under Section 11.1 or 11.2 of these Bylaws for a portion of expenses, including attorneys' fees, judgments, penalties, fines, and amounts paid in settlement, but not for the total amount thereof, the Company shall indemnify the person for the portion of the

expenses, judgments, penalties, fines, or amounts paid in settlement for which the person is entitled to be indemnified.

11.8 Advances.

The Company may pay or reimburse the reasonable expenses incurred by a person referred to in Section 11.1 or 11.2 of these bylaws who is a party or threatened to be made a party to an action, suit, or proceeding in advance of final disposition of the proceeding if (a) the person furnishes the Company a written affirmation of his or her good faith belief that he or she has met the applicable standard of conduct set forth in Section 11.1 or 11.2, (b) the person furnishes the Company a written undertaking executed to personally repay the advance if it is ultimately determined that he or she did not meet the standard of conduct, (c) the authorization of payment is made in the manner specified in Section 11.6, and (d) a determination is made that the facts then known to those making the determination would not preclude indemnification under Section 11.1 or 11.2. The undertaking shall be a general obligation of the person, but need not be secured.

11.9 Scope.

The indemnification or advancement of expenses provided under this Article XI is not exclusive of other rights to which a person seeking indemnification or advancement of expenses may be entitled under a contractual arrangement with the Company. However, the total amount of expenses advanced or indemnified from all sources combined shall not exceed the amount of actual expenses incurred by the person seeking indemnification or advancement of expenses.

11.10 Agents.

The Company may, to the extent authorized from time to time by the Board, grant rights to indemnification and to the advancement of expenses to any employee or agent of the Company to the fullest extent of the provisions of this Article XI with respect to the indemnification and advancement of expenses of directors and officers of the Company.

11.11 Succession.

The indemnification provided in this Article XI continues as to a person who has ceased to be a director or officer and shall inure to the benefit of his or her successors.

11.12 Insurance.

The Company may buy and maintain insurance on behalf of any person who is or was a director, officer, partner, trustee, employee or agent of the Company, or is or was serving at the request of the Company as a director, officer, employee or agent of another entity or enterprise against any liability asserted against the person and incurred by him or her in any such capacity or arising out of his or her status as such, whether or not the Company would have power to indemnify the person against such liability under these Bylaws or the laws of Iowa.

11.13 Legislation.

Upon any change of the Iowa statutory provisions relating to the subject matter of this Article XI, the indemnification to which any person shall be entitled hereunder shall be determined by such changed provisions, but only to the extent that any such change permits the Company to provide broader indemnification rights than before any such change. Subject to Section 11.14, the Board may amend these Bylaws to conform to any such changed statutory provisions.

11.14 Amendment.

No amendment or repeal of this Article XI shall apply to any director or officer of the Company for or with respect to any prior acts or omissions of such director or officer.

**XII.
AMENDMENT**

The Bylaws of the Company may be amended, altered or repealed, in whole or in part, by the Shareholders or by the Board at any meeting duly held in accordance with these Bylaws.

QuickLinks

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Office of the Secretary of State/Corporations Division

For Profit Articles of Incorporation

We, the undersigned incorporators, hereby associate ourselves together to form and establish a corporation FOR profit under the laws of the State of Kansas.

Article One: Name of the corporation

OHI (KANSAS), INC.

DO NOT WRITE IN THIS SPACE

Article Two: Address of registered office in Kansas

c/o THE CORPORATION COMPANY, INC. 515 SO. KANSAS AVENUE,

TOPEKA

SHAWNEE,

66603

(City)

(County)

(Zip Code)

Name of resident agent at above address

THE CORPORATION COMPANY, INC.

Article Three: Nature of corporation business or purposes to be conducted or promoted is

To engage in any lawful act or activity for which corporations may be organized under the

General Corporation Code of the State of Kansas

Article Four: Total number of shares that this corporation shall be authorized to issue

_____ shares of	_____ stock, class	_____ par value of	_____ dollars each
_____ shares of	_____ stock, class	_____ par value of	_____ dollars each
1,000	Common		
_____ shares of	_____ stock, class	_____ without nominal or par value	
_____ shares of	_____ stock, class	_____ without nominal or par value	

If applicable, state any designations, powers, preferences, rights, qualifications, limitations or restrictions applicable to any class of stock or any special grant of authority to be given, to the board of directors

See attached rider

Article Five: Name and mailing address of each incorporator

Michael R. Dalida

30600 Telegraph Rd., Bingham Farms, MI 48025

Article Six: Name and mailing address of each person who is to serve as a director until the first annual meeting of the stockholders or until a successor is elected and qualified is

Essel W. Bailey, Jr., 905 W Eisenhower

Suite 110

Ann Arbor, MI 48103

Article Seven: Is the corporation to exist perpetually? Yes No

If *no*, the term for which this corporation is to exist is _____

In testimony whereof, we have hereunto subscribed our names the 9th day of Sept., A.D. 1994.

Signatures must correspond exactly to the names of the incorporators listed in Article Six.

/s/ MICHAEL R. DALIDA

State of Michigan

County of Oakland

ss

Before me, a notary public in and for said county and state, personally appeared

Michael R. Dalida

who are known to me to be the same persons who executed the foregoing Articles of Incorporation and duly acknowledged the execution of the same. In witness whereof I have hereunto subscribed my name and affixed my official seal, this 9th day of Sept., A.D. 1994.

(Seal)

Notary Public

My appointment or commission expires 05-21-97.

**Submit document in duplicate
with \$75 filing fee to:**

Corporations Division

Office of the Secretary of State,

2nd Floor, State capitol, Topeka, KS 66612-1594

ARTICLE FOUR

No director shall be personally liable to the Corporation or its stockholders for monetary damages for any breach of fiduciary duty by such director as a director. Notwithstanding the foregoing, a director shall be liable to the extent provided by applicable law (i) for breach of the director's duty of loyalty to the Corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under the provisions of K.S.A. 17-6424 and any amendments thereto, or (iv) for any transaction from which the director derived an improper personal benefit. No amendment to or repeal of this Article shall apply to or have any effect on the liability or alleged liability of any director of the Corporation for or with respect to any acts or omissions of such director occurring prior to the date when such provision becomes effective.

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AMENDED AND RESTATED BYLAWS**OF OHI (KANSAS), INC.****I.
OFFICES**

The principal office of OHI (KANSAS), Inc. (the "Company") shall be at such place within Kansas or Maryland as the Board of Directors of the Company (the "Board") shall from time to time determine. The Company also may have offices at such other places as the business of the Company may require.

**II.
SEAL**

The Company may have a seal in such form as the Board may from time to time determine. The seal, if so authorized, may be used by causing it or a facsimile to be impressed, affixed or copied.

**III.
CAPITAL****3.1 ISSUANCE.**

The shares of capital stock of the Company (the "Shares") shall be issued in such amounts, at such times, for such consideration and on such terms as the Board shall deem advisable, subject to the Company's Articles of Incorporation (the "Articles") and the laws of Kansas.

3.2 CERTIFICATES.

The Shares shall be represented by certificates signed by the President. Each such certificate shall state upon its face that the Company is formed under the laws of Kansas, the person to whom it is issued, the number and class of Shares, and the designation of the series, if any, that the certificate represents, and such other provisions as may be required by Kansas law.

3.3 TRANSFER.

The Shares are transferable only on the books of the Company upon surrender of the certificate therefor, properly endorsed for transfer, and the presentation of such evidences of ownership and validity of the assignment as the Company may require.

3.4 REGISTRATION.

The Company shall be entitled to treat the person in whose name any Share is registered as the owner thereof for purposes of dividends and other distributions in the course of business, or in the course of recapitalization, merger, plan of share exchange, reorganization, sale of assets, liquidation or otherwise and for the purpose of votes, approvals and consents by shareholders of the Company ("Shareholders"), and for the purpose of notices to Shareholders, and for all other purposes whatever, and shall not be bound to recognize any equitable or other claim to or interest in such Shares on the part of any other person, whether or not the Company shall have notice thereof, save as expressly required by the laws of Kansas.

3.5 REPLACEMENT.

Upon the presentation to the Company of a proper affidavit attesting the loss, destruction or mutilation of any certificate for Shares, the Board shall direct the issuance of a new certificate to replace the certificate so alleged to be lost, destroyed or mutilated. The Board may require as a condition precedent to the issuance of a new certificate a bond or agreement of indemnity, in such form and amount, and with such sureties as the Board may direct or approve.

**IV.
SHAREHOLDERS**

4.1 MEETINGS.

Meetings of Shareholders shall be held at the principal office of the Company or at such other place as determined by the Board and stated in the notice of meeting. The annual meeting of Shareholders shall be held on the first Monday of March at 10:30 o'clock in the morning. Directors shall be elected at each annual meeting and such other business transacted as may come before the meeting. Special meetings of Shareholders may be called by the Board, the CEO (if such office is filled), the President or any Director, and shall be called by the Secretary at the written request of Shareholders holding a majority of the outstanding Shares and entitled to vote. The request shall state the purpose or purposes for which the meeting is to be called.

4.2 NOTICE.

Except as otherwise provided by statute or the Articles, written notice of the time, place and purposes of a meeting of Shareholders shall be given not fewer than ten nor more than 60 days before the date of the meeting to each Shareholder of record entitled to vote at the meeting, either personally or by mailing such notice to his last address as it appears on the books of the Company. No notice need be given of an adjourned meeting of the Shareholders provided the time and place to which such meeting is adjourned are announced at the meeting at which the adjournment is taken and at the adjourned meeting only such business is transacted as might have been transacted at the original meeting. However, if after the adjournment a new record date is fixed for the adjourned meeting a notice of the adjourned meeting shall be given to each Shareholder of record on the new record date entitled to notice as provided in this Bylaw.

4.3 DATES.

The Board may fix in advance a date as the record date for the purpose of determining Shareholders entitled to notice of and to vote at a meeting of Shareholders or an adjournment thereof, or to express consent or to dissent from a proposal without a meeting, or for the purpose of determining Shareholders entitled to receive payment of a dividend or allotment of a right, or for the purpose of any other action. The date fixed shall not be more than 60 nor less than ten days before the date of the meeting, nor more than 60 days before any other action. In such case only such Shareholders as shall be Shareholders of record on the date so fixed shall be entitled to notice of and to vote at such meeting or adjournment thereof, or to express consent or to dissent from such proposal, or to receive payment of such dividend or to receive such allotment of rights, or to participate in any other action, as the case may be, notwithstanding any transfer of any stock on the books of the Company, or otherwise, after any such record date. Nothing in this Bylaw shall affect the rights of a Shareholder and his transferee or transferor as between themselves.

4.4 LISTS.

The Secretary of the Company or the agent of the Company having charge of the stock transfer records for Shares shall make and certify a complete list of the Shareholders entitled to vote at a Shareholders' meeting or any adjournment thereof. The list shall be arranged alphabetically within each class and series, with the address of, and the number of Shares held by, each Shareholder, be available for inspection by Shareholders at the Company's offices at least ten (10) days prior to the date of the meeting, be produced at the meeting, be subject to inspection by any Shareholder during the meeting, and be prima facie evidence of the Shareholders entitled to examine the list or vote.

4.5 QUORUM.

Unless a greater or lesser quorum is required in the Articles or by the laws of Kansas, the Shareholders present at a meeting in person or by proxy who, as of the record date for such meeting,

were holders of a majority of the outstanding Shares entitled to vote at the meeting shall constitute a quorum. Whether or not a quorum is present, a meeting of Shareholders may be adjourned by a vote of the Shares present in person or by proxy. When the holders of a class or series of Shares are entitled to vote separately on an item of business, this Bylaw applies in determining the presence of a quorum of such class or series for transaction of such item of business.

4.6 PROXIES.

A Shareholder entitled to vote at a meeting of Shareholders or to express consent or dissent without a meeting may authorize other persons to act for the Shareholder by proxy. A proxy shall be signed by the Shareholder or the Shareholder's authorized agent or representative.

4.7 VOTING.

Each outstanding Share is entitled to one vote on each matter submitted to a vote, unless otherwise provided in the Articles. When an action, other than the election of directors, is to be taken by a vote of the Shareholders, it shall be authorized by a majority of the votes cast by the holders of Shares entitled to vote thereon, unless a greater vote is required by the Articles or by the laws of Kansas. Except as otherwise provided by the Articles, directors shall be elected by a plurality of the votes cast at any election.

V. DIRECTORS

5.1 NUMBER.

The business and affairs of the Company shall be managed by a Board of one director. No director need be a resident of Kansas or a Shareholder.

5.2 TENURE.

Directors shall be elected at each annual meeting of the Shareholders, each to hold office until the next annual meeting of Shareholders and until the director's successor is elected and qualified, or until the director's resignation or removal. A director may resign by written notice to the Company. The resignation is effective upon its receipt by the Company or a subsequent time as set forth in the notice of resignation. A director or the entire Board may be removed, with or without cause, by vote of the holders of a majority of the Shares entitled to vote at an election of directors.

5.3 VACANCIES.

Vacancies in the Board occurring by reason of death, resignation, removal, increase in the number of directors or otherwise shall be filled by the affirmative vote of a majority of the remaining directors though less than a quorum of the Board, unless filled by proper action of the Shareholders. Each person so elected shall be a director for a term of office continuing only until the next election of directors by the Shareholders. A vacancy that will occur at a specific date, by reason of a resignation effective at a later date or otherwise, may be filled before the vacancy occurs, but the newly elected director may not take office until the vacancy occurs.

5.4 MEETINGS.

The Board shall meet each year immediately after the annual meeting of the Shareholders, or within three days of such time excluding Sundays and legal holidays if such later time is deemed advisable, at the place where such meeting of the Shareholders has been held or such other place as the Board may determine, for the purpose of election of officers and consideration of such business that may properly be brought before the meeting; provided, that if less than a majority of the directors appear for an annual meeting of the Board the holding of such annual meeting shall not be required and the matters which might have been taken up therein may be taken up at any later special or

annual meeting, or by consent resolution. Regular meetings of the Board may be held at such times and places as the majority of the directors may from time to time determine at a prior meeting or as shall be directed or approved by the vote or written consent of all directors. Special meetings of the Board may be called by the President and shall be called by the Secretary upon the written request of any director.

5.5 NOTICES.

No notice shall be required for annual or regular meetings of the Board or for adjourned meetings, whether regular or special. Three days' written notice shall be given for special meetings of the Board, and such notice shall state the time, place and purposes of the meeting.

5.6 QUORUM.

A majority of the Board then in office, or of the members of a committee thereof, constitutes a quorum for the transaction of business. The vote of a majority of the directors present at any meeting at which there is a quorum shall be the acts of the Board or of the committee, except as a larger vote may be required by the laws of Kansas. A member of the Board or of a committee designated by the Board may participate in a meeting by means of conference telephone by means of which all persons participating in the meeting can communicate with each other. Participation in a meeting in this manner constitutes presence in person at the meeting.

5.7 COMMITTEES.

The Board may, by resolution passed by a majority of the whole Board, appoint three or more members of the Board as an executive committee to exercise all powers and authorities of the Board in management of the business and affairs of the Company, except that the committee shall not have power or authority to (a) amend the Articles; (b) adopt an agreement of merger or consolidation; (c) recommend to Shareholders the sale, lease or exchange of all or substantially all of the Company's property and assets; (d) recommend to Shareholders a dissolution of the Company or revocation of a dissolution; (e) amend these Bylaws; (f) fill vacancies in the Board; or (g) unless expressly authorized by the Board, declare a dividend or authorize the issuance of stock. The Board from time to time may, by like resolution, appoint such other committees of one or more directors to have such authority as shall be specified by the Board in the resolution making such appointments. The Board may designate one or more directors as alternate members of any committee who may replace an absent or disqualified member at any meeting thereof.

5.8 DISSENT.

A director who is present at a meeting of the Board, or a committee thereof of which the director is a member, at which action on a corporate matter is taken is presumed to have concurred in that action unless the director's dissent is entered in the minutes of the meeting or unless the director files a written dissent to the action with the person acting as secretary of the meeting before the adjournment thereof or shall forward such dissent by registered mail to the Secretary of the Company promptly after the adjournment of the meeting. Such right to dissent does not apply to a director who voted in favor of such action. A director who is absent from a meeting of the Board, or a committee thereof of which the director is a member, at which any such action is taken is presumed to have concurred in the action unless the director files a written dissent with the Secretary of the Company within a reasonable time after the director has knowledge of the action.

5.9 COMPENSATION.

The Board, by affirmative vote of a majority of directors in office and irrespective of any personal interest of any of them, may establish reasonable compensation of directors for services to the Company as directors or officers.

**VI.
PROCEDURES**

6.1 NOTICE.

All notices of meetings to be given to Shareholders, directors or any committee of directors may be given by mail, overnight courier, telefax or e-mail to any Shareholder, director or committee member at his last address as it appears on the books of the Company. Such notice shall be deemed to be given at the time when the same shall be mailed or otherwise dispatched.

6.2 WAIVER.

Notice of the time, place and purpose of any meeting of Shareholders, directors or committee of directors may be waived by mail, overnight courier, telefax or e-mail, either before or after the meeting, or in such other manner as may be permitted by the laws of Kansas. Attendance of a person at any meeting of Shareholders, in person or by proxy, or at any meeting of directors or of a committee of directors, constitutes a waiver of notice of the meeting except as follows:

(a) In the case of a Shareholder, unless the Shareholder at the beginning of the meeting objects to holding the meeting or transacting business at the meeting, or unless with respect to consideration of a particular matter at the meeting that is not within the purposes described in the meeting notice, the Shareholder objects to considering the matter when it is presented.

(b) In the case of a director, unless he or she at the beginning of the meeting, or upon his or her arrival, objects to the meeting or the transacting of business at the meeting and does not thereafter vote for or assent to any action taken at the meeting.

6.3 CONSENT.

Any action required or permitted at any meeting of directors or committee thereof may be taken without a meeting, without prior notice and without a vote, if all directors or committee members entitled to vote thereon consent thereto in writing, before or after the action is taken. Any action required or permitted at any meeting of Shareholders may be taken without a meeting, without prior notice and without a vote, if all Shareholders entitled to vote thereon consent thereto in writing, before or after the action is taken or if such action otherwise satisfies the Articles and Kansas law.

**VII.
OFFICERS**

7.1 NUMBER.

The Board shall elect or appoint a President, a Secretary and a Treasurer, and may elect a Chief Executive Officer (the "CEO"), a Chief Operating Officer (the "COO"), and/or one or more Vice Presidents, Assistant Secretaries or Assistant Treasurers. The CEO (if appointed) shall be a member of the Board. Any two or more of the above offices, except those of President and Vice President, may be held by the same person. No officer shall execute or verify an instrument in more than one capacity if the instrument is required by law, the Articles or these Bylaws to be executed, acknowledged, or verified by one or more officers.

7.2 TERM.

An officer shall hold office for the term for which he is elected or appointed and until his successor is elected or appointed and qualified, or until his resignation or removal. An officer may resign by written notice to the Company. The resignation is effective upon its receipt by the Company or at a subsequent time specified in the notice of resignation. An officer may be removed by the Board with or without cause. The removal of an officer shall be without prejudice to his contract rights, if any. The appointment of an officer does not of itself create contract rights.

7.3 VACANCIES.

The Board may fill any vacancies in any office occurring for whatever reason.

7.4 AUTHORITY.

All officers, employees and agents of the Company shall have such authority and perform such duties in the conduct and management of the business and affairs of the Company as may be designated by the Board and these Bylaws.

VIII. DUTIES

8.1 CEO.

The CEO, if any is appointed, shall preside at all meetings of the Shareholders and of the Board at which the CEO is present. The CEO shall be the chief executive officer of the Company, shall see that all resolutions of the Board are carried into effect, and shall have the general powers of supervision usually vested in the chief executive officer of a corporation. Subject to any contrary directives by the Board, the CEO shall hold (a) authority to direct (and commit) the Company's resources toward the achievement of the Company's goals, (b) authority to vote all securities or other interests of other corporations and business organizations held by the Company, and (c) any further authority as may hereafter be vested in him by the Board.

8.2 PRESIDENT.

In the absence of the CEO, the President shall hold and exercise all authority ascribed to the CEO. In addition, the President shall exercise any and all authority as may be granted to him by the Board, and, subject only to the directives of the CEO, shall ensure that all resolutions of the Board are carried into effect. In the absence of the COO, the President shall also shall hold and exercise all authority ascribed to the COO. In the absence of the Secretary and any Assistant Secretary, the President may exercise the authority otherwise reserved to the Secretary.

8.3 COO.

The COO shall be the chief operating officer of the Company. The President shall have the general powers of management usually vested in the chief operating officer of a corporation, and, subject to any contrary directives by the Board, shall hold (a) authority to supervise corporation personnel and to implement the directives of the Board, the President and the CEO, and (b) any further authority as may hereafter be vested in him by the Board.

8.4 VICE PRESIDENTS.

The Vice Presidents, in order of their seniority, shall, in the absence or disability of the President, perform the duties and exercise the powers of the President. The Vice Presidents shall in any event assume operating responsibility for those aspects of the Company's business referenced in any specific title of the particular Vice President, and shall perform such other duties as may be delegated by the Board, the CEO, the COO or the President. In any event, any Vice President whose title includes the phrase chief financial officer shall be deemed to have been charged with the responsibility for the Company's finances, shall have been granted custody of corporate funds and securities, shall be obligated to keep full and accurate accounts of receipts and disbursements in books of the Company, and shall deposit all moneys and other value in the name and to the credit of the Company in such depositories as may be designated by the Board. Moreover, any Vice President whose title includes the phrase general counsel shall be deemed to have been charged with the responsibility for the Company's legal affairs and shall be deemed the Company's principal liaison with the Company's outside counsel and regulatory authorities.

8.5 SECRETARY.

The Secretary shall record all votes and minutes of all proceedings in a book to be kept for that purpose, shall give or cause to be given notice of all meetings of the Shareholders and of the Board, and shall keep in safe custody the seal of the Company and, when authorized by the Board, affix the same to any instrument requiring it, and when so affixed it shall be attested by the signature of the Secretary, or by the signature of the Treasurer or an Assistant Secretary. The Secretary may delegate any of the duties, powers and authorities of the Secretary to one or more Assistant Secretaries, unless such delegation is disapproved by the Board.

8.6 TREASURER.

Subject to the authority of any Vice President charged with the responsibility for the Company's finances, the Treasurer shall have the custody of corporate funds and securities, shall keep full and accurate accounts of receipts and disbursements in books of the Company and shall deposit all moneys and other value in the name and to the credit of the Company in such depositories as may be designated by the Board. The Treasurer shall render to the President and directors, whenever they may require it, an account of his or her transactions as Treasurer and of the financial condition of the Company. The Treasurer may delegate any of his or her duties, powers and authorities to one or more Assistant Treasurers unless such delegation is disapproved by the Board.

8.7 ASSISTANTS.

The Assistant Secretaries, in order of their seniority, shall perform the duties and exercise the powers and authorities of the Secretary in case of the Secretary's absence or disability. The Assistant Treasurers, in the order of their seniority, shall perform the duties and exercise the powers and authorities of the Treasurer in case of the Treasurer's absence or disability. The Assistant Secretaries and Assistant Treasurers shall also perform such duties as may be delegated by the Secretary and Treasurer, respectively, and also such duties as the Board may prescribe.

IX. ACTIONS

9.1 PAYMENT.

All checks, drafts, notes, bonds, bills of exchange and orders for payment of money of the Company may, subject to any contrary resolution adopted by the Board from time to time, be signed by the CEO, the President or any other officer as may be authorized by the Board.

9.2 CONTRACTS.

The Board may in any instance designate the officer and/or agent who shall have authority to execute any contract, conveyance, mortgage or other instrument on behalf of the Company, or may ratify or confirm any execution. When the execution of any instrument has been authorized without specification of the executing officers or agents, the CEO or President may execute the same in the name and on behalf of the Company and may affix the corporate seal thereto.

X. RECORDS

10.1 MAINTENANCE.

The proper officers and agents of the Company shall keep and maintain such books, records and accounts of the Company's business and affairs, minutes of the proceedings of its Shareholders, Board and committees, if any, and such stock ledgers and lists of Shareholders, as the Board shall deem advisable, and as shall be required by the laws of Kansas and other states or jurisdictions empowered

to impose such requirements. Books, records and minutes may be kept within or without Kansas in a place which the Board shall determine.

10.2 RELIANCE.

In discharging his or her duties, a director or an officer of the Company, when acting in good faith, may rely upon information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by (a) one or more directors, officers, or employees of the Company, or of a business organization under joint control or common control, whom the director or officer reasonably believes to be reliable and competent in the matters presented, (b) legal counsel, public accountants, engineers, or other persons as to matters the director or officer reasonably believes are within the person's professional or expert competence, or (c) a committee of the board of which he or she is not a member if the director or officer reasonably believes the committee merits confidence. A director or officer may not rely on any information if he or she has knowledge concerning the matter that makes reliance otherwise permitted unwarranted.

XI. INDEMNIFICATION

11.1 PERSONAL.

Subject to all of the other provisions of this Article XI, the Company shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative and whether formal or informal (other than an action by or in the right of the Company) by reason that the person is or was a director or officer of the Company, or is or was serving at the request of the Company as a director, officer, partner, trustee, employee, or agent of another entity or enterprise, against expenses (including reasonable attorneys' fees), judgments, penalties and amounts paid in settlement reasonably incurred by him or her in connection with such action, suit or proceeding, if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the Company or the Shareholders, and, with respect to any criminal action or proceeding, if the person had no reasonable cause to believe his or her conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which the person reasonably believed to be in or not opposed to the best interests of the Company or the Shareholders, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his or her conduct was unlawful.

11.2 DERIVATIVE.

Subject to all of the provisions of this Article XI, the Company shall indemnify any person who was or is a party to or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Company to procure a judgment in its favor by reason of the fact that the person is or was a director or officer of the Company, or is or was serving at the request of the Company as a director, officer, partner, trustee, employee, or agent of another foreign or domestic corporation, partnership, joint venture, trust or other enterprise, whether for profit or not, against expenses (including attorneys' fees) and amounts paid in settlement reasonably incurred by the person in connection with such action or suit, if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the Company or the Shareholders. However, indemnification shall not be made for any claim, issue or matter in which such person has been found liable to the Company unless and only to the extent that the court in which such action or suit was brought has determined upon application that, despite the adjudication of liability but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnification for the reasonable expenses incurred.

11.3 EXPENSES.

To the extent that a person has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Section 11.1 or 11.2 of these Bylaws, or in defense of any claim, issue or matter in the action, suit or proceeding, the person shall be indemnified against actual and reasonable expenses (including attorneys' fees) incurred by such person in connection with the action, suit or proceeding and any action, suit or proceeding brought to enforce the mandatory indemnification provided by this Section 11.3.

11.4 DEFINITIONS.

For purposes of Sections 11.1 and 11.2, "other enterprises" shall include employee benefit plans; "fines" shall include any excise taxes assessed on a person with respect to an employee benefit plan; and "serving at the request of the Company" shall include any service as a director, officer, employee, or agent of the Company that imposes duties on, or involves services by, the director or officer with respect to an employee benefit plan, its participants or beneficiaries; and a person who acted in good faith and in a manner the person reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be considered to have acted in a manner "not opposed to the best interests of the Company or the Shareholders".

11.5 PARAMETERS.

The right to indemnification conferred in this Article XI shall be a contract right, and shall apply to services of a director or officer as an employee or agent of the Company as well as in such person's capacity as a director or officer. Except as provided in Section 11.3 of these Bylaws, the Company shall have no obligations under this Article XI to indemnify any person in connection with any proceeding, or part thereof, initiated by him or her without Board authorization.

11.6 DETERMINATION.

Any indemnification under Section 11.1 or 11.2 of these Bylaws (unless ordered by a court) shall be made by the Company only as authorized in the specific case upon a determination that indemnification of the person is proper in the circumstances because the person has met the applicable standard of conduct set forth in Section 11.1 or 11.2, whichever is applicable, and upon an evaluation of the reasonableness of expenses and amount paid in settlement. Such determination and evaluation shall be made in any of the following ways:

- (a) By a majority vote of a quorum of the Board consisting of directors who are not parties or threatened to be made parties to such proceeding.
- (b) If the quorum described in clause (a) above is not obtainable, then by a majority vote of a committee of directors duly designated by the Board and consisting solely of two or more directors who are not at the time parties or threatened to be made parties to the proceeding.
- (c) By independent legal counsel in a written opinion, so long as such counsel is selected (i) by the Board or its committee in the manner prescribed in subparagraph (a) or (b), or (ii) if a quorum of the Board cannot be obtained under subparagraph (a) and a committee cannot be designated under subparagraph (b), by the Board.
- (d) By the Shareholders, but Shares held by directors or officers who are parties or threatened to be made parties to the action, suit or proceeding may not be voted.

11.7 PROPORTIONALITY.

If a person is entitled to indemnification under Section 11.1 or 11.2 of these Bylaws for a portion of expenses, including attorneys' fees, judgments, penalties, fines, and amounts paid in settlement, but not for the total amount thereof, the Company shall indemnify the person for the portion of the

expenses, judgments, penalties, fines, or amounts paid in settlement for which the person is entitled to be indemnified.

11.8 ADVANCES.

The Company may pay or reimburse the reasonable expenses incurred by a person referred to in Section 11.1 or 11.2 of these bylaws who is a party or threatened to be made a party to an action, suit, or proceeding in advance of final disposition of the proceeding if (a) the person furnishes the Company a written affirmation of his or her good faith belief that he or she has met the applicable standard of conduct set forth in Section 11.1 or 11.2, (b) the person furnishes the Company a written undertaking executed to personally repay the advance if it is ultimately determined that he or she did not meet the standard of conduct, (c) the authorization of payment is made in the manner specified in Section 11.6, and (d) a determination is made that the facts then known to those making the determination would not preclude indemnification under Section 11.1 or 11.2. The undertaking shall be a general obligation of the person, but need not be secured.

11.9 SCOPE.

The indemnification or advancement of expenses provided under this Article XI is not exclusive of other rights to which a person seeking indemnification or advancement of expenses may be entitled under a contractual arrangement with the Company. However, the total amount of expenses advanced or indemnified from all sources combined shall not exceed the amount of actual expenses incurred by the person seeking indemnification or advancement of expenses.

11.10 AGENTS.

The Company may, to the extent authorized from time to time by the Board, grant rights to indemnification and to the advancement of expenses to any employee or agent of the Company to the fullest extent of the provisions of this Article XI with respect to the indemnification and advancement of expenses of directors and officers of the Company.

11.11 SUCCESSION.

The indemnification provided in this Article XI continues as to a person who has ceased to be a director or officer and shall inure to the benefit of his or her successors.

11.12 INSURANCE.

The Company may buy and maintain insurance on behalf of any person who is or was a director, officer, partner, trustee, employee or agent of the Company, or is or was serving at the request of the Company as a director, officer, employee or agent of another entity or enterprise against any liability asserted against the person and incurred by him or her in any such capacity or arising out of his or her status as such, whether or not the Company would have power to indemnify the person against such liability under these Bylaws or the laws of Kansas.

11.13 LEGISLATION.

Upon any change of the Kansas statutory provisions relating to the subject matter of this Article XI, the indemnification to which any person shall be entitled hereunder shall be determined by such changed provisions, but only to the extent that any such change permits the Company to provide broader indemnification rights than before any such change. Subject to Section 11.14, the Board may amend these Bylaws to conform to any such changed statutory provisions.

11.14 AMENDMENT.

No amendment or repeal of this Article XI shall apply to any director or officer of the Company for or with respect to any prior acts or omissions of such director or officer.

XII. AMENDMENT

The Bylaws of the Company may be amended, altered or repealed, in whole or in part, by the Shareholders or by the Board at any meeting duly held in accordance with these Bylaws.

ARTICLES OF INCORPORATION

OF

OMEGA (KANSAS), INC.

The undersigned, being a natural person of the age of 18 years or more, for the purpose of forming a corporation under the Kansas General Corporation Code, does hereby adopt the following Articles of Incorporation.

**ARTICLE I
CORPORATE NAME**

The name of the corporation is Omega (Kansas), Inc. (the "Corporation").

**ARTICLE II
REGISTERED OFFICE AND REGISTERED AGENT**

The Registered Office of the Corporation in the State of Kansas is located at 515 South Kansas, City of Topeka, County of Shawnee, Kansas 66603. The name of its Registered Agent at such address is The Corporation Company, Inc.

**ARTICLE III
PURPOSE OF ORGANIZATION**

The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the Kansas General Corporation Code as presently in effect or as it may hereafter be amended.

**ARTICLE IV
CAPITALIZATION**

The total number of shares of all classes of stock which the Corporation shall have authority to issue is 1,000 shares of common stock, par value of \$.001 per share.

**ARTICLE V
INCORPORATOR**

The name and mailing address of the incorporator are Sandra T. Hawley, c/o Shook, Hardy & Bacon L.L.P., 1010 Grand Boulevard, 5th Floor, Post Office Box 15607, Kansas City, Missouri 64106-0607. The powers of said Incorporator shall not terminate upon the filing of the Articles of Incorporation.

**ARTICLE VI
DIRECTORS**

The number of Directors to constitute the initial Board of Directors is one. After the first meeting of the Board of Directors, the number of Directors shall be fixed in the manner provided in the Bylaws of the Corporation. Voting for directors shall not be by written ballot, unless requested by any stockholder.

**ARTICLE VII
BYLAWS**

In furtherance of and not in limitation of the powers conferred by the laws of the State of Kansas, the Board of Directors of the Corporation is authorized and empowered to make, alter, amend and repeal the bylaws of the Corporation in any manner not inconsistent with the laws of the State of Kansas.

**ARTICLE VIII
PREEMPTIVE RIGHTS**

The stockholders shall have preemptive rights to purchase any shares of the Corporation hereafter issued or any securities exchangeable for or convertible into such shares or any warrants or other instruments evidencing rights or options to subscribe for, purchase or otherwise acquire such shares; provided, however, no preemptive rights shall exist to acquire shares issued to employees pursuant to any equity-based incentive plan adopted by the Corporation.

**ARTICLE IX
CUMULATIVE VOTING**

At all elections of directors of the Corporation and for the purposes of all other matters upon which stockholders are entitled to vote, each stockholder shall be entitled to as many votes as shall equal the number of shares of stock held by that stockholder. No cumulative voting shall be permitted.

**ARTICLE X
DIRECTOR LIABILITY**

To the fullest extent permitted by the Kansas General Corporation Code as presently in effect or as it may hereafter be amended, no director shall be personally liable to the Corporation or its stockholders for monetary damages for any breach of fiduciary duty by such director as a director.

**ARTICLE XI
INDEMNIFICATION**

The Corporation shall, to the fullest extent permitted by the Kansas General Corporation Code as presently in effect or as it may hereafter be amended, indemnify all persons whom it may indemnify pursuant thereto and advance expenses of litigation to directors and officers in accordance with the procedures and limitations set forth in the bylaws of the Corporation.

**ARTICLE XII
STOCKHOLDER WRITTEN CONSENTS**

Any action which may be taken at a meeting of the stockholders may be taken without a meeting if consents in writing, setting for the action so taken, shall be signed by all the stockholders entitled to vote with respect to the subject matter thereof.

**ARTICLE XIII
COMPROMISES OR ARRANGEMENTS WITH CREDITORS OR STOCKHOLDERS**

Whenever a compromise or arrangement is proposed between this Corporation and its creditors or any class of them or between this Corporation and its stockholders or any class of them, any court of competent jurisdiction within the state of Kansas, on the application in a summary way of this Corporation or of any creditor or stockholder thereof or on the application of any receiver or receivers appointed for this Corporation under the provisions of K.S.A. 17-6901 and amendments thereto, or on the application of trustees in dissolution or of any receiver or receivers appointed for this Corporation under the provisions of K.S.A. 17-6808 and amendments thereto, may order a meeting of the creditors or class of creditors, or of the stockholders or class of stockholders of this Corporation, as the case may be, to be summoned in such manner as the court directs. If a majority in number representing 3/4 in value of the creditors or class of creditors, or of the stockholders or class of stockholders of this Corporation, as the case may be, agree to any compromise or arrangement and to any reorganization of this Corporation as consequence of such compromise or arrangement and the reorganization, if sanctioned by the court to which the application has been made, shall be binding on all the creditors or class of creditors, or on all the stockholders or class of stockholders, of this Corporation, as the case may be, and also on this Corporation.

IN WITNESS WHEREOF, these Articles of Incorporation have been signed this 8th day of June, 1999.

/s/ SANDRA T. HAWLEY

Sandra T. Hawley
Sole Incorporator

STATE OF MISSOURI)
) ss.
COUNTY OF JACKSON)

I, L. Diane Brown, a Notary Public, do hereby certify that on the 8th day of June, 1999, personally appeared before me Sandra T. Hawley, who being first duly sworn, acknowledged and declared that he is the person who signed the foregoing document as Incorporator and that the statements therein contained are true.

/s/ L. DIANE BROWN

Notary Public

My commission expires:

9/24/2001

CERTIFICATE OF THE KANSAS SECRETARY OF STATE

Registration No. 274-5123

I hereby certify the above and foregoing to be true and correct copy of the original filed with the Kansas Secretary of State. Certified on this date: June 8, 1994

RON THORNBURGH, Secretary of State

BYLAWS
OF
OMEGA (KANSAS), INC.
a Kansas Corporation

PREAMBLE

These bylaws are subject to, and governed by, the Kansas General Corporation Code (the "Code") and the articles of incorporation of Omega (Kansas), Inc. (the "Corporation"). In the event of a direct conflict between the provisions of these bylaws and the mandatory provisions of the Code or the provisions of the articles of incorporation of the Corporation, such provisions of the Code or the articles of incorporation of the Corporation, as the case may be, will be controlling.

ARTICLE ONE:
OFFICES

1.01 **Registered Office and Agent.** The registered office and registered agent of the Corporation shall be as designated from time to time by the appropriate filing by the Corporation in the office of the Secretary of State of Kansas.

1.02 **Other Offices.** The Corporation may also have offices at such other places, both within and without the State of Kansas, as the board of directors may from time to time determine or the business of the Corporation may require.

ARTICLE TWO:
SHAREHOLDERS

2.01 **Annual Meetings.** An annual meeting of shareholders of the Corporation shall be held during each calendar year on such date and at such time as shall be designated from time to time by the board of directors and stated in the notice of the meeting, if not a legal holiday in the place where the meeting is to be held, and, if a legal holiday in such place, then on the next business day following, at the time specified in the notice of the meeting. At such meeting, the shareholders shall elect directors and transact such other business as may properly be brought before the meeting.

2.02 **Special Meetings.** A special meeting of the shareholders may be called at any time by the president, the board of directors, or the holders of not less than ten percent of all shares entitled to vote at such meeting. Only business within the purpose or purposes described in the notice of special meeting may be conducted at such special meeting.

2.03 **Place of Meetings.** The annual meeting of shareholders may be held at any place within or without the State of Kansas designated by the board of directors. Special meetings of shareholders may be held at any place within or without the State of Kansas designated by the person or persons calling such special meeting as provided in Section 2.02 above. Meetings of shareholders shall be held at the principal office of the Corporation unless another place is designated for meetings in the manner provided herein.

2.04 **Notice.** Except as otherwise provided by law, written or printed notice stating the place, day, and hour of each meeting of the shareholders and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered not less than ten nor more than sixty days before the date of the meeting by or at the direction of the president, the secretary, or the person calling the meeting, to each shareholder of record entitled to vote at such meeting.

2.05 **Voting List.** At least ten days before each meeting of shareholders, the secretary shall prepare a complete list of shareholders entitled to vote at such meeting, arranged in alphabetical order, including the address of each shareholder and the number of voting shares held by each shareholder. For a period of ten days prior to such meeting, such list shall be kept on file at the registered office or

principal place of business of the Corporation and shall be subject to inspection by any shareholder during usual business hours. Such list shall be produced at such meeting, and at all times during such meeting shall be subject to inspection by any shareholder. The original share transfer records shall be prima facie evidence as to who are the shareholders entitled to examine such list.

2.06 Voting of Shares. Shares of the Corporation's own stock owned by the Corporation or by another domestic or foreign corporation or other entity, if a majority of the voting stock or voting interest of the other corporation or other entity is owned or controlled by the Corporation, shall not be voted, directly or indirectly, at any meeting and shall not be counted in determining the total number of outstanding shares at any given time. This shall not be construed as limiting the right of the Corporation or any domestic or foreign corporation or other entity to vote stock, including its own stock, held or controlled by it in a fiduciary capacity or with respect to which it otherwise exercises voting power in a fiduciary capacity. Shares standing in the name of another domestic or foreign corporation of any type or kind may be voted by such officer, agent, or proxy as the bylaws of such corporation may authorize or, in the absence of such authorization, as the board of directors of such corporation may determine. Shares held by an administrator, executor, guardian, or conservator may be voted by such person, either in person or by proxy, without transfer of such shares into such person's name so long as such shares form a part of the estate served by such person and are in the possession of such estate. Shares held by a trustee may be voted by the trustee, either in person or by proxy, only after the shares have been transferred into the trustee's name as trustee. Shares standing in the name of a receiver may be voted by such receiver, and shares held by or under the control of a receiver may be voted by such receiver without transfer of such shares into the receiver's name if authority to do so is contained in the court order by which such receiver was appointed. A shareholder whose shares are pledged shall be entitled to vote such shares until they have been transferred into the name of the pledgee, and thereafter, the pledgee shall be entitled to vote such shares.

2.07 Quorum; Withdrawal of Quorum. A quorum shall be present at a meeting of shareholders if the holders of a majority of the shares entitled to vote at the meeting are represented at the meeting in person or by proxy, except as otherwise provided by law or the articles of incorporation. If a quorum shall not be present at any meeting of shareholders, the shareholders represented in person or by proxy at such meeting may adjourn the meeting until such time and to such place as may be determined by a vote of the holders of a majority of the shares represented in person or by proxy at that meeting. Once a quorum is present at a meeting of shareholders, the shareholders represented in person or by proxy at the meeting may conduct such business as may be properly brought before the meeting until it is adjourned, and the subsequent withdrawal from the meeting of any shareholder or the refusal of any shareholder represented in person or by proxy to vote shall not affect the presence of a quorum at the meeting.

2.08 Vote Required. Directors of the Corporation shall be elected by a plurality of the votes cast by the holders of shares entitled to vote in the election of directors of the Corporation at a meeting of shareholders at which a quorum is present. Except as otherwise provided by law, the articles of incorporation, or these bylaws, with respect to any matter, the affirmative vote of the holders of a majority of the Corporation's shares entitled to vote on and that voted for or against or expressly abstained with respect to that matter at a meeting at which a quorum is present shall be the act of the shareholders.

2.09 Method of Voting; Proxies. Every shareholder of record shall be entitled at every meeting of shareholders to one vote on each matter submitted to a vote, for every share standing in such shareholder's name on the original share transfer records of the Corporation except to the extent that the voting rights of the shares of any class or classes are increased, limited, or denied by the articles of incorporation. Such share transfer records shall be prima facie evidence as to the identity of shareholders entitled to vote. At any meeting of shareholders, every shareholder having the right to vote may vote either in person or by a proxy executed in writing by the shareholder or by such

shareholder's duly authorized attorney-in-fact. Each such proxy shall be filed with the secretary of the Corporation before, or at the time of, the meeting. No proxy shall be valid after eleven months from the date of its execution, unless otherwise provided in the proxy. If no date is stated on a proxy, such proxy shall be presumed to have been executed on the date of the meeting at which it is to be voted. Each proxy shall be revocable unless the proxy form conspicuously states that the proxy is irrevocable and the proxy is coupled with an interest.

2.10 Closing of Transfer Records; Record Date. For the purpose of determining shareholders entitled to notice of, or to vote at, any meeting of shareholders or any adjournment thereof, or entitled to receive a distribution (other than a distribution involving a purchase or redemption by the Corporation of any of its own shares) or a share dividend, or in order to make a determination of shareholders for any other proper purpose (other than determining shareholders entitled to consent to action by shareholders proposed to be taken without a meeting of shareholders), the board of directors may provide that the share transfer records of the Corporation shall be closed for a stated period but not to exceed in any event sixty days. If the share transfer records are closed for the purpose of determining shareholders entitled to notice of, or to vote at, a meeting of shareholders, such records shall be closed for at least ten days immediately preceding such meeting. In lieu of closing the share transfer records, the board of directors may fix in advance a date as the record date for any such determination of shareholders, such date in any case to be not more than sixty days and, in case of a meeting of shareholders, not less than ten days prior to the date on which the particular action requiring such determination of shareholders is to be taken. If the share transfer records are not closed and if no record date is fixed for the determination of shareholders entitled to notice of, or to vote at, a meeting of shareholders or entitled to receive a distribution (other than a distribution involving a purchase or redemption by the Corporation of any of its own shares) or a share dividend, the date on which the notice of the meeting is mailed or the date on which the resolution of the board of directors declaring such distribution or share dividend is adopted, as the case may be, shall be the record date for such determination of shareholders. When a determination of shareholders entitled to vote at any meeting of shareholders has been made as provided in this Section 2.10, such determination shall apply to any adjournment thereof except where the determination has been made through the closing of the share transfer records and the stated period of closing has expired.

2.11 Officers Duties at Meetings. The president shall preside at, and the secretary shall prepare minutes of, each meeting of shareholders, and in the absence of either such officer, such officer's duties shall be performed by some person or persons elected by the vote of the holders of a majority of the outstanding shares entitled to vote, present in person or represented by proxy.

2.12 Action Without Meeting. Any action that may be taken, or that is required by law or the articles of incorporation or bylaws of the Corporation to be taken, at any annual or special meeting of shareholders, may be taken without a meeting, without prior notice, and without a vote, if a consent or consents in writing, setting forth the action so taken, shall have been signed by the holder or holders of shares having not less than the minimum number of votes that would be necessary to take such action at a meeting at which the holders of all shares entitled to vote on the action were present and voted. The signed consent or consents of shareholders shall be placed in the minute books of the Corporation. The record date for the purpose of determining shareholders entitled to consent to any action pursuant to this Section 2.12 shall be determined in accordance with Article 17-6501 of the Code.

ARTICLE THREE: DIRECTORS

3.01 Management. The powers of the Corporation shall be exercised by or under the authority of, and the business and affairs of the Corporation shall be managed under the direction of, the board of directors.

3.02 **Number; Election; Term; Qualification.** The number of directors that shall constitute the board of directors shall be not less than one. The first board of directors shall consist of the number of directors named in the articles of incorporation. Thereafter, the number of directors that shall constitute the entire board of directors shall be determined by resolution of the board of directors at any meeting thereof or by the shareholders at any meeting thereof, but shall never be less than one. At each annual meeting of shareholders, directors shall be elected to hold office until the next annual meeting of shareholders and until their successors are elected and qualified. No director need be a shareholder, a resident of the State of Kansas, or a citizen of the United States.

3.03 **Changes in Number.** No decrease in the number of directors constituting the entire board of directors shall have the effect of shortening the term of any incumbent director. Any directorship to be filled by reason of an increase in the number of directors may be filled by (a) the shareholders at any annual or special meeting of shareholders called for that purpose or (b) the board of directors for a term of office continuing only until the next election of one or more directors by the shareholders; provided that the board of directors may not fill more than two such directorships during the period between any two successive annual meetings of shareholders. Notwithstanding the foregoing, whenever the holders of any class or series of shares are entitled to elect one or more directors by the provisions of the articles of incorporation, any newly created directorship(s) of such class or series to be filled by reason of an increase in the number of such directors may be filled by the affirmative vote of a majority of the directors elected by such class or series then in office or by a sole remaining director so elected or by the vote of the holders of the outstanding shares of such class or series, and such directorship(s) shall not in any case be filled by the vote of the remaining directors or by the holders of the outstanding shares of the Corporation as a whole unless otherwise provided in the articles of incorporation.

3.04 **Removal.** At any meeting of shareholders called expressly for that purpose, any director or the entire board of directors may be removed, with or without cause, by a vote of the holders of a majority of the shares then entitled to vote on the election of directors. Notwithstanding the foregoing, whenever the holders of any class or series of shares are entitled to elect one or more directors by the provisions of the articles of incorporation, only the holders of shares of that class or series shall be entitled to vote for or against the removal of any director elected by the holders of shares of that class or series.

3.05 **Vacancies.** Any vacancy occurring in the initial board of directors before the issuance of shares may be filled by the affirmative vote or written consent of a majority of the incorporators or by the affirmative vote of a majority of the remaining directors though less than a quorum of the board of directors. Any vacancy occurring in the board of directors after the issuance of shares may be filled by (a) the shareholders at any annual or special meeting of shareholders called for that purpose or (b) the affirmative vote of a majority of the remaining directors though less than a quorum of the board of directors. A director elected to fill a vacancy shall be elected to serve for the unexpired term of such director's predecessor in office. Notwithstanding the foregoing, whenever the holders of any class or series of shares are entitled to elect one or more directors by the provisions of the articles of incorporation, any vacancies in such directorship(s) may be filled by the affirmative vote of a majority of the directors elected by such class or series then in office or by a sole remaining director so elected or by the vote of the holders of the outstanding shares of such class or series, and such directorship(s) shall not in any case be filled by the vote of the remaining directors or the holders of the outstanding shares of the Corporation as a whole unless otherwise provided in the articles of incorporation.

3.06 **Place of Meetings.** Except as otherwise set forth in these bylaws, the board of directors may hold its meetings in such place or places within or without the State of Kansas as the person or persons calling the meeting in accordance with these bylaws may determine.

3.07 **First Meeting.** Each newly elected board of directors may hold its first meeting for the purpose of organization and the transaction of business, if a quorum is present, immediately after and at the same place as the annual meeting of shareholders, and notice of such meeting shall not be necessary.

3.08 **Regular Meetings.** Regular meetings of the board of directors may be held without notice at such times and places as may be designated from time to time by resolution of the board of directors and communicated to all directors.

3.09 **Special Meetings; Notice.** Special meetings of the board of directors shall be held whenever called by the president or by any director. The person calling any special meeting shall cause notice of such special meeting, including therein the time and place of such special meeting, to be given to each director at least two days before such special meeting. Neither the business to be transacted at, nor the purpose of, any special meeting of the board of directors need be specified in the notice or waiver of notice of any special meeting.

3.10 **Quorum; Majority Vote.** At all meetings of the board of directors, a majority of the number of directors fixed in the manner provided in these bylaws shall constitute a quorum for the transaction of business. If a quorum is not present at a meeting, a majority of the directors present may adjourn the meeting from time to time, without notice other than an announcement at the meeting, until a quorum is present. The act of a majority of the directors present at a meeting at which a quorum is in attendance shall be the act of the board of directors, unless the act of a greater number is required by law, the articles of incorporation, or these bylaws.

3.11 **Procedure; Minutes.** At meetings of the board of directors, business shall be transacted in such order as the board of directors may determine from time to time. The board of directors shall appoint at each meeting a person to preside at the meeting and a person to act as secretary of the meeting. The secretary of the meeting shall prepare minutes of the meeting, which shall be delivered to the secretary of the Corporation for placement in the minute books of the Corporation.

3.12 **Presumption of Assent.** A director of the Corporation who is present at any meeting of the board of directors at which action on any matter is taken shall be presumed to have assented to the action unless such director's dissent shall be entered in the minutes of the meeting or unless such director shall file a written dissent to such action with the person acting as secretary of the meeting before the adjournment thereof or shall forward any dissent by certified or registered mail to the secretary of the Corporation immediately after the adjournment of the meeting. Such right to dissent shall not apply to a director who voted in favor of such action.

3.13 **Compensation.** Directors, in their capacity as directors, may receive, by resolution of the board of directors, a fixed sum and expenses of attendance, if any, for attending meetings of the board of directors or a stated salary. No director shall be precluded from serving the Corporation in any other capacity or receiving compensation therefor.

3.14 **Action Without Meeting.** Any action that may be taken, or that is required by law, the articles of incorporation, or these bylaws to be taken, at a meeting of the board of directors or any committee may be taken without a meeting if a consent in writing, setting forth the action so taken, shall have been signed by all of the members of the board of directors or committee, as the case may be, in accordance with Article 17-6302 of the Code, and such consent shall have the same force and effect, as of the date stated therein, as a unanimous vote of such members of the board of directors or committee, as the case may be, and may be stated as such in any document or instrument filed with the Secretary of State of Kansas or in any certificate or other document delivered to any person. The consent may be in one or more counterparts so long as each director or committee member signs one of the counterparts. The signed consent shall be placed in the minute books of the Corporation.

**ARTICLE FOUR:
COMMITTEES**

4.01 **Designation.** The board of directors may, by resolution adopted by a majority of the entire board of directors, designate one or more committees.

4.02 **Number; Qualification; Term.** The board of directors, by resolution adopted by a majority of the entire board of directors, shall designate one or more of its members as members of any committee and may designate one or more of its members as alternate members of any committee, who may, subject to any limitations imposed by the board of directors, replace absent or disqualified members at any meeting of that committee. The number of committee members may be increased or decreased from time to time by resolution adopted by a majority of the entire board of directors. Each committee member shall serve as such until the earliest of (a) the expiration of such member's term as director, (b) such member's resignation as a committee member or as a director, or (c) such member's removal, as a committee member or as a director.

4.03 **Authority.** Each committee, to the extent expressly provided in the resolution establishing such committee, shall have and may exercise all of the authority of the board of directors, including, without limitation, the authority to authorize a distribution and to authorize the issuance of shares of the Corporation. Notwithstanding the foregoing, however, no committee shall have the authority of the board of directors in reference to:

- (a) amending the articles of incorporation, except that a committee may, to the extent provided in the resolution designating that committee, exercise the authority of the board of directors vested in it in accordance with Article 2.13 of the Code;
- (b) proposing a reduction of the stated capital of the Corporation in the manner permitted by Article 17.6301 (e) of the Code;
- (c) approving a plan of merger or share exchange of the Corporation;
- (d) recommending to the shareholders the sale, lease, or exchange of all or substantially all of the property and assets of the Corporation otherwise than in the usual and regular course of its business;
- (e) recommending to the shareholders a voluntary dissolution of the Corporation or a revocation thereof;
- (f) amending, altering, or repealing these bylaws or adopting new bylaws of the Corporation;
- (g) filling vacancies in the board of directors;
- (h) filling vacancies in, or designating alternate members of, any committee;
- (i) filling any directorship to be filled by reason of an increase in the number of directors;
- (j) electing or removing officers of the Corporation or members or alternate members of any committee;
- (k) fixing the compensation of any member or alternate member of any committee; or
- (l) altering or repealing any resolution of the board of directors that by its terms provides that it shall not be amendable or repealable.

4.04 **Committee Changes.** The board of directors shall have the power at any time to fill vacancies in, to change the membership of, and to discharge any committee.

4.05 **Regular Meetings.** Regular meetings of any committee may be held without notice at such time and place as may be designated from time to time by the committee and communicated to all members thereof.

4.06 **Special Meetings.** Special meetings of any committee may be held whenever called by any committee member. The committee member calling any special meeting shall cause notice of such special meeting, including therein the time and place of such special meeting, to be given to each committee member at least two days before such special meeting. Neither the business to be transacted at, nor the purpose of, any special meeting of any committee need be specified in the notice or waiver of notice of any special meeting.

4.07 **Quorum; Majority Vote.** At meetings of any committee, a majority of the number of members designated by the board of directors shall constitute a quorum for the transaction of business. If a quorum is not present at a meeting of any committee, a majority of the members present may adjourn the meeting from time to time, without notice other than an announcement at the meeting, until a quorum is present. The act of a majority of the members present at any meeting at which a quorum is in attendance shall be the act of a committee, unless the act of a greater number is required by law, the articles of incorporation, or these bylaws.

4.08 **Minutes.** Each committee shall cause minutes of its proceedings to be prepared and shall report the same to the board of directors upon the request of the board of directors. The minutes of the proceedings of each committee shall be delivered to the secretary of the Corporation for placement in the minute books of the Corporation.

4.09 **Compensation.** Committee members may, by resolution of the board of directors, be allowed a fixed sum and expenses of attendance, if any, for attending any committee meetings or a stated salary.

4.10 **Responsibility.** The designation of any committee and the delegation of authority to it shall not operate to relieve the board of directors or any director of any responsibility imposed upon it or such director by law.

ARTICLE FIVE: GENERAL PROVISIONS RELATING TO MEETINGS

5.01 **Notice.** Whenever by law, the articles of incorporation, or these bylaws, notice is required to be given to any committee member, director, or shareholder and no provision is made as to how such notice shall be given, it shall be construed to mean that any such notice may be given (a) in person, (b) in writing, by mail, postage prepaid, addressed to such committee member, director, or shareholder at such person's address as it appears on the books of the Corporation or, in the case of a shareholder, the share transfer records of the Corporation, or (c) by any other method permitted by law. Any notice required or permitted to be given by mail shall be deemed to be delivered and given at the time when the same is deposited in the United States mail, postage prepaid, and addressed as aforesaid.

5.02 **Waiver of Notice.** Whenever by law, the articles of incorporation, or these bylaws, any notice is required to be given to any committee member, shareholder, or director of the Corporation, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time notice should have been given, shall be equivalent to the giving of such notice. Attendance of a committee member, shareholder, or director at a meeting shall constitute a waiver of notice of such meeting, except where such person attends for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

5.03 **Telephone and Similar Meetings.** Shareholders, directors, or committee members may participate in and hold a meeting by means of a conference telephone or similar communications

equipment by means of which persons participating in the meeting can hear each other. Participation in such a meeting shall constitute presence in person at such meeting, except where a person participates in the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

**ARTICLE SIX:
OFFICERS AND OTHER AGENTS**

6.01 **Number; Titles; Election; Term; Qualification.** The officers of the Corporation shall be a president and a secretary. The Corporation may also have a chairman of the board, one or more vice presidents (and, in the case of each vice president, with such descriptive title, if any, as the board of directors shall determine), a treasurer, one or more assistant treasurers, one or more assistant secretaries, and such other officers and such agents as the board of directors may from time to time elect or appoint. The board of directors shall elect a president and secretary at its first meeting at which a quorum shall be present after the annual meeting of shareholders or whenever a vacancy exists. The board of directors then, or from time to time, may also elect or appoint one or more other officers or agents as it shall deem advisable. Each officer and agent shall hold office for the term for which such person is elected or appointed and until such person's successor has been elected or appointed and qualified. Any person may hold any number of offices. No officer or agent need be a shareholder, a director, a resident of the State of Kansas, or a citizen of the United States.

6.02 **Removal.** Any officer or agent elected or appointed by the board of directors may be removed by the board of directors whenever in its judgment the best interest of the Corporation will be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the person so removed. Election or appointment of an officer or agent shall not of itself create contract rights.

6.03 **Vacancies.** Any vacancy occurring in any office of the Corporation may be filled by the board of directors.

6.04 **Authority.** Officers shall have such authority and perform such duties in the management of the Corporation as are provided in these bylaws or as may be determined by resolution of the board of directors not inconsistent with these bylaws.

6.05 **Compensation.** The compensation, if any, of officers and agents shall be fixed from time to time by the board of directors; provided, that the board of directors may by resolution delegate to any one or more officers of the Corporation the authority to fix such compensation.

6.06 **Chairman of the Board.** The chairman of the board shall have such powers and duties as may be prescribed by the board of directors.

6.07 **President.** Unless and to the extent that such powers and duties are expressly delegated to a chairman of the board by the board of directors, the president shall be the chief executive officer of the Corporation and, subject to the supervision of the board of directors, shall have general management and control of the business and property of the Corporation in the ordinary course of its business with all such powers with respect to such general management and control as may be reasonably incident to such responsibilities, including, but not limited to, the power to employ, discharge, or suspend employees and agents of the Corporation, to fix the compensation of employees and agents, and to suspend, with or without cause, any officer of the Corporation pending final action by the board of directors with respect to continued suspension, removal, or reinstatement of such officer. The president may, without limitation, agree upon and execute all division and transfer orders, bonds, contracts, and other obligations in the name of the Corporation.

6.08 **Vice Presidents.** Each vice president shall have such powers and duties as may be prescribed by the board of directors or as may be delegated from time to time by the president and (in the order as designated by the board of directors, or in the absence of such designation, as determined by the

length of time each has held the office of vice president continuously) shall exercise the powers of the president during that officer's absence or inability to act. As between the Corporation and third parties, any action taken by a vice president in the performance of the duties of the president shall be conclusive evidence of the absence or inability to act of the president at the time such action was taken.

6.09 **Treasurer.** The treasurer shall have custody of the Corporation's funds and securities, shall keep full and accurate accounts of receipts and disbursements, and shall deposit all moneys and valuable effects in the name and to the credit of the Corporation in such depository or depositories as may be designated by the board of directors. The treasurer shall audit all payrolls and vouchers of the Corporation, receive, audit, and consolidate all operating and financial statements of the Corporation and its various departments, shall supervise the accounting and auditing practices of the Corporation, and shall have charge of matters relating to taxation. Additionally, the treasurer shall have the power to endorse for deposit, collection, or otherwise all checks, drafts, notes, bills of exchange, and other commercial paper payable to the Corporation and to give proper receipts and discharges for all payments to the Corporation. The treasurer shall perform such other duties as may be prescribed by the board of directors or as may be delegated from time to time by the president.

6.10 **Assistant Treasurers.** Each assistant treasurer shall have such powers and duties as may be prescribed by the board of directors or as may be delegated from time to time by the president. The assistant treasurers (in the order as designated by the board of directors or, in the absence of such designation, as determined by the length of time each has held the office of assistant treasurer continuously) shall exercise the powers of the treasurer during that officer's absence or inability to act. As between the Corporation and third parties, any action taken by an assistant treasurer in the performance of the duties of the treasurer shall be conclusive evidence of the absence or inability to act of the treasurer at the time such action was taken.

6.11 **Secretary.** The secretary shall maintain minutes of all meetings of the board of directors, of any committee, and of the shareholders or consents in lieu of such minutes in the Corporation's minute books, and shall cause notice of such meetings to be given when requested by any person authorized to call such meetings. The secretary may sign with the president, in the name of the Corporation, all contracts of the Corporation and affix the seal of the Corporation thereto. The secretary shall have charge of the certificate books, share transfer records, stock ledgers, and such other stock books and papers as the board of directors may direct, all of which shall at all reasonable times be open to inspection by any director at the office of the Corporation during business hours. The secretary shall perform such other duties as may be prescribed by the board of directors or as may be delegated from time to time by the president.

6.12 **Assistant Secretaries.** Each assistant secretary shall have such powers and duties as may be prescribed by the board of directors or as may be delegated from time to time by the president. The assistant secretaries (in the order designated by the board of directors or, in the absence of such designation, as determined by the length of time each has held the office of assistant secretary continuously) shall exercise the powers of the secretary during that officer's absence or inability to act. As between the Corporation and third parties, any action taken by an assistant secretary in the performance of the duties of the secretary shall be conclusive evidence of the absence or inability to act of the secretary at the time such action was taken.

ARTICLE SEVEN: CERTIFICATES AND SHAREHOLDERS

7.01 **Certificated and Uncertificated Shares.** The shares of the Corporation may be either certificated shares or uncertificated shares. As used herein, the term "certificated shares" means shares represented by instruments in bearer or registered form, and the term "uncertificated shares" means

shares not represented by instruments and the transfers of which are registered upon books maintained for that purpose by or on behalf of the Corporation.

7.02 **Certificates for Certificated Shares.** The certificates representing certificated shares of stock of the Corporation shall be in such form as shall be approved by the board of directors in conformity with law. The certificates shall be consecutively numbered, shall be entered as they are issued in the books of the Corporation or in the records of the Corporation's designated transfer agent, if any, and shall state upon the face thereof: (a) that the Corporation is organized under the laws of the State of Kansas; (b) the name of the person to whom issued; (c) the number and class of shares and the designation of the series, if any, that such certificate represents; (d) the par value of each share represented by such certificate, or a statement that the shares are without par value; and (e) such other matters as may be required by law. The certificates shall be signed by the president or any vice president and also by the secretary, an assistant secretary, or any other officer; however, the signatures of any of such officers may be facsimiles. The certificates may be sealed with the seal of the Corporation or a facsimile thereof.

7.03 **Issuance.** Shares with or without par value may be issued for such consideration and to such persons as the board of directors may from time to time determine, except in the case of shares with par value the consideration must be at least equal to the par value of such shares. Shares may not be issued until the full amount of the consideration has been paid. After the issuance of uncertificated shares, the Corporation or the transfer agent of the Corporation shall send to the registered owner of such uncertificated shares a written notice containing the information required to be stated on certificates representing shares of stock as set forth in Section 7.02 above and such additional information as may be required by the Kansas Uniform Commercial Code as currently in effect and as the same may be amended from time to time hereafter.

7.04 **Consideration for Shares.** The consideration for the issuance of shares shall consist of any tangible or intangible benefit to the Corporation, including cash, promissory notes, services performed, contracts for services to be performed, or other securities of the corporation. In the absence of fraud in the transaction, the judgment of the board of directors as to the value of consideration received shall be conclusive. When consideration, fixed as provided by law, has been paid, the shares shall be deemed to have been issued and shall be considered fully paid and nonassessable. The consideration received for shares shall be allocated by the board of directors, in accordance with law, between stated capital and surplus accounts.

7.05 **Lost, Stolen, or Destroyed Certificates.** The Corporation shall issue a new certificate or certificates in place of any certificate representing shares previously issued if the registered owner of the certificate:

- (a) **Claim.** Makes proof by affidavit, in form and substance satisfactory to the board of directors or any proper officer, that a previously issued certificate representing shares has been lost, destroyed, or stolen;
- (b) **Timely Request.** Requests the issuance of a new certificate before the Corporation has notice that the certificate has been acquired by a purchaser for value in good faith and without notice of an adverse claim;
- (c) **Bond.** If required by the board of directors or any proper officer, in its or such officer's discretion, delivers to the Corporation a bond or indemnity agreement in such form, with such surety or sureties, and with such fixed or open penalty, as the board of directors or such officer may direct, in its or such officer's discretion, to indemnify the Corporation (and its transfer agent and registrar, if any) against any claim that may be made on account of the alleged loss, destruction, or theft of the certificate; and

(d) *Other Requirements.* Satisfies any other reasonable requirements imposed by the board of directors.

7.06 **Transfer of Shares.** Shares of stock of the Corporation shall be transferable only on the books of the Corporation by the shareholders thereof in person or by their duly authorized attorneys or legal representatives. With respect to certificated shares, upon surrender to the Corporation or the transfer agent of the Corporation for transfer of a certificate representing shares duly endorsed and accompanied by any reasonable assurances that such endorsements are genuine and effective as the Corporation may require and after compliance with any applicable law relating to the collection of taxes, the Corporation or its transfer agent shall, if it has no notice of an adverse claim or if it has discharged any duty with respect to any adverse claim, issue one or more new certificates to the person entitled thereto, cancel the old certificate, and record the transaction upon its books. With respect to uncertificated shares, upon delivery to the Corporation or the transfer agent of the Corporation of an instruction originated by an appropriate person (as prescribed by the Kansas Uniform Commercial Code as currently in effect and as the same may be amended from time to time hereafter) and accompanied by any reasonable assurances that such instruction is genuine and effective as the Corporation may require and after compliance with any applicable law relating to the collection of taxes, the Corporation or its transfer agent shall, if it has no notice of an adverse claim or has discharged any duty with respect to any adverse claim, record the transaction upon its books, and shall send to the new registered owner of such uncertificated shares, and, if the shares have been transferred subject to a registered pledge, to the registered pledgee, a written notice containing the information required to be stated on certificates representing shares of stock set forth in Section 7.02 above and such additional information as may be required by the Kansas Uniform Commercial Code as currently in effect and as the same may be amended from time to time hereafter.

7.07 **Registered Shareholders.** The Corporation shall be entitled to treat the shareholder of record as the shareholder in fact of any shares and, accordingly, shall not be bound to recognize any equitable or other claim to or interest in such shares on the part of any other person, whether or not it shall have actual or other notice thereof, except as otherwise provided by law.

7.08 **Legends.** The board of directors shall cause an appropriate legend to be placed on certificates representing shares of stock as may be deemed necessary or desirable by the board of directors in order for the Corporation to comply with applicable federal or state securities or other laws.

7.09 **Regulations.** The board of directors shall have the power and authority to make all such rules and regulations as it may deem expedient concerning the issue, transfer, registration, or replacement of certificates representing shares of stock of the Corporation.

ARTICLE EIGHT: MISCELLANEOUS PROVISIONS

8.01 **Dividends.** Subject to provisions of applicable statutes and the articles of incorporation, dividends may be declared by and at the discretion of the board of directors at any meeting and may be paid in cash, in property, or in shares of stock of the Corporation.

8.02 **Books and Records.** The Corporation shall keep books and records of account and shall keep minutes of the proceedings of its shareholders, the board of directors, and each committee of the board of directors. The Corporation shall keep at its registered office or principal place of business, or at the office of its transfer agent or registrar, a record of the original issuance of shares issued by the Corporation and a record of each transfer of those shares that have been presented to the Corporation for registration of transfer, giving the names and addresses of all past and current shareholders and the number and class of the shares held by each of such shareholders.

8.03 **Fiscal Year.** The fiscal year of the Corporation shall be fixed by the board of directors; provided, that if such fiscal year is not fixed by the board of directors and the board of directors does not defer its determination of the fiscal year, the fiscal year shall be the calendar year.

8.04 **Seal.** The seal, if any, of the Corporation shall be in such form as may be approved from time to time by the board of directors. If the board of directors approves a seal, the affixation of such seal shall not be required to create a valid and binding obligation against the Corporation.

8.05 **Attestation by the Secretary.** With respect to any deed, deed of trust, mortgage, or other instrument executed by the Corporation through its duly authorized officer or officers, the attestation to such execution by the secretary of the Corporation shall not be necessary to constitute such deed, deed of trust, mortgage, or other instrument a valid and binding obligation against the Corporation unless the resolutions, if any, of the board of directors authorizing such execution expressly state that such attestation is necessary.

8.06 **Resignation.** Any director, committee member, officer, or agent may resign by so stating at any meeting of the board of directors or by giving written notice to the board of directors, the president, or the secretary. Such resignation shall take effect at the time specified in the statement made at the board of directors' meeting or in the written notice, but in no event may the effective time of such resignation be prior to the time such statement is made or such notice is given. If no effective time is specified in the resignation, the resignation shall be effective immediately. Unless a resignation specifies otherwise, it shall be effective without being accepted.

8.07 **Securities of Other Corporations.** The president or any vice president of the Corporation shall have the power and authority to transfer, endorse for transfer, vote, consent, or take any other action with respect to any securities of another issuer that may be held or owned by the Corporation and to make, execute, and deliver any waiver, proxy, or consent with respect to any such securities.

8.08 **Amendment of Bylaws.** The board of directors may amend or repeal the bylaws of the Corporation or adopt new bylaws unless: (a) the articles of incorporation or the Code reserves the power exclusively to the shareholders in whole or part or (b) the shareholders in amending, repealing, or adopting a particular bylaw expressly provide that the board of directors may not amend or repeal that bylaw. Unless the articles of incorporation or a bylaw adopted by the shareholders provides otherwise as to all or some portion of the bylaws, the shareholders may amend, repeal, or adopt the bylaws even though the bylaws may also be amended, repealed, or adopted by the Board of Directors.

8.09 **Invalid Provisions.** If any part of these bylaws is held invalid or inoperative for any reason, the remaining parts, so far as is possible and reasonable, shall remain valid and operative.

8.10 **Headings; Table of Contents.** The headings and table of contents used in these bylaws are for convenience only and do not constitute matter to be construed in the interpretation of these bylaws.

**ARTICLES OF ORGANIZATION
OF
NRS VENTURES, L.L.C.**

FIRST: the name of the limited liability company (the "Company") is NRS VENTURES, L.L.C.

SECOND: The street address of the company's initial registered office, and the name of its initial registered agent at that office are Corporation Service Company d/b/a CSC-Lawyers Incorporating Service Company, 421 West Main Street, Frankfort, Kentucky, 40601.

THIRD: The mailing address of the company's initial principal office is 4284 Juniper Drive, Kewadyn, Michigan 49648.

FOURTH: The company has at least two or more members.

FIFTH: The company is to be managed by a manager or managers.

SIXTH: The company is not to have a specific date of dissolution.

SEVENTH: The sole purpose of the company shall be to own, as a passive investment, one or more nursing homes in Kentucky, to be operated on a long term basis by one ore more third parties.

Signed on July 3, 1997.

/s/ NEIL R. SCHMEICHEL

Neil R. Schmeichel, Organizer

CONSENT TO APPOINTMENT
BY REGISTERED AGENT

Corporation Service Company d/b/a CSC-Lawyers Incorporating Service Company, voluntarily consent to serve as the registered agent in the State of Kentucky for NRS Ventures, L.L.C.

Date this 7th day of July, 1997.

CORPORATION SERVICE COMPANY

/s/ PATRICIA COSENTINO

Patricia Cosentino, Assistant Secretary

**ARTICLES OF AMENDMENT
THE ARTICLES OF ORGANIZATION
OF
NRS VENTURES, L.L.C.**

Pursuant to the provisions of Section 275.030 of the Kentucky Limited Liability Company Act, NRS Ventures, L.L.C., a Kentucky limited liability company (the "Company"), adopts the following Articles of Amendment to its Articles of Organization.

ARTICLE I

The name of the Company is NRS Ventures, L.L.C.

ARTICLE II

The Articles of Organization are hereby amended to delete in its entirety Article SEVENTH and to replace it with the following:

"SEVENTH: The purpose of the company is to engage in any lawful act or activity for which limited liability companies may be organized under the Kentucky Limited Liability Company Act as presently in effect or as it may hereafter be amended."

ARTICLE III

These Articles of Amendment to the Articles of Organization and each amendment effected hereby were duly adopted by the sole member of the Company by written consent dated February 19, 2002 in accordance with Chapter 275 of the Kentucky Limited Liability Company Act.

[The Next Page is the Signature Page]

Executed as of the 19th of February, 2002.

NRS VENTURES, L.L.C.

By: Omega Healthcare Investors, Inc.,
a Maryland corporation

Title: *Sole Member and Sole Manager*

By: /s/ ROBERT O. STEPHENSON

Name: Robert O. Stephenson

Title: *CFO*

**ARTICLE OF AMENDMENT
TO THE ARTICLES OF ORGANIZATION
OF
NRS VENTURES, L.L.C.**

Pursuant to the provisions of Section 275.030 of the Kentucky Limited Liability Company Act, NRS Ventures, L.L.C. (the "*Company*") adopts the following Articles of Amendment to its Articles of Organization:

1. The name of the company is NRS Ventures, L.L.C.
2. Article Fourth of the Articles of Organization is hereby amended to read in its entirety as follows:

"The Company has at least one or more members."

3. The foregoing amendment to the Articles of Organization was adopted on June 13, 2003.

4. The foregoing amendment to the Articles of Organization was duly adopted by all members in accordance with Chapter 275 of the Kentucky Limited Liability Company Act, and as otherwise provided in the Operating Agreement of the Company.

Executed on the 13th day of June, 2003.

NRS VENTURES, L.L.C.

Omega Healthcare Investors, Inc.,
a Maryland corporation,
its sole member and sole manager

By: /s/ DANIEL J. BOOTH

Name: Daniel J. Booth
Title: *Chief Operating Officer*

[COMMONWEALTH OF KENTUCKY LOGO]

JOHN Y. BROWN III
SECRETARY OF STATE

CERTIFICATE

I, **JOHN Y BROWN III**, Secretary of State for the Commonwealth of Kentucky, do certify that the foregoing writing has been carefully compared by me with the original record thereof, now in my official custody as Secretary of State and remaining on file in my office, and found to be a true and correct copy of **ARTICLES OF ORGANIZATION OF NRS VENTURES, L.L.C. FILED JULY 10, 1997** ;

**FIRST AMENDMENT TO
OPERATING AGREEMENT**

This First Amendment to Operating Agreement (this "**Amendment**,") is made and entered into as of February 20, 2002 by Omega Healthcare Investors, Inc., a Maryland corporation (the "**Member**").

RECITALS:

- A. The Operating Agreement (the "**Original Operating Agreement**") of NRS Ventures, L.L.C. (the "**Company**") was previously entered on July 10, 1997 by Neill Schmeichel and Joan Schmeichel (the "**Original Members**").
- B. On July 1, 1999, the Original Members transferred to the Member all of their ownership interests in and to the Company.
- C. The Member desires to enter into this Amendment to amend the original scope set forth in the Original Operating Agreement (as amended, the "**Operating Agreement**"). Capitalized terms not otherwise defined herein shall have the meaning given to such terms by the Original Operating Agreement.

AGREEMENT:

NOW, THEREFORE, the Member amends the Original Operating Agreement as follows:

1. *Amendments.* Paragraph 4 is deleted in its entirety and replaced with the following:

"4. *Scope.* The Company is organized to engage in any lawful act or activity for which limited liability companies may be organized under the Kentucky Limited Liability Company Act as presently in effect or as it may hereafter be amended. No Member need afford the Company or any other Member the opportunity to acquire or invest in any investment that such Member may wish to acquire in his own name, whether or not such prospect would otherwise be an opportunity of the Company."

2. *Effectiveness.* This Amendment will become effective when signed by the Member. Executed versions of this amendment transmitted by facsimile will be deemed originals for all purposes.

3. *Governing Law.* This Amendment shall be governed by and construed in accordance with the internal laws of the State of Kentucky.

4. *No Other Changes.* Except as expressly amended herein, the Operating Agreement shall remain unchanged and shall continue in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed as of the date first stated above.

OMEGA HEALTHCARE INVESTORS, INC.

Name: /s/ ROBERT O. STEPHENSON

Title: *Chief Financial Officer*

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed as of the date first stated above.

OMEGA HEALTHCARE INVESTORS, INC.

Name: /s/ ROBERT O. STEPHENSON

Title: *Chief Financial Officer*

**ASSIGNMENT OF MEMBERSHIP INTERESTS
NRS VENTURES, L.L.C.**

For and in consideration of the sum of \$ _____, the undersigned, Neill Schmeichel and Joan Schmeichel (collectively, "Assignors"), hereby assign, transfer and set over to Omega Healthcare Investors, Inc. ("Assignee") all right, title and interest that either of Assignors has as a member or manager of NRS Ventures, L.L.C., a limited liability company formed under the laws of the State of Kentucky ("NRS Ventures"), it being the intent of Assignors that Assignee be substituted as member and manager of NRS Ventures. Assignee hereby assumes all obligations of Assignors arising from and after the date of this Assignment under the Articles of Organization dated July 3, 1997 and Operating Agreement of NRS Ventures, L.L.C. dated July 10, 1997.

Dated as of July 1, 1999

ASSIGNORS:

/s/ NEILL SCHMEICHEL

Neill Schmeichel

/s/ JOAN SCHMEICHEL

Joan Schmeichel

ASSIGNEE:

OMEGA HEALTHCARE INVESTORS, INC.,
a Maryland corporation

By: /s/ SUSAN A. KOVACK

Its: *Vice President*

OPERATING AGREEMENT OF NRS VENTURES, L.L.C.

THIS OPERATING AGREEMENT is executed this 10th day of July, 1997, by and between NEILL SCHMEICHEL, whose address is 4284 Juniper Drive, Kewadin, Michigan 49648, and JOAN SCHMEICHEL, whose address is 4284 Juniper Drive, Kewadin, Michigan 49648.

1. *Formation.* The parties hereto hereby acknowledge that, on the date hereof, the Articles of Organization of NRS Ventures, L.L.C. (the "Company") were filed with the Kentucky Secretary of State, and with the Clerk of Franklin County, Kentucky, thereby forming the Company as a limited liability company under the Kentucky Limited Liability Company Act (the "Act").

2. *Name/Office/Agent.* The name of the Company shall be NHS Ventures, L.L.C., and its principal office shall be located at 4284 Juniper Drive, Kewadin, Michigan 49648. The Company's initial registered office shall be located at 421 West Main Street, Frankfort, Kentucky 48601, and its registered agent at such address shall be Corporation Service Company.

3. *Definitions.* For purposes of this Agreement, the following terms shall have the respective meanings ascribed to them in this Paragraph 3.

"Act" has the meaning ascribed to it in Paragraph 1.

"Code" means the Internal Revenue Code of 1986, as amended, and references to the provisions thereof shall include references to corresponding provisions of subsequent law.

"Company" has the meaning ascribed to it in Paragraph 1.

"Contributions" means the amount of cash or the fair market value of other property contributed to the Company or required to be contributed to the Company.

"Majority Interest" means any group of Members who together hold an aggregate Percentage of at least 50.1%.

"Manager" has the meaning ascribed to it in Paragraph 6.

"Members" means Neill Schmeichel and Joan Schmeichel, and, in the event of action taken to grant a person membership in the Company pursuant to Paragraph 13, any successor to either or both of them.

"Percentages" means the Members' respective interests in the Company, which, as of the date of this Agreement, and until adjusted in accordance with the terms of this Agreement, shall be 99% in the case of Neill Schmeichel, and 1% in the case of Joan Schmeichel.

"Profits" and "Losses" means taxable profits or losses of the Company for each fiscal year (or other period) determined in accordance with Code Section 703 (provided that (a) any tax-exempt income shall be added to such taxable income or loss, and (b) any Code Section 705(a)(2)(B) expenditures shall be subtracted from such taxable income or loss).

4. *Scope.* The Company is organized to own, as a passive investor, one or more nursing homes in Kentucky, to be operated on a long-term basis by one or more third parties. No Member need afford the Company or any other Member the opportunity to acquire or invest in any investment that such Member may wish to acquire in his own name, whether or not such prospect would otherwise be an opportunity of the Company.

5. *Contributions.* The Members acknowledge that, on the date hereof, (a) Neill Schmeichel has contributed \$ to capital of the Company, and (b) Joan Sehtneichel has contributed \$ to capital of the Company. To the extent approved by the Manager from time to time, the Members may be requested to make Contributions or additional Contributions. If the Manager determines that such additional Contributions are necessary or appropriate, the Members shall have the opportunity (but not

the obligation) to participate in such additional Contributions on a pro rata basis in accordance with their Percentages. If any Member fails to contribute his share, the Percentages shall be reallocated in proportion to the initial and all additional Contributions of each Member. No Member shall be required to restore any deficit in his capital account, and, until termination of the Company, no Member shall withdraw any of his capital account.

6. *Management.* The Company shall be managed by a manager (the "Manager"), who shall speak for, and act of behalf of, the Company. The incumbent Manager shall so serve until the Manager's (a) resignation, (b) death, (c) termination as otherwise required by the Act, or (d) termination per the will of the Majority Interest. The initial Manager shall be Neill Schmeichel.

7. *Liability.* The Manager shall discharge his management duties in good faith, and no Manager shall be liable for monetary damages to the Company for any breach of any such management duties, except for (a) receipt of a financial benefit to which the Manager is not entitled, (b) assenting to a distribution in violation of this Agreement or the Act, or (c) a knowing violation of the law. No Manager or Member shall be liable for the acts or obligations of the Company, unless such Manager or Member shall have expressly assumed such liability.

8. *Capital.* A capital account shall be maintained for each Member, to which Contributions and Profits shall be credited and against which distributions and Losses shall be charged. Capital accounts shall be maintained in accordance with the accounting principles of Code Section 704.

9. *Profits and Losses.* The Profits and Losses of the Company shall be determined as of the end of each fiscal year, and shall be allocated among the Members in proportion to their respective Percentages.

10. *Distributions.* Subject to the following sentence, available cash shall be distributed to the Members, at such times and in such amounts as the Manager may discretionarily determine, in proportion to the Members' Percentages. After payment (or the establishment of a reserve for the payment) of Company debt, any proceeds from the sale of all or substantially all of the Company's assets shall be distributed to the Members (i) in proportion to, and to the extent of, the respective balances in the Members' capital accounts, and (ii) thereafter, in proportion to the Members' Percentages.

11. *Dissolution.* The Company shall be dissolved upon the first to occur of (a) the written consent of all Members, (b) the entry of a decree of judicial dissolution, or (c) the death, withdrawal, expulsion, bankruptcy or dissolution of any Member (unless, within 60 days after such event, (i) the Company has at least two Members, and (ii) the Majority Interest elects in writing to reconstitute and continue the business of the Company).

12. *Winding Up.* Upon termination of the Company, the Manager shall conclude the Company's affairs. The Company's assets may be liquidated or transferred in kind, as determined by the Manager. The Company's assets shall first be applied toward the payment of Company debt, and then shall be distributed to the Members according to their respective positive capital accounts after the allocation under Paragraph 10 and the distribution under the second sentence of Paragraph 10.

13. *Assignment.* Subject to the following sentences of this Paragraph 13, a Member may assign his interest in the Company, in whole or in part. Such assignment shall not of itself substitute the assignee as a Member. Moreover, such assignments shall entitle the assignee to none of the rights of a Member, whether under this Agreement or under the Act, other than the right to receive (to the extent assigned) the distributions to which the assigning Member would otherwise be entitled. An assignee shall not be admitted as a Member, unless every Member consents thereto in writing.

14. *Amendment.* This Agreement may be amended only by the written consent of all Members.

THE PARTIES have executed this Agreement as of the date first above written.

/s/ NEILL SCHMEICHEL

/s/ JOAN SCHMEICHEL

Neill Schmeichel

Joan Schmeichel

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ARTICLES OF INCORPORATION

OF

I, the undersigned, acting as incorporator of a corporation under the Kentucky Business Corporation Act of 1988, adopt the following Articles of Incorporation for such corporation:

FIRST: The name of the corporation is _____.

SECOND: The number of shares the corporation is authorized to issue is One Thousand (1,000) shares of Common Stock, par value \$.01 per share.

THIRD: The street address of the corporation's initial registered office is c/o CT Corporation System, Kentucky Home Life Building, Louisville, Kentucky 40202, and the name of its registered agent at that office is CT CORPORATION SYSTEM.

FOURTH: The mailing address of the corporation's principal office is 906 West Eisenhower Circle, Suite 110, Ann Arbor, Michigan 48103.

FIFTH: The name and mailing address of each incorporator is:

NAME	ADDRESS
Alice A. Deck	Four Penn Center Plaza Philadelphia, PA 19103

DATED:

/s/ ALICE A. DECK

Alice A. Deck, *Incorporator*

AMENDED AND RESTATED BYLAWS

OF _____

**I.
OFFICES**

The principal office of _____ (the "Company") shall be at such place within Kentucky or Maryland as the Board of Directors of the Company (the "Board") shall from time to time determine. The Company also may have offices at such other places as the business of the Company may require.

**II.
SEAL**

The Company may have a seal in such form as the Board may from time to time determine. The seal, if so authorized, may be used by causing it or a facsimile to be impressed, affixed or copied.

**III.
CAPITAL****3.1 ISSUANCE.**

The shares of capital stock of the Company (the "Shares") shall be issued in such amounts, at such times, for such consideration and on such terms as the Board shall deem advisable, subject to the Company's Articles of Incorporation (the "Articles") and the laws of Kentucky.

3.2 CERTIFICATES.

The Shares shall be represented by certificates signed by the President. Each such certificate shall state upon its face that the Company is formed under the laws of Kentucky, the person to whom it is issued, the number and class of Shares, and the designation of the series, if any, that the certificate represents, and such other provisions as may be required by Kentucky law.

3.3 TRANSFER.

The Shares are transferable only on the books of the Company upon surrender of the certificate therefor, properly endorsed for transfer, and the presentation of such evidences of ownership and validity of the assignment as the Company may require.

3.4 REGISTRATION.

The Company shall be entitled to treat the person in whose name any Share is registered as the owner thereof for purposes of dividends and other distributions in the course of business, or in the course of recapitalization, merger, plan of share exchange, reorganization, sale of assets, liquidation or otherwise and for the purpose of votes, approvals and consents by shareholders of the Company ("Shareholders"), and for the purpose of notices to Shareholders, and for all other purposes whatever, and shall not be bound to recognize any equitable or other claim to or interest in such Shares on the part of any other person, whether or not the Company shall have notice thereof, save as expressly required by the laws of Kentucky.

3.5 REPLACEMENT.

Upon the presentation to the Company of a proper affidavit attesting the loss, destruction or mutilation of any certificate for Shares, the Board shall direct the issuance of a new certificate to replace the certificate so alleged to be lost, destroyed or mutilated. The Board may require as a condition precedent to the issuance of a new certificate a bond or agreement of indemnity, in such form and amount, and with such sureties as the Board may direct or approve.

**IV.
SHAREHOLDERS**

4.1 MEETINGS.

Meetings of Shareholders shall be held at the principal office of the Company or at such other place as determined by the Board and stated in the notice of meeting. The annual meeting of Shareholders shall be held on the first Monday of March at 10:30 o'clock in the morning. Directors shall be elected at each annual meeting and such other business transacted as may come before the meeting. Special meetings of Shareholders may be called by the Board, the CEO (if such office is filled), the President or any Director, and shall be called by the Secretary at the written request of Shareholders holding a majority of the outstanding Shares and entitled to vote. The request shall state the purpose or purposes for which the meeting is to be called.

4.2 NOTICE.

Except as otherwise provided by statute or the Articles, written notice of the time, place and purposes of a meeting of Shareholders shall be given not fewer than ten nor more than 60 days before the date of the meeting to each Shareholder of record entitled to vote at the meeting, either personally or by mailing such notice to his last address as it appears on the books of the Company. No notice need be given of an adjourned meeting of the Shareholders provided the time and place to which such meeting is adjourned are announced at the meeting at which the adjournment is taken and at the adjourned meeting only such business is transacted as might have been transacted at the original meeting. However, if after the adjournment a new record date is fixed for the adjourned meeting a notice of the adjourned meeting shall be given to each Shareholder of record on the new record date entitled to notice as provided in this Bylaw.

4.3 DATES.

The Board may fix in advance a date as the record date for the purpose of determining Shareholders entitled to notice of and to vote at a meeting of Shareholders or an adjournment thereof, or to express consent or to dissent from a proposal without a meeting, or for the purpose of determining Shareholders entitled to receive payment of a dividend or allotment of a right, or for the purpose of any other action. The date fixed shall not be more than 60 nor less than ten days before the date of the meeting, nor more than 60 days before any other action. In such case only such Shareholders as shall be Shareholders of record on the date so fixed shall be entitled to notice of and to vote at such meeting or adjournment thereof, or to express consent or to dissent from such proposal, or to receive payment of such dividend or to receive such allotment of rights, or to participate in any other action, as the case may be, notwithstanding any transfer of any stock on the books of the Company, or otherwise, after any such record date. Nothing in this Bylaw shall affect the rights of a Shareholder and his transferee or transferor as between themselves.

4.4 LISTS.

The Secretary of the Company or the agent of the Company having charge of the stock transfer records for Shares shall make and certify a complete list of the Shareholders entitled to vote at a Shareholders' meeting or any adjournment thereof. The list shall be arranged alphabetically within each class and series, with the address of, and the number of Shares held by, each Shareholder, be available for inspection by Shareholders at the offices of the Company at least five (5) days prior to the date of such meeting, be produced at the meeting, be subject to inspection by any Shareholder during the meeting, and be prima facie evidence of the Shareholders entitled to examine the list or vote.

4.5 QUORUM.

Unless a greater or lesser quorum is required in the Articles or by the laws of Kentucky, the Shareholders present at a meeting in person or by proxy who, as of the record date for such meeting,

were holders of a majority of the outstanding Shares entitled to vote at the meeting shall constitute a quorum. Whether or not a quorum is present, a meeting of Shareholders may be adjourned by a vote of the Shares present in person or by proxy. When the holders of a class or series of Shares are entitled to vote separately on an item of business, this Bylaw applies in determining the presence of a quorum of such class or series for transaction of such item of business.

4.6 PROXIES.

A Shareholder entitled to vote at a meeting of Shareholders or to express consent or dissent without a meeting may authorize other persons to act for the Shareholder by proxy. A proxy shall be signed by the Shareholder or the Shareholder's authorized agent or representative.

4.7 VOTING.

Each outstanding Share is entitled to one vote on each matter submitted to a vote, unless otherwise provided in the Articles. When an action, other than the election of directors, is to be taken by a vote of the Shareholders, it shall be authorized by a majority of the votes cast by the holders of Shares entitled to vote thereon, unless a greater vote is required by the Articles or by the laws of Kentucky. Except as otherwise provided by the Articles, directors shall be elected by a plurality of the votes cast at any election.

V. DIRECTORS

5.1 NUMBER.

The business and affairs of the Company shall be managed by a Board of one director. No director need be a resident of Kentucky or a Shareholder.

5.2 TENURE.

Directors shall be elected at each annual meeting of the Shareholders, each to hold office until the next annual meeting of Shareholders and until the director's successor is elected and qualified, or until the director's resignation or removal. A director may resign by written notice to the Company. The resignation is effective upon its receipt by the Company or a subsequent time as set forth in the notice of resignation. A director or the entire Board may be removed, with or without cause, by vote of the holders of a majority of the Shares entitled to vote at an election of directors.

5.3 VACANCIES.

Vacancies in the Board occurring by reason of death, resignation, removal, increase in the number of directors or otherwise shall be filled by the affirmative vote of a majority of the remaining directors though less than a quorum of the Board, unless filled by proper action of the Shareholders. Each person so elected shall be a director for a term of office continuing only until the next election of directors by the Shareholders. A vacancy that will occur at a specific date, by reason of a resignation effective at a later date or otherwise, may be filled before the vacancy occurs, but the newly elected director may not take office until the vacancy occurs.

5.4 MEETINGS.

The Board shall meet each year immediately after the annual meeting of the Shareholders, or within three days of such time excluding Sundays and legal holidays if such later time is deemed advisable, at the place where such meeting of the Shareholders has been held or such other place as the Board may determine, for the purpose of election of officers and consideration of such business that may properly be brought before the meeting; provided, that if less than a majority of the directors appear for an annual meeting of the Board the holding of such annual meeting shall not be required and the matters which might have been taken up therein may be taken up at any later special or

annual meeting, or by consent resolution. Regular meetings of the Board may be held at such times and places as the majority of the directors may from time to time determine at a prior meeting or as shall be directed or approved by the vote or written consent of all directors. Special meetings of the Board may be called by the President and shall be called by the Secretary upon the written request of any director.

5.5 NOTICES.

No notice shall be required for annual or regular meetings of the Board or for adjourned meetings, whether regular or special. Three days' written notice shall be given for special meetings of the Board, and such notice shall state the time, place and purposes of the meeting.

5.6 QUORUM.

A majority of the Board then in office, or of the members of a committee thereof, constitutes a quorum for the transaction of business. The vote of a majority of the directors present at any meeting at which there is a quorum shall be the acts of the Board or of the committee, except as a larger vote may be required by the laws of Kentucky. A member of the Board or of a committee designated by the Board may participate in a meeting by means of conference telephone by means of which all persons participating in the meeting can communicate with each other. Participation in a meeting in this manner constitutes presence in person at the meeting.

5.7 COMMITTEES.

The Board may, by resolution passed by a majority of the whole Board, appoint three or more members of the Board as an executive committee to exercise all powers and authorities of the Board in management of the business and affairs of the Company, except that the committee shall not have power or authority to (a) amend the Articles; (b) adopt an agreement of merger or consolidation; (c) recommend to Shareholders the sale, lease or exchange of all or substantially all of the Company's property and assets; (d) recommend to Shareholders a dissolution of the Company or revocation of a dissolution; (e) amend these Bylaws; (f) fill vacancies in the Board; or (g) unless expressly authorized by the Board, declare a dividend or authorize the issuance of stock. The Board from time to time may, by like resolution, appoint such other committees of one or more directors to have such authority as shall be specified by the Board in the resolution making such appointments. The Board may designate one or more directors as alternate members of any committee who may replace an absent or disqualified member at any meeting thereof.

5.8 DISSENT.

A director who is present at a meeting of the Board, or a committee thereof of which the director is a member, at which action on a corporate matter is taken is presumed to have concurred in that action unless the director's dissent is entered in the minutes of the meeting or unless the director files a written dissent to the action with the person acting as secretary of the meeting before the adjournment thereof or shall forward such dissent by registered mail to the Secretary of the Company promptly after the adjournment of the meeting. Such right to dissent does not apply to a director who voted in favor of such action. A director who is absent from a meeting of the Board, or a committee thereof of which the director is a member, at which any such action is taken is presumed to have concurred in the action unless the director files a written dissent with the Secretary of the Company within a reasonable time after the director has knowledge of the action.

5.9 COMPENSATION.

The Board, by affirmative vote of a majority of directors in office and irrespective of any personal interest of any of them, may establish reasonable compensation of directors for services to the Company as directors or officers.

VI.
PROCEDURES

6.1 NOTICE.

All notices of meetings to be given to Shareholders, directors or any committee of directors may be given by mail, overnight courier, telefax or e-mail to any Shareholder, director or committee member at his last address as it appears on the books of the Company. Such notice shall be deemed to be given at the time when the same shall be mailed or otherwise dispatched.

6.2 WAIVER.

Notice of the time, place and purpose of any meeting of Shareholders, directors or committee of directors may be waived by mail, overnight courier, telefax or e-mail, either before or after the meeting, or in such other manner as may be permitted by the laws of Kentucky. Attendance of a person at any meeting of Shareholders, in person or by proxy, or at any meeting of directors or of a committee of directors, constitutes a waiver of notice of the meeting except as follows:

(a) In the case of a Shareholder, unless the Shareholder at the beginning of the meeting objects to holding the meeting or transacting business at the meeting, or unless with respect to consideration of a particular matter at the meeting that is not within the purposes described in the meeting notice, the Shareholder objects to considering the matter when it is presented.

(b) In the case of a director, unless he or she at the beginning of the meeting, or upon his or her arrival, objects to the meeting or the transacting of business at the meeting and does not thereafter vote for or assent to any action taken at the meeting.

6.3 CONSENT.

Any action required or permitted at any meeting of directors or committee thereof may be taken without a meeting, without prior notice and without a vote, if all directors or committee members entitled to vote thereon consent thereto in writing, before or after the action is taken. Any action required or permitted at any meeting of Shareholders may be taken without a meeting, without prior notice and without a vote, if all Shareholders entitled to vote thereon consent thereto in writing, before or after the action is taken or if such action otherwise satisfies the Articles and Kentucky law.

VII.
OFFICERS

7.1 NUMBER.

The Board shall elect or appoint a President, a Secretary and a Treasurer, and may elect a Chief Executive Officer (the "CEO"), a Chief Operating Officer (the "COO"), and/or one or more Vice Presidents, Assistant Secretaries or Assistant Treasurers. The CEO (if appointed) shall be a member of the Board. Any two or more of the above offices, except those of President and Vice President, may be held by the same person. No officer shall execute or verify an instrument in more than one capacity if the instrument is required by law, the Articles or these Bylaws to be executed, acknowledged, or verified by one or more officers.

7.2 TERM.

An officer shall hold office for the term for which he is elected or appointed and until his successor is elected or appointed and qualified, or until his resignation or removal. An officer may resign by written notice to the Company. The resignation is effective upon its receipt by the Company or at a subsequent time specified in the notice of resignation. An officer may be removed by the Board with or without cause. The removal of an officer shall be without prejudice to his contract rights, if any. The appointment of an officer does not of itself create contract rights.

7.3 VACANCIES.

The Board may fill any vacancies in any office occurring for whatever reason.

7.4 AUTHORITY.

All officers, employees and agents of the Company shall have such authority and perform such duties in the conduct and management of the business and affairs of the Company as may be designated by the Board and these Bylaws.

VIII. DUTIES

8.1 CEO.

The CEO, if any is appointed, shall preside at all meetings of the Shareholders and of the Board at which the CEO is present. The CEO shall be the chief executive officer of the Company, shall see that all resolutions of the Board are carried into effect, and shall have the general powers of supervision usually vested in the chief executive officer of a corporation. Subject to any contrary directives by the Board, the CEO shall hold (a) authority to direct (and commit) the Company's resources toward the achievement of the Company's goals, (b) authority to vote all securities or other interests of other corporations and business organizations held by the Company, and (c) any further authority as may hereafter be vested in him by the Board.

8.2 PRESIDENT.

In the absence of the CEO, the President shall hold and exercise all authority ascribed to the CEO. In addition, the President shall exercise any and all authority as may be granted to him by the Board, and, subject only to the directives of the CEO, shall ensure that all resolutions of the Board are carried into effect. In the absence of the COO, the President shall also shall hold and exercise all authority ascribed to the COO. In the absence of the Secretary and any Assistant Secretary, the President may exercise the authority otherwise reserved to the Secretary.

8.3 COO.

The COO shall be the chief operating officer of the Company. The President shall have the general powers of management usually vested in the chief operating officer of a corporation, and, subject to any contrary directives by the Board, shall hold (a) authority to supervise corporation personnel and to implement the directives of the Board, the President and the CEO, and (b) any further authority as may hereafter be vested in him by the Board.

8.4 VICE PRESIDENTS.

The Vice Presidents, in order of their seniority, shall, in the absence or disability of the President, perform the duties and exercise the powers of the President. The Vice Presidents shall in any event assume operating responsibility for those aspects of the Company's business referenced in any specific title of the particular Vice President, and shall perform such other duties as may be delegated by the Board, the CEO, the COO or the President. In any event, any Vice President whose title includes the phrase chief financial officer shall be deemed to have been charged with the responsibility for the Company's finances, shall have been granted custody of corporate funds and securities, shall be obligated to keep full and accurate accounts of receipts and disbursements in books of the Company, and shall deposit all moneys and other value in the name and to the credit of the Company in such depositories as may be designated by the Board. Moreover, any Vice President whose title includes the phrase general counsel shall be deemed to have been charged with the responsibility for the Company's legal affairs and shall be deemed the Company's principal liaison with the Company's outside counsel and regulatory authorities.

8.5 SECRETARY.

The Secretary shall record all votes and minutes of all proceedings in a book to be kept for that purpose, shall give or cause to be given notice of all meetings of the Shareholders and of the Board, and shall keep in safe custody the seal of the Company and, when authorized by the Board, affix the same to any instrument requiring it, and when so affixed it shall be attested by the signature of the Secretary, or by the signature of the Treasurer or an Assistant Secretary. The Secretary may delegate any of the duties, powers and authorities of the Secretary to one or more Assistant Secretaries, unless such delegation is disapproved by the Board.

8.6 TREASURER.

Subject to the authority of any Vice President charged with the responsibility for the Company's finances, the Treasurer shall have the custody of corporate funds and securities, shall keep full and accurate accounts of receipts and disbursements in books of the Company and shall deposit all moneys and other value in the name and to the credit of the Company in such depositories as may be designated by the Board. The Treasurer shall render to the President and directors, whenever they may require it, an account of his or her transactions as Treasurer and of the financial condition of the Company. The Treasurer may delegate any of his or her duties, powers and authorities to one or more Assistant Treasurers unless such delegation is disapproved by the Board.

8.7 ASSISTANTS.

The Assistant Secretaries, in order of their seniority, shall perform the duties and exercise the powers and authorities of the Secretary in case of the Secretary's absence or disability. The Assistant Treasurers, in the order of their seniority, shall perform the duties and exercise the powers and authorities of the Treasurer in case of the Treasurer's absence or disability. The Assistant Secretaries and Assistant Treasurers shall also perform such duties as may be delegated by the Secretary and Treasurer, respectively, and also such duties as the Board may prescribe.

**IX.
ACTIONS**

9.1 PAYMENT.

All checks, drafts, notes, bonds, bills of exchange and orders for payment of money of the Company may, subject to any contrary resolution adopted by the Board from time to time, be signed by the CEO, the President or any other officer as may be authorized by the Board.

9.2 CONTRACTS.

The Board may in any instance designate the officer and/or agent who shall have authority to execute any contract, conveyance, mortgage or other instrument on behalf of the Company, or may ratify or confirm any execution. When the execution of any instrument has been authorized without specification of the executing officers or agents, the CEO or President may execute the same in the name and on behalf of the Company and may affix the corporate seal thereto.

**X.
RECORDS**

10.1 MAINTENANCE.

The proper officers and agents of the Company shall keep and maintain such books, records and accounts of the Company's business and affairs, minutes of the proceedings of its Shareholders, Board and committees, if any, and such stock ledgers and lists of Shareholders, as the Board shall deem advisable, and as shall be required by the laws of Kentucky and other states or jurisdictions empowered

to impose such requirements. Books, records and minutes may be kept within or without Kentucky in a place which the Board shall determine.

10.2 RELIANCE.

In discharging his or her duties, a director or an officer of the Company, when acting in good faith, may rely upon information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by (a) one or more directors, officers, or employees of the Company, or of a business organization under joint control or common control, whom the director or officer reasonably believes to be reliable and competent in the matters presented, (b) legal counsel, public accountants, engineers, or other persons as to matters the director or officer reasonably believes are within the person's professional or expert competence, or (c) a committee of the board of which he or she is not a member if the director or officer reasonably believes the committee merits confidence. A director or officer may not rely on any information if he or she has knowledge concerning the matter that makes reliance otherwise permitted unwarranted.

XI. INDEMNIFICATION

11.1 PERSONAL.

Subject to all of the other provisions of this Article XI, the Company shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative and whether formal or informal (other than an action by or in the right of the Company) by reason that the person is or was a director or officer of the Company, or is or was serving at the request of the Company as a director, officer, partner, trustee, employee, or agent of another entity or enterprise, against expenses (including reasonable attorneys' fees), judgments, penalties and amounts paid in settlement reasonably incurred by him or her in connection with such action, suit or proceeding, if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the Company or the Shareholders, and, with respect to any criminal action or proceeding, if the person had no reasonable cause to believe his or her conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which the person reasonably believed to be in or not opposed to the best interests of the Company or the Shareholders, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his or her conduct was unlawful.

11.2 DERIVATIVE.

Subject to all of the provisions of this Article XI, the Company shall indemnify any person who was or is a party to or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Company to procure a judgment in its favor by reason of the fact that the person is or was a director or officer of the Company, or is or was serving at the request of the Company as a director, officer, partner, trustee, employee, or agent of another foreign or domestic corporation, partnership, joint venture, trust or other enterprise, whether for profit or not, against expenses (including attorneys' fees) and amounts paid in settlement reasonably incurred by the person in connection with such action or suit, if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the Company or the Shareholders. However, indemnification shall not be made for any claim, issue or matter in which such person has been found liable to the Company unless and only to the extent that the court in which such action or suit was brought has determined upon application that, despite the adjudication of liability but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnification for the reasonable expenses incurred.

11.3 EXPENSES.

To the extent that a person has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Section 11.1 or 11.2 of these Bylaws, or in defense of any claim, issue or matter in the action, suit or proceeding, the person shall be indemnified against actual and reasonable expenses (including attorneys' fees) incurred by such person in connection with the action, suit or proceeding and any action, suit or proceeding brought to enforce the mandatory indemnification provided by this Section 11.3.

11.4 DEFINITIONS.

For purposes of Sections 11.1 and 11.2, "other enterprises" shall include employee benefit plans; "fines" shall include any excise taxes assessed on a person with respect to an employee benefit plan; and "serving at the request of the Company" shall include any service as a director, officer, employee, or agent of the Company that imposes duties on, or involves services by, the director or officer with respect to an employee benefit plan, its participants or beneficiaries; and a person who acted in good faith and in a manner the person reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be considered to have acted in a manner "not opposed to the best interests of the Company or the Shareholders".

11.5 PARAMETERS.

The right to indemnification conferred in this Article XI shall be a contract right, and shall apply to services of a director or officer as an employee or agent of the Company as well as in such person's capacity as a director or officer. Except as provided in Section 11.3 of these Bylaws, the Company shall have no obligations under this Article XI to indemnify any person in connection with any proceeding, or part thereof, initiated by him or her without Board authorization.

11.6 DETERMINATION.

Any indemnification under Section 11.1 or 11.2 of these Bylaws (unless ordered by a court) shall be made by the Company only as authorized in the specific case upon a determination that indemnification of the person is proper in the circumstances because the person has met the applicable standard of conduct set forth in Section 11.1 or 11.2, whichever is applicable, and upon an evaluation of the reasonableness of expenses and amount paid in settlement. Such determination and evaluation shall be made in any of the following ways:

- (a) By a majority vote of a quorum of the Board consisting of directors who are not parties or threatened to be made parties to such proceeding.
- (b) If the quorum described in clause (a) above is not obtainable, then by a majority vote of a committee of directors duly designated by the Board and consisting solely of two or more directors who are not at the time parties or threatened to be made parties to the proceeding.
- (c) By independent legal counsel in a written opinion, so long as such counsel is selected (i) by the Board or its committee in the manner prescribed in subparagraph (a) or (b), or (ii) if a quorum of the Board cannot be obtained under subparagraph (a) and a committee cannot be designated under subparagraph (b), by the Board.
- (d) By the Shareholders, but Shares held by directors or officers who are parties or threatened to be made parties to the action, suit or proceeding may not be voted.

11.7 PROPORTIONALITY.

If a person is entitled to indemnification under Section 11.1 or 11.2 of these Bylaws for a portion of expenses, including attorneys' fees, judgments, penalties, fines, and amounts paid in settlement, but not for the total amount thereof, the Company shall indemnify the person for the portion of the

expenses, judgments, penalties, fines, or amounts paid in settlement for which the person is entitled to be indemnified.

11.8 ADVANCES.

The Company may pay or reimburse the reasonable expenses incurred by a person referred to in Section 11.1 or 11.2 of these bylaws who is a party or threatened to be made a party to an action, suit, or proceeding in advance of final disposition of the proceeding if (a) the person furnishes the Company a written affirmation of his or her good faith belief that he or she has met the applicable standard of conduct set forth in Section 11.1 or 11.2, (b) the person furnishes the Company a written undertaking executed to personally repay the advance if it is ultimately determined that he or she did not meet the standard of conduct, (c) the authorization of payment is made in the manner specified in Section 11.6, and (d) a determination is made that the facts then known to those making the determination would not preclude indemnification under Section 11.1 or 11.2. The undertaking shall be a general obligation of the person, but need not be secured.

11.9 SCOPE.

The indemnification or advancement of expenses provided under this Article XI is not exclusive of other rights to which a person seeking indemnification or advancement of expenses may be entitled under a contractual arrangement with the Company. However, the total amount of expenses advanced or indemnified from all sources combined shall not exceed the amount of actual expenses incurred by the person seeking indemnification or advancement of expenses.

11.10 AGENTS.

The Company may, to the extent authorized from time to time by the Board, grant rights to indemnification and to the advancement of expenses to any employee or agent of the Company to the fullest extent of the provisions of this Article XI with respect to the indemnification and advancement of expenses of directors and officers of the Company.

11.11 SUCCESSION.

The indemnification provided in this Article XI continues as to a person who has ceased to be a director or officer and shall inure to the benefit of his or her successors.

11.12 INSURANCE.

The Company may buy and maintain insurance on behalf of any person who is or was a director, officer, partner, trustee, employee or agent of the Company, or is or was serving at the request of the Company as a director, officer, employee or agent of another entity or enterprise against any liability asserted against the person and incurred by him or her in any such capacity or arising out of his or her status as such, whether or not the Company would have power to indemnify the person against such liability under these Bylaws or the laws of Kentucky.

11.13 LEGISLATION.

Upon any change of the Kentucky statutory provisions relating to the subject matter of this Article XI, the indemnification to which any person shall be entitled hereunder shall be determined by such changed provisions, but only to the extent that any such change permits the Company to provide broader indemnification rights than before any such change. Subject to Section 11.14, the Board may amend these Bylaws to conform to any such changed statutory provisions.

11.14 AMENDMENT.

No amendment or repeal of this Article XI shall apply to any director or officer of the Company for or with respect to any prior acts or omissions of such director or officer.

XII. AMENDMENT

The Bylaws of the Company may be amended, altered or repealed, in whole or in part, by the Shareholders or by the Board at any meeting duly held in accordance with these Bylaws.

ARTICLES OF INCORPORATION FOR A STOCK CORPORATION

FIRST: The undersigned Jennifer J. Bakhuyzen whose address is c/o Dykema Gossett, PLLC, 300 Ottawa Ave., N.W., Suite 700 Grand Rapids, Michigan 49503, being at least eighteen years of age, do(es) hereby form a corporation under the laws of the State of Maryland.

SECOND: The name of the corporation is _____.

THIRD: The purposes for which the corporation is formed are as follows: To engage in any activity within the purposes for which corporations may be organized under the Business Corporation Act of Maryland

FOURTH: The street address of the principal office of the corporation in Maryland is 9690 Deereco Road, Suite 100, Timonium, Maryland 21093.

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

SIXTH: The corporation has authority to issue 1,000 shares at \$0.01 par value per share.

SEVENTH: The number of directors of the corporation shall be 3 which number may be increased or decreased pursuant to the bylaws of the corporation, and so long as there are less than three (3) stockholders, the number of directors may be less than three (3) but not less than the number of stockholders, and the name(s) of the director(s) who shall act until the first meeting or until their successors are duly chosen and qualified is/are, C. Taylor Pickett, Robert Stephenson, and Daniel J. Booth.

IN WITNESS WHEREOF, I have signed these articles and acknowledge the same to be my act.

I hereby consent to my designation in this document as resident agent for this corporation.

SIGNATURE(S) OF INCORPORATOR(S):

SIGNATURE OF RESIDENT AGENT LISTED IN FIFTH:

/s/ SHIRLEY N. BLUNT

SHIRLEY N. BLUNT, AUTHORIZED REPRESENTATIVE FOR CSC-LAWYERS INCORPORATING SERVICE COMPANY

RETURN TO:

Jennifer J. Bakhuyzen

c/o Dykema Gossett, PLLC
300 Ottawa Ave., N.W., Suite 700

Grand Rapids, Michigan 49502

QuickLinks

[ARTICLES OF INCORPORATION FOR A STOCK CORPORATION](#)

**BYLAWS
OF**

**I.
Offices**

The principal office of _____ (the "Company") shall be at such place within _____ or Maryland as the Company's Board of Directors (the "Board") shall select from time to time. The Company may have offices at such other places as the Company's business may require.

**II.
Capital**

2.01 *Issuance.* The shares of capital stock of the Company (the "Shares") shall be issued in such amounts, at such times, for such consideration and on such terms as the Board shall deem advisable, subject to the Company's Articles of Incorporation (the "Articles") and the laws of Maryland.

2.02 *Certificates.* The Shares shall be represented by certificates signed by the President. Each such certificate shall state upon its face that the Company is formed under the laws of Maryland, the person to whom it is issued, the number and class of Shares, and the series designation (if relevant), that the certificate represents, and such other provisions required by Maryland law.

2.03 *Transfer.* The Shares are transferable only on the books of the Company upon surrender of the certificate therefore, properly endorsed for transfer, and the presentation of such evidences of ownership and validity of the assignment as the Company may require.

2.04 *Registration.* The Company shall be entitled to treat the person in whose name any Share is registered as the owner thereof for purposes of dividends and other distributions in the course of business, or in the course of recapitalization, merger, plan of share exchange, reorganization, sale of assets, liquidation or otherwise and for the purpose of votes, approvals and consents by shareholders of the Company ("Shareholders"), and for the purpose of notices to Shareholders, and for all other purposes whatever, and shall not be bound to recognize any equitable or other claim to or interest in such Shares on the part of any other person, whether or not the Company shall have notice thereof, save as expressly required by the laws of Maryland.

2.05 *Replacement.* Upon the presentation to the Company of a proper affidavit attesting the loss, destruction or mutilation of any certificate for Shares, the Board shall direct the issuance of a new certificate to replace the certificate so alleged to be lost, destroyed or mutilated. The Board may require as a condition precedent to the issuance of a new certificate a bond or agreement of indemnity, in such form and amount, and with such sureties as the Board may direct or approve.

**III.
Shareholders**

3.01 *Meetings.* Meetings of Shareholders shall be held at the principal office of the Company or at such other place as determined by the Board and stated in the notice of meeting. The annual meeting of Shareholders shall be held on the first Monday of March at 10:30 o'clock in the morning. Directors shall be elected at each annual meeting and such other business transacted as may come before the meeting. Special meetings of Shareholders may be called by the Board, the Chairman (if such office is filled), the President or any Director, and shall be called by the Secretary at the written request of Shareholders holding a majority of the outstanding Shares and entitled to vote. The request shall state the purpose or purposes for which the meeting is to be called.

3.02 *Notice.* Except as otherwise provided by statute or the Articles, written notice of the time, place and purposes of a meeting of Shareholders shall be given not fewer than ten nor more than

60 days before the date of the meeting to each Shareholder of record entitled to vote at the meeting, either personally or by mailing such notice to his last address as it appears on the books of the Company. No notice need be given of an adjourned meeting of the Shareholders provided the time and place to which such meeting is adjourned are announced at the meeting at which the adjournment is taken and at the adjourned meeting only such business is transacted as might have been transacted at the original meeting. However, if after the adjournment a new record date is fixed for the adjourned meeting a notice of the adjourned meeting shall be given to each Shareholder of record on the new record date entitled to notice as provided in this Bylaw.

3.03 *Dates.* The Board may fix in advance a date as the record date for the purpose of determining Shareholders entitled to notice of and to vote at a meeting of Shareholders or an adjournment thereof, or to express consent or to dissent from a proposal without a meeting, or for the purpose of determining Shareholders entitled to receive payment of a dividend or allotment of a right, or for the purpose of any other action. The date fixed shall not be more than 60 nor fewer than ten days before the date of the meeting, nor more than 60 days before any other action. In such case only such Shareholders as shall be Shareholders of record on the date so fixed shall be entitled to notice of and to vote at such meeting or adjournment thereof, or to express consent or to dissent from such proposal, or to receive payment of such dividend or to receive such allotment of rights, or to participate in any other action, as the case may be, notwithstanding any transfer of any stock on the books of the Company, or otherwise, after any such record date. Nothing in this Bylaw shall affect the rights of a Shareholder and his transferee or transferor as between themselves.

3.04 *Lists.* The Secretary of the Company or the agent of the Company having charge of the stock transfer records for Shares shall make and certify a complete list of the Shareholders entitled to vote at a Shareholders' meeting or any adjournment thereof. The list shall be arranged alphabetically within each class and series, with the address of, and the number of Shares held by, each Shareholder, be produced at the meeting, be subject to inspection by any Shareholder during the meeting, and be prima facie evidence of the Shareholders entitled to examine the list or vote.

3.05 *Quorum.* Unless a greater or lesser quorum is required in the Articles or by the laws of Maryland, the Shareholders present at a meeting in person or by proxy who, as of the record date for such meeting, were holders of a majority of the outstanding Shares entitled to vote at the meeting shall constitute a quorum. Whether or not a quorum is present, a meeting of Shareholders may be adjourned by a vote of the Shares present in person or by proxy. When the holders of a class or series of Shares are entitled to vote separately on an item of business, this Bylaw applies in determining the presence of a quorum of such class or series for transaction of such item of business.

3.06 *Proxies.* A Shareholder entitled to vote at a meeting of Shareholders or to express consent or dissent without a meeting may authorize other persons to act for the Shareholder by proxy. A proxy shall be signed by the Shareholder or the Shareholder's authorized agent or representative.

3.07 *Voting.* Each outstanding Share is entitled to one vote on each matter submitted to a vote. When an action, other than the election of directors, is to be taken by a vote of the Shareholders, it shall be authorized by a majority of the votes cast by the holders of Shares entitled to vote thereon, unless a greater vote is required by the Articles or by the laws of Maryland. Except as otherwise provided by the Articles, directors shall be elected by a plurality of the votes cast at any election.

IV. Directors

4.01 *Number.* The business and affairs of the Company shall be managed by a Board of one director. No director need be a resident of Maryland or a Shareholder.

4.02 *Tenure.* Directors shall be elected at each annual meeting of the Shareholders, each to hold office until the next annual meeting of Shareholders and until the director's successor is elected and qualified, or until the director's resignation or removal. A director may resign by written notice to the Company. The resignation is effective upon its receipt by the Company or any later date as set forth in the notice of resignation. A director or the entire Board may be removed, with or without cause, by vote of the holders of a majority of the Shares entitled to vote at an election of directors.

4.03 *Vacancies.* Vacancies in the Board occurring by reason of death, resignation, removal, increase in the number of directors or otherwise shall be filled by the affirmative vote of a majority of the remaining directors though less than a quorum of the Board, unless filled by proper action of the Shareholders. Each person so elected shall be a director for a term of office continuing only until the next election of directors by the Shareholders. A vacancy that will occur at a specific date, by reason of a resignation effective at a later date or otherwise, may be filled before the vacancy occurs, but the newly elected director may not take office until the vacancy occurs.

4.04 *Meetings.* The Board shall meet each year immediately after the annual meeting of the Shareholders, or within two days of such time if such later time is deemed advisable, at the place where such meeting of the Shareholders has been held or such other place as the Board may determine, to elect officers and consider such business that may properly be brought before the meeting. If, however, less than a majority of the directors appear for an annual meeting of the Board, the annual meeting need not be held and the matters that might have been addressed therein may be addressed at any later meeting, or by consent resolution. Regular meetings of the Board may be held at such times and places as the majority of the directors may from time to time determine at a prior meeting or as shall be directed or approved by the vote or written consent of all directors. Special meetings of the Board may be called by the Corporation's president or any director.

4.05 *Notices.* No notice shall be required for annual or regular meetings of the Board or for adjourned meetings, whether regular or special. Three days' written notice shall be given for special meetings of the Board, and such notice shall state the time, place and purposes of the meeting.

4.06 *Quorum.* A majority of the Board then in office, or of the members of a committee thereof, constitutes a quorum for the transaction of business. The vote of a majority of the directors present at any meeting at which there is a quorum shall be the acts of the Board or of the committee, except as a larger vote may be required by the laws of Maryland. A member of the Board or of a committee designated by the Board may participate in a meeting by means of conference telephone by means of which all persons participating in the meeting can communicate with each other. Participation in a meeting in this manner constitutes presence in person at the meeting.

4.07 *Committees.* The Board may, by resolution passed by a majority of the whole Board, appoint three or more members of the Board as an executive committee to exercise all powers and authorities of the Board in management of the business and affairs of the Company, except that the committee shall not have power or authority to (a) amend the Articles; (b) adopt an agreement of merger or consolidation; (c) recommend to Shareholders the sale, lease or exchange of all or substantially all of the Company's property and assets; (d) recommend to Shareholders a dissolution of the Company or revocation of a dissolution; (e) amend these Bylaws; (f) fill vacancies in the Board; or (g) unless expressly authorized by the Board, declare a dividend or authorize the issuance of stock. The Board from time to time may, by like resolution, appoint such other committees of one or more directors to have such authority as shall be specified by the Board in the resolution making such appointments. The Board may designate one or more directors as alternate members of any committee who may replace an absent or disqualified member at any meeting thereof.

4.08 *Dissent.* A director who is present at a meeting of the Board, or a committee thereof of which the director is a member, at which action on a corporate matter is taken is presumed to have concurred in that action unless the director's dissent is entered in the minutes of the meeting or unless

the director files a written dissent to the action with the person acting as secretary of the meeting before the adjournment thereof or shall forward such dissent by registered mail to the Secretary of the Company promptly after the adjournment of the meeting. Such right to dissent does not apply to a director who voted in favor of such action. A director who is absent from a meeting of the Board, or a committee thereof of which the director is a member, at which any such action is taken is presumed to have concurred in the action unless the director files a written dissent with the Secretary of the Company within a reasonable time after the director has knowledge of the action.

4.09 *Compensation.* The Board, by affirmative vote of a majority of directors in office and irrespective of any personal interest of any of them, may establish reasonable compensation of directors for services to the Company as directors or officers.

V. Procedures

5.01 *Notice.* All notices of meetings to be given to Shareholders, directors or any committee of directors may be given by mail, overnight courier, telefax or e-mail to any Shareholder, director or committee member at his last address as it appears on the books of the Company. Such notice shall be deemed to be given at the time when the same shall be mailed or otherwise dispatched.

5.02 *Waiver.* Notice of the time, place and purpose of any meeting of Shareholders, directors or committee of directors may be waived by mail, overnight courier, telefax or e-mail, either before or after the meeting, or in such other manner as permitted by the laws of Maryland. Attendance of a person at any meeting of Shareholders, in person or by proxy, or at any meeting of directors or of a committee of directors, constitutes a waiver of notice of the meeting except as follows:

(a) In the case of a Shareholder, unless the Shareholder at the beginning of the meeting objects to holding the meeting or transacting business at the meeting, or unless with respect to consideration of a particular matter at the meeting that is not within the purposes described in the meeting notice, the Shareholder objects to considering the matter when it is presented.

(b) In the case of a director, unless he or she at the beginning of the meeting, or upon his or her arrival, objects to the meeting or the transacting of business at the meeting and does not thereafter vote for or assent to any action taken at the meeting.

5.03 *Consent.* Any action permitted at any meeting of directors or committee thereof may be taken without a meeting, without prior notice and without a vote, if all directors or committee members entitled to vote thereon consent thereto in writing, before or after the action is taken. Any action permitted at a meeting of Shareholders may be taken without a meeting, without prior notice and without a vote, if all Shareholders entitled to vote thereon consent thereto in writing, before or after the action is taken or if such action otherwise satisfies the Articles and Maryland law.

VI. Officers

6.01 *Number.* The Board shall elect a President, a Secretary and a Treasurer, and may elect a Chairman, a Chief Operating Officer, and/or one or more Vice Presidents, Assistant Secretaries or Assistant Treasurers. The Chairman (if appointed) shall be a member of the Board. Any two or more of the above offices, except those of President and Vice President, may be held by the same person. Any person appointed by the Board to the office of Treasurer shall hold the equivalent title of Chief Financial Officer, and any person appointed by the Board to the office of Vice President-Finance or the office of Chief Financial Officer shall serve as Treasurer and shall forthwith succeed any incumbent holder of any such title. No officer shall execute an instrument in multiple capacities if the instrument is required by law to be acknowledged or verified by two or more officers.

6.02 *Term.* An officer shall hold office for the term for which he is elected or appointed and until his successor is elected or appointed and qualified, or until his resignation or removal. An officer may resign by written notice to the Company. The resignation is effective upon its receipt by the Company or at a subsequent time specified in the notice of resignation. An officer may be removed by the Board with or without cause. The removal of an officer shall be without prejudice to his contract rights, if any. The appointment of an officer does not of itself create contract rights.

6.03 *Vacancies.* The Board may fill any vacancies in any office occurring for whatever reason.

6.04 *Authority.* All officers, employees and agents of the Company shall have such authority and perform such duties in the conduct and management of the business and affairs of the Company as may be designated by the Board and these Bylaws, and, in that regard,

(a) all checks, drafts, notes, bonds, bills of exchange and orders for payment by the Company may, subject to any contrary resolution adopted by the Board from time to time, be signed by the President, the Chief Operating Officer, the Chief Financial Officer or any Vice President, and

(b) the Board may in any instance designate the officer and/or agent who shall have authority to execute any contract, conveyance, mortgage or other instrument on behalf of the Company, or may ratify or confirm any execution (although when the execution of any instrument has been authorized without specification of the executing officers or agents, the President, Chief Executive Officer or any Vice President may execute the same and on behalf of the Company).

VII. Duties

7.01 *Chairman.* The Chairman, if any is appointed, shall preside at all meetings of the Shareholders and of the Board at which the Chairman is present. The Chairman shall hold only such further authority as is expressly ascribed to him by these Bylaws and the resolutions of the Board.

7.02 *President.* The President shall be the chief executive officer of the Company, shall see that all resolutions of the Board are carried into effect, shall have the general powers of supervision usually vested in the chief executive officer of a corporation, and, subject to any contrary directives by the Board, shall hold authority (a) to direct (and commit) the Company's resources toward the achievement of the Company's goals, (b) to vote all securities or other interests of other business organizations held by the Company, and (c) to take such further actions to the extent approved by the Board. The President shall also hold authority equivalent to that held by the Chief Operating Officer, although, in the absence of a specific contrary directive by the Board or the President, such authority shall be left to the Chief Operating Officer. In the absence of the Secretary and any Assistant Secretary, the President may exercise the authority otherwise reserved to the Secretary.

7.03 *COO.* The Chief Operating Officer shall assume managerial responsibility over the day-to-day operations of the Company, shall exercise authority subject only to the directives of the President and the Board, and, subject to any contrary directive by the President or Board, shall hold (a) authority to supervise Company personnel, and (b) any further authority granted by the Board.

7.04 *Vice Presidents.* The Vice Presidents, in order of their seniority, shall, in the absence or disability of the President, perform the duties and exercise the powers of the President. Subject to the third sentence of Bylaw 6.01, the Vice Presidents shall in any event hold operating responsibility for those aspects of the Company's business referenced in any specific title of the particular Vice President, and shall perform such other duties as may be delegated by the Board or President.

7.05 *Secretary.* The Secretary shall record all votes and minutes of all proceedings in a book to be kept for that purpose, shall give or cause to be given notice of all meetings of the Shareholders and of the Board, and shall keep in safe custody the seal of the Company and, when authorized by the

Board, affix the same to any instrument requiring it, and when so affixed it shall be attested by the signature of the Secretary, or by the signature of the Treasurer or an Assistant Secretary. The Secretary may delegate any of the duties, powers and authorities of the Secretary to one or more Assistant Secretaries, unless such delegation is disapproved by the Board.

7.06 *Treasurer.* Subject to the authority of any Vice President charged with the responsibility for the Company's finances, the Treasurer shall have the custody of corporate funds and securities, shall keep full and accurate accounts of receipts and disbursements in books of the Company and shall deposit all moneys and other value in the name and to the credit of the Company in such depositories as may be designated by the Board. The Treasurer shall render to the President and directors, whenever they may require it, an account of his or her transactions as Treasurer and of the financial condition of the Company. The Treasurer may delegate any of his or her duties, powers and authorities to one or more Assistant Treasurers unless such delegation is disapproved by the Board.

7.07 *Assistants.* The Assistant Secretaries, in order of their seniority, shall perform the duties and exercise the powers and authorities of the Secretary in case of the Secretary's absence or disability. The Assistant Treasurers, in the order of their seniority, shall perform the duties and exercise the powers and authorities of the Treasurer in case of the Treasurer's absence or disability. The Assistant Secretaries and Assistant Treasurers shall also perform such duties as may be delegated by the Secretary and Treasurer, respectively, and also such duties as the Board may prescribe.

VIII. Records

8.01 *Maintenance.* The proper officers and agents of the Company shall keep and maintain such books, records and accounts of the Company's business and affairs, minutes of the proceedings of its Shareholders, Board and committees, if any, and such stock ledgers and lists of Shareholders, as the Board shall deem advisable, and as shall be required by the laws of Maryland and other states or jurisdictions empowered to impose such requirements. Books, records and minutes may be kept within or without Maryland in a place which the Board shall determine.

8.02 *Reliance.* In discharging his or her duties, a director or an officer of the Company, when acting in good faith, may rely upon information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by (a) one or more directors, officers, or employees of the Company, or of a business organization under joint control or common control, whom the director or officer reasonably believes to be reliable and competent in the matters presented, (b) legal counsel, public accountants, engineers, or other persons as to matters the director or officer reasonably believes are within the person's professional or expert competence, or (c) a committee of the board of which he or she is not a member if the director or officer reasonably believes the committee merits confidence. A director or officer may not rely on any information if he or she has knowledge concerning the matter that makes reliance otherwise permitted unwarranted.

IX. Indemnification

9.01 *Personal.* Subject to all of the other provisions of this Article IX, the Company shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative and whether formal or informal (other than an action by or in the right of the Company) by reason that the person is or was a director or officer of the Company, or is or was serving at the request of the Company as a director, officer, partner, trustee, employee, or agent of another entity or enterprise, against expenses (including reasonable attorneys' fees), judgments, penalties and amounts paid in settlement reasonably incurred by him or her in connection with such action, suit or proceeding, if the

person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the Company or the Shareholders, and, with respect to any criminal action or proceeding, if the person had no reasonable cause to believe his or her conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which the person reasonably believed to be in or not opposed to the best interests of the Company or the Shareholders, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his or her conduct was unlawful.

9.02 *Derivative.* Subject to all of the provisions of this Article IX, the Company shall indemnify any person who was or is a party to or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Company to procure a judgment in its favor by reason of the fact that the person is or was a director or officer of the Company, or is or was serving at the request of the Company as a director, officer, partner, trustee, employee, or agent of another foreign or domestic corporation, partnership, joint venture, trust or other enterprise, whether for profit or not, against expenses (including attorneys' fees) and amounts paid in settlement reasonably incurred by the person in connection with such action or suit, if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the Company or the Shareholders. However, indemnification shall not be made for any claim, issue or matter in which such person has been found liable to the Company unless and only to the extent that the court in which such action or suit was brought has determined upon application that, despite the adjudication of liability but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnification for the reasonable expenses incurred.

9.03 *Expenses.* To the extent that a person has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Section 9.01 or 9.02 of these Bylaws, or in defense of any claim, issue or matter in the action, suit or proceeding, the person shall be indemnified against actual and reasonable expenses (including attorneys' fees) incurred by such person in connection with the action, suit or proceeding and any action, suit or proceeding brought to enforce the mandatory indemnification provided by this Section 9.03.

9.04 *Definitions.* For purposes of Sections 9.01 and 9.02, "other enterprises" shall include employee benefit plans; "fines" shall include any excise taxes assessed on a person with respect to an employee benefit plan; and "serving at the request of the Company" shall include any service as a director, officer, employee, or agent of the Company that imposes duties on, or involves services by, the director or officer with respect to an employee benefit plan, its participants or beneficiaries; and a person who acted in good faith and in a manner the person reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be considered to have acted in a manner "not opposed to the best interests of the Company or the Shareholders".

9.05 *Parameters.* The right to indemnification conferred in this Article IX shall be a contract right, and shall apply to services of a director or officer as an employee or agent of the Company as well as in such person's capacity as a director or officer. Except as provided in Section 9.03 of these Bylaws, the Company shall have no obligations under this Article IX to indemnify any person in connection with any proceeding, or part thereof, initiated by him or her without Board authorization.

9.06 *Determination.* Any indemnification under Section 9.01 or 9.02 of these Bylaws (unless ordered by a court) shall be made by the Company only as authorized in the specific case upon a determination that indemnification of the person is proper in the circumstances because the person has met the applicable standard of conduct set forth in Section 9.01 or 9.02, whichever is applicable, and

upon an evaluation of the reasonableness of expenses and amount paid in settlement. Such determination and evaluation shall be made in any of the following ways:

(a) By a majority vote of a quorum of the Board consisting of directors who are not parties or threatened to be made parties to such proceeding.

(b) If the quorum described in clause (a) above is not obtainable, then by a majority vote of a committee of directors duly designated by the Board and consisting solely of two or more directors who are not at the time parties or threatened to be made parties to the proceeding.

(c) By independent legal counsel in a written opinion, so long as such counsel is selected (i) by the Board or its committee in the manner prescribed in subparagraph (a) or (b), or (ii) if a quorum of the Board cannot be obtained under subparagraph (a) and a committee cannot be designated under subparagraph (b), by the Board.

(d) By the Shareholders, but Shares held by directors or officers who are parties or threatened to be made parties to the action, suit or proceeding may not be voted.

9.07 *Proportionality.* If a person is entitled to indemnification under Section 9.01 or 9.02 of these Bylaws for a portion of expenses, including attorneys' fees, judgments, penalties, fines, and amounts paid in settlement, but not for the total amount thereof, the Company shall indemnify the person for the portion of the expenses, judgments, penalties, fines, or amounts paid in settlement for which the person is entitled to be indemnified.

9.08 *Advances.* The Company may pay or reimburse the reasonable expenses incurred by a person referred to in Section 9.01 or 9.02 of these bylaws who is a party or threatened to be made a party to an action, suit, or proceeding in advance of final disposition of the proceeding if (a) the person furnishes the Company a written affirmation of his or her good faith belief that he or she has met the applicable standard of conduct set forth in Section 9.01 or 9.02, (b) the person furnishes the Company a written undertaking executed to personally repay the advance if it is ultimately determined that he or she did not meet the standard of conduct, (c) the authorization of payment is made in the manner specified in Section 9.06, and (d) a determination is made that the facts then known to those making the determination would not preclude indemnification under Section 9.01 or 9.02. The undertaking shall be a general obligation of the person, but need not be secured.

9.09 *Scope.* The indemnification or advancement of expenses provided under this Article IX is not exclusive of other rights to which a person seeking indemnification or advancement of expenses may be entitled under a contractual arrangement with the Company. However, the total amount of expenses advanced or indemnified from all sources combined shall not exceed the amount of actual expenses incurred by the person seeking indemnification or advancement of expenses.

9.10 *Agents.* The Company may, to the extent authorized from time to time by the Board, grant rights to indemnification and to the advancement of expenses to any employee or agent of the Company to the fullest extent of the provisions of this Article IX with respect to the indemnification and advancement of expenses of directors and officers of the Company.

9.11 *Succession.* The indemnification provided in this Article IX continues as to a person who has ceased to be a director or officer and shall inure to the benefit of his or her successors.

9.12 *Insurance.* The Company may buy and maintain insurance on behalf of any person who is or was a director, officer, partner, trustee, employee or agent of the Company, or is or was serving at the request of the Company as a director, officer, employee or agent of another entity or enterprise against any liability asserted against the person and incurred by him or her in any such capacity or arising out of his or her status as such, whether or not the Company would have power to indemnify the person against such liability under these Bylaws or the laws of Maryland.

9.13 *Legislation.* Upon any change of the Maryland statutory provisions relating to the subject of this Article IX, the indemnification to which any person shall be entitled hereunder shall be determined by such changed provisions, but only to the extent that any such change permits the Company to provide broader indemnification rights than before any such change. Subject to Section 9.14, the Board may amend these Bylaws to conform to any such changed statutory provisions.

9.14 *Amendment.* No amendment or repeal of this Article IX shall apply to any director or officer of the Company for or with respect to any prior acts or omissions of such director or officer.

X.
Amendment

The Bylaws of the Company may be amended, altered or repealed, in whole or in part, by the Shareholders or by the Board at any meeting duly held in accordance with these Bylaws.

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ARTICLES OF INCORPORATION

OF

BAYSIDE STREET, INC.

* * * *

12/22/93 11:23

WE, THE UNDERSIGNED, Claudia L. Saari, whose post-office address is 30600 Telegraph Road, Ste. 3275, Bingham Farms, Michigan 48025, and Michael R. Dalida, whose post-office address is 30600 Telegraph Road, Ste. 3275, Bingham Farms, Michigan 48025, each being at least eighteen years of age, do, under and by virtue of the General Laws of the State of Maryland authorizing the formation of corporations, associate ourselves as incorporators with the intention of forming a corporation.

FIRST: The name of the corporation is

BAYSIDE STREET, INC.

SECOND: The purposes for which the corporation is formed are:

To engage in any or all lawful business for which corporations may be organized under the Maryland General Corporation Law.

THIRD: The post-office address of the principal office of the corporation in this state is c/o The Corporation Trust Incorporated, 32 South Street, Baltimore, Maryland 21202. The name of the resident agent of the corporation in this State is The Corporation Trust Incorporated, a corporation of this State, and the post-office address of the resident agent is 32 South Street, Baltimore, Maryland 21202.

FOURTH: The total number of shares of stock which the corporation shall have authority to issue is ten (10) shares, all of one class, of the par value of One Dollar (\$1.00) each and of the aggregate par value of Ten Dollars (\$10.00).

FIFTH: The number of directors of the corporation shall be three (3) which may be changed in accordance with the by-laws of the corporation. The names of the directors who shall act until the first annual meeting or until their successors are duly chosen and qualify are:

Essel W. Bailey
Joseph L. Rzepka
Laurie W. Fulkerson

SIXTH: The duration of the corporation shall be perpetual.

IN WITNESS WHEREOF, the undersigned incorporators of BAYSIDE STREET, INC. who executed the foregoing Articles of Incorporation hereby acknowledge the same to be their act and further acknowledge that, to the best of their knowledge the matters and facts set forth therein are true in all material respects under the penalties of perjury.

Dated the 20th Day of December, 1993.

/s/ CLAUDIA L. SAARI

Claudia L. Saari (Incorporator)

/s/ MICHAEL R. DALIDA

Michael R. Dalida (Incorporator)

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[ARTICLES OF INCORPORATION OF BAYSIDE STREET, INC.](#)

**AMENDED AND RESTATED BYLAWS
OF BAYSIDE STREET, INC.**

**I.
OFFICES**

The principal office of BAYSIDE STREET, INC. (the "Company") shall be at such place within Maryland as the Board of Directors of the Company (the "Board") shall from time to time determine. The Company also may have offices at such other places as the business of the Company may require.

**II.
SEAL**

The Company may have a seal in such form as the Board may from time to time determine. The seal, if so authorized, may be used by causing it or a facsimile to be impressed, affixed or copied.

**III.
CAPITAL**

3.1 Issuance.

The shares of capital stock of the Company (the "Shares") shall be issued in such amounts, at such times, for such consideration and on such terms as the Board shall deem advisable, subject to the Company's Articles of Incorporation (the "Articles") and the laws of Maryland.

3.2 Certificates.

The Shares shall be represented by certificates signed by the President. Each such certificate shall state upon its face that the Company is formed under the laws of Maryland, the person to whom it is issued, the number and class of Shares, and the designation of the series, if any, that the certificate represents, and such other provisions as may be required by Maryland law.

3.3 Transfer.

The Shares are transferable only on the books of the Company upon surrender of the certificate therefor, properly endorsed for transfer, and the presentation of such evidences of ownership and validity of the assignment as the Company may require.

3.4 Registration.

The Company shall be entitled to treat the person in whose name any Share is registered as the owner thereof for purposes of dividends and other distributions in the course of business, or in the course of recapitalization, merger, plan of share exchange, reorganization, sale of assets, liquidation or otherwise and for the purpose of votes, approvals and consents by shareholders of the Company ("Shareholders"), and for the purpose of notices to Shareholders, and for all other purposes whatever, and shall not be bound to recognize any equitable or other claim to or interest in such Shares on the part of any other person, whether or not the Company shall have notice thereof, save as expressly required by the laws of Maryland.

3.5 Replacement.

Upon the presentation to the Company of a proper affidavit attesting the loss, destruction or mutilation of any certificate for Shares, the Board shall direct the issuance of a new certificate to replace the certificate so alleged to be lost, destroyed or mutilated. The Board may require as a condition precedent to the issuance of a new certificate a bond or agreement of indemnity, in such form and amount, and with such sureties as the Board may direct or approve.

**IV.
SHAREHOLDERS**

4.1 Meetings.

Meetings of Shareholders shall be held at the principal office of the Company or at such other place as determined by the Board and stated in the notice of meeting. The annual meeting of Shareholders shall be held on the first Monday of March at 10:30 o'clock in the morning. Directors shall be elected at each annual meeting and such other business transacted as may come before the meeting. Special meetings of Shareholders may be called by the Board, the CEO (if such office is filled), the President or any Director, and shall be called by the Secretary at the written request of Shareholders holding a majority of the outstanding Shares and entitled to vote. The request shall state the purpose or purposes for which the meeting is to be called.

4.2 Notice.

Except as otherwise provided by statute or the Articles, written notice of the time, place and purposes of a meeting of Shareholders shall be given not fewer than ten nor more than 60 days before the date of the meeting to each Shareholder of record entitled to vote at the meeting, either personally or by mailing such notice to his last address as it appears on the books of the Company. No notice need be given of an adjourned meeting of the Shareholders provided the time and place to which such meeting is adjourned are announced at the meeting at which the adjournment is taken and at the adjourned meeting only such business is transacted as might have been transacted at the original meeting. However, if after the adjournment a new record date is fixed for the adjourned meeting a notice of the adjourned meeting shall be given to each Shareholder of record on the new record date entitled to notice as provided in this Bylaw.

4.3 Dates.

The Board may fix in advance a date as the record date for the purpose of determining Shareholders entitled to notice of and to vote at a meeting of Shareholders or an adjournment thereof, or to express consent or to dissent from a proposal without a meeting, or for the purpose of determining Shareholders entitled to receive payment of a dividend or allotment of a right, or for the purpose of any other action. The date fixed shall not be more than 60 nor less than ten days before the date of the meeting, nor more than 60 days before any other action. In such case only such Shareholders as shall be Shareholders of record on the date so fixed shall be entitled to notice of and to vote at such meeting or adjournment thereof, or to express consent or to dissent from such proposal, or to receive payment of such dividend or to receive such allotment of rights, or to participate in any other action, as the case may be, notwithstanding any transfer of any stock on the books of the Company, or otherwise, after any such record date. Nothing in this Bylaw shall affect the rights of a Shareholder and his transferee or transferor as between themselves.

4.4 Lists.

The Secretary of the Company or the agent of the Company having charge of the stock transfer records for Shares shall make and certify a complete list of the Shareholders entitled to vote at a Shareholders' meeting or any adjournment thereof. The list shall be arranged alphabetically within each class and series, with the address of, and the number of Shares held by, each Shareholder, be available for inspection by Shareholders at the offices of the Company at least (5) days prior to the date of such meeting, be produced at the meeting, be subject to inspection by any Shareholder during the meeting, and be prima facie evidence of the Shareholders entitled to examine the list or vote.

4.5 Quorum.

Unless a greater or lesser quorum is required in the Articles or by the laws of Maryland, the Shareholders present at a meeting in person or by proxy who, as of the record date for such meeting,

were holders of a majority of the outstanding Shares entitled to vote at the meeting shall constitute a quorum. Whether or not a quorum is present, a meeting of Shareholders may be adjourned by a vote of the Shares present in person or by proxy. When the holders of a class or series of Shares are entitled to vote separately on an item of business, this Bylaw applies in determining the presence of a quorum of such class or series for transaction of such item of business.

4.6 Proxies.

A Shareholder entitled to vote at a meeting of Shareholders or to express consent or dissent without a meeting may authorize other persons to act for the Shareholder by proxy. A proxy shall be signed by the Shareholder or the Shareholder's authorized agent or representative.

4.7 Voting.

Each outstanding Share is entitled to one vote on each matter submitted to a vote, unless otherwise provided in the Articles. When an action, other than the election of directors, is to be taken by a vote of the Shareholders, it shall be authorized by a majority of the votes cast by the holders of Shares entitled to vote thereon, unless a greater vote is required by the Articles or by the laws of Maryland. Except as otherwise provided by the Articles, directors shall be elected by a plurality of the votes cast at any election.

V. DIRECTORS

5.1 Number.

The business and affairs of the Company shall be managed by a Board of one director. No director need be a resident of Maryland or a Shareholder.

5.2 Tenure.

Directors shall be elected at each annual meeting of the Shareholders, each to hold office until the next annual meeting of Shareholders and until the director's successor is elected and qualified, or until the director's resignation or removal. A director may resign by written notice to the Company. The resignation is effective upon its receipt by the Company or a subsequent time as set forth in the notice of resignation. A director or the entire Board may be removed, with or without cause, by vote of the holders of a majority of the Shares entitled to vote at an election of directors.

5.3 Vacancies.

Vacancies in the Board occurring by reason of death, resignation, removal, increase in the number of directors or otherwise shall be filled by the affirmative vote of a majority of the remaining directors though less than a quorum of the Board, unless filled by proper action of the Shareholders. Each person so elected shall be a director for a term of office continuing only until the next election of directors by the Shareholders. A vacancy that will occur at a specific date, by reason of a resignation effective at a later date or otherwise, may be filled before the vacancy occurs, but the newly elected director may not take office until the vacancy occurs.

5.4 Meetings.

The Board shall meet each year immediately after the annual meeting of the Shareholders, or within three days of such time excluding Sundays and legal holidays if such later time is deemed advisable, at the place where such meeting of the Shareholders has been held or such other place as the Board may determine, for the purpose of election of officers and consideration of such business that may properly be brought before the meeting; provided, that if less than a majority of the directors appear for an annual meeting of the Board the holding of such annual meeting shall not be required and the matters which might have been taken up therein may be taken up at any later special or

annual meeting, or by consent resolution. Regular meetings of the Board may be held at such times and places as the majority of the directors may from time to time determine at a prior meeting or as shall be directed or approved by the vote or written consent of all directors. Special meetings of the Board may be called by the President and shall be called by the Secretary upon the written request of any director.

5.5 Notices.

No notice shall be required for annual or regular meetings of the Board or for adjourned meetings, whether regular or special. Three days' written notice shall be given for special meetings of the Board, and such notice shall state the time, place and purposes of the meeting.

5.6 Quorum.

A majority of the Board then in office, or of the members of a committee thereof, constitutes a quorum for the transaction of business. The vote of a majority of the directors present at any meeting at which there is a quorum shall be the acts of the Board or of the committee, except as a larger vote may be required by the laws of Maryland. A member of the Board or of a committee designated by the Board may participate in a meeting by means of conference telephone by means of which all persons participating in the meeting can communicate with each other. Participation in a meeting in this manner constitutes presence in person at the meeting.

5.7 Committees.

The Board may, by resolution passed by a majority of the whole Board, appoint three or more members of the Board as an executive committee to exercise all powers and authorities of the Board in management of the business and affairs of the Company, except that the committee shall not have power or authority to (a) amend the Articles; (b) adopt an agreement of merger or consolidation; (c) recommend to Shareholders the sale, lease or exchange of all or substantially all of the Company's property and assets; (d) recommend to Shareholders a dissolution of the Company or revocation of a dissolution; (e) amend these Bylaws; (f) fill vacancies in the Board; or (g) unless expressly authorized by the Board, declare a dividend or authorize the issuance of stock. The Board from time to time may, by like resolution, appoint such other committees of one or more directors to have such authority as shall be specified by the Board in the resolution making such appointments. The Board may designate one or more directors as alternate members of any committee who may replace an absent or disqualified member at any meeting thereof.

5.8 Dissent.

A director who is present at a meeting of the Board, or a committee thereof of which the director is a member, at which action on a corporate matter is taken is presumed to have concurred in that action unless the director's dissent is entered in the minutes of the meeting or unless the director files a written dissent to the action with the person acting as secretary of the meeting before the adjournment thereof or shall forward such dissent by registered mail to the Secretary of the Company promptly after the adjournment of the meeting. Such right to dissent does not apply to a director who voted in favor of such action. A director who is absent from a meeting of the Board, or a committee thereof of which the director is a member, at which any such action is taken is presumed to have concurred in the action unless the director files a written dissent with the Secretary of the Company within a reasonable time after the director has knowledge of the action.

5.9 Compensation.

The Board, by affirmative vote of a majority of directors in office and irrespective of any personal interest of any of them, may establish reasonable compensation of directors for services to the Company as directors or officers.

VI.
PROCEDURES

6.1 Notice.

All notices of meetings to be given to Shareholders, directors or any committee of directors may be given by mail, overnight courier, telefax or e-mail to any Shareholder, director or committee member at his last address as it appears on the books of the Company. Such notice shall be deemed to be given at the time when the same shall be mailed or otherwise dispatched.

6.2 Waiver.

Notice of the time, place and purpose of any meeting of Shareholders, directors or committee of directors may be waived by mail, overnight courier, telefax or e-mail, either before or after the meeting, or in such other manner as may be permitted by the laws of Maryland. Attendance of a person at any meeting of Shareholders, in person or by proxy, or at any meeting of directors or of a committee of directors, constitutes a waiver of notice of the meeting except as follows:

(a) In the case of a Shareholder, unless the Shareholder at the beginning of the meeting objects to holding the meeting or transacting business at the meeting, or unless with respect to consideration of a particular matter at the meeting that is not within the purposes described in the meeting notice, the Shareholder objects to considering the matter when it is presented.

(b) In the case of a director, unless he or she at the beginning of the meeting, or upon his or her arrival, objects to the meeting or the transacting of business at the meeting and does not thereafter vote for or assent to any action taken at the meeting.

6.3 Consent.

Any action required or permitted at any meeting of directors or committee thereof may be taken without a meeting, without prior notice and without a vote, if all directors or committee members entitled to vote thereon consent thereto in writing, before or after the action is taken. Any action required or permitted at any meeting of Shareholders may be taken without a meeting, without prior notice and without a vote, if all Shareholders entitled to vote thereon consent thereto in writing, before or after the action is taken or if such action otherwise satisfies the Articles and Maryland law.

VII.
OFFICERS

7.1 Number.

The Board shall elect or appoint a President, a Secretary and a Treasurer, and may elect a Chief Executive Officer (the "CEO"), a Chief Operating Officer (the "COO"), and/or one or more Vice Presidents, Assistant Secretaries or Assistant Treasurers. The CEO (if appointed) shall be a member of the Board. Any two or more of the above offices, except those of President and Vice President, may be held by the same person. No officer shall execute or verify an instrument in more than one capacity if the instrument is required by law, the Articles or these Bylaws to be executed, acknowledged, or verified by one or more officers.

7.2 Term.

An officer shall hold office for the term for which he is elected or appointed and until his successor is elected or appointed and qualified, or until his resignation or removal. An officer may resign by written notice to the Company. The resignation is effective upon its receipt by the Company or at a subsequent time specified in the notice of resignation. An officer may be removed by the Board with or without cause. The removal of an officer shall be without prejudice to his contract rights, if any. The appointment of an officer does not of itself create contract rights.

7.3 **Vacancies.**

The Board may fill any vacancies in any office occurring for whatever reason.

7.4 **Authority.**

All officers, employees and agents of the Company shall have such authority and perform such duties in the conduct and management of the business and affairs of the Company as may be designated by the Board and these Bylaws.

VIII. DUTIES

8.1 **CEO.**

The CEO, if any is appointed, shall preside at all meetings of the Shareholders and of the Board at which the CEO is present. The CEO shall be the chief executive officer of the Company, shall see that all resolutions of the Board are carried into effect, and shall have the general powers of supervision usually vested in the chief executive officer of a corporation. Subject to any contrary directives by the Board, the CEO shall hold (a) authority to direct (and commit) the Company's resources toward the achievement of the Company's goals, (b) authority to vote all securities or other interests of other corporations and business organizations held by the Company, and (c) any further authority as may hereafter be vested in him by the Board.

8.2 **President.**

In the absence of the CEO, the President shall hold and exercise all authority ascribed to the CEO. In addition, the President shall exercise any and all authority as may be granted to him by the Board, and, subject only to the directives of the CEO, shall ensure that all resolutions of the Board are carried into effect. In the absence of the COO, the President shall also shall hold and exercise all authority ascribed to the COO. In the absence of the Secretary and any Assistant Secretary, the President may exercise the authority otherwise reserved to the Secretary.

8.3 **COO.**

The COO shall be the chief operating officer of the Company. The President shall have the general powers of management usually vested in the chief operating officer of a corporation, and, subject to any contrary directives by the Board, shall hold (a) authority to supervise corporation personnel and to implement the directives of the Board, the President and the CEO, and (b) any further authority as may hereafter be vested in him by the Board.

8.4 **Vice Presidents.**

The Vice Presidents, in order of their seniority, shall, in the absence or disability of the President, perform the duties and exercise the powers of the President. The Vice Presidents shall in any event assume operating responsibility for those aspects of the Company's business referenced in any specific title of the particular Vice President, and shall perform such other duties as may be delegated by the Board, the CEO, the COO or the President. In any event, any Vice President whose title includes the phrase chief financial officer shall be deemed to have been charged with the responsibility for the Company's finances, shall have been granted custody of corporate funds and securities, shall be obligated to keep full and accurate accounts of receipts and disbursements in books of the Company, and shall deposit all moneys and other value in the name and to the credit of the Company in such depositories as may be designated by the Board. Moreover, any Vice President whose title includes the phrase general counsel shall be deemed to have been charged with the responsibility for the Company's legal affairs and shall be deemed the Company's principal liaison with the Company's outside counsel and regulatory authorities.

8.5 Secretary.

The Secretary shall record all votes and minutes of all proceedings in a book to be kept for that purpose, shall give or cause to be given notice of all meetings of the Shareholders and of the Board, and shall keep in safe custody the seal of the Company and, when authorized by the Board, affix the same to any instrument requiring it, and when so affixed it shall be attested by the signature of the Secretary, or by the signature of the Treasurer or an Assistant Secretary. The Secretary may delegate any of the duties, powers and authorities of the Secretary to one or more Assistant Secretaries, unless such delegation is disapproved by the Board.

8.6 Treasurer.

Subject to the authority of any Vice President charged with the responsibility for the Company's finances, the Treasurer shall have the custody of corporate funds and securities, shall keep full and accurate accounts of receipts and disbursements in books of the Company and shall deposit all moneys and other value in the name and to the credit of the Company in such depositories as may be designated by the Board. The Treasurer shall render to the President and directors, whenever they may require it, an account of his or her transactions as Treasurer and of the financial condition of the Company. The Treasurer may delegate any of his or her duties, powers and authorities to one or more Assistant Treasurers unless such delegation is disapproved by the Board.

8.7 Assistants.

The Assistant Secretaries, in order of their seniority, shall perform the duties and exercise the powers and authorities of the Secretary in case of the Secretary's absence or disability. The Assistant Treasurers, in the order of their seniority, shall perform the duties and exercise the powers and authorities of the Treasurer in case of the Treasurer's absence or disability. The Assistant Secretaries and Assistant Treasurers shall also perform such duties as may be delegated by the Secretary and Treasurer, respectively, and also such duties as the Board may prescribe.

IX. ACTIONS

9.1 Payment.

All checks, drafts, notes, bonds, bills of exchange and orders for payment of money of the Company may, subject to any contrary resolution adopted by the Board from time to time, be signed by the CEO, the President or any other officer as may be authorized by the Board.

9.2 Contracts.

The Board may in any instance designate the officer and/or agent who shall have authority to execute any contract, conveyance, mortgage or other instrument on behalf of the Company, or may ratify or confirm any execution. When the execution of any instrument has been authorized without specification of the executing officers or agents, the CEO or President may execute the same in the name and on behalf of the Company and may affix the corporate seal thereto.

X. RECORDS

10.1 Maintenance.

The proper officers and agents of the Company shall keep and maintain such books, records and accounts of the Company's business and affairs, minutes of the proceedings of its Shareholders, Board and committees, if any, and such stock ledgers and lists of Shareholders, as the Board shall deem advisable, and as shall be required by the laws of Maryland and other states or jurisdictions empowered

to impose such requirements. Books, records and minutes may be kept within or without Maryland in a place which the Board shall determine.

10.2 **Reliance.**

In discharging his or her duties, a director or an officer of the Company, when acting in good faith, may rely upon information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by (a) one or more directors, officers, or employees of the Company, or of a business organization under joint control or common control, whom the director or officer reasonably believes to be reliable and competent in the matters presented, (b) legal counsel, public accountants, engineers, or other persons as to matters the director or officer reasonably believes are within the person's professional or expert competence, or (c) a committee of the board of which he or she is not a member if the director or officer reasonably believes the committee merits confidence. A director or officer may not rely on any information if he or she has knowledge concerning the matter that makes reliance otherwise permitted unwarranted.

XI. INDEMNIFICATION

11.1 **Personal.**

Subject to all of the other provisions of this Article XI, the Company shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative and whether formal or informal (other than an action by or in the right of the Company) by reason that the person is or was a director or officer of the Company, or is or was serving at the request of the Company as a director, officer, partner, trustee, employee, or agent of another entity or enterprise, against expenses (including reasonable attorneys' fees), judgments, penalties and amounts paid in settlement reasonably incurred by him or her in connection with such action, suit or proceeding, if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the Company or the Shareholders, and, with respect to any criminal action or proceeding, if the person had no reasonable cause to believe his or her conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which the person reasonably believed to be in or not opposed to the best interests of the Company or the Shareholders, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his or her conduct was unlawful.

11.2 **Derivative.**

Subject to all of the provisions of this Article XI, the Company shall indemnify any person who was or is a party to or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Company to procure a judgment in its favor by reason of the fact that the person is or was a director or officer of the Company, or is or was serving at the request of the Company as a director, officer, partner, trustee, employee, or agent of another foreign or domestic corporation, partnership, joint venture, trust or other enterprise, whether for profit or not, against expenses (including attorneys' fees) and amounts paid in settlement reasonably incurred by the person in connection with such action or suit, if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the Company or the Shareholders. However, indemnification shall not be made for any claim, issue or matter in which such person has been found liable to the Company unless and only to the extent that the court in which such action or suit was brought has determined upon application that, despite the adjudication of liability but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnification for the reasonable expenses incurred.

11.3 Expenses.

To the extent that a person has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Section 11.1 or 11.2 of these Bylaws, or in defense of any claim, issue or matter in the action, suit or proceeding, the person shall be indemnified against actual and reasonable expenses (including attorneys' fees) incurred by such person in connection with the action, suit or proceeding and any action, suit or proceeding brought to enforce the mandatory indemnification provided by this Section 11.3.

11.4 Definitions.

For purposes of Sections 11.1 and 11.2, "other enterprises" shall include employee benefit plans; "fines" shall include any excise taxes assessed on a person with respect to an employee benefit plan; and "serving at the request of the Company" shall include any service as a director, officer, employee, or agent of the Company that imposes duties on, or involves services by, the director or officer with respect to an employee benefit plan, its participants or beneficiaries; and a person who acted in good faith and in a manner the person reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be considered to have acted in a manner "not opposed to the best interests of the Company or the Shareholders".

11.5 Parameters.

The right to indemnification conferred in this Article XI shall be a contract right, and shall apply to services of a director or officer as an employee or agent of the Company as well as in such person's capacity as a director or officer. Except as provided in Section 11.3 of these Bylaws, the Company shall have no obligations under this Article XI to indemnify any person in connection with any proceeding, or part thereof, initiated by him or her without Board authorization.

11.6 Determination.

Any indemnification under Section 11.1 or 11.2 of these Bylaws (unless ordered by a court) shall be made by the Company only as authorized in the specific case upon a determination that indemnification of the person is proper in the circumstances because the person has met the applicable standard of conduct set forth in Section 11.1 or 11.2, whichever is applicable, and upon an evaluation of the reasonableness of expenses and amount paid in settlement. Such determination and evaluation shall be made in any of the following ways:

- (a) By a majority vote of a quorum of the Board consisting of directors who are not parties or threatened to be made parties to such proceeding.
- (b) If the quorum described in clause (a) above is not obtainable, then by a majority vote of a committee of directors duly designated by the Board and consisting solely of two or more directors who are not at the time parties or threatened to be made parties to the proceeding.
- (c) By independent legal counsel in a written opinion, so long as such counsel is selected (i) by the Board or its committee in the manner prescribed in subparagraph (a) or (b), or (ii) if a quorum of the Board cannot be obtained under subparagraph (a) and a committee cannot be designated under subparagraph (b), by the Board.
- (d) By the Shareholders, but Shares held by directors or officers who are parties or threatened to be made parties to the action, suit or proceeding may not be voted.

11.7 Proportionality.

If a person is entitled to indemnification under Section 11.1 or 11.2 of these Bylaws for a portion of expenses, including attorneys' fees, judgments, penalties, fines, and amounts paid in settlement, but not for the total amount thereof, the Company shall indemnify the person for the portion of the

expenses, judgments, penalties, fines, or amounts paid in settlement for which the person is entitled to be indemnified.

11.8 Advances.

The Company may pay or reimburse the reasonable expenses incurred by a person referred to in Section 11.1 or 11.2 of these bylaws who is a party or threatened to be made a party to an action, suit, or proceeding in advance of final disposition of the proceeding if (a) the person furnishes the Company a written affirmation of his or her good faith belief that he or she has met the applicable standard of conduct set forth in Section 11.1 or 11.2, (b) the person furnishes the Company a written undertaking executed to personally repay the advance if it is ultimately determined that he or she did not meet the standard of conduct, (c) the authorization of payment is made in the manner specified in Section 11.6, and (d) a determination is made that the facts then known to those making the determination would not preclude indemnification under Section 11.1 or 11.2. The undertaking shall be a general obligation of the person, but need not be secured.

11.9 Scope.

The indemnification or advancement of expenses provided under this Article XI is not exclusive of other rights to which a person seeking indemnification or advancement of expenses may be entitled under a contractual arrangement with the Company. However, the total amount of expenses advanced or indemnified from all sources combined shall not exceed the amount of actual expenses incurred by the person seeking indemnification or advancement of expenses.

11.10 Agents.

The Company may, to the extent authorized from time to time by the Board, grant rights to indemnification and to the advancement of expenses to any employee or agent of the Company to the fullest extent of the provisions of this Article XI with respect to the indemnification and advancement of expenses of directors and officers of the Company.

11.11 Succession.

The indemnification provided in this Article XI continues as to a person who has ceased to be a director or officer and shall inure to the benefit of his or her successors.

11.12 Insurance.

The Company may buy and maintain insurance on behalf of any person who is or was a director, officer, partner, trustee, employee or agent of the Company, or is or was serving at the request of the Company as a director, officer, employee or agent of another entity or enterprise against any liability asserted against the person and incurred by him or her in any such capacity or arising out of his or her status as such, whether or not the Company would have power to indemnify the person against such liability under these Bylaws or the laws of Maryland.

11.13 Legislation.

Upon any change of the Maryland statutory provisions relating to the subject matter of this Article XI, the indemnification to which any person shall be entitled hereunder shall be determined by such changed provisions, but only to the extent that any such change permits the Company to provide broader indemnification rights than before any such change. Subject to Section 11.14, the Board may amend these Bylaws to conform to any such changed statutory provisions.

11.14 Amendment.

No amendment or repeal of this Article XI shall apply to any director or officer of the Company for or with respect to any prior acts or omissions of such director or officer.

**XII.
AMENDMENT**

The Bylaws of the Company may be amended, altered or repealed, in whole or in part, by the Shareholders or by the Board at any meeting duly held in accordance with these Bylaws.

ARTICLES OF ORGANIZATION OF _____

PURSUANT TO THE MARYLAND LIMITED LIABILITY COMPANY ACT, as amended (the "Act"), the undersigned authorized individual hereby executes these Articles of Organization:

ARTICLE I

The name of the limited liability company (the "Company") is _____.

ARTICLE II

The Company is organized to (a) purchase (and/or otherwise acquire) ownership and/or leasehold interests in one or more nursing homes, and (b) assume (and/or otherwise incur) any such obligations, and conduct any such operations, as shall be incidental or reasonably related thereto.

ARTICLE III

The address of the Company's principal office in the State of Maryland is c/o The Corporation Trust Incorporated, 32 South Street, Baltimore, Maryland 21202, and the name and the address of the Company's resident agent in the State of Maryland are The Corporation Trust Incorporated, 32 South Street, Baltimore, Maryland 21202.

ARTICLE IV

The Company shall be managed by one or more managers (who need not be members), and the authority of members to act for the Company solely by virtue of their being members is limited.

ARTICLE V

Without limiting the ability of the Company to hereafter admit (and/or substitute) members and/or managers in accordance with the Company's operating agreement, as such agreement may be amended from time to time (the "Operating Agreement"), the Company's Initial member, and the Company's initial manager, shall be Omega Healthcare Investors, Inc., a Maryland corporation.

ARTICLE VI

The Company's existence shall commence upon the later of (a) October 1, 1997, or (b) the date on which these Articles of Organization are duly filed with the Maryland State Department of Assessments and Taxation. Unless terminated earlier pursuant to the Act or pursuant to the Company's Operating Agreement, the Company's term shall end on December 31, 2097.

IN WITNESS WHEREOF, the undersigned individual, being duly authorized by the Company's member and manager, executes and certifies these Articles on this 25th day of September, 1997.

/s/ STUART D. LOGAN

Stuart D. Logan

OPERATING AGREEMENT OF _____

THIS OPERATING AGREEMENT is executed this first day of October, 1997, by OMEGA HEALTHCARE INVESTORS, INC., a Maryland corporation ("OHI").

1. *Formation.* OHI hereby acknowledges that

(a) on the date hereof, the articles of organization of _____ (the "Company") became effective with the State Department of Assessments and Taxation of the State of Maryland (the "Department"), thereby forming the Company as a limited liability company under the Maryland Limited Liability Company Act, as amended (the "Act"), and

(b) from and after the date hereof, the Company shall be operated pursuant to (i) the aforementioned restated articles of organization, as such articles may from time to time hereafter be amended or further restated, and (ii) this operating agreement, as it may from time to time hereafter be amended or restated (this "Agreement").

2. *Name/Office/Agent.* The name of the Company shall be _____. The address of the Company's principal office shall be 32 South Street, Baltimore, Maryland 21202, and the name and the address of the Company's resident agent shall be The Corporation Trust Incorporated, 32 South Street, Baltimore, Maryland 21202.

3. *Definitions.* For purposes of this Agreement, the following terms shall have the respective meanings ascribed to them in this Paragraph 3.

"Act" has the meaning ascribed to it in Paragraph 1.

"Affiliate" means any person that directly or indirectly, through one or more intermediaries controls, is controlled by, or is under common control with; a Member or Manager.

"Agreement" has the meaning ascribed to it in Paragraph 1.

"Code" means the Internal Revenue Code of 1986, as amended, and references to the provisions thereof shall include references to corresponding provisions of subsequent law.

"Company" has the meaning ascribed to it in Paragraph 1.

"Contributions" means the amount of cash or the fair market value of other property contributed to the Company or required to be contributed to the Company.

"Department" has the meaning ascribed to it in Paragraph 1.

"Majority Interest" means any group of Members who together hold an aggregate Percentage of at least 50.1%.

"Manager" has the meaning ascribed to it in Paragraph 6.

"Members" means (a) OHI and any person or persons who may hereafter be admitted to the Company in accordance with Paragraph 14, and (b) in the event of action taken to grant a person membership in the Company pursuant to Paragraph 13, any successor to any one or more of them.

"Percentages" means the Members' respective interests in the Profits of the Company, which, as of the date of this Agreement, and until adjusted in accordance with the terms of this Agreement, shall be 100% in the case of OHI.

"Profits and Losses" means taxable profits or losses of the Company for each Fiscal Year (or other period) determined in accordance with Code Section 703 (provided that (a) any tax-exempt income shall be added to such taxable income or loss, and (b) any Code Section 705(a)(2)(B) expenditures shall be subtracted from such taxable income or loss).

4. *Scope.*

(a) The Company is organized to (i) purchase (and/or otherwise acquire) ownership and/or leasehold interests in one or more nursing homes as may be selected by the Manager in any one or more states, and (ii) assume (and/or otherwise incur) any such obligations, and conduct any such operations, as shall be incidental or reasonably related thereto (including, without limitation, the acquisition of other continuing-care facilities in any one or more states to provide services akin to, or in support of, services traditionally rendered by nursing homes).

(b) No Member or Manager need afford the Company or any other Member or Manager the opportunity to acquire, invest or participate in any business or investment that such Member or Manager may wish to acquire in its own name, whether or not such business would otherwise be an opportunity of the Company.

5. *Contributions.* To the extent approved by the Manager from time to time, the Members may be requested to make Contributions or additional Contributions, on such terms as the Manager may prescribe. If the Manager determines that such additional Contributions are necessary or appropriate, the Members shall have the opportunity (but not the obligation) to participate in such additional Contributions on a pro rata basis in accordance with their Percentages. If any Member fails to contribute its share, the Percentages shall be reallocated in proportion to the initial and all additional Contributions of each Member. No Member shall be required to restore any deficit in its capital account, and, until termination of the Company, no Member shall withdraw any of its capital account.

6. *Management.* The Company shall be managed by a manager (the "Manager"), who shall speak for, and act of behalf of, the Company. The initial Manager shall be OHI. An incumbent Manager shall so serve until the Manager's (a) resignation, (b) death or dissolution, or (c) termination as otherwise required by the Act. Upon the termination of a Manager's tenure as Manager, a new Manager shall be selected by the Majority Interest.

7. *Liability.*

(a) No Manager or Member shall be liable for the acts or obligations of the Company, unless such Manager or Member shall have expressly assumed such liability.

(b) The Manager shall discharge its management duties in good faith, and no Manager shall be liable for monetary damages to the Company for any breach of any such management duties, except for (i) receipt of a financial benefit to which the Manager is not entitled, (ii) assenting to a distribution in violation of this Agreement or the Act, or (iii) a knowing violation of the law.

(c) The Company shall indemnify any Manager (and may indemnify any employee or agent of the Company or Manager) who was or is a party or is threatened to be made a party to a threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, and whether formal or informal (other than an action by or in the right of the Company), by reason that such person is or was a Manager, employee or agent of the Company or Manager, against expenses (including attorneys' fees), judgments, penalties, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with the action, suit or proceeding, but only if the person acted in good faith, without gross negligence and in a manner that such person reasonably believed to be in the best interests of the Company, and, with respect to a criminal action or proceeding, if such person had no reasonable cause to believe his conduct was unlawful. To the extent that a Manager, employee or agent of the Company (or of the Manager) is successful in defending an action, suit or proceeding referred to in this Section 7, or in defending any claim, issue or other matter in the action, suit or proceeding, such person shall be indemnified against actual and reasonable expenses (including attorneys' fees) incurred by him in connection with the action, suit or proceeding and any action, suit or proceeding brought to enforce the mandatory indemnification provided herein. Any indemnification permitted under this Subsection 7(c) shall (unless ordered by a court) be made by

the Company only as authorized in the specific case, upon a determination that the indemnification is proper under the circumstances because the person to indemnify has met the applicable standard of conduct and upon an evaluation of the reasonableness of expenses and amount paid in settlement. This determination and evaluation shall be made in good faith by a majority (by Percentages) of those Members who are not parties or threatened to be made parties to the action, suit or proceeding. Notwithstanding the foregoing, no indemnification shall be provided to any Manager, employee or agent of the Company (or of the Manager) for or in connection with (i) the receipt of a financial benefit to which such person is not entitled, (ii) voting for or assenting to a distribution to Members in violation of this Agreement or Act, or (iii) a knowing violation of law.

8. *Capital.* A capital account shall be maintained for each Member, to which Contributions and Profits shall be credited and against which distributions and Losses shall be charged. Capital accounts shall be maintained in accordance with the accounting principles of Code Section 704.

9. *Profits and Losses.* The Profits and Losses of the Company shall be determined as of the end of each fiscal year, and shall be allocated among the Members in proportion to their respective Percentages.

10. *Distributions.*

(a) The availability of cash (or other assets) for distribution to the Member shall be determined by the Manager, in the exercise of its sole discretion, after accounting for (i) the payment (or the establishment of a reserve for the payment) of Company debt, and (ii) the purchase, repair or improvement (or the establishment of a reserve for the purchase, repair or improvement) of assets owned or leased (or to be owned or leased) by the Company.

(b) Available cash (or other assets) shall be distributed to the Members, at such times as the Manager may discretionarily determine, in the following priority:

(i) first, among the Members in proportion to, and to the extent of, their respective capital-account balances, and

(ii) the balance, among the Members in proportion to their respective Percentages.

11. *Dissolution.* The Company shall be dissolved upon the first to occur of (a) the written consent of all Members, (b) the sale or other disposition of substantially all of the Company's assets, or (c) the entry of a decree of judicial dissolution.

12. *Winding Up.* Upon termination of the Company, the Manager shall conclude the Company's affairs. The Company's assets may be liquidated or transferred in kind, as determined by the Manager. The Company's assets shall first be applied toward the payment of Company debt, and then shall be distributed to the Members consistent with Paragraph 10, after the allocation under Paragraph 9 and any after accounting for any prior distributions.

13. *Assignment.* Subject to the following sentences of this Paragraph 13, a Member may assign its interest in the Company, in whole or in part, but only with the consent of the Manager. Such assignment shall not of itself substitute the assignee as a Member. Moreover, such assignment shall entitle the assignee to none of the rights of a Member, whether under this Agreement or under the Act, other than the right to receive (to the extent assigned) the distributions to which the assigning Member would otherwise be entitled. An assignee shall not be admitted as a Member, unless the Majority Interest consents thereto in writing.

14. *Admission and Withdrawal.*

(a) Other than as provided in Paragraph 13 with respect to the successors and assigns of then-existing Members, and other than as provided in the last sentence of this Subparagraph 14(a), no additional Member shall be admitted to the Company without (i) the consent of the Manager, and

(ii) the approval of the Majority Interest. The approval of the Majority Interest shall be solicited pursuant to a written proposal that (i) shall have been agreed to by the Manager and the candidate, (ii) shall specify the terms of the proposed admission, including the candidate's identity, date of admission, Percentage and commitment to make Contributions, and (iii) shall specify that all then existing Percentages shall be diluted ratably to the aggregate extent of the candidate's Percentage, provided that a particular Member's Percentage may be disproportionately diluted, but only if, and only to the extent, such Member specifically agrees to such disproportionate dilution.

(b) No Member may withdraw from the Company without the discretionary consent of all Members, which, if given, shall specify the terms of such withdrawal. A Member resigning from the Company in violation of this Subparagraph 14(b) shall receive, as payment in full upon the automatic and immediate redemption of its Percentage and capital account, either (i) the ongoing equity distributions to which it would otherwise be entitled were it still a Member, or (ii) within 12 months after withdrawal, a payment equal to the withdrawing Member's capital-account balance. In the event such withdrawal is volitional, the withdrawing Member shall be liable for, and the payment otherwise owing it under this Subparagraph 14(b) shall be subject to setoff to the extent of, any and all damages resulting to the Company and/or Members from such breach of this Agreement.

(c) A Manager may not voluntarily resign as Manager, without the consent of the Majority Interest.

15. *Amendment.* This Agreement may be amended only by the written consent of all Members.

16. *Miscellaneous.* This Agreement shall be binding upon and shall inure to the benefit of the parties, their successors and permitted assigns. No provision of this Agreement shall be construed as for the benefit of or as enforceable by any creditor of the Company or any other person not a party to this Agreement.

THE UNDERSIGNED has executed this Agreement as of the date first above written.

OMEGA HEALTHCARE INVESTORS, INC.

By:

Name:

Title:

**ARTICLES OF INCORPORATION
OF
JEFFERSON CLARK, INC.**

The undersigned, being a natural person and acting as incorporator, does hereby adopt the following Articles of Incorporation (hereinafter called these "Articles") for the purpose of forming a business corporation in the State of Maryland, pursuant to the provisions of the Maryland General Corporation Law (hereinafter called the "MGCL").

FIRST

1. The name of the incorporator is Stuart D. Logan.
2. The incorporator's address, including the street and number, including the county or municipal area, and including the state or country, is 1577 North Woodward Avenue, Suite 300, City of Bloomfield Hills, County of Oakland, State of Michigan 48304.
3. The incorporator is over 18 years old.
4. The incorporator is forming the corporation named in these Articles (hereinafter called the "Corporation") under the general laws of the State of Maryland, and, in particular, the MGCL.

SECOND

The name of the Corporation is Jefferson Clark, Inc.

THIRD

The purpose for which this corporation is formed is to engage in the ownership of real property and mortgages secured by interests in real property and in any other lawful act or activity for which corporations may be organized under the General Corporation Law of Maryland as now or hereafter in force.

FOURTH

The address, including street and number, and the county or municipal area, of the principal office of the Corporation within the State of Maryland, is c/o The Corporation Trust Incorporated, 32 South Street, Baltimore, Maryland 21202.

FIFTH

The name and the address, including street and number, and the county or municipal area, of the resident agent of the Corporation within the State of Maryland, is The Corporation Trust Incorporated, 32 South Street, Baltimore, Maryland 21202.

SIXTH

1. The total number of shares of stock that the Corporation has authority to issue is one thousand, each of which is of a par value of one hundred dollars and each of which is designated only as Common Stock.
 2. The aggregate par value of all the authorized shares of stock is one hundred thousand dollars.
 3. The board of directors of the Corporation (hereinafter called the "Board") is authorized, from time to time, to issue any additional stock or convertible securities of the Corporation without the approval of the holders of outstanding stock.
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4. Any provisions restricting the transferability of any of Corporation stock may be set forth in the bylaws of the Corporation (hereinafter called the "Bylaws") or in any agreement or agreements duly entered into.

5. To the extent permitted by Section 2-104(b)(5) of the MGCL, and notwithstanding any provision of the MGCL requiring a greater proportion than a majority of the votes entitled to be cast in order to take or authorize any action, any such action may be taken or authorized upon the concurrence of at least a majority of the aggregate number of votes entitled to be cast thereon.

SEVENTH

1. Until changed by the Bylaws, or until any such time (if ever) as the Corporation shall have more than one Shareholder, only one director shall serve on the Board.

2. Essel W. Bailey, Jr. shall serve as the sole member of the Board, until the first annual meeting of stockholders and until his successor is elected and qualifies.

3. The initial Bylaws shall be adopted by the initial members of the Board. Thereafter, the power to adopt, alter, and repeal the Bylaws shall be vested in the Board.

EIGHTH

1. To the fullest extent that limitations on the liability of directors and officers are permitted by the MGCL, no director or officer of the Corporation shall have any liability to the Corporation or its stockholders for money or other damages. This limitation on liability applies to events occurring at the time a person serves as a director or officer of the Corporation whether or not such person is a director or officer at the time of any proceeding in which liability is asserted.

2. The Corporation shall indemnify and advance expenses to its directors to the fullest extent that indemnification of, and advance of expenses to, directors is permitted by the MGCL. The Corporation shall indemnify and advance expenses to its officers to the same extent as its directors and to such further extent as is consistent with law. The Board may, by bylaw, resolution or agreement, make further provision for indemnification of directors, officers, employees and agents to the fullest extent permitted by the MGCL.

3. References to the MGCL in this Article Eighth are to that law as from time to time amended.

4. No future amendment to these Articles shall affect any right of any person under this Article Eighth based on any event, omission or proceeding prior to such amendment.

NINTH

The period of the existence of the Corporation is to be perpetual.

TENTH

From time to time, any provision of these Articles may be amended, altered or repealed, and other provisions authorized by the MGCL at the time in force may be added or inserted in the manner and at the time prescribed by said laws, and any contract rights at any time conferred upon a stockholder of the Corporation by these Articles are granted subject to this Article Tenth.

IN WITNESS WHEREOF, I have adopted and signed these Articles and do hereby acknowledge that the adoption and signing are my act.

Dated: August 7, 1997

/s/ STUART D. LOGAN

Stuart D. Logan

BYLAWS
OF
JEFFERSON CLARK, INC.

ARTICLE I
OFFICES

1.01 *Principal Office.* The principal office of the corporation shall be at such place within or outside the State of Maryland as the Board of Directors shall determine from time to time.

1.02 *Other Offices.* The corporation also may have offices at such other places as the Board of Directors from time to time determines or the business of the corporation requires.

ARTICLE II
SEAL

2.01 *Seal.* The corporation may have a seal in such form as the Board of Directors may from time to time determine. The seal may be used by causing it or a facsimile to be impressed, affixed, reproduced or otherwise.

ARTICLE III
CAPITAL STOCK

3.01 *Issuance of Shares.* The shares of capital stock of the corporation shall be issued in such amounts, at such times, for such consideration and on such terms and conditions as the Board shall deem advisable, subject to the Articles of Incorporation and any requirements of the laws of the State of Maryland.

3.02 *Certificates for Shares.* The shares of the corporation shall be represented by certificates signed by the Chairman of the Board, Vice Chairman of the Board, President or a Vice President of the corporation, and may be sealed with the seal of the corporation or a facsimile thereof. A certificate representing shares shall state upon its face that the corporation is formed under the laws of the State of Maryland, the name of the person to whom it is issued, the number and class of shares, and the designation of the series, if any, which the certificate represents and such other provisions as may be required by the laws of the State of Maryland.

3.03 *Transfer of Shares.* The shares of the capital stock of the corporation are transferable only on the books of the corporation upon surrender of the certificate therefor, properly endorsed for transfer, and the presentation of such evidences of ownership and validity of the assignment as the corporation may require.

3.04 *Registered Shareholders.* The corporation shall be entitled to treat the person in whose name any share of stock is registered as the owner thereof for purposes of dividends and other distributions in the course of business, or in the course of recapitalization, consolidation, merger, reorganization, sale of assets, liquidation or otherwise and for the purpose of votes, approvals and consents by shareholders, and for the purpose of notices to shareholders, and for all other purposes whatever, and shall not be bound to recognize any equitable or other claim to or interest in such shares on the part of any other person, whether or not the corporation shall have notice thereof, save as expressly required by the laws of the State of Maryland.

3.05 *Lost or Destroyed Certificates.* Upon the presentation to the corporation of a proper affidavit attesting the loss, destruction or mutilation of any certificate or certificates for shares of stock of the corporation, the Board of Directors shall direct the issuance of a new certificate or certificates to replace the certificates so alleged to be lost, destroyed or mutilated. The Board of Directors may

require as a condition precedent to the issuance of new certificates a bond or agreement of indemnity, in such form and amount and with such sureties, or without sureties, as the Board of Directors may direct or approve.

ARTICLE IV SHAREHOLDERS AND MEETINGS OF SHAREHOLDERS

4.01 *Place of Meetings.* All meetings of shareholders shall be held at the principal office of the corporation or at such other place as shall be determined by the Board of Directors and stated in the notice of meeting.

4.02 *Annual Meeting.* The annual meeting of the shareholders of the corporation shall be held on the last Monday of the fifth calendar month after the end of the corporation's fiscal year at 2 o'clock in the afternoon, or on such other date and at such other time as may be determined by the Board of Directors. Directors shall be elected at each annual meeting and such other business transacted as may come before the meeting.

4.03 *Special Meetings.* Special meetings of shareholders may be called by the Board of Directors, the Chairman of the Board (if such office is filled) or the President and shall be called by the President or Secretary at the written request of shareholders holding a majority of the shares of stock of the corporation outstanding and entitled to vote. The request shall state the purpose or purposes for which the meeting is to be called.

4.04 *Notice of Meetings.* Except as otherwise provided by statute, written notice of the time, place and purposes of a meeting of shareholders shall be given not less than 10 nor more than 60 days before the date of the meeting to each shareholder of record entitled to vote at the meeting, either personally or by mailing such notice to his last address as it appears on the books of the corporation. No notice need be given of an adjourned meeting of the shareholders provided the time and place to which such meeting is adjourned are announced at the meeting at which the adjournment is taken and at the adjourned meeting only such business is transacted as might have been transacted at the original meeting. However, if after the adjournment a new record date is fixed for the adjourned meeting a notice of the adjourned meeting shall be given to each shareholder of record on the new record date entitled to notice as provided in this Bylaw.

4.05 *Record Dates.* The Board of Directors may fix in advance a date as the record date for the purpose of determining shareholders entitled to notice of and to vote at a meeting of shareholders or an adjournment thereof, or to express consent or to dissent from a proposal without a meeting, or for the purpose of determining shareholders entitled to receive payment of a dividend or allotment of a right, or for the purpose of any other action. The date fixed shall not be more than 60 nor less than 10 days before the date of the meeting, nor more than 60 days before any other action. In such case only such shareholders as shall be shareholders of record on the date so fixed shall be entitled to notice of and to vote at such meeting or adjournment thereof, or to express consent or to dissent from such proposal, or to receive payment of such dividend or to receive such allotment of rights, or to participate in any other action, as the case may be, notwithstanding any transfer of any stock on the books of the corporation, or otherwise, after any such record date. Nothing in this Bylaw shall affect the rights of a shareholder and his transferee or transferor as between themselves.

4.06 *List of Shareholders.* The Secretary of the corporation or the agent of the corporation having charge of the stock transfer records for shares of the corporation shall make and certify a complete list of the shareholders entitled to vote at a shareholders' meeting or any adjournment thereof. The list shall be arranged alphabetically within each class and series, with the address of, and the number of shares held by, each shareholder; be produced at the time and place of the meeting; be subject to inspection by any shareholder during the whole time of the meeting; and be prima facie evidence as to who are the shareholders entitled to examine the list or vote at the meeting.

4.07 *Quorum.* Unless a greater or lesser quorum is required in the Articles of Incorporation or by the laws of the State of Maryland, the shareholders present at a meeting in person or by proxy who, as of the record date for such meeting, were holders of a majority of the outstanding shares of the corporation entitled to vote at the meeting shall constitute a quorum at the meeting. Whether or not a quorum is present, a meeting of shareholders may be adjourned by a vote of the shares present in person or by proxy. When the holders of a class or series of shares are entitled to vote separately on an item of business, this Bylaw applies in determining the presence of a quorum of such class or series for transaction of such item of business.

4.08 *Proxies.* A shareholder entitled to vote at a meeting of shareholders or to express consent or dissent without a meeting may authorize other persons to act for the shareholder by proxy. A proxy shall be signed by the shareholder or the shareholder's authorized agent or representative and shall not be valid after the expiration of three years from its date unless otherwise provided in the proxy. A proxy is revocable at the pleasure of the shareholder executing it except as otherwise provided by the laws of the State of Maryland.

4.09 *Voting.* Each outstanding share is entitled to one vote on each matter submitted to a vote, unless otherwise provided in the Articles of Incorporation. Votes shall be cast in writing and signed by the shareholder or the shareholder's proxy. When an action, other than the election of directors, is to be taken by a vote of the shareholders, it shall be authorized by a majority of the votes cast by the holders of shares entitled to vote thereon, unless a greater vote is required by the Articles of Incorporation or by the laws of the State of Maryland. Except as otherwise provided by the Articles of Incorporation, directors shall be elected by a plurality of the votes cast at any election.

ARTICLE V DIRECTORS

5.01 *Number.* The business and affairs of the corporation shall be managed by a Board of not less than one nor more than seven directors as shall be fixed from time to time by the Board of Directors. The directors need not be residents of Maryland or shareholders of the corporation.

5.02 *Election, Resignation and Removal.* Directors shall be elected at each annual meeting of the shareholders, each to hold office until the next annual meeting of shareholders and until the director's successor is elected and qualified, or until the director's resignation or removal. A director may resign by written notice to the corporation. The resignation is effective upon its receipt by the corporation or a subsequent time as set forth in the notice of resignation. A director or the entire Board of Directors may be removed, with or without cause, by vote of the holders of a majority of the shares entitled to vote at an election of directors.

5.03 *Vacancies.* Vacancies in the Board of Directors occurring by reason of death, resignation, removal, increase in the number of directors or otherwise shall be filled by the affirmative vote of a majority of the remaining directors though less than a quorum of the Board of Directors, unless filled by proper action of the shareholders of the corporation. Each person so elected shall be a director for a term of office continuing only until the next election of directors by the shareholders.

5.04 *Annual Meeting.* The Board of Directors shall meet each year immediately after the annual meeting of the shareholders, or within three (3) days of such time excluding Sundays and legal holidays if such later time is deemed advisable, at the place where such meeting of the shareholders has been held or such other place as the Board may determine, for the purpose of election of officers and consideration of such business that may properly be brought before the meeting; provided, that if less than a majority of the directors appear for an annual meeting of the Board of Directors the holding of such annual meeting shall not be required and the matters which might have been taken up therein may be taken up at any later special or annual meeting, or by consent resolution.

5.05 *Regular and Special Meetings.* Regular meetings of the Board of Directors may be held at such times and places as the majority of the directors may from time to time determine at a prior meeting or as shall be directed or approved by the vote or written consent of all the directors. Special meetings of the Board may be called by the Chairman of the Board (if such office is filled) or the President and shall be called by the President or Secretary upon the written request of any two directors.

5.06 *Notices.* No notice shall be required for annual or regular meetings of the Board or for adjourned meetings, whether regular or special. Twenty-four hours written notice shall be given for special meetings of the Board, and such notice shall state the time, place and purpose or purposes of the meeting.

5.07 *Quorum.* A majority of the Board of Directors then in office, or of the members of a committee thereof, constitutes a quorum for the transaction of business. The vote of a majority of the directors present at any meeting at which there is a quorum shall be the acts of the Board or of the committee, except as a larger vote may be required by the laws of the State of Maryland. A member of the Board or of a committee designated by the Board may participate in a meeting by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can communicate with the other participants. Participation in a meeting in this manner constitutes presence in person at the meeting.

5.08 *Executive and Other Committees.* The Board of Directors may, by resolution passed by a majority of the whole Board, appoint two or more members of the Board as an executive committee to exercise all powers and authorities of the Board in management of the business and affairs of the corporation, except that the committee shall not have power or authority to (a) amend the Articles of Incorporation; (b) adopt an agreement of merger or consolidation; (c) recommend to shareholders the sale, lease or exchange of all or substantially all of the corporation's property and assets; (d) recommend to shareholders a dissolution of the corporation or revocation of a dissolution; (e) amend these Bylaws; (f) fill vacancies in the Board; or (g) unless expressly authorized by the Board, declare a dividend or authorize the issuance of stock.

The Board of Directors from time to time may, by like resolution, appoint such other committees of two or more directors to have such authority as shall be specified by the Board in the resolution making such appointments. The Board of Directors may designate one or more directors as alternate members of any committee who may replace an absent or disqualified member at any meeting thereof.

5.09 *Dissents.* A director who is present at a meeting of the Board of Directors, or a committee thereof of which the director is a member, at which action on a corporate matter is taken is presumed to have concurred in that action unless the director's dissent is entered in the minutes of the meeting or unless the director files a written dissent to the action with the person acting as secretary of the meeting before the adjournment thereof or shall forward such dissent by registered mail to the Secretary of the corporation promptly after the adjournment of the meeting. Such right to dissent does not apply to a director who voted in favor of such action. A director who is absent from a meeting of the Board, or a committee thereof of which the director is a member, at which any such action is taken is presumed to have concurred in the action unless the director files a written dissent with the Secretary of the corporation within a reasonable time after the director has knowledge of the action.

5.10 *Compensation.* The Board of Directors, by affirmative vote of a majority of directors in office and irrespective of any personal interest of any of them, may establish reasonable compensation of directors for services to the corporation as directors or officers.

**ARTICLE VI
NOTICES, WAIVERS OF NOTICE AND MANNER OF ACTING**

6.01 *Notices.* All notices of meetings required to be given to shareholders, directors or any committee of directors may be given by mail, telecopy, telegram, radiogram or cablegram to any shareholder, director or committee member at his last address as it appears on the books of the corporation. Such notice shall be deemed to be given at the time when the same shall be mailed or otherwise dispatched.

6.02 *Waiver of Notice.* Notice of the time, place and purpose of any meeting of shareholders, directors or committee of directors may be waived by telecopy, telegram, radiogram, cablegram or other writing, either before or after the meeting, or in such other manner as may be permitted by the laws of the State of Maryland. Attendance of a person at any meeting of shareholders, in person or by proxy, or at any meeting of directors or of a committee of directors, constitutes a waiver of notice of the meeting except when the person attends the meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened.

6.03 *Action Without a Meeting.* Except as may be provided otherwise in the Articles of Incorporation for action to be taken by shareholders, any action required or permitted at any meeting of shareholders or directors or committee of directors may be taken without a meeting, without prior notice and without a vote, if all of the shareholders or directors or committee members entitled to vote thereon consent thereto in writing.

**ARTICLE VII
OFFICERS**

7.01 *Number.* The Board of Directors shall elect or appoint a President, a Secretary and a Treasurer, and may select a Chairman of the Board, and one or more Vice Presidents, Assistant Vice Presidents, Assistant Secretaries or Assistant Treasurers. Any two or more of the above offices, except those of President and Vice President, may be held by the same person. No officer shall execute, acknowledge or verify an instrument in more than one capacity if the instrument is required by law, the Articles of Incorporation or these Bylaws to be executed, acknowledged, or verified by one or more officers.

7.02 *Term of Office, Resignation and Removal.* An officer shall hold office for the term for which he is elected or appointed and until his successor is elected or appointed and qualified, or until his resignation or removal. An officer may resign by written notice to the corporation. The resignation is effective upon its receipt by the corporation or at a subsequent time specified in the notice of resignation. An officer may be removed by the Board with or without cause. The removal of an officer shall be without prejudice to his contract rights, if any. The election or appointment of an officer does not of itself create contract rights.

7.03 *Vacancies.* The Board of Directors may fill any vacancies in any office occurring for whatever reason.

7.04 *Authority.* All officers, employees and agents of the corporation shall have such authority and perform such duties in the conduct and management of the business and affairs of the corporation as may be designated by the Board of Directors and these Bylaws.

**ARTICLE VIII
DUTIES OF OFFICERS**

8.01 *Chairman of the Board.* The Chairman of the Board shall preside at all meetings of the shareholders and of the Board of Directors at which the Chairman is present. The Chairman shall be

the Chief Executive Officer of the corporation. The Chairman shall see that all orders and resolutions of the Board are carried into effect and the Chairman shall have the general powers of supervision and management usually vested in the chief executive officer of a corporation, including the authority to vote all securities of other corporations and organizations held by the corporation.

8.02 *President.* The President shall be the Chief Operating Officer of the corporation and shall have the general powers of supervision and management over the day-to-day operations of the corporation. The President shall see that all orders and resolutions of the Board are carried into effect and shall be ex officio a member of all management committees. He may execute any documents in the name of the corporation and shall have such other powers and duties as may be prescribed by the Board.

8.03 *Vice Presidents.* The Vice Presidents, in order of their seniority, shall, in the absence or disability of the President, perform the duties and exercise the powers of the President and shall perform such other duties as the Board of Directors or the President may from time to time prescribe.

8.04 *Secretary.* The Secretary shall attend all meetings of the Board of Directors and of shareholders and shall record all votes and minutes of all proceedings in a book to be kept for that purpose, shall give or cause to be given notice of all meetings of the shareholders and of the Board of Directors, and shall keep in safe custody the seal of the corporation and, when authorized by the Board, affix the same to any instrument requiring it, and when so affixed it shall be attested by the signature of the Secretary, or by the signature of the Treasurer or an Assistant Secretary. The Secretary may delegate any of the duties, powers and authorities of the Secretary to one or more Assistant Secretaries, unless such delegation is disapproved by the Board.

8.05 *Treasurer.* The Treasurer shall have the custody of the corporate funds and securities; shall keep full and accurate accounts of receipts and disbursements in books of the corporation; and shall deposit all moneys and other valuable effects in the name and to the credit of the corporation in such depositories as may be designated by the Board of Directors. The Treasurer shall render to the President and directors, whenever they may require it, an account of his or her transactions as Treasurer and of the financial condition of the corporation. The Treasurer may delegate any of his or her duties, powers and authorities to one or more Assistant Treasurers unless such delegation is disapproved by the Board of Directors.

8.06 *Assistant Secretaries and Treasurers.* The Assistant Secretaries, in order of their seniority, shall perform the duties and exercise the powers and authorities of the Secretary in case of the Secretary's absence or disability. The Assistant Treasurers, in the order of their seniority, shall perform the duties and exercise the powers and authorities of the Treasurer in case of the Treasurer's absence or disability. The Assistant Secretaries and Assistant Treasurers shall also perform such duties as may be delegated to them by the Secretary and Treasurer, respectively, and also such duties as the Board of Directors may prescribe.

ARTICLE IX SPECIAL CORPORATE ACTS

9.01 *Orders for Payment of Money.* All checks, drafts, notes, bonds, bills of exchange and orders for payment of money of the corporation shall be signed by such officer or officers or such other person or persons as the Board of Directors may from time to time designate.

9.02 *Contracts and Conveyances.* The Board of Directors of the corporation may in any instance designate the officer and/or agent who shall have authority to execute any contract, conveyance, mortgage or other instrument on behalf of the corporation, or may ratify or confirm any execution. When the execution of any instrument has been authorized without specification of the executing officers or agents, the Chairman of the Board, the President or any Vice President or Assistant Vice

President, and the Secretary or Assistant Secretary or Treasurer or Assistant Treasurer, may execute the same in the name and on behalf of this corporation and may affix the corporate seal thereto.

ARTICLE X BOOKS AND RECORDS

10.01 *Maintenance of Books and Records.* The proper officers and agents of the corporation shall keep and maintain such books, records and accounts of the corporation's business and affairs, minutes of the proceedings of its shareholders, Board and committees, if any, and such stock ledgers and lists of shareholders, as the Board of Directors shall deem advisable, and as shall be required by the laws of the State of Maryland and other states or jurisdictions empowered to impose such requirements. Books, records and minutes may be kept within or without the State of Maryland in a place which the Board shall determine.

10.02 *Reliance on Books and Records.* In discharging his or her duties, a director or an officer of the corporation is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by any of the following: (a) one or more directors, officers, or employees of the corporation, or of a business organization under joint control or common control whom the director or officer reasonably believes to be reliable and competent in the matters presented, (b) legal counsel, public accountants, engineers, or other persons as to matters the director or officer reasonably believes are within the person's professional or expert competence, or (c) a committee of the Board of Directors of which he or she is not a member if the director or officer reasonably believes the Committee merits confidence. A director or officer is not entitled to rely on such information if he or she has knowledge concerning the matter in question that makes such reliance unwarranted.

ARTICLE XI INDEMNIFICATION

11.01 *Non-Derivative Actions.* Subject to all of the other provisions of this Article XI, the corporation shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative and whether formal or informal (other than an action by or in the right of the corporation), by reason of the fact that the person is or was a director or officer of the corporation, or is or was serving at the request of the corporation as a director, officer, partner, trustee, employee, or agent of another foreign or domestic corporation, partnership, joint venture, trust or other enterprise, whether for profit or not, against expenses (including attorneys' fees), judgments, penalties, fines and amounts paid in settlement actually and reasonably incurred by him or her in connection with such action, suit or proceeding if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the corporation or its shareholders, and with respect to any criminal action or proceeding, if the person had no reasonable cause to believe his or her conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which the person reasonably believed to be in or not opposed to the best interests of the corporation or its shareholders, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his or her conduct was unlawful.

11.02 *Derivative Actions.* Subject to all of the provisions of this Article XI, the corporation shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the corporation to procure a judgment in its favor by reason of the fact that the person is or was a director or officer of the corporation, or is or was serving at the request of the corporation as a director, officer, partner, trustee, employee, or agent

of another foreign or domestic corporation, partnership, joint venture, trust or other enterprise, whether for profit or not, against expenses (including attorneys' fees) and amounts paid in settlement incurred by the person in connection with such action or suit if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the corporation or its shareholders. However, indemnification shall not be made for any claim, issue or matter in which such person has been found liable to the corporation unless and only to the extent that the court in which such action or suit was brought has determined upon application that, despite the adjudication of liability but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnification for the expenses which the court considers proper.

11.03 *Expenses of Successful Defense.* To the extent that a person has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Section 11.01 or 11.02 of these Bylaws, or in defense of any claim, issue or matter in the action, suit or proceeding, the person shall be indemnified against expenses (including attorneys' fees) incurred by such person in connection with the action, suit or proceeding and any action, suit or proceeding brought to enforce the mandatory indemnification provided by this Section 11.03.

11.04 *Definitions.* For the purposes of Sections 11.01 and 11.02, "other enterprises" shall include employee benefit plans; "fines" shall include any excise taxes assessed on a person with respect to an employee benefit plan; "serving at the request of the corporation" shall include any service as a director, officer, employee, or agent of the corporation which imposes duties on, or involves services by, the director or officer with respect to an employee benefit plan, its participants or beneficiaries; and a person who acted in good faith and in a manner the person reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be considered to have acted in a manner "not opposed to the best interests of the corporation or its shareholders" as referred to in Sections 11.01 and 11.02.

11.05 *Contract Right; Limitation on Indemnity.* The right to indemnification conferred in this Article XI shall be a contract right, and shall apply to services of a director or officer as an employee or agent of the corporation as well as in such person's capacity as a director or officer. Except as provided in Section 11.03 of these Bylaws, the corporation shall have no obligations under this Article XI to indemnify any person in connection with any proceeding, or part thereof, initiated by such person without authorization by the Board of Directors.

11.06 *Determination That Indemnification is Proper.* Any indemnification under Section 11.01 or 11.02 of these Bylaws (unless ordered by a court) shall be made by the corporation only as authorized in the specific case upon a determination that indemnification of the person is proper in the circumstances because the person has met the applicable standard of conduct set forth in Section 11.01 or 11.02, whichever is applicable. Such determination shall be made in any of the following ways:

- (i) By a majority vote of a quorum of the Board consisting of directors who were not parties to such action, suit or proceeding.
- (ii) If the quorum described in clause (i) above is not obtainable, then by a committee of directors who are not parties to the action, suit or proceeding. The committee shall consist of not less than two disinterested directors.
- (iii) By independent legal counsel in a written opinion. Legal counsel for this purpose shall be chosen by the Board or its committee prescribed in clauses (i) or (ii), or if a quorum of the Board cannot be obtained under clause (i) and a committee cannot be designated under clause (ii), by the Board.
- (iv) By the shareholders. Shares held by directors or officers who are parties or threatened to be made parties to the action, suit or proceeding may not be voted.

11.07 *Proportionate Indemnity.* If a person is entitled to indemnification under Section 11.01 or 11.02 of these Bylaws for a portion of expenses, including attorneys' fees, judgments, penalties, fines, and amounts paid in settlement, but not for the total amount thereof, the corporation shall indemnify the person for the portion of the expenses, judgments, penalties, fines, or amounts paid in settlement for which the person is entitled to be indemnified.

11.08 *Expense Advance.* Expenses incurred in defending a civil or criminal action, suit or proceeding described in Section 11.01 or 11.02 of these Bylaws shall be paid by the corporation in advance of the final disposition of such action, suit or proceeding if the corporation receives from the person requesting such advance the following: (i) a written affirmation of the person's good faith belief that the person has met the applicable standard of conduct in Section 11.01 or 11.02 and (ii) a written undertaking by or on behalf of the person to repay the expenses if it is ultimately determined that the person is not entitled to be indemnified by the corporation. The undertaking shall be an unlimited general obligation of the person on whose behalf advances are made but need not be secured.

11.09 *Non-Exclusivity of Rights.* The indemnification or advancement of expenses provided under this Article X1 is not exclusive of other rights to which a person seeking indemnification or advancement of expenses may be entitled under a contractual arrangement with the corporation. However, the total amount of expenses advanced or indemnified from all sources combined shall not exceed the amount of actual expenses incurred by the person seeking indemnification or advancement of expenses.

11.10 *Indemnification of Employees and Agents of the Corporation.* The corporation may, to the extent authorized from time to time by the Board of Directors, grant rights to indemnification and to the advancement of expenses to any employee or agent of the corporation to the fullest extent of the provisions of this Article XI with respect to the indemnification and advancement of expenses of directors and officers of the corporation.

11.11 *Former Directors and Officers.* The indemnification provided in this Article XI continues as to a person who has ceased to be a director or officer and shall inure to the benefit of the heirs, executors and administrators of such person.

11.12 *Insurance.* The corporation may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against the person and incurred by him or her in any such capacity or arising out of his or her status as such, whether or not the corporation would have power to indemnify the person against such liability under these Bylaws or the laws of the State of Maryland.

11.13 *Changes in Maryland Law.* In the event of any change of the Maryland statutory provisions applicable to the corporation relating to the subject matter of this Article XI, then the indemnification to which any person shall be entitled hereunder shall be determined by such changed provisions, but only to the extent that any such change permits the corporation to provide broader indemnification rights than such provisions permitted the corporation to provide prior to any such change. Subject to Section 11.14, the Board of Directors is authorized to amend these Bylaws to conform to any such changed statutory provisions.

11.14 *Amendment or Repeal of Article XI.* No amendment or repeal of this Article XI shall apply to or have any effect on any director or officer of the corporation for or with respect to any acts or omissions of such director or officer occurring prior to such amendment or repeal.

**ARTICLE XII
AMENDMENTS**

12.01 *Amendments.* Subject to Section 11.14, the Bylaws of the corporation may be amended, altered or repealed, in whole or in part, by the shareholders or by the Board of Directors at any meeting duly held in accordance with these Bylaws, provided that notice of the meeting includes notice of the proposed amendment, alteration or repeal.

**ARTICLES OF INCORPORATION
OF**

THE UNDERSIGNED, being a natural person and acting as incorporator, does hereby adopt the following Articles of Incorporation for the purpose of forming a business corporation in the State of Maryland, pursuant to the provisions of the Maryland General Corporation Law.

FIRST: The name of the incorporator is Stuart D. Logan, his address is 1577 North Woodward Avenue, Suite 300, Bloomfield Hills, Oakland County, Michigan 48301-2820, he is at least eighteen years of age and he is forming the corporation named in these Articles of Incorporation under the general laws of the State of Maryland, to wit, the Maryland General Corporation Law.

SECOND: The name of the corporation is _____.

THIRD: The corporation is formed to: (a) own, operate and eventually dispose of, facilities for the provision of nursing care, physical therapy, assisted living and related services, as well as to engage in all other lawful activities related to, and in furtherance of, this purpose, (b) purchase, receive, take by grant, gift, devise, bequest or otherwise, lease, or otherwise acquire, own, hold, improve, employ, use, and otherwise deal in and with real or personal property, or any interest therein, wherever situated, and to sell, convey, lease, exchange, transfer or otherwise dispose of, or mortgage or pledge, all or any of its property and assets, or any interest therein, wherever situated, (c) engage generally in the real estate business as principal, agent, broker, and in any lawful capacity, and generally to take, lease, purchase, or otherwise acquire, and to own, use, hold, sell, convey, exchange, lease, mortgage, work, clear, improve, develop, divide, and otherwise handle, manage, operate, deal in, and dispose of real estate, real property, lands, multiple-dwelling structures, houses, buildings, and other works and any interest or right therein; to take, lease, purchase, or otherwise acquire, and to own, use, hold, sell, convey, exchange, hire, lease, pledge, mortgage, and otherwise handle, and deal in and dispose of, as principal, agent, broker, and in any lawful capacity, such personal property, chattels, chattels real, rights, easements, privileges, choses in action, notes, bonds, mortgages, and securities as may lawfully be acquired, held, or disposed of; and to acquire, purchase, sell, assign, transfer, dispose of, and generally deal in and with, as principal, agent, broker, and in any lawful capacity, mortgages and other interests in real, personal, and mixed properties; to carry on a general construction, contracting, building, and realty management business as principal, agent, representative, contractor, subcontractor, and in any other lawful capacity, (d) carry on a general mercantile, industrial, investing, and trading business in all its branches; to devise, invent, manufacture, fabricate, assemble, install, service, maintain, alter, buy, sell, import, export, license as licensor or licensee, lease as lessor or lessee, distribute, job, enter into, negotiate, execute, acquire, and assign contracts in respect of, acquire, receive, grant, and assign licensing arrangements, options, franchises, and other rights in respect of, and generally deal in and with, at wholesale and retail, as principal, and as sales, business, special, or general agent, representative, broker, factor, merchant, distributor, jobber, advisor, and in any other lawful capacity, goods, wares, merchandise, commodities, and unimproved, improved, finished, processed, and other real, personal, and, mixed property of any and all kinds, together with the components, resultant, and by-products thereof, (e) apply for, register, obtain, purchase, lease, take licenses in respect of, or otherwise acquire, and to hold, own, use, operate, develop, enjoy, turn to account, grant licenses and immunities in respect of, manufacture under and to introduce, sell, assign, mortgage, pledge, or otherwise dispose of, and, in any manner deal with and contract with reference to (i) inventions, devices, formulae, processes, and any improvements and modifications thereof, (ii) letters patent, patent rights, patented processes, copyrights, designs, and similar rights, trade-marks, trade symbols and other indications of origin and ownership granted by or recognized under the laws of the United States of America or of any state or subdivision thereof, or of any foreign country or subdivision thereof, and all rights connected therewith or appertaining thereunto, (iii) franchises, licenses, grants, and concessions, and (f) have all of the powers conferred upon corporations organized under the provisions of the Maryland General Corporation Law.

FOURTH: The address of the principal office of the corporation within the State of Maryland is c/o CSC-Lawyers Incorporating Service Company, 11 East Chase Street, Baltimore City, Maryland 21202.

FIFTH: The name and the address of the resident agent of the corporation within the State of Maryland, are CSC-Lawyers Incorporating Service Company, 11 East Chase Street, Baltimore City, Maryland 21202.

SIXTH: The total number of shares of stock which the corporation has authority to issue is Five Thousand, all of which are without par value and are designated as Common Stock. The Board of Directors of the corporation is authorized, from time to time, to issue any additional stock or convertible securities of the corporation without the approval of the holders of outstanding stock. Provisions, if any, governing the restriction on the transferability of any of the shares of stock of the Corporation may be set forth in the bylaws of the corporation or in any agreement or agreements duly entered into. To the extent permitted by Section 2-104(b)(5) of the Maryland General Corporation Law, notwithstanding any provision of the Maryland General Corporation Law requiring a greater proportion than a majority of the votes entitled to be cast in order to take or authorize any action, any such action may be taken or authorized upon the concurrence of at least a majority of the aggregate number of votes entitled to be cast thereon.

SEVENTH: The number of directors of the corporation, until such number shall be changed by the bylaws of the corporation, is one. The name of the individual who will serve as director of the corporation until his successor(s) is (are) elected and qualify are is Essel W. Bailey. The initial bylaws of the corporation shall be adopted by the initial directors. Thereafter, the power to adopt, alter, and repeal the bylaws of the corporation shall be vested in the Board of Directors of the corporation. The liability of the directors of the corporation is limited to the fullest extent permitted by the provisions of Section 2-405.2 of the Maryland General Corporation Law, as the same may be amended and supplemented. The corporation shall, to the fullest extent permitted by the Maryland General Corporation Law, as the same may be amended and supplemented, and, without limiting the generality of the foregoing, in accordance with Section 2-418 of said Maryland General Corporation Law, indemnify any and all persons whom it shall have power to indemnify under said law from and against any and all of the expenses, liabilities or other matters referred to in or covered by said Corporation Law.

EIGHTH: From time to time any of the provisions of these Articles of Incorporation may be amended, altered or repealed, and other provisions authorized by the Maryland General Corporation Law at the time in force may be added or inserted in the manner and at the time prescribed by said laws, and any contract rights at any time conferred upon the stockholders of the corporation by these Articles of Incorporation are granted subject to the provisions of this Article.

IN WITNESS WHEREOF, I have adopted and signed these Articles of Incorporation and do hereby acknowledge that the adoption and signing are my act.

Dated: October 26, 1999

/s/ STUART D. LOGAN

Stuart D. Logan, Incorporator

BYLAWS OF _____

**I.
Offices**

The principal office of _____ (the "Company") shall be at such place as the Board of Directors of the Company (the "Board") shall from time to time determine. The Company also may have additional offices at such other places as the business may require.

**II.
Capital**

2.01 *Issuance.* The shares of capital stock of the Company (the "Shares") shall be issued in such amounts, at such times, for such consideration and on such terms as the Board shall deem advisable, subject to the Company's Articles of Incorporation (the "Articles") and the laws of Maryland.

2.02 *Certificates.* The Shares shall be represented by certificates signed by the President. Each such certificate shall state upon its face that the Company is formed under the laws of Maryland, the person to whom it is issued, the number and class of Shares, and the designation of the series, if any, that the certificate represents, and such other provisions as may be required by Maryland law.

2.03 *Transfer.* The Shares are transferable only on the books of the Company upon surrender of the certificate therefor, properly endorsed for transfer, and the presentation of such evidences of ownership and validity of the assignment as the Company may require.

2.04 *Registration.* The Company shall be entitled to treat the person in whose name any Share is registered as the owner thereof for purposes of dividends and other distributions in the course of business, or in the course of recapitalization, merger, plan of share exchange, reorganization, sale of assets, liquidation or otherwise and for the purpose of votes, approvals and consents by shareholders of the Company ("Shareholders"), and for the purpose of notices to Shareholders, and for all other purposes whatever, and shall not be bound to recognize any equitable or other claim to or interest in such Shares on the part of any other person, whether or not the Company shall have notice thereof, save as expressly required by the laws of Maryland.

2.05 *Replacement.* Upon the presentation to the Company of a proper affidavit attesting the loss, destruction or mutilation of any certificate for Shares, the Board shall direct the issuance of a new certificate to replace the certificate so alleged to be lost, destroyed or mutilated. The Board may require as a condition precedent to the issuance of a new certificate a bond or agreement of indemnity, in such form and amount, and with such sureties as the Board may direct or approve.

**III.
Shareholders**

3.01 *Meetings.* Meetings of Shareholders shall be held at the principal office of the Company or at such other place as determined by the Board and stated in the notice of meeting. The annual meeting of Shareholders shall be held on the first Monday of March at 10:30 o'clock in the morning. Directors shall be elected at each annual meeting and such other business transacted as may come before the meeting. Special meetings of Shareholders may be called by the Board, the CEO (if such office is filled), the President or any Director, and shall be called by the Secretary at the written request of Shareholders holding a majority of the outstanding Shares and entitled to vote. The request shall state the purpose or purposes for which the meeting is to be called.

3.02 *Notice.* Except as otherwise provided by statute or the Articles, written notice of the time, place and purposes of a meeting of Shareholders shall be given not fewer than ten nor more than 60 days before the date of the meeting to each Shareholder of record entitled to vote at the meeting, either personally or by mailing such notice to his last address as it appears on the books of the Company. No notice need be given of an adjourned meeting of the Shareholders provided the time and

place to which such meeting is adjourned are announced at the meeting at which the adjournment is taken and at the adjourned meeting only such business is transacted as might have been transacted at the original meeting. However, if after the adjournment a new record date is fixed for the adjourned meeting a notice of the adjourned meeting shall be given to each Shareholder of record on the new record date entitled to notice as provided in this Bylaw.

3.03 *Dates.* The Board may fix in advance a date as the record date for the purpose of determining Shareholders entitled to notice of and to vote at a meeting of Shareholders or an adjournment thereof, or to express consent or to dissent from a proposal without a meeting, or for the purpose of determining Shareholders entitled to receive payment of a dividend or allotment of a right, or for the purpose of any other action. The date fixed shall not be more than 60 nor less than ten days before the date of the meeting, nor more than 60 days before any other action. In such case only such Shareholders as shall be Shareholders of record on the date so fixed shall be entitled to notice of and to vote at such meeting or adjournment thereof, or to express consent or to dissent from such proposal, or to receive payment of such dividend or to receive such allotment of rights, or to participate in any other action, as the case may be, notwithstanding any transfer of any stock on the books of the Company, or otherwise, after any such record date. Nothing in this Bylaw shall affect the rights of a Shareholder and his transferee or transferor as between themselves.

3.04 *Lists.* The Secretary of the Company or the agent of the Company having charge of the stock transfer records for Shares shall make and certify a complete list of the Shareholders entitled to vote at a Shareholders' meeting or any adjournment thereof. The list shall be arranged alphabetically within each class and series, with the address of, and the number of Shares held by, each Shareholder, be produced at the meeting, be subject to inspection by any Shareholder during the meeting, and be prima facie evidence of the Shareholders entitled to examine the list or vote.

3.05 *Quorum.* Unless a greater or lesser quorum is required in the Articles or by the laws of Maryland, the Shareholders present at a meeting in person or by proxy who, as of the record date for such meeting, were holders of a majority of the outstanding Shares entitled to vote at the meeting shall constitute a quorum. Whether or not a quorum is present, a meeting of Shareholders maybe adjourned by a vote of the Shares present in person or by proxy. When the holders of a class or series of Shares are entitled to vote separately on an item of business, this Bylaw applies in determining the presence of a quorum of such class or series for transaction of such item of business.

3.06 *Proxies.* A Shareholder entitled to vote at a meeting of Shareholders or to express consent or dissent without a meeting may authorize other persons to act for the Shareholder by proxy. A proxy shall be signed by the Shareholder or the Shareholder's authorized agent or representative.

3.07 *Voting.* Each outstanding Share is entitled to one vote on each matter submitted to a vote, unless otherwise provided in the Articles. When an action, other than the election of directors, is to be taken by a vote of the Shareholders, it shall be authorized by a majority of the votes cast by the holders of Shares entitled to vote thereon, unless a greater vote is required by the Articles or by the laws of Maryland. Except as otherwise provided by the Articles, directors shall be elected by a plurality of the votes cast at any election.

IV. Directors

4.01 *Number.* Until the amendment of this Section 4.01, the business of the Company shall be managed by a Board of one director. No director need be a resident of Maryland or a Shareholder.

4.02 *Tenure.* Directors shall be elected at each annual meeting of the Shareholders, each to hold office until the next annual meeting of Shareholders and until the director's successor is elected and qualified, or until the director's resignation or removal. A director may resign by written notice to the

Company. The resignation is effective upon its receipt by the Company or a subsequent time as set forth in the notice of resignation. A director or the entire Board may be removed, with or without cause, by vote of the holders of a majority of the Shares entitled to vote at an election of directors.

4.03 *Vacancies.* Vacancies in the Board occurring by reason of death, resignation, removal, increase in the number of directors or otherwise shall be filled by the affirmative vote of a majority of the remaining directors though less than a quorum of the Board, unless filled by proper action of the Shareholders. Each person so elected shall be a director for a term of office continuing only until the next election of directors by the Shareholders. A vacancy that will occur at a specific date, by reason of a resignation effective at a later date or otherwise, may be filled before the vacancy occurs, but the newly elected director may not take office until the vacancy occurs.

4.04 *Meetings.* The Board shall meet each year immediately after the annual meeting of the Shareholders, or within three days of such time excluding Sundays and legal holidays if such later time is deemed advisable, at the place where such meeting of the Shareholders has been held or such other place as the Board may determine, for the purpose of election of officers and consideration of such business that may properly be brought before the meeting; provided, that if less than a majority of the directors appear for an annual meeting of the Board the holding of such annual meeting shall not be required and the matters which might have been taken up therein may be taken up at any later special or annual meeting, or by consent resolution. Regular meetings of the Board may be held at such times and places as the majority of the directors may from time to time determine at a prior meeting or as shall be directed or approved by the vote or written consent of all directors. Special meetings of the Board may be called by the President and shall be called by the Secretary upon the written request of any director.

4.05 *Notices.* No notice shall be required for annual or regular meetings of the Board or for adjourned meetings, whether regular or special. Three days' written notice shall be given for special meetings of the Board, and such notice shall state the time, place and purposes of the meeting.

4.06 *Quorum.* A majority of the Board then in office, or of the members of a committee thereof, constitutes a quorum for the transaction of business. The vote of a majority of the directors present at any meeting at which there is a quorum shall be the acts of the Board or of the committee, except as a larger vote may be required by the laws of Maryland. A member of the Board or of a committee designated by the Board may participate in a meeting by means of conference telephone by means of which all persons participating in the meeting can communicate with each other. Participation in a meeting in this manner constitutes presence in person at the meeting.

4.07 *Committees.* The Board may, by resolution passed by a majority of the whole Board, appoint three or more members of the Board as an executive committee to exercise all powers and authorities of the Board in management of the business and affairs of the Company, except that the committee shall not have power or authority to (a) amend the Articles; (b) adopt an agreement of merger or consolidation; (c) recommend to Shareholders the sale, lease or exchange of all or substantially all of the Company's property and assets; (d) recommend to Shareholders a dissolution of the Company or revocation of a dissolution; (e) amend these Bylaws; (f) fill vacancies in the Board; or (g) unless expressly authorized by the Board, declare a dividend or authorize the issuance of stock. The Board from time to time may, by like resolution, appoint such other committees of one or more directors to have such authority as shall be specified by the Board in the resolution making such appointments. The Board may designate one or more directors as alternate members of any committee who may replace an absent or disqualified member at any meeting thereof.

4.08 *Dissent.* A director who is present at a meeting of the Board, or a committee thereof of which the director is a member, at which action on a corporate matter is taken is presumed to have concurred in that action unless the director's dissent is entered in the minutes of the meeting or unless the director files a written dissent to the action with the person acting as secretary of the meeting

before the adjournment thereof or shall forward such dissent by registered mail to the Secretary of the Company promptly after the adjournment of the meeting. Such right to dissent does not apply to a director who voted in favor of such action. A director who is absent from a meeting of the Board, or a committee thereof of which the director is a member, at which any such action is taken is presumed to have concurred in the action unless the director files a written dissent with the Secretary of the Company within a reasonable time after the director has knowledge of the action.

4.09 *Compensation.* The Board, by affirmative vote of a majority of directors in office and irrespective of any personal interest of any of them, may establish reasonable compensation of directors for services to the Company as directors or officers.

V. Procedures

5.01 *Notice.* All notices of meetings to be given to Shareholders, directors or any committee of directors may be given by mail, overnight courier, telefax or e-mail to any Shareholder, director or committee member at his last address as it appears on the books of the Company. Such notice shall be deemed to be given at the time when the same shall be mailed or otherwise dispatched.

5.02 *Waiver.* Notice of the time, place and purpose of any meeting of Shareholders, directors or committee of directors may be waived by mail, overnight courier, telefax or e-mail, either before or after the meeting, or in such other manner as may be permitted by the laws of Maryland. Attendance of a person at any meeting of Shareholders, in person or by proxy, or at any meeting of directors or of a committee of directors, constitutes a waiver of notice of the meeting except as follows:

(a) In the case of a Shareholder, unless the Shareholder at the beginning of the meeting objects to holding the meeting or transacting business at the meeting, or unless with respect to consideration of a particular matter at the meeting that is not within the purposes described in the meeting notice, the Shareholder objects to considering the matter when it is presented.

(b) In the case of a director, unless he or she at the beginning of the meeting, or upon his or her arrival, objects to the meeting or the transacting of business at the meeting and does not thereafter vote for or assent to any action taken at the meeting.

5.03 *Consent.* Any action required or permitted at any meeting of directors or committee thereof may be taken without a meeting, without prior notice and without a vote, if all directors or committee members entitled to vote thereon consent thereto in writing, before or after the action is taken. Any action required or permitted at any meeting of Shareholders may be taken without a meeting, without prior notice and without a vote, if all Shareholders entitled to vote thereon consent thereto in writing, before or after the action is taken or if such action otherwise satisfies the Articles and Maryland law.

VI. Officers

6.01 *Number.* The Board shall elect or appoint a President, a Secretary and a Treasurer, and may elect a Chief Executive Officer (the "CEO"), a Chief Operating Officer (the "COO"), and/or one or more Vice Presidents, Assistant Secretaries or Assistant Treasurers. The CEO (if appointed) shall be a member of the Board. Any two or more of the above offices, except those of President and Vice President, may be held by the same person. No officer shall execute or verify an instrument in more than one capacity if the instrument is required by law, the Articles or these Bylaws to be executed, acknowledged, or verified by one or more officers.

6.02 *Term.* An officer shall hold office for the term for which he is elected or appointed and until his successor is elected or appointed and qualified, or until his resignation or removal. An officer

may resign by written notice to the Company. The resignation is effective upon its receipt by the Company or at a subsequent time specified in the notice of resignation. An officer may be removed by the Board with or without cause. The removal of an officer shall be without prejudice to his contract rights, if any. The appointment of an officer does not of itself create contract rights.

6.03 *Vacancies.* The Board may fill any vacancies in any office occurring for whatever reason.

6.04 *Authority.* All officers, employees and agents of the Company shall have such authority and perform such duties in the conduct and management of the business and affairs of the Company as may be designated by the Board and these Bylaws.

VII. Duties

7.01 *CEO.* The CEO, if any is appointed, shall preside at all meetings of the Shareholders and of the Board at which the CEO is present. The CEO shall be the chief executive officer of the Company, shall see that all resolutions of the Board are carried into effect, and shall have the general powers of supervision usually vested in the chief executive officer of a corporation. Subject to any contrary directives by the Board, the CEO shall hold (a) authority to direct (and commit) the Company's resources toward the achievement of the Company's goals, (b) authority to vote all securities or other interests of other corporations and business organizations held by the Company, and (c) any further authority as may hereafter be vested in him by the Board.

7.02 *President.* In the absence of the CEO, the President shall hold and exercise all authority ascribed to the CEO. In addition, the President shall exercise any and all authority as may be granted to him by the Board, and, subject only to the directives of the CEO, shall ensure that all resolutions of the Board are carried into effect. In the absence of the COO, the President shall also shall hold and exercise all authority ascribed to the COO. In the absence of the Secretary and any Assistant Secretary, the President may exercise the authority otherwise reserved to the Secretary.

7.03 *COO.* The COO shall be the chief operating officer of the Company. The President shall have the general powers of management usually vested in the chief operating officer of a corporation, and, subject to any contrary directives by the Board, shall hold (a) authority to supervise corporation personnel and to implement the directives of the Board, the President and the CEO, and (b) any further authority as may hereafter be vested in him by the Board.

7.04 *Vice Presidents.* The Vice Presidents, in order of their seniority, shall, in the absence or disability of the President, perform the duties and exercise the powers of the President. The Vice Presidents shall in any event assume operating responsibility for those aspects of the Company's business referenced in any specific title of the particular Vice President, and shall perform such other duties as may be delegated by the Board, the CEO, the COO or the President. In any event, any Vice President whose title includes the phrase chief financial officer shall be deemed to have been charged with the responsibility for the Company's finances, shall have been granted custody of corporate funds and securities, shall be obligated to keep full and accurate accounts of receipts and disbursements in books of the Company, and shall deposit all moneys and other value in the name and to the credit of the Company in such depositories as may be designated by the Board. Moreover, any Vice President whose title includes the phrase general counsel shall be deemed to have been charged with the responsibility for the Company's legal affairs and shall be deemed the Company's principal liaison with the Company's outside counsel and regulatory authorities.

7.05 *Secretary.* The Secretary shall record all votes and minutes of all proceedings in a book to be kept for that purpose, shall give or cause to be given notice of all meetings of the Shareholders and of the Board, and shall keep in safe custody the seal of the Company and, when authorized by the Board, affix the same to any instrument requiring it, and when so affixed it shall be attested by the

signature of the Secretary, or by the signature of the Treasurer or an Assistant Secretary. The Secretary may delegate any of the duties, powers and authorities of the Secretary to one or more Assistant Secretaries, unless such delegation is disapproved by the Board.

7.06 *Treasurer.* Subject to the authority of any Vice President charged with the responsibility for the Company's finances, the Treasurer shall have the custody of corporate funds and securities, shall keep full and accurate accounts of receipts and disbursements in books of the Company and shall deposit all moneys and other value in the name and to the credit of the Company in such depositories as may be designated by the Board. The Treasurer shall render to the President and directors, whenever they may require it, an account of his or her transactions as Treasurer and of the financial condition of the Company. The Treasurer may delegate any of his or her duties, powers and authorities to one or more Assistant Treasurers unless such delegation is disapproved by the Board.

7.07 *Assistants.* The Assistant Secretaries, in order of their seniority, shall perform the duties and exercise the powers and authorities of the Secretary in case of the Secretary's absence or disability. The Assistant Treasurers, in the order of their seniority, shall perform the duties and exercise the powers and authorities of the Treasurer in case of the Treasurer's absence or disability. The Assistant Secretaries and Assistant Treasurers shall also perform such duties as may be delegated by the Secretary and Treasurer, respectively, and also such duties as the Board may prescribe.

VIII. Actions

8.01 *Payment.* All checks, drafts, notes, bonds, bills of exchange and orders for payment of money of the Company may, subject to any contrary resolution adopted by the Board from time to time, be signed by the CEO, the President or any other officer as may be authorized by the Board.

8.02 *Contracts.* The Board may in any instance designate the officer and/or agent who shall have authority to execute any contract, conveyance, mortgage or other instrument on behalf of the Company, or may ratify or confirm any execution. When the execution of any instrument has been authorized without specification of the executing officers or agents, the CEO or President may execute the same in the name and on behalf of the Company and may affix the corporate seal thereto.

IX. Records

9.01 *Maintenance.* The proper officers and agents of the Company shall keep and maintain such books, records and accounts of the Company's business and affairs, minutes of the proceedings of its Shareholders, Board and committees, if any, and such stock ledgers and lists of Shareholders, as the Board shall deem advisable, and as shall be required by the laws of Maryland and other states or jurisdictions empowered to impose such requirements. Books, records and minutes may be kept within or without Maryland in a place which the Board shall determine.

9.02 *Reliance.* In discharging his or her duties, a director or an officer of the Company, when acting in good faith, may rely upon information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by (a) one or more directors, officers, or employees of the Company, or of a business organization under joint control or common control, whom the director or officer reasonably believes to be reliable and competent in the matters presented, (b) legal counsel, public accountants, engineers, or other persons as to matters the director or officer reasonably believes are within the person's professional or expert competence, or (c) a committee of the board of which he or she is not a member if the director or officer reasonably believes the committee merits confidence. A director or officer may not rely on any information if he or she has knowledge concerning the matter that makes reliance otherwise permitted unwarranted.

X.
Indemnification

10.01 *Personal.* Subject to all of the other provisions of this Article X, the Company shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative and whether formal or informal (other than an action by or in the right of the Company) by reason that the person is or was a director or officer of the Company, or is or was serving at the request of the Company as a director, officer, partner, trustee, employee, or agent of another entity or enterprise, against expenses (including reasonable attorneys' fees), judgments, penalties and amounts paid in settlement reasonably incurred by him or her in connection with such action, suit or proceeding, if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the Company or the Shareholders, and, with respect to any criminal action or proceeding, if the person had no reasonable cause to believe his or her conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which the person reasonably believed to be in or not opposed to the best interests of the Company or the Shareholders, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his or her conduct was unlawful.

10.02 *Derivative.* Subject to all of the provisions of this Article X, the Company shall indemnify any person who was or is a party to or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Company to procure a judgment in its favor by reason of the fact that the person is or was a director or officer of the Company, or is or was serving at the request of the Company as a director, officer, partner, trustee, employee, or agent of another foreign or domestic corporation, partnership, joint venture, trust or other enterprise, whether for profit or not, against expenses (including attorneys' fees) and amounts paid in settlement reasonably incurred by the person in connection with such action or suit, if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the Company or the Shareholders. However, indemnification shall not be made for any claim, issue or matter in which such person has been found liable to the Company unless and only to the extent that the court in which such action or suit was brought has determined upon application that, despite the adjudication of liability but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnification for the reasonable expenses incurred.

10.03 *Expenses.* To the extent that a person has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Section 10.01 or 10.02 of these Bylaws, or in defense of any claim, issue or matter in the action, suit or proceeding, the person shall be indemnified against actual and reasonable expenses (including attorneys' fees) incurred by such person in connection with the action, suit or proceeding and any action, suit or proceeding brought to enforce the mandatory indemnification provided by this Section 11.03.

10.04 *Definitions.* For purposes of Sections 10.01 and 10.02, "other enterprises" shall include employee benefit plans; "fines" shall include any excise taxes assessed on a person with respect to an employee benefit plan; and "serving at the request of the Company" shall include any service as a director, officer, employee, or agent of the Company that imposes duties on, or involves services by, the director or officer with respect to an employee benefit plan, its participants or beneficiaries; and a person who acted in good faith and in a manner the person reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be considered to have acted in a manner "not opposed to the best interests of the Company or the Shareholders".

10.05 *Parameters.* The right to indemnification conferred in this Article X shall be a contract right, and shall apply to services of a director or officer as an employee or agent of the Company as

well as in such person's capacity as a director or officer. Except as provided in Section 10.03 of these Bylaws, the Company shall have no obligations under this Article X to indemnify any person in connection with any proceeding, or part thereof, initiated by him or her without Board authorization.

10.06 *Determination.* Any indemnification under Section 10.01 or 10.02 of these Bylaws (unless ordered by a court) shall be made by the Company only as authorized in the specific case upon a determination that indemnification of the person is proper in the circumstances because the person has met the applicable standard of conduct set forth in Section 10.01 or 10.02, whichever is applicable, and upon an evaluation of the reasonableness of expenses and amount paid in settlement. Such determination and evaluation shall be made in any of the following ways:

(a) By a majority vote of a quorum of the Board consisting of directors who are not parties or threatened to be made parties to such proceeding.

(b) If the quorum described in clause (a) above is not obtainable, then by a majority vote of a committee of directors duly designated by the Board and consisting solely of two or more directors who are not at the time parties or threatened to be made parties to the proceeding.

(c) By independent legal counsel in a written opinion, so long as such counsel is selected (i) by the Board or its committee in the manner prescribed in subparagraph (a) or (b), or (ii) if a quorum of the Board cannot be obtained under subparagraph (a) and a committee cannot be designated under subparagraph (b), by the Board.

(d) By the Shareholders, but Shares held by directors or officers, who are parties or threatened to be made parties to the action, suit or proceeding may not be voted.

10.07 *Proportionality.* If a person is entitled to indemnification under Section 10.01 or 10.02 of these Bylaws for a portion of expenses, including attorneys' fees, judgments, penalties, fines, and amounts paid in settlement, but not for the total amount thereof, the Company shall indemnify the person for the portion of the expenses, judgments, penalties, fines, or amounts paid in settlement for which the person is entitled to be indemnified.

10.08 *Advances.* The Company may pay or reimburse the reasonable expenses incurred by a person referred to in Section 10.01 or 10.02 of these bylaws who is a party or threatened to be made a party to an action, suit, or proceeding in advance of final disposition of the proceeding if (a) the person furnishes the Company a written affirmation of his or her good faith belief that he or she has met the applicable standard of conduct set forth in Section 10.01 or 10.02, (b) the person furnishes the Company a written undertaking executed to personally repay the advance if it is ultimately determined that he or she did not meet the standard of conduct, (c) the authorization of payment is made in the manner specified in Section 10.06, and (d) a determination is made that the facts then known to those making the determination would not preclude indemnification under Section 10.01 or 10.02. The undertaking shall be a general obligation of the person, but need not be secured.

10.09 *Scope.* The indemnification or advancement of expenses provided under this Article X is not exclusive of other rights to which a person seeking indemnification or advancement of expenses may be entitled under a contractual arrangement with the Company. However, the total amount of expenses advanced or indemnified from all sources combined shall not exceed the amount of actual expenses incurred by the person seeking indemnification or advancement of expenses.

10.10 *Agents.* The Company may, to the extent authorized from time to time by the Board, grant rights to indemnification and to the advancement of expenses to any employee or agent of the Company to the fullest extent of the provisions of this Article X with respect to the indemnification and advancement of expenses of directors and officers of the Company.

10.11 *Succession.* The indemnification provided in this Article X continues as to a person who has ceased to be a director or officer and shall inure to the benefit of his or her successors.

10.12 *Insurance.* The Company may buy and maintain insurance on behalf of any person who is or was a director, officer, partner, trustee, employee or agent of the Company, or is or was serving at the request of the Company as a director, officer, employee or agent of another entity or enterprise against any liability asserted against the person and incurred by him or her in any such capacity or arising out of his or her status as such, whether or not the Company would have power to indemnify the person against such liability under these Bylaws or the laws of Maryland.

10.13 *Legislation.* Upon any change of the Maryland statutory provisions relating to the subject matter of this Article X, the indemnification to which any person shall be entitled hereunder shall be determined by such changed provisions, but only to the extent that any such change permits the Company to provide broader indemnification rights than before any such change. Subject to Section 10.14, the Board may amend these Bylaws to conform to any such changed statutory provisions.

10.14 *Amendment.* No amendment or repeal of this Article X shall apply to any director or officer of the Company for or with respect to any prior acts or omissions of such director or officer.

XI. Amendment

The Bylaws of the Company may be amended, altered or repealed, in whole or in part, by the Shareholders or by the Board at any meeting duly held in accordance with these Bylaws.

ARTICLES OF INCORPORATION OF OMEGA TRS I, INC.

THE UNDERSIGNED, being a natural person and acting as sole incorporator, hereby adopts the following articles of incorporation (these "Articles") for the purpose of forming a business corporation in the State of Maryland pursuant to the Maryland General Corporation Law (the "MGCL").

FIRST

1. The name of the incorporator is Stuart D. Logan, the age of the incorporator is 44 years, the county of residence of the incorporator is Oakland County, Michigan, and the address of the incorporator in such county is 39577 Woodward Avenue, Suite 300, Bloomfield Hills, Michigan 48304.

2. The incorporator shall have formed the corporation named in these Articles (the "Corporation") under the general laws of the State of Maryland, and, in particular, the MGCL.

SECOND

The name of the Corporation is Omega TRS I, Inc.

THIRD

1. The Corporation is formed to engage in any lawful activity, to conduct any lawful business and to make any lawful investment for which corporations may be organized under the MGCL.

2. The period of the existence of the Corporation shall be perpetual.

FOURTH

1. The address of the principal office of the Corporation within the State of Maryland is 32 South Street, Baltimore City, Maryland 21202, care of CT Corporation System.

2. The name and the address of the resident agent of the Corporation within the State of Maryland are (a) CT Corporation System, and (b) 32 South Street, Baltimore City, Maryland 21202.

FIFTH

1. The Corporation shall be authorized to issue up to 10,000 shares of capital stock ("Shares"), each of which shall be (a) ascribed a par value of one dollar, and (b) designated as common stock.

2. The aggregate par value of all the authorized Shares is \$10,000.

3. The board of directors of the Corporation (the "Board") may hereafter cause the Corporation to issue Shares or convertible securities without the approval of the holders of outstanding Shares.

4. Any restriction on the transferability of any Shares may be set forth in the bylaws of the Corporation (the "Bylaws") or in any restrictive contract signed by the holder of the affected Shares.

5. To the extent permitted by Section 2-104(b)(5) of the MGCL, and notwithstanding any provision of the MGCL requiring a greater proportion than a majority of the votes entitled to be cast in order to take or authorize any action, any such action may be taken or authorized upon the concurrence of at least a majority of the aggregate number of votes entitled to be cast thereon.

SIXTH

1. Until changed by the Bylaws, or until any such time (if ever) as the Corporation shall have more than one Shareholder, only one director shall serve on the Board.

2. Susan A. Kovach shall serve as the sole member of the Board, until (a) the first annual meeting of stockholders and (b) her successor shall have been elected and qualified.

3. The initial Bylaws shall be adopted by the initial member of the Board, and, thereafter, the power to adopt, alter, and repeal the Bylaws shall be vested in the Board.

SEVENTH

1. To the fullest extent that limitations on the liability of directors and officers are permitted by the MGCL, no director or officer of the Corporation shall have any liability to the Corporation or any holder of Shares for monetary redress or other damages. This limitation on liability applies to events occurring at the time a person serves as a director or officer of the Corporation whether or not such person is a director or officer at the time of any proceeding in which liability is asserted.

2. The Corporation shall indemnify and advance expenses to its directors to the fullest extent that the indemnification of, and the advancement of expenses to, directors is permitted by the MGCL. The Corporation shall indemnify and advance expenses to its officers to the same extent as its directors and to such further extent as is consistent with law. To any greater extent permitted by the MGCL, the Board may (by bylaw, resolution or agreement) make further provision for indemnification of the Corporation's directors, officers, employees and agents.

3. References to the MGCL in this Article Seventh are to that law as from time to time amended, and no future amendment to these Articles shall affect any right of any person under this Article Seventh based on any event, omission or proceeding arising prior to such amendment.

* * * * *

IN WITNESS WHEREOF, the undersigned incorporator hereby affirms that he has adopted and executed these Articles and hereby acknowledges that such adoption and execution are his free act.

Dated: March 7, 2001

/s/ STUART D. LOGAN

Stuart D. Logan

I hereby consent to act as resident agent in Maryland for the entity named in the attached instrument.

The Corporation Trust Incorporated

/s/ BILLIE J. SWOBODA, V.P.

Billie J. Swoboda, V.P.

BYLAWS OF OMEGA TRS I, INC.

I. Offices

The principal office of Omega TRS I, Inc. (the "Company") shall be at such place within Michigan or Maryland as the Board of Directors of the Company (the "Board") shall determine from time to time. The Company may have offices at such other places as the Company's business may require.

II. Capital

2.01 *Issuance.* The shares of capital stock of the Company (the "Shares") shall be issued in such amounts, at such times, for such consideration and on such terms as the Board shall deem advisable, subject to the Company's Articles of Incorporation (the "Articles") and the laws of Maryland.

2.02 *Certificates.* The Shares shall be represented by certificates signed by the President. Each such certificate shall state upon its face that the Company is formed under the laws of Maryland, the person to whom it is issued, the number and class of Shares, and the designation of the series, if any, that the certificate represents, and such other provisions as may be required by Maryland law.

2.03 *Transfer.* The Shares are transferable only on the books of the Company upon surrender of the certificate therefor, properly endorsed for transfer, and the presentation of such evidences of ownership and validity of the assignment as the Company may require.

2.04 *Registration.* The Company shall be entitled to treat the person in whose name any Share is registered as the owner thereof for purposes of dividends and other distributions in the course of business, or in the course of recapitalization, merger, plan of share exchange, reorganization, sale of assets, liquidation or otherwise and for the purpose of votes, approvals and consents by shareholders of the Company ("Shareholders"), and for the purpose of notices to Shareholders, and for all other purposes whatever, and shall not be bound to recognize any equitable or other claim to or interest in such Shares on the part of any other person, whether or not the Company shall have notice thereof, save as expressly required by the laws of Maryland.

2.05 *Replacement.* Upon the presentation to the Company of a proper affidavit attesting the loss, destruction or mutilation of any certificate for Shares, the Board shall direct the issuance of a new certificate to replace the certificate so alleged to be lost, destroyed or mutilated. The Board may require as a condition precedent to the issuance of a new certificate a bond or agreement of indemnity, in such form and amount, and with such sureties as the Board may direct or approve.

III. Shareholders

3.01 *Meetings.* Meetings of Shareholders shall be held at the principal office of the Company or at such other place as determined by the Board and stated in the notice of meeting. The annual meeting of Shareholders shall be held on the first Monday of March at 10:30 o'clock in the morning. Directors shall be elected at each annual meeting and such other business transacted as may come before the meeting. Special meetings of Shareholders may be called by the Board, the Chairman (if such office is filled), the President or any Director, and shall be called by the Secretary at the written request of Shareholders holding a majority of the outstanding Shares and entitled to vote. The request shall state the purpose or purposes for which the meeting is to be called.

3.02 *Notice.* Except as otherwise provided by statute or the Articles, written notice of the time, place and purposes of a meeting of Shareholders shall be given not fewer than ten nor more than 60 days before the date of the meeting to each Shareholder of record entitled to vote at the meeting, either personally or by mailing such notice to his last address as it appears on the books of the Company. No notice need be given of an adjourned meeting of the Shareholders provided the time and place to which such meeting is adjourned are announced at the meeting at which the adjournment is taken and at the adjourned meeting only such business is transacted as might have been transacted at the original meeting. However, if after the adjournment a new record date is fixed for the adjourned meeting a notice of the adjourned meeting shall be given to each Shareholder of record on the new record date entitled to notice as provided in this Bylaw.

3.03 *Dates.* The Board may fix in advance a date as the record date for the purpose of determining Shareholders entitled to notice of and to vote at a meeting of Shareholders or an adjournment thereof, or to express consent or to dissent from a proposal without a meeting, or for the purpose of determining Shareholders entitled to receive payment of a dividend or allotment of a right, or for the purpose of any other action. The date fixed shall not be more than 60 nor fewer than ten days before the date of the meeting, nor more than 60 days before any other action. In such case only such Shareholders as shall be Shareholders of record on the date so fixed shall be entitled to notice of and to vote at such meeting or adjournment thereof, or to express consent or to dissent from such proposal, or to receive payment of such dividend or to receive such allotment of rights, or to participate in any other action, as the case may be, notwithstanding any transfer of any stock on the books of the Company, or otherwise, after any such record date. Nothing in this Bylaw shall affect the rights of a Shareholder and his transferee or transferor as between themselves.

3.04 *Lists.* The Secretary of the Company or the agent of the Company having charge of the stock transfer records for Shares shall make and certify a complete list of the Shareholders entitled to vote at a Shareholders' meeting or any adjournment thereof. The list shall be arranged alphabetically within each class and series, with the address of, and the number of Shares held by, each Shareholder, be produced at the meeting, be subject to inspection by any Shareholder during the meeting, and be prima facie evidence of the Shareholders entitled to examine the list or vote.

3.05 *Quorum.* Unless a greater or lesser quorum is required in the Articles or by the laws of Maryland, the Shareholders present at a meeting in person or by proxy who, as of the record date for such meeting, were holders of a majority of the outstanding Shares entitled to vote at the meeting shall constitute a quorum. Whether or not a quorum is present, a meeting of Shareholders may be adjourned by a vote of the Shares present in person or by proxy. When the holders of a class or series of Shares are entitled to vote separately on an item of business, this Bylaw applies in determining the presence of a quorum of such class or series for transaction of such item of business.

3.06 *Proxies.* A Shareholder entitled to vote at a meeting of Shareholders or to express consent or dissent without a meeting may authorize other persons to act for the Shareholder by proxy. A proxy shall be signed by the Shareholder or the Shareholder's authorized agent or representative.

3.07 *Voting.* Each outstanding Share is entitled to one vote on each matter submitted to a vote. When an action, other than the election of directors, is to be taken by a vote of the Shareholders, it shall be authorized by a majority of the votes cast by the holders of Shares entitled to vote thereon, unless a greater vote is required by the Articles or by the laws of Maryland. Except as otherwise provided by the Articles, directors shall be elected by a plurality of the votes cast at any election.

IV. Directors

4.01 *Number.* The business and affairs of the Company shall be managed by a Board of one director. No director need be a resident of Maryland or a Shareholder.

4.02 *Tenure.* Directors shall be elected at each annual meeting of the Shareholders, each to hold office until the next annual meeting of Shareholders and until the director's successor is elected and qualified, or until the director's resignation or removal. A director may resign by written notice to the Company. The resignation is effective upon its receipt by the Company or any later date as set forth in the notice of resignation. A director or the entire Board may be removed, with or without cause, by vote of the holders of a majority of the Shares entitled to vote at an election of directors.

4.03 *Vacancies.* Vacancies in the Board occurring by reason of death, resignation, removal, increase in the number of directors or otherwise shall be filled by the affirmative vote of a majority of the remaining directors though less than a quorum of the Board, unless filled by proper action of the Shareholders. Each person so elected shall be a director for a term of office continuing only until the next election of directors by the Shareholders. A vacancy that will occur at a specific date, by reason of a resignation effective at a later date or otherwise, may be filled before the vacancy occurs, but the newly elected director may not take office until the vacancy occurs.

4.04 *Meetings.* The Board shall meet each year immediately after the annual meeting of the Shareholders, or within two days of such time if such later time is deemed advisable, at the place where such meeting of the Shareholders has been held or such other place as the Board may determine, to elect officers and consider such business that may properly be brought before the meeting. If, however, less than a majority of the directors appear for an annual meeting of the Board, the annual meeting need not be held and the matters that might have been addressed therein may be addressed at any later meeting, or by consent resolution. Regular meetings of the Board may be held at such times and places as the majority of the directors may from time to time determine at a prior meeting or as shall be directed or approved by the vote or written consent of all directors. Special meetings of the Board may be called by the Corporation's president or any director.

4.05 *Notices.* No notice shall be required for annual or regular meetings of the Board or for adjourned meetings, whether regular or special. Three days' written notice shall be given for special meetings of the Board, and such notice shall state the time, place and purposes of the meeting.

4.06 *Quorum.* A majority of the Board then in office, or of the members of a committee thereof, constitutes a quorum for the transaction of business. The vote of a majority of the directors present at any meeting at which there is a quorum shall be the acts of the Board or of the committee, except as a larger vote maybe required by the laws of Maryland. A member of the Board or of a committee designated by the Board may participate in a meeting by means of conference telephone by means of which all persons participating in the meeting can communicate with each other. Participation in a meeting in this manner constitutes presence in person at the meeting.

4.07 *Committees.* The Board may, by resolution passed by a majority of the whole Board, appoint three or more members of the Board as an executive committee to exercise all powers and authorities of the Board in management of the business and affairs of the Company, except that the committee shall not have power or authority to (a) amend the Articles; (b) adopt an agreement of merger or consolidation; (c) recommend to Shareholders the sale, lease or exchange of all or substantially all of the Company's property and assets; (d) recommend to Shareholders a dissolution of the Company or revocation of a dissolution; (e) amend these Bylaws; (f) fill vacancies in the Board; or (g) unless expressly authorized by the Board, declare a dividend or authorize the issuance of stock. The Board from time to time may, by like resolution, appoint such other committees of one or more directors to have such authority as shall be specified by the Board in the resolution making such appointments. The Board may designate one or more directors as alternate members of any committee who may replace an absent or disqualified member at any meeting thereof.

4.08 *Dissent.* A director who is present at a meeting of the Board, or a committee thereof of which the director is a member, at which action on a corporate matter is taken is presumed to have concurred in that action unless the director's dissent is entered in the minutes of the meeting or unless

the director files a written dissent to the action with the person acting as secretary of the meeting before the adjournment thereof or shall forward such dissent by registered mail to the Secretary of the Company promptly after the adjournment of the meeting. Such right to dissent does not apply to a director who voted in favor of such action. A director who is absent from a meeting of the Board, or a committee thereof of which the director is a member, at which any such action is taken is presumed to have concurred in the action unless the director files a written dissent with the Secretary of the Company within a reasonable time after the director has knowledge of the action.

4.09 *Compensation.* The Board, by affirmative vote of a majority of directors in office and irrespective of any personal interest of any of them, may establish reasonable compensation of directors for services to the Company as directors or officers.

V. Procedures

5.01 *Notice.* All notices of meetings to be given to Shareholders, directors or any committee of directors may be given by mail, overnight courier, telefax or e-mail to any Shareholder, director or committee member at his last address as it appears on the books of the Company. Such notice shall be deemed to be given at the time when the same shall be mailed or otherwise dispatched.

5.02 *Waiver.* Notice of the time, place and purpose of any meeting of Shareholders, directors or committee of directors may be waived by mail, overnight courier, telefax or e-mail, either before or after the meeting, or in such other manner as may be permitted by the laws of Maryland. Attendance of a person at any meeting of Shareholders, in person or by proxy, or at any meeting of directors or of a committee of directors, constitutes a waiver of notice of the meeting except as follows:

(a) In the case of a Shareholder, unless the Shareholder at the beginning of the meeting objects to holding the meeting or transacting business at the meeting, or unless with respect to consideration of a particular matter at the meeting that is not within the purposes described in the meeting notice, the Shareholder objects to considering the matter when it is presented.

(b) In the case of a director, unless he or she at the beginning of the meeting, or upon his or her arrival, objects to the meeting or the transacting of business at the meeting and does not thereafter vote for or assent to any action taken at the meeting.

5.03 *Consent.* Any action permitted at any meeting of directors or committee thereof may be taken without a meeting, without prior notice and without a vote, if all directors or committee members entitled to vote thereon consent thereto in writing, before or after the action is taken. Any action required or permitted at any meeting of Shareholders may be taken without a meeting, without prior notice and without a vote, if all Shareholders entitled to vote thereon consent thereto in writing, before or after the action is taken or if such action otherwise satisfies the Articles and Maryland law.

VI. Officers

6.01 *Number.* The Board shall elect or appoint a President, a Chief Operating Officer, a Secretary and a Treasurer, and may elect a Chairman, and/or one or more Vice Presidents, Assistant Secretaries or Assistant Treasurers. The Chairman (if appointed) shall be a member of the Board. Any two or more of the above offices, except those of President and Vice President, may be held by the same person. Any person appointed by the Board to the office of Treasurer shall hold the equivalent title of *Chief Financial Officer*, and any person appointed by the Board to the office of *Vice President-Finance* or the office of *Chief Financial Officer* shall serve as Treasurer and shall forthwith succeed any incumbent holder of any such title. No officer shall execute an instrument in multiple capacities if the instrument is required by law to be acknowledged or verified by two or more officers.

6.02 *Term.* An officer shall hold office for the term for which he is elected or appointed and until his successor is elected or appointed and qualified, or until his resignation or removal. An officer may resign by written notice to the Company. The resignation is effective upon its receipt by the Company or at a subsequent time specified in the notice of resignation. An officer may be removed by the Board with or without cause. The removal of an officer shall be without prejudice to his contract rights, if any. The appointment of an officer does not of itself create contract rights.

6.03 *Vacancies.* The Board may fill any vacancies in any office occurring for whatever reason.

6.04 *Authority.* All officers, employees and agents of the Company shall have such authority and perform such duties in the conduct and management of the business and affairs of the Company as may be designated by the Board and these Bylaws, and, in that regard,

(a) all checks, drafts, notes, bonds, bills of exchange and orders for payment by the Company may, subject to any contrary resolution adopted by the Board from time to time, be signed by the President, the Chief Operating Officer, the Chief Financial Officer or any Vice President, and

(b) the Board may in any instance designate the officer and/or agent who shall have authority to execute any contract, conveyance, mortgage or other instrument on behalf of the Company, or may ratify or confirm any execution (although when the execution of any instrument has been authorized without specification of the executing officers or agents, the President, Chief Executive Officer or any Vice President may execute the same and on behalf of the Company).

VII. Duties

7.01 *Chairman.* The Chairman, if any is appointed, shall preside at all meetings of the Shareholders and of the Board at which the Chairman is present. The Chairman shall hold only such further authority as is expressly ascribed to him by these Bylaws and the resolutions of the Board.

7.02 *President.* The President shall be the chief executive officer of the Company, shall see that all resolutions of the Board are carried into effect, shall have the general powers of supervision usually vested in the chief executive officer of a corporation, and, subject to any contrary directives by the Board, shall hold authority (a) to direct (and commit) the Company's resources toward the achievement of the Company's goals, (b) to vote all securities or other interests of other business organizations held by the Company, and (c) to take such further actions to the extent approved by the Board. The President shall also hold authority equivalent to that held by the Chief Operating Officer, although, in the absence of a specific contrary directive by the Board or the President, such authority shall be left to the Chief Operating Officer. In the absence of the Secretary and any Assistant Secretary, the President may exercise the authority otherwise reserved to the Secretary.

7.03 *COO.* The Chief Operating Officer shall assume managerial responsibility over the day-to-day operations of the Company, shall exercise authority subject only to the directives of the President and the Board, and, subject to any contrary directive by the President or Board, shall hold (a) authority to supervise Company personnel, and (b) any further authority granted by the Board.

7.04 *Vice Presidents.* The Vice Presidents, in order of their seniority, shall, in the absence or disability of the President, perform the duties and exercise the powers of the President. Subject to the third sentence of Bylaw 6.01, the Vice Presidents shall in any event hold operating responsibility for those aspects of the Company's business referenced in any specific title of the particular Vice President, and shall perform such other duties as may be delegated by the Board or President.

7.05 *Secretary.* The Secretary shall record all votes and minutes of all proceedings in a book to be kept for that purpose, shall give or cause to be given notice of all meetings of the Shareholders and of the Board, and shall keep in safe custody the seal of the Company and, when authorized by the

Board, affix the same to any instrument requiring it, and when so affixed it shall be attested by the signature of the Secretary, or by the signature of the Treasurer or an Assistant Secretary. The Secretary may delegate any of the duties, powers and authorities of the Secretary to one or more Assistant Secretaries, unless such delegation is disapproved by the Board.

7.06 *Treasurer.* Subject to the authority of any Vice President charged with the responsibility for the Company's finances, the Treasurer shall have the custody of corporate funds and securities, shall keep full and accurate accounts of receipts and disbursements in books of the Company and shall deposit all moneys and other value in the name and to the credit of the Company in such depositories as may be designated by the Board. The Treasurer shall render to the President and directors, whenever they may require it, an account of his or her transactions as Treasurer and of the financial condition of the Company. The Treasurer may delegate any of his or her duties, powers and authorities to one or more Assistant Treasurers unless such delegation is disapproved by the Board.

7.07 *Assistants.* The Assistant Secretaries, in order of their seniority, shall perform the duties and exercise the powers and authorities of the Secretary in case of the Secretary's absence or disability. The Assistant Treasurers, in the order of their seniority, shall perform the duties and exercise the powers and authorities of the Treasurer in case of the Treasurer's absence or disability. The Assistant Secretaries and Assistant Treasurers shall also perform such duties as may be delegated by the Secretary and Treasurer, respectively, and also such duties as the Board may prescribe.

VIII. Records

8.01 *Maintenance.* The proper officers and agents of the Company shall keep and maintain such books, records and accounts of the Company's business and affairs, minutes of the proceedings of its Shareholders, Board and committees, if any, and such stock ledgers and lists of Shareholders, as the Board shall deem advisable, and as shall be required by the laws of Maryland and other states or jurisdictions empowered to impose such requirements. Books, records and minutes may be kept within or without Maryland in a place which the Board shall determine.

8.02 *Reliance.* In discharging his or her duties, a director or an officer of the Company, when acting in good faith, may rely upon information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by (a) one or more directors, officers, or employees of the Company, or of a business organization under joint control or common control, whom the director or officer reasonably believes to be reliable and competent in the matters presented, (b) legal counsel, public accountants, engineers, or other persons as to matters the director or officer reasonably believes are within the person's professional or expert competence, or (c) a committee of the board of which he or she is not a member if the director or officer reasonably believes the committee merits confidence. A director or officer may not rely on any information if he or she has knowledge concerning the matter that makes reliance otherwise permitted unwarranted.

IX. Indemnification

9.01 *Personal.* Subject to all of the other provisions of this Article IX, the Company shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative and whether formal or informal (other than an action by or in the right of the Company) by reason that the person is or was a director or officer of the Company, or is or was serving at the request of the Company as a director, officer, partner, trustee, employee, or agent of another entity or enterprise, against expenses (including reasonable attorneys' fees), judgments, penalties and amounts paid in settlement reasonably incurred by him or her in connection with such action, suit or proceeding, if the

person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the Company or the Shareholders, and, with respect to any criminal action or proceeding, if the person had no reasonable cause to believe his or her conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which the person reasonably believed to be in or not opposed to the best interests of the Company or the Shareholders, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his or her conduct was unlawful.

9.02 *Derivative.* Subject to all of the provisions of this Article IX, the Company shall indemnify any person who was or is a party to or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Company to procure a judgment in its favor by reason of the fact that the person is or was a director or officer of the Company, or is or was serving at the request of the Company as a director, officer, partner, trustee, employee, or agent of another foreign or domestic corporation, partnership, joint venture, trust or other enterprise, whether for profit or not, against expenses (including attorneys' fees) and amounts paid in settlement reasonably incurred by the person in connection with such action or suit, if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the Company or the Shareholders. However, indemnification shall not be made for any claim, issue or matter in which such person has been found liable to the Company unless and only to the extent that the court in which such action or suit was brought has determined upon application that, despite the adjudication of liability but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnification for the reasonable expenses incurred.

9.03 *Expenses.* To the extent that a person has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Section 9.01 or 9.02 of these Bylaws, or in defense of any claim, issue or matter in the action, suit or proceeding, the person shall be indemnified against actual and reasonable expenses (including attorneys' fees) incurred by such person in connection with the action, suit or proceeding and any action, suit or proceeding brought to enforce the mandatory indemnification provided by this Section 11.03.

9.04 *Definitions.* For purposes of Sections 9.01 and 9.02, "other enterprises" shall include employee benefit plans; "fines" shall include any excise taxes assessed on a person with respect to an employee benefit plan; and "serving at the request of the Company" shall include any service as a director, officer, employee, or agent of the Company that imposes duties on, or involves services by, the director or officer with respect to an employee benefit plan, its participants or beneficiaries; and a person who acted in good faith and in a manner the person reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be considered to have acted in a manner "not opposed to the best interests of the Company or the Shareholders".

9.05 *Parameters.* The right to indemnification conferred in this Article IX shall be a contract right, and shall apply to services of a director or officer as an employee or agent of the Company as well as in such person's capacity as a director or officer. Except as provided in Section 9.03 of these Bylaws, the Company shall have no obligations under this Article IX to indemnify any person in connection with any proceeding, or part thereof, initiated by him or her without Board authorization.

9.06 *Determination.* Any indemnification under Section 9.01 or 9.02 of these Bylaws (unless ordered by a court) shall be made by the Company only as authorized in the specific case upon a determination that indemnification of the person is proper in the circumstances because the person has met the applicable standard of conduct set forth in Section 9.01 or 9.02, whichever is applicable, and

upon an evaluation of the reasonableness of expenses and amount paid in settlement. Such determination and evaluation shall be made in any of the following ways:

(a) By a majority vote of a quorum of the Board consisting of directors who are not parties or threatened to be made parties to such proceeding.

(b) If the quorum described in clause (a) above is not obtainable, then by a majority vote of a committee of directors duly designated by the Board and consisting solely of two or more directors who are not at the time parties or threatened to be made parties to the proceeding.

(c) By independent legal counsel in a written opinion, so long as such counsel is selected (i) by the Board or its committee in the manner prescribed in subparagraph (a) or (b), or (ii) if a quorum of the Board cannot be obtained under subparagraph (a) and a committee cannot be designated under subparagraph (b), by the Board.

(d) By the Shareholders, but Shares held by directors or officers who are parties or threatened to be made parties to the action, suit or proceeding may not be voted.

9.07 *Proportionality.* If a person is entitled to indemnification under Section 9.01 or 9.02 of these Bylaws for a portion of expenses, including attorneys' fees, judgments, penalties, fines, and amounts paid in settlement, but not for the total amount thereof, the Company shall indemnify the person for the portion of the expenses, judgments, penalties, fines, or amounts paid in settlement for which the person is entitled to be indemnified.

9.08 *Advances.* The Company may pay or reimburse the reasonable expenses incurred by a person referred to in Section 9.01 or 9.02 of these bylaws who is a party or threatened to be made a party to an action, suit, or proceeding in advance of final disposition of the proceeding if (a) the person furnishes the Company a written affirmation of his or her good faith belief that he or she has met the applicable standard of conduct set forth in Section 9.01 or 9.02, (b) the person furnishes the Company a written undertaking executed to personally repay the advance if it is ultimately determined that he or she did not meet the standard of conduct, (c) the authorization of payment is made in the manner specified in Section 9.06, and (d) a determination is made that the facts then known to those making the determination would not preclude indemnification under Section 9.01 or 9.02. The undertaking shall be a general obligation of the person, but need not be secured.

9.09 *Scope.* The indemnification or advancement of expenses provided under this Article IX is not exclusive of other rights to which a person seeking indemnification or advancement of expenses may be entitled under a contractual arrangement with the Company. However, the total amount of expenses advanced or indemnified from all sources combined shall not exceed the amount of actual expenses incurred by the person seeking indemnification or advancement of expenses.

9.10 *Agents.* The Company may, to the extent authorized from time to time by the Board, grant rights to indemnification and to the advancement of expenses to any employee or agent of the Company to the fullest extent of the provisions of this Article IX with respect to the indemnification and advancement of expenses of directors and officers of the Company.

9.11 *Succession.* The indemnification provided in this Article IX continues as to a person who has ceased to be a director or officer and shall inure to the benefit of his or her successors.

9.12 *Insurance.* The Company may buy and maintain insurance on behalf of any person who is or was a director, officer, partner, trustee, employee or agent of the Company, or is or was serving at the request of the Company as a director, officer, employee or agent of another entity or enterprise against any liability asserted against the person and incurred by him or her in any such capacity or arising out of his or her status as such, whether or not the Company would have power to indemnify the person against such liability under these Bylaws or the laws of Maryland.

9.13 *Legislation.* Upon any change of the Maryland statutory provisions relating to the subject matter of this Article IX, the indemnification to which any person shall be entitled hereunder shall be determined by such changed provisions, but only to the extent that any such change permits the Company to provide broader indemnification rights than before any such change. Subject to Section 9.14, the Board may amend these Bylaws to conform to any such changed statutory provisions.

9.14 *Amendment.* No amendment or repeal of this Article IX shall apply to any director or officer of the Company for or with respect to any prior acts or omissions of such director or officer.

X.
Amendment

The Bylaws of the Company may be amended, altered or repealed, in whole or in part, by the Shareholders or by the Board at any meeting duly held in accordance with these Bylaws.

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CERTIFICATE OF LIMITED PARTNERSHIP

OF

TEXAS LESSOR—STONEGATE, LP

To the State Department of Assessments and Taxation State of Maryland

The undersigned, pursuant to section 10-201 of the Annotated Code of Maryland, desiring to form a limited partnership under the laws of Maryland, hereby certify that:

1. The name of the limited partnership is TEXAS LESSOR—STONEGATE, LP
2. The address of its principal office in this state is 9690 Deereco Road, Suite 100, Timonium, Maryland 21093.

The name and address of its resident agent is CSC-Lawyers Incorporating Service Company, 11 East Chase Street, Baltimore, Maryland 21202.

3. The names and business residence or mailing addresses of the general partners are set forth below:

NAME	ADDRESS
Texas Lessor—StoneGate GP, Inc., a Maryland corporation	9690 Deereco Road, Suite 360 Timonium, Maryland 21093

4. The limited partnership shall have a perpetual existence.
5. The undersigned constitute all the general partners in the above-named limited partnership.

Signatures on following page.

Signed on January 29, 2002

Texas Lessor—StoneGate GP, Inc., a Maryland corporation, its
General Partner

By: /s/ LAWRENCE D. RICH

Name: Lawrence D. Rich

Title: Vice President

**AGREEMENT OF LIMITED PARTNERSHIP
FOR
TEXAS LESSOR—STONEGATE, LP**

This AGREEMENT OF LIMITED PARTNERSHIP of TEXAS LESSOR STONEGATE, LP (this "Agreement") is made and entered into on this ___ day of _____, 2002.

Recitals:

A. Texas Lessor—Stonegate, Limited, Inc., a Maryland corporation (the "*Limited Partner*") and Texas Lessor—Stonegate GP, Inc., a Maryland corporation (the "*General Partner*") (collectively, the "*Partners*") have joined together to form a limited partnership known as Texas Lessor—Stonegate, LP (the "*Partnership*") under and pursuant to the laws of the State of Maryland.

B. In accordance with such formation, the Partners executed and filed a Certificate of Limited Partnership of Texas Lessor—Stonegate, LP among the partnership records of the Maryland State Department of Assessments and Taxation ("*MDSAT*") on January 30, 2002 at Film No. 00340, Folio No. 0328 (the "*Certificate*").

C. Texas Lessor—Stonegate, Limited, Inc., a Maryland corporation (the "*Limited Partner*") is the holder of one hundred percent (100%) of the existing limited partnership interests in the Partnership (the; "*Limited Partnership Interests*"). The Limited Partner owns ninety-nine and 99/100 percent (99.99%) interest in the Partnership.

D. Texas Lessor—Stonegate GP, Inc., a Maryland corporation (the "*General Partner*") is the holder of one hundred percent (100%) of the existing general partnership interests in the Partnership. The General Partner owns 1/100 percent (.01%) interest in the Partnership.

E. The parties hereto now desire to enter into the Partnership Agreement in accordance with the provisions of the Maryland Revised Uniform Limited Partnership Act [Md. Code, Corporations and Associations Article, Section 10-101 et seq., as amended (the "*Act*")].

NOW, THEREFORE, the parties hereto agree as follows:

1. *Incorporation of Recitals and Acknowledgments.*

(a) The foregoing recitals are incorporated herein to the same extent as if set forth herein in full.

(b) The parties acknowledge that until such time (if ever) as action is taken to grant a person membership in the Partnership pursuant to Section 11, the Partners shall be the General Partner and the Limited Partner.

(c) The parties acknowledge that until such time (if ever) as a Partner withdraws from the Partnership pursuant to Section 12 (or, in the case of the General Partner, action is taken pursuant to Subsection 5(a)), (i) the General Partner shall serve as the Partnership's general partner for purposes of Section 10-101(6) of the Act, and (ii) the Limited Partner shall serve as the Partnership's limited partner for purposes of Section 10-101(7) of the Act.

(d) The parties acknowledge that until adjusted in accordance with Section 4, 11 or 12, the Partners' respective percentage interests in the taxable profits and losses of the Partnership for each year or other fiscal period ("*Profits and Losses*") shall be .01% in the case of the General Partner, and 99.99% in the case of the Limited Partner (the "*Percentages*").

(e) The Partnership shall hereafter be governed in accordance with the Act and this operating agreement (this "*Agreement*").

2. (a) *Resident Agent.* The name and address of the resident agent of the Partnership in the State of Maryland shall be CSC-Lawyers Incorporating Service Company, 11 E. Chase St., Baltimore, MD 21202-2516. The resident agent may be changed from time to time by the general partner of the Partnership in its discretion and in compliance with the Act.

(b) *Principal Office.* The principal office of the Partnership in the State of Maryland for the purposes of the Act, at which all Partnership records (including those required by the Act) are kept is 9690 Deereco Road? Suite 100, Timonium, Maryland 21093. The Partnership shall have such other or additional offices as the General Partner, in its discretion, shall deem advisable.

3. *Scope.*

(a) The purpose of the Partnership is to acquire, hold, own, improve, operate, manage, service, mortgage, lease, encumber and otherwise deal with as owner real property and any and all buildings and other improvements located thereon and, except to the extent owned by tenants of the land or buildings, all personal property located at or used or useful in connection with such land and building (such land, buildings, improvements and personal property being hereafter collectively referred to as the "*Property*") as hereafter expanded, contracted and/or otherwise changed by the Partnership.

(b) Although the Partnership's business (the "*Business*") shall be limited to the assets, operations and goals falling within the scope of Subsection 3(a), the Partnership shall have the power and authority to engage in all activities and undertakings necessary or convenient to the accomplishment of the Partnership's purposes.

(c) No Partner need afford the Partnership or any Partner the opportunity to acquire or invest in any investment that the Partner may wish to acquire in its own name, whether or not the prospect would otherwise be an opportunity of the Partnership.

4. *Contributions.*

(a) The General Partner has contributed \$_____ to the capital of the Partnership.

(b) The Limited Partner has contributed \$_____ to the capital of the Partnership.

(c) To the extent approved by the Partners from time to time, the Partners may be requested to make additional capital contributions.

5. *Management.*

(a) The Partnership shall be managed by the General Partner, whose authority shall stem from Section 10-403 of the Act and whose authority shall be subject to only such participatory rights (if any) as may be guaranteed to limited partners pursuant to the Act or as may be expressly reserved to all of the Partners pursuant to this Agreement. Until its resignation, or until its removal by a majority in interest of the Partners pursuant to the General Partner's uncured breach of this Agreement or the Act, the General Partner shall serve as general partner. Upon any such resignation or removal, the remaining Partners shall unanimously select a successor.

(b) Subject only to Subsection 5(c), the Partnership's general partner (i) shall have unilateral authority to act for, execute documents on behalf of, and otherwise bind, the Partnership, and (ii) shall hold authority, on behalf of the Partnership, to do all things appropriate to the accomplishment of the purposes of the Partnership, including, but not limited to, (A) investigating, acquiring, improving, operating, dealing in the Business and associated assets, (B) representing, and speaking for, the Partnership in its dealings with third parties, (C) hiring contractors, subcontractors, attorneys, accountants, consultants or other agents, and defining their duties and establishing their compensation, and (D) executing contracts, notes and other writings.

(c) Notwithstanding any contrary provision within the foregoing Subsections of this Section 5, no act shall be taken, sum expended, decision made, obligation incurred or power exercised on behalf of the Partnership, unless the General Partner shall have received the consent of all Partners, in the case of any act that would contravene the Act or this Agreement.

(d) The General Partner shall act on behalf of the Partnership in good faith, and shall not be liable to the Partnership or to any other Partner for any loss or damage arising out of the management of the Partnership or any other activities in its capacity as general partner, unless caused by its own bad faith or gross negligence. The Partnership shall indemnify the General Partner against any claim or liability incurred by it in connection with the Partnership, unless caused by its own bad faith or gross negligence. This provision shall not be construed to relieve the General Partner of personal liability to creditors once Partnership assets have been exhausted. The General Partner shall not be personally liable to return any Partner's capital contribution.

(e) General Partner shall serve as the Partnership's tax matters partner as that phrase is defined in Section 6231(a)(7) of United States Internal Revenue Code (the "*Code*").

6. *Capital.*

(a) A capital account shall be maintained for each Partner, to which capital contributions and profits shall be credited and against which distributions and losses shall be charged. Capital accounts shall be maintained in accordance with the accounting principles of Code Section 704.

(b) No Partner shall be required to restore any deficit in his capital account, and, except as explicitly provided for in this Agreement, no Partner shall withdraw any of his capital account.

7. *Profits and Losses.* Profits and Losses shall be determined as of the end of each year, and shall be allocated among the Partners in proportion to their respective Percentages.

8. *Distributions.* Available cash shall be distributed to the Partners, at such times and in such amounts as the General Partner may determine, in its discretion, as follows:

- (a) first, in proportion to, and to the extent of, the Partners' respective capital account balances (until such balances are reduced to zero), and
- (b) thereafter, in proportion to the Partners' Percentages.

9. *Dissolution.* The Partnership shall be dissolved upon the first to occur of (a) December 31, 2098, (b) the written consent of all Partners, (c) the entry of a decree of judicial dissolution, or (d) the withdrawal, expulsion, bankruptcy or dissolution of the General Partner (unless at least two Partners remain, and, within 90 days of such event, all remaining Partners (i) elect in writing to reconstitute and continue the business of the Partnership, and (ii) appoint a new general partner who agrees, to so act).

10. *Winding Up.* Upon dissolution of the Partnership, the General Partner shall commence the process of winding up the affairs of the Partnership, toward the eventual, orderly disposition of the Business and the Partnership's other assets. The assets of the Partnership may be liquidated or transferred in kind, as determined by the General Partner. The assets of the Partnership shall first be applied toward the payment of (or to a reserve for the payment of) Partnership debt (to the extent that such debt is recourse against the Partnership) and then shall be distributed to the Partners in accordance with their respective positive capital accounts after the allocations pursuant to Section 8.

11. *Assignment.* Subject to the following sentences of this Section 11, a Partner may assign his interest in the Partnership, in whole or in part, without the consent of all of the Partners. Such assignment shall not of itself substitute the assignee as a Partner. Moreover, such assignment shall entitle the assignee to none of the rights of a Partner, whether under this Agreement or under the

Act, other than the right to receive (to the extent assigned) the distributions to which the assigning Partner would otherwise be entitled. An assignee shall not be admitted as a Partner, unless every Partner consents thereto in writing, with such consent to be independent of the consent solicited in connection with the proposed mere assignment contemplated by the first three sentences of this Section 11.

12. *Withdrawal.* No Partner may withdraw from the Partnership without the consent of every Partner. If withdrawal is pursuant to the Partner's assignment of its entire interest to a person who is thereupon (or thereafter) admitted as a Partner, the withdrawing Partner shall receive no consideration in respect thereof (other than any payment received by the withdrawing Partner from its assignee). In other cases of a permitted withdrawal, the withdrawing Partner shall receive any such consideration as shall have been requested in connection with the solicitation of the consent required by this Section 12. If, however, the withdrawal is in violation of Section 11 and this Section 12, the withdrawing Partner shall receive only such consideration as shall be selected by the General Partner from the two alternatives provided under Section 10-604 of the Act, with such consideration to be reduced by any and all damages suffered by the Partnership and other Partners yes a result of such unauthorized withdrawal (including, without limitation, the loss resulting from any untimely dissolution of the Partnership).

13. *Amendment.* This Agreement may be amended only by the written consent of all Partners.

14. *Miscellaneous.* This Agreement (a) shall be binding upon the parties hereto and their respective successors and permitted assigns, (b) shall create no enforceable rights in any third parties, (c) shall be governed by Maryland law, (d) comprises the entire understanding of the parties with respect to the transactions referenced herein, (e) may be executed in counterparts, and (f) shall afford each aggrieved party all redress available at law or in equity upon a breach hereof. To facilitate execution, this Agreement may be executed in as many counterparts as may be required; and it shall not be necessary that the signature of each party, or that the signatures of all persons required to bind any party, appear on each counterpart; but it shall be sufficient that the signature of each party, or that the signatures of the persons required to bind any party, appear on one or more of such counterparts. All counterparts shall collectively constitute a single agreement. This Agreement shall be effective for all purposes and in all respects as of the date.

IN WITNESS WHEREOF, the undersigned general partner and limited partner of the Partnership have affixed their signatures and seals as of the day and year first above written, do hereby acknowledge this Agreement to be their free act and deed, and do hereby affirm under the penalties of perjury that the facts stated herein are true.

Signature page follows.

Signature page of the Agreement of Limited Partnership of Texas Lessor—Stonegate, LP.

Witnesses:

/s/ JUDITH A. JACOBS

Printed: Judith A. Jacobs

/s/ DONNA A. TALIPAN

Printed: Donna A. Talipan

General Partner:

Texas Lessor—Stonegate GP, Inc., a Maryland corporation

By: /s/ DANIEL J. BOOTH

Name: Daniel J. Booth

Title: *Secretary*

Limited Partner:

Texas Lessor—Stonegate, Limited, Inc., a Maryland corporation

/s/ JUDITH A. JACOBS

Printed: Judith A. Jacobs

/s/ DONNA A. TALIPAN

Printed: Donna A. Talipan

By: /s/ DANIEL J. BOOTH

Name: Daniel J. Booth

Title: *Secretary*

THE COMMONWEALTH OF MASSACHUSETTS

ARTICLES OF ORGANIZATION
(General Laws, Chapter 156B)

I hereby certify that, upon examination of these Articles of Organization, duly submitted to me, it appears that the provisions of the General Laws relative to the organization of corporations have been complied with, and I hereby approve said articles; and the filing fee in the amount of \$200.00 having been paid, said articles are deemed to have been filed with me this 14th day of July, 1999.

Effective Date:

[A TRUE COPY ATTEST
/s/ WILLIAM FRANCIS GALVIN

/s/ WILLIAM FRANCIS GALVIN

WILLIAM FRANCIS GALVIN
SECRETARY OF THE COMMONWEALTH
DATE 10/31/01 CLERK AG5]

WILLIAM FRANCIS GALVIN
Secretary of the Commonwealth

FILING FEE: One tenth of one percent of the total authorized capital stock, but not less than \$200.00. For the purpose of filing, shares of stock with a par value less than \$1.00, or no par stock, shall be deemed to have a par value of \$1.00 per share.

TO BE FILLED IN BY CORPORATION
Photocopy of document to be sent to:

Telephone: Jon Olinto
Hale And Dorr LLP
60 State Street
Boston, MA 02109
(617) 526-5061

The Commonwealth of Massachusetts
William Francis Galvin
Secretary of the Commonwealth
One Ashburton Place, Boston, Massachusetts 02108-1512

ARTICLES OF ORGANIZATION
(General Laws Chapter 156B)

ARTICLE I

The exact name of the corporation is:

OHIMA, Inc.

ARTICLE II

The purpose of the corporation is to engage in the following business activities:

To engage in the business associated with the operation of healthcare facilities.

To carry on business or other activity which may lawfully be carried on by a corporation organized under the Business Corporation Law of the Commonwealth of Massachusetts, whether or not related to those referenced in the preceding paragraph.

Note: if the space provided under any article or item of this form is insufficient, additions shall be set forth on one side only of separate 8 1/2 x 11 sheets of paper with a left margin of at least 1 inch. Additions to more than one article may be made on a single sheet so long as each article requiring each addition is clearly indicated.

ARTICLE III

State the total number of shares and par value, if any, of each class of stock which the corporation is authorized to issue:

WITHOUT PAR VALUE		WITH PAR VALUE		
TYPE	NUMBER OF SHARES	TYPE	NUMBER OF SHARES	PAR VALUE
Common		Common:	200,000	\$.01
Preferred:		Preferred:		

ARTICLE IV

If more than one class of stock is authorized, state a distinguishing designation for each class. Prior to the issuance of any class of stock, if shares of another class are outstanding, the corporation must provide a description of the preferences, limitations, qualifications, and special or relative rights or privileges of that class and of each other class of which shares are outstanding and of each series then established within any class.

N/A

ARTICLE V

The restrictions, if any, imposed by the Articles of Organization upon the transfer of shares of any class are:

None.

ARTICLE VI

* Other lawful provisions, if any, for the conduct and regulation of the business and affairs of the corporation, for its voluntary dissolution, or for limiting, defining, or regulating the powers of the corporation, or of its directors or stockholders, or of any class of stockholders:

None.

** If there are no provisions state "none".*

Note: The preceding six (6) articles are considered to be permanent and may ONLY be changed by filing appropriate Articles of Amendment.

ARTICLE VII

The effective date of organization of the corporation shall be the date approved and filed by the Secretary of the Commonwealth. If a later effective date is desired, specify such date which shall not be more than *thirty days* after the date of filing:

N/A

ARTICLE VIII

The information contained in Article VIII is not a permanent part of the Articles of Organization.

- a. The street address (*post office boxes are not acceptable*) of the principal office of the corporation *in Massachusetts* is:
c/o CT Corporation System 2 Oliver Street, Boston, MA 02109
- b. The name, residential address and post office address of each director and officer of the corporation is as follows:

	NAME	RESIDENTIAL ADDRESS	POST OFFICE ADDRESS
President:	Essel W. Bailey, Jr.	One Hillside Court Ann Arbor, MI 48104	Same
Treasurer:	David A. Stover	240 Stonebridge North Ann Arbor, MI 48108	Same
Clerk:	Susan Kovach	180 Lake Village Drive Ann Arbor, MI 48103	Same
Directors:	Essel W. Bailey, Jr.	One Hillside Court Ann Arbor, MI 48104	Same

- c. The fiscal year (i.e., tax year) of the corporation shall end on the last day of the month of:
December 31
- d. The name and business address of the resident agent, if any, of the corporation is:
c/o CT Corporation System, 2 Oliver Street, Boston, MA 02109

ARTICLE IX

By-laws of the corporation have been duly adopted and the president, treasurer, clerk and directors whose names are set forth above, have been duly elected.

IN WITNESS WHEREOF AND UNDER THE PAINS AND PENALTIES OF PERJURY, I/we, whose signature(s) appear below as incorporator(s) and whose name(s) and business or residential address(es) *are clearly typed or printed* beneath each signature do hereby associate with the intention of forming this corporation under the provisions of General Laws, Chapter 156B and do hereby sign these Articles of Organization as incorporator(s) this 13th day of July, 1999.

/s/ SUSAN KOVACH
Susan Kovach
900 Victors Way, Suite 350
Ann Arbor, MI 48108

Note: If an existing corporation is acting as incorporator, type in the exact name of the corporation, the state or other jurisdiction where it was incorporated, the name of the person signing on behalf of said corporation and the title he/she holds or other authority by which such action is taken.

QuickLinks

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**AMENDED AND RESTATED BYLAWS
OF OHIMA, INC.**

**I.
OFFICES**

The principal office of OHIMA, Inc. (the "Company") shall be at such place within Massachusetts or Maryland as the Board of Directors of the Company (the "Board") shall from time to time determine. The Company also may have offices at such other places as the business of the Company may require.

**II.
SEAL**

The Company may have a seal in such form as the Board may from time to time determine. The seal, if so authorized, may be used by causing it or a facsimile to be impressed, affixed or copied.

**III.
CAPITAL**

3.1 ISSUANCE.

The shares of capital stock of the Company (the "Shares") shall be issued in such amounts, at such times, for such consideration and on such terms as the Board shall deem advisable, subject to the Company's Articles of Incorporation (the "Articles") and the laws of Massachusetts.

3.2 CERTIFICATES.

The Shares shall be represented by certificates signed by the President. Each such certificate shall state upon its face that the Company is formed under the laws of Massachusetts, the person to whom it is issued, the number and class of Shares, and the designation of the series, if any, that the certificate represents, and such other provisions as may be required by Massachusetts law.

3.3 TRANSFER.

The Shares are transferable only on the books of the Company upon surrender of the certificate therefor, properly endorsed for transfer, and the presentation of such evidences of ownership and validity of the assignment as the Company may require.

3.4 REGISTRATION.

The Company shall be entitled to treat the person in whose name any Share is registered as the owner thereof for purposes of dividends and other distributions in the course of business, or in the course of recapitalization, merger, plan of share exchange, reorganization, sale of assets, liquidation or otherwise and for the purpose of votes, approvals and consents by shareholders of the Company ("Shareholders"), and for the purpose of notices to Shareholders, and for all other purposes whatever, and shall not be bound to recognize any equitable or other claim to or interest in such Shares on the part of any other person, whether or not the Company shall have notice thereof, save as expressly required by the laws of Massachusetts.

3.5 REPLACEMENT.

Upon the presentation to the Company of a proper affidavit attesting the loss, destruction or mutilation of any certificate for Shares, the Board shall direct the issuance of a new certificate to replace the certificate so alleged to be lost, destroyed or mutilated. The Board may require as a condition precedent to the issuance of a new certificate a bond or agreement of indemnity, in such form and amount, and with such sureties as the Board may direct or approve.

**IV.
SHAREHOLDERS**

4.1 MEETINGS.

Meetings of Shareholders shall be held at the principal office of the Company or at such other place as determined by the Board and stated in the notice of meeting. The annual meeting of Shareholders shall be held on the first Monday of March at 10:30 o'clock in the morning. Directors shall be elected at each annual meeting and such other business transacted as may come before the meeting. Special meetings of Shareholders may be called by the Board, the CEO (if such office is filled), the President or any Director, and shall be called by the Secretary at the written request of Shareholders holding a majority of the outstanding Shares and entitled to vote. The request shall state the purpose or purposes for which the meeting is to be called.

4.2 NOTICE.

Except as otherwise provided by statute or the Articles, written notice of the time, place and purposes of a meeting of Shareholders shall be given not fewer than ten nor more than 60 days before the date of the meeting to each Shareholder of record entitled to vote at the meeting, either personally or by mailing such notice to his last address as it appears on the books of the Company. No notice need be given of an adjourned meeting of the Shareholders provided the time and place to which such meeting is adjourned are announced at the meeting at which the adjournment is taken and at the adjourned meeting only such business is transacted as might have been transacted at the original meeting. However, if after the adjournment a new record date is fixed for the adjourned meeting a notice of the adjourned meeting shall be given to each Shareholder of record on the new record date entitled to notice as provided in this Bylaw.

4.3 DATES.

The Board may fix in advance a date as the record date for the purpose of determining Shareholders entitled to notice of and to vote at a meeting of Shareholders or an adjournment thereof, or to express consent or to dissent from a proposal without a meeting, or for the purpose of determining Shareholders entitled to receive payment of a dividend or allotment of a right, or for the purpose of any other action. The date fixed shall not be more than 60 nor less than ten days before the date of the meeting, nor more than 60 days before any other action. In such case only such Shareholders as shall be Shareholders of record on the date so fixed shall be entitled to notice of and to vote at such meeting or adjournment thereof, or to express consent or to dissent from such proposal, or to receive payment of such dividend or to receive such allotment of rights, or to participate in any other action, as the case may be, notwithstanding any transfer of any stock on the books of the Company, or otherwise, after any such record date. Nothing in this Bylaw shall affect the rights of a Shareholder and his transferee or transferor as between themselves.

4.4 LISTS.

The Secretary of the Company or the agent of the Company having charge of the stock transfer records for Shares shall make and certify a complete list of the Shareholders entitled to vote at a Shareholders' meeting or any adjournment thereof. The list shall be arranged alphabetically within each class and series, with the address of, and the number of Shares held by, each Shareholder, be available for inspection by the Shareholders at the offices of the Company during the period following two (2) days after notice of the meeting is sent to Shareholders and ending after such conclusion of the meeting, be subject to inspection by any Shareholder during the meeting, and be prima facie evidence of the Shareholders entitled to examine the list or vote.

4.5 QUORUM.

Unless a greater or lesser quorum is required in the Articles or by the laws of Massachusetts, the Shareholders present at a meeting in person or by proxy who, as of the record date for such meeting, were holders of a majority of the outstanding Shares entitled to vote at the meeting shall constitute a quorum. Whether or not a quorum is present, a meeting of Shareholders may be adjourned by a vote of the Shares present in person or by proxy. When the holders of a class or series of Shares are entitled to vote separately on an item of business, this Bylaw applies in determining the presence of a quorum of such class or series for transaction of such item of business.

4.6 PROXIES.

A Shareholder entitled to vote at a meeting of Shareholders or to express consent or dissent without a meeting may authorize other persons to act for the Shareholder by proxy. A proxy shall be signed by the Shareholder or the Shareholder's authorized agent or representative.

4.7 VOTING.

Each outstanding Share is entitled to one vote on each matter submitted to a vote, unless otherwise provided in the Articles. When an action, other than the election of directors, is to be taken by a vote of the Shareholders, it shall be authorized by a majority of the votes cast by the holders of Shares entitled to vote thereon, unless a greater vote is required by the Articles or by the laws of Massachusetts. Except as otherwise provided by the Articles, directors shall be elected by a plurality of the votes cast at any election.

V. DIRECTORS

5.1 NUMBER.

The business and affairs of the Company shall be managed by a Board of one director. No director need be a resident of Massachusetts or a Shareholder.

5.2 TENURE.

Directors shall be elected at each annual meeting of the Shareholders, each to hold office until the next annual meeting of Shareholders and until the director's successor is elected and qualified, or until the director's resignation or removal. A director may resign by written notice to the Company. The resignation is effective upon its receipt by the Company or a subsequent time as set forth in the notice of resignation. A director or the entire Board may be removed, with or without cause, by vote of the holders of a majority of the Shares entitled to vote at an election of directors.

5.3 VACANCIES.

Vacancies in the Board occurring by reason of death, resignation, removal, increase in the number of directors or otherwise shall be filled by the affirmative vote of a majority of the remaining directors though less than a quorum of the Board, unless filled by proper action of the Shareholders. Each person so elected shall be a director for a term of office continuing only until the next election of directors by the Shareholders. A vacancy that will occur at a specific date, by reason of a resignation effective at a later date or otherwise, may be filled before the vacancy occurs, but the newly elected director may not take office until the vacancy occurs.

5.4 MEETINGS.

The Board shall meet each year immediately after the annual meeting of the Shareholders, or within three days of such time excluding Sundays and legal holidays if such later time is deemed advisable, at the place where such meeting of the Shareholders has been held or such other place as

the Board may determine, for the purpose of election of officers and consideration of such business that may properly be brought before the meeting; provided, that if less than a majority of the directors appear for an annual meeting of the Board the holding of such annual meeting shall not be required and the matters which might have been taken up therein may be taken up at any later special or annual meeting, or by consent resolution. Regular meetings of the Board may be held at such times and places as the majority of the directors may from time to time determine at a prior meeting or as shall be directed or approved by the vote or written consent of all directors. Special meetings of the Board may be called by the President and shall be called by the Secretary upon the written request of any director.

5.5 NOTICES.

No notice shall be required for annual or regular meetings of the Board or for adjourned meetings, whether regular or special. Three days' written notice shall be given for special meetings of the Board, and such notice shall state the time, place and purposes of the meeting.

5.6 QUORUM.

A majority of the Board then in office, or of the members of a committee thereof, constitutes a quorum for the transaction of business. The vote of a majority of the directors present at any meeting at which there is a quorum shall be the acts of the Board or of the committee, except as a larger vote may be required by the laws of Massachusetts. A member of the Board or of a committee designated by the Board may participate in a meeting by means of conference telephone by means of which all persons participating in the meeting can communicate with each other. Participation in a meeting in this manner constitutes presence in person at the meeting.

5.7 COMMITTEES.

The Board may, by resolution passed by a majority of the whole Board, appoint three or more members of the Board as an executive committee to exercise all powers and authorities of the Board in management of the business and affairs of the Company, except that the committee shall not have power or authority to (a) amend the Articles; (b) adopt an agreement of merger or consolidation; (c) recommend to Shareholders the sale, lease or exchange of all or substantially all of the Company's property and assets; (d) recommend to Shareholders a dissolution of the Company or revocation of a dissolution; (e) amend these Bylaws; (f) fill vacancies in the Board; or (g) unless expressly authorized by the Board, declare a dividend or authorize the issuance of stock. The Board from time to time may, by like resolution, appoint such other committees of one or more directors to have such authority as shall be specified by the Board in the resolution making such appointments. The Board may designate one or more directors as alternate members of any committee who may replace an absent or disqualified member at any meeting thereof.

5.8 DISSENT.

A director who is present at a meeting of the Board, or a committee thereof of which the director is a member, at which action on a corporate matter is taken is presumed to have concurred in that action unless the director's dissent is entered in the minutes of the meeting or unless the director files a written dissent to the action with the person acting as secretary of the meeting before the adjournment thereof or shall forward such dissent by registered mail to the Secretary of the Company promptly after the adjournment of the meeting. Such right to dissent does not apply to a director who voted in favor of such action. A director who is absent from a meeting of the Board, or a committee thereof of which the director is a member, at which any such action is taken is presumed to have concurred in the action unless the director files a written dissent with the Secretary of the Company within a reasonable time after the director has knowledge of the action.

5.9 COMPENSATION.

The Board, by affirmative vote of a majority of directors in office and irrespective of any personal interest of any of them, may establish reasonable compensation of directors for services to the Company as directors or officers.

VI. PROCEDURES

6.1 NOTICE.

All notices of meetings to be given to Shareholders, directors or any committee of directors may be given by mail, overnight courier, telefax or e-mail to any Shareholder, director or committee member at his last address as it appears on the books of the Company. Such notice shall be deemed to be given at the time when the same shall be mailed or otherwise dispatched.

6.2 WAIVER.

Notice of the time, place and purpose of any meeting of Shareholders, directors or committee of directors may be waived by mail, overnight courier, telefax or e-mail, either before or after the meeting, or in such other manner as may be permitted by the laws of Massachusetts. Attendance of a person at any meeting of Shareholders, in person or by proxy, or at any meeting of directors or of a committee of directors, constitutes a waiver of notice of the meeting except as follows:

- (a) In the case of a Shareholder, unless the Shareholder at the beginning of the meeting objects to holding the meeting or transacting business at the meeting, or unless with respect to consideration of a particular matter at the meeting that is not within the purposes described in the meeting notice, the Shareholder objects to considering the matter when it is presented.
- (b) In the case of a director, unless he or she at the beginning of the meeting, or upon his or her arrival, objects to the meeting or the transacting of business at the meeting and does not thereafter vote for or assent to any action taken at the meeting.

6.3 CONSENT.

Any action required or permitted at any meeting of directors or committee thereof may be taken without a meeting, without prior notice and without a vote, if all directors or committee members entitled to vote thereon consent thereto in writing, before or after the action is taken. Any action required or permitted at any meeting of Shareholders may be taken without a meeting, without prior notice and without a vote, if all Shareholders entitled to vote thereon consent thereto in writing, before or after the action is taken or if such action otherwise satisfies the Articles and Massachusetts law.

VII. OFFICERS

7.1 NUMBER.

The Board shall elect or appoint a President, a Secretary and a Treasurer, and may elect a Chief Executive Officer (the "CEO"), a Chief Operating Officer (the "COO"), and/or one or more Vice Presidents, Assistant Secretaries or Assistant Treasurers. The CEO (if appointed) shall be a member of the Board. Any two or more of the above offices, except those of President and Vice President, may be held by the same person. No officer shall execute or verify an instrument in more than one capacity if the instrument is required by law, the Articles or these Bylaws to be executed, acknowledged, or verified by one or more officers.

7.2 TERM.

An officer shall hold office for the term for which he is elected or appointed and until his successor is elected or appointed and qualified, or until his resignation or removal. An officer may resign by written notice to the Company. The resignation is effective upon its receipt by the Company or at a subsequent time specified in the notice of resignation. An officer may be removed by the Board with or without cause. The removal of an officer shall be without prejudice to his contract rights, if any. The appointment of an officer does not of itself create contract rights.

7.3 VACANCIES.

The Board may fill any vacancies in any office occurring for whatever reason.

7.4 AUTHORITY.

All officers, employees and agents of the Company shall have such authority and perform such duties in the conduct and management of the business and affairs of the Company as may be designated by the Board and these Bylaws.

VIII. DUTIES

8.1 CEO.

The CEO, if any is appointed, shall preside at all meetings of the Shareholders and of the Board at which the CEO is present. The CEO shall be the chief executive officer of the Company, shall see that all resolutions of the Board are carried into effect, and shall have the general powers of supervision usually vested in the chief executive officer of a corporation. Subject to any contrary directives by the Board, the CEO shall hold (a) authority to direct (and commit) the Company's resources toward the achievement of the Company's goals, (b) authority to vote all securities or other interests of other corporations and business organizations held by the Company, and (c) any further authority as may hereafter be vested in him by the Board.

8.2 PRESIDENT.

In the absence of the CEO, the President shall hold and exercise all authority ascribed to the CEO. In addition, the President shall exercise any and all authority as may be granted to him by the Board, and, subject only to the directives of the CEO, shall ensure that all resolutions of the Board are carried into effect. In the absence of the COO, the President shall also shall hold and exercise all authority ascribed to the COO. In the absence of the Secretary and any Assistant Secretary, the President may exercise the authority otherwise reserved to the Secretary.

8.3 COO.

The COO shall be the chief operating officer of the Company. The President shall have the general powers of management usually vested in the chief operating officer of a corporation, and, subject to any contrary directives by the Board, shall hold (a) authority to supervise corporation personnel and to implement the directives of the Board, the President and the CEO, and (b) any further authority as may hereafter be vested in him by the Board.

8.4 VICE PRESIDENTS.

The Vice Presidents, in order of their seniority, shall, in the absence or disability of the President, perform the duties and exercise the powers of the President. The Vice Presidents shall in any event assume operating responsibility for those aspects of the Company's business referenced in any specific title of the particular Vice President, and shall perform such other duties as may be delegated by the Board, the CEO, the COO or the President. In any event, any Vice President whose title includes the

phrase chief financial officer shall be deemed to have been charged with the responsibility for the Company's finances, shall have been granted custody of corporate funds and securities, shall be obligated to keep full and accurate accounts of receipts and disbursements in books of the Company, and shall deposit all moneys and other value in the name and to the credit of the Company in such depositories as may be designated by the Board. Moreover, any Vice President whose title includes the phrase general counsel shall be deemed to have been charged with the responsibility for the Company's legal affairs and shall be deemed the Company's principal liaison with the Company's outside counsel and regulatory authorities.

8.5 SECRETARY.

The Secretary shall record all votes and minutes of all proceedings in a book to be kept for that purpose, shall give or cause to be given notice of all meetings of the Shareholders and of the Board, and shall keep in safe custody the seal of the Company and, when authorized by the Board, affix the same to any instrument requiring it, and when so affixed it shall be attested by the signature of the Secretary, or by the signature of the Treasurer or an Assistant Secretary. The Secretary may delegate any of the duties, powers and authorities of the Secretary to one or more Assistant Secretaries, unless such delegation is disapproved by the Board.

8.6 TREASURER.

Subject to the authority of any Vice President charged with the responsibility for the Company's finances, the Treasurer shall have the custody of corporate funds and securities, shall keep full and accurate accounts of receipts and disbursements in books of the Company and shall deposit all moneys and other value in the name and to the credit of the Company in such depositories as may be designated by the Board. The Treasurer shall render to the President and directors, whenever they may require it, an account of his or her transactions as Treasurer and of the financial condition of the Company. The Treasurer may delegate any of his or her duties, powers and authorities to one or more Assistant Treasurers unless such delegation is disapproved by the Board.

8.7 ASSISTANTS.

The Assistant Secretaries, in order of their seniority, shall perform the duties and exercise the powers and authorities of the Secretary in case of the Secretary's absence or disability. The Assistant Treasurers, in the order of their seniority, shall perform the duties and exercise the powers and authorities of the Treasurer in case of the Treasurer's absence or disability. The Assistant Secretaries and Assistant Treasurers shall also perform such duties as may be delegated by the Secretary and Treasurer, respectively, and also such duties as the Board may prescribe.

IX. ACTIONS

9.1 PAYMENT.

All checks, drafts, notes, bonds, bills of exchange and orders for payment of money of the Company may, subject to any contrary resolution adopted by the Board from time to time, be signed by the CEO, the President or any other officer as may be authorized by the Board.

9.2 CONTRACTS.

The Board may in any instance designate the officer and/or agent who shall have authority to execute any contract, conveyance, mortgage or other instrument on behalf of the Company, or may ratify or confirm any execution. When the execution of any instrument has been authorized without specification of the executing officers or agents, the CEO or President may execute the same in the name and on behalf of the Company and may affix the corporate seal thereto.

**X.
RECORDS**

10.1 MAINTENANCE.

The proper officers and agents of the Company shall keep and maintain such books, records and accounts of the Company's business and affairs, minutes of the proceedings of its Shareholders, Board and committees, if any, and such stock ledgers and lists of Shareholders, as the Board shall deem advisable, and as shall be required by the laws of Massachusetts and other states or jurisdictions empowered to impose such requirements. Books, records and minutes may be kept within or without Massachusetts in a place which the Board shall determine.

10.2 RELIANCE.

In discharging his or her duties, a director or an officer of the Company, when acting in good faith, may rely upon information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by (a) one or more directors, officers, or employees of the Company, or of a business organization under joint control or common control, whom the director or officer reasonably believes to be reliable and competent in the matters presented, (b) legal counsel, public accountants, engineers, or other persons as to matters the director or officer reasonably believes are within the person's professional or expert competence, or (c) a committee of the board of which he or she is not a member if the director or officer reasonably believes the committee merits confidence. A director or officer may not rely on any information if he or she has knowledge concerning the matter that makes reliance otherwise permitted unwarranted.

**XI.
INDEMNIFICATION**

11.1 PERSONAL.

Subject to all of the other provisions of this Article XI, the Company shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative and whether formal or informal (other than an action by or in the right of the Company) by reason that the person is or was a director or officer of the Company, or is or was serving at the request of the Company as a director, officer, partner, trustee, employee, or agent of another entity or enterprise, against expenses (including reasonable attorneys' fees), judgments, penalties and amounts paid in settlement reasonably incurred by him or her in connection with such action, suit or proceeding, if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the Company or the Shareholders, and, with respect to any criminal action or proceeding, if the person had no reasonable cause to believe his or her conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which the person reasonably believed to be in or not opposed to the best interests of the Company or the Shareholders, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his or her conduct was unlawful.

11.2 DERIVATIVE.

Subject to all of the provisions of this Article XI, the Company shall indemnify any person who was or is a party to or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Company to procure a judgment in its favor by reason of the fact that the person is or was a director or officer of the Company, or is or was serving at the request of the Company as a director, officer, partner, trustee, employee, or agent of another foreign or domestic corporation, partnership, joint venture, trust or other enterprise, whether for profit or not,

against expenses (including attorneys' fees) and amounts paid in settlement reasonably incurred by the person in connection with such action or suit, if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the Company or the Shareholders. However, indemnification shall not be made for any claim, issue or matter in which such person has been found liable to the Company unless and only to the extent that the court in which such action or suit was brought has determined upon application that, despite the adjudication of liability but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnification for the reasonable expenses incurred.

11.3 EXPENSES.

To the extent that a person has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Section 11.1 or 11.2 of these Bylaws, or in defense of any claim, issue or matter in the action, suit or proceeding, the person shall be indemnified against actual and reasonable expenses (including attorneys' fees) incurred by such person in connection with the action, suit or proceeding and any action, suit or proceeding brought to enforce the mandatory indemnification provided by this Section 11.3.

11.4 DEFINITIONS.

For purposes of Sections 11.1 and 11.2, "other enterprises" shall include employee benefit plans; "fines" shall include any excise taxes assessed on a person with respect to an employee benefit plan; and "serving at the request of the Company" shall include any service as a director, officer, employee, or agent of the Company that imposes duties on, or involves services by, the director or officer with respect to an employee benefit plan, its participants or beneficiaries; and a person who acted in good faith and in a manner the person reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be considered to have acted in a manner "not opposed to the best interests of the Company or the Shareholders".

11.5 PARAMETERS.

The right to indemnification conferred in this Article XI shall be a contract right, and shall apply to services of a director or officer as an employee or agent of the Company as well as in such person's capacity as a director or officer. Except as provided in Section 11.3 of these Bylaws, the Company shall have no obligations under this Article XI to indemnify any person in connection with any proceeding, or part thereof, initiated by him or her without Board authorization.

11.6 DETERMINATION.

Any indemnification under Section 11.1 or 11.2 of these Bylaws (unless ordered by a court) shall be made by the Company only as authorized in the specific case upon a determination that indemnification of the person is proper in the circumstances because the person has met the applicable standard of conduct set forth in Section 11.1 or 11.2, whichever is applicable, and upon an evaluation of the reasonableness of expenses and amount paid in settlement. Such determination and evaluation shall be made in any of the following ways:

- (a) By a majority vote of a quorum of the Board consisting of directors who are not parties or threatened to be made parties to such proceeding.
- (b) If the quorum described in clause (a) above is not obtainable, then by a majority vote of a committee of directors duly designated by the Board and consisting solely of two or more directors who are not at the time parties or threatened to be made parties to the proceeding.
- (c) By independent legal counsel in a written opinion, so long as such counsel is selected (i) by the Board or its committee in the manner prescribed in subparagraph (a) or (b), or (ii) if a

quorum of the Board cannot be obtained under subparagraph (a) and a committee cannot be designated under subparagraph (b), by the Board.

(d) By the Shareholders, but Shares held by directors or officers who are parties or threatened to be made parties to the action, suit or proceeding may not be voted.

11.7 PROPORTIONALITY.

If a person is entitled to indemnification under Section 11.1 or 11.2 of these Bylaws for a portion of expenses, including attorneys' fees, judgments, penalties, fines, and amounts paid in settlement, but not for the total amount thereof, the Company shall indemnify the person for the portion of the expenses, judgments, penalties, fines, or amounts paid in settlement for which the person is entitled to be indemnified.

11.8 ADVANCES.

The Company may pay or reimburse the reasonable expenses incurred by a person referred to in Section 11.1 or 11.2 of these bylaws who is a party or threatened to be made a party to an action, suit, or proceeding in advance of final disposition of the proceeding if (a) the person furnishes the Company a written affirmation of his or her good faith belief that he or she has met the applicable standard of conduct set forth in Section 11.1 or 11.2, (b) the person furnishes the Company a written undertaking executed to personally repay the advance if it is ultimately determined that he or she did not meet the standard of conduct, (c) the authorization of payment is made in the manner specified in Section 11.6, and (d) a determination is made that the facts then known to those making the determination would not preclude indemnification under Section 11.1 or 11.2. The undertaking shall be a general obligation of the person, but need not be secured.

11.9 SCOPE.

The indemnification or advancement of expenses provided under this Article XI is not exclusive of other rights to which a person seeking indemnification or advancement of expenses may be entitled under a contractual arrangement with the Company. However, the total amount of expenses advanced or indemnified from all sources combined shall not exceed the amount of actual expenses incurred by the person seeking indemnification or advancement of expenses.

11.10 AGENTS.

The Company may, to the extent authorized from time to time by the Board, grant rights to indemnification and to the advancement of expenses to any employee or agent of the Company to the fullest extent of the provisions of this Article XI with respect to the indemnification and advancement of expenses of directors and officers of the Company.

11.11 SUCCESSION.

The indemnification provided in this Article XI continues as to a person who has ceased to be a director or officer and shall inure to the benefit of his or her successors.

11.12 INSURANCE.

The Company may buy and maintain insurance on behalf of any person who is or was a director, officer, partner, trustee, employee or agent of the Company, or is or was serving at the request of the Company as a director, officer, employee or agent of another entity or enterprise against any liability asserted against the person and incurred by him or her in any such capacity or arising out of his or her status as such, whether or not the Company would have power to indemnify the person against such liability under these Bylaws or the laws of Massachusetts.

11.13 LEGISLATION.

Upon any change of the Massachusetts statutory provisions relating to the subject matter of this Article XI, the indemnification to which any person shall be entitled hereunder shall be determined by such changed provisions, but only to the extent that any such change permits the Company to provide broader indemnification rights than before any such change. Subject to Section 11.14, the Board may amend these Bylaws to conform to any such changed statutory provisions.

11.14 AMENDMENT.

No amendment or repeal of this Article XI shall apply to any director or officer of the Company for or with respect to any prior acts or omissions of such director or officer.

**XII.
AMENDMENT**

The Bylaws of the Company may be amended, altered or repealed, in whole or in part, by the Shareholders or by the Board at any meeting duly held in accordance with these Bylaws.

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ARTICLES OF INCORPORATION

These Articles of Incorporation are signed by the incorporator to form a profit corporation pursuant to Act 284 of the Michigan Public Acts of 1972, as amended (the "Act"), as follows:

**ARTICLE I
Name**

The name of the corporation is Long Term Care—Michigan, Inc.

**ARTICLE II
Purpose**

Subject to the following two sentences, the corporation may engage in any activity within the purposes for which corporations may be formed under the Act. Nonetheless, the corporation shall not, through any of its employees, provide, offer to provide or hold out the corporation as offering services requiring licensure as a member of the learned professions ("Professionals"). In furtherance of the foregoing, any contracts between the corporation and any Professional shall not be construed as relieving such Professional of his or her independent professional responsibility for the delivery of the professional services for which the licenses have been issued.

**ARTICLE III
Authorized Capital**

The total authorized capital is 60,000 shares of common stock.

**ARTICLE IV
Office and Agent**

The mailing address and street address of the initial registered office is 900 victor's Way, Suite 350, Ann Arbor, Michigan 48108. The initial resident agent at such office is F. Scott Kellman.

**ARTICLE V
Director Liability**

No director of the corporation shall be personally liable to the corporation or its shareholders for monetary damages for breach of fiduciary duty as a director, provided that this Article V shall not affect the liability of a director for (a) a breach of duty of loyalty to the corporation or shareholders, (b) acts or omissions that are not in good faith or that involve intentional misconduct or a knowing violation of law, (c) a violation of Section 551(1) of the Act, or (d) a transaction from which the director derived an improper personal benefit. If the Act is hereafter amended to authorize the further limitation of liability, then the liability of a director shall be limited to the full extent permitted by the Act as so amended. No amendment or repeal of this Article V shall affect the liability of any director with respect to any acts or omissions occurring prior to such amendment or repeal.

**ARTICLE VI
Certain Arrangements**

Whenever a compromise or arrangement or any plan of reorganization of the corporation is proposed between the corporation and its creditors or any class of them and/or between the corporation and its shareholders or any class of them, any court of equity jurisdiction within Michigan may, on the application of the corporation or of any creditor or shareholder thereof, or on the application of any receiver or receivers appointed for the corporation, order a meeting of the creditors or class of creditors, and/or of the shareholders or class of shareholders, as the case may be, to be affected by the proposed compromise or arrangement or reorganization, to be summoned in such

manner as said court directs. If a majority in number, representing three-fourths in value of the creditors or class of creditors, and/or of the shareholders or class of shareholders, as the case may be, to be affected by the proposed compromise or arrangement or reorganization, agrees to any compromise or arrangement or to any reorganization of the corporation as a consequence of such compromise or arrangement, such compromise or arrangement and said reorganization shall, if sanctioned by the court to which the said application has been made, be binding on all creditors or class of creditors, and/or on all shareholders or class of shareholders, as the case may be, and also on the corporation.

ARTICLE VII
Incorporator

The name and business address of the incorporator is Stuart D. Logan, 39577 Woodward Avenue, Suite 300, Bloomfield Hills, Michigan 48304.

I, THE INCORPORATOR, sign my name this 17th day of August, 2001.

/s/ STUART D. LOGAN

Stuart D. Logan, *Incorporator*

BYLAWS OF LONG TERM CARE—MICHIGAN, INC.**I.
Offices**

The principal office of Long Term Care—Michigan, Inc. (the "*Company*") shall be at such place within Michigan or Maryland as the Company's Board of Directors (the "*Board*") shall select from time to time. The Company may have offices at such other places as the Company's business may require.

**II.
Capital**

2.01 *Issuance.* The shares of capital stock of the Company (the "*Shares*") shall be issued in such amounts, at such times, for such consideration and on such terms as the Board shall deem advisable, subject to the Company's Articles of Incorporation (the "*Articles*") and the laws of Michigan.

2.02 *Certificates.* The Shares shall be represented by certificates signed by the President. Each such certificate shall state upon its face that the Company is formed under the laws of Michigan, the person to whom it is issued, the number and class of Shares, and the series designation (if relevant), that the certificate represents, and such other provisions required by Michigan law.

2.03 *Transfer.* The Shares are transferable only on the books of the Company upon surrender of the certificate therefor, properly endorsed for transfer, and the presentation of such evidences of ownership and validity of the assignment as the Company may require.

2.04 *Registration.* The Company shall be entitled to treat the person in whose name any Share is registered as the owner thereof for purposes of dividends and other distributions in the course of business, or in the course of recapitalization, merger, plan of share exchange, reorganization, sale of assets, liquidation or otherwise and for the purpose of votes, approvals and consents by shareholders of the Company ("*Shareholders*"), and for the purpose of notices to Shareholders, and for all other purposes whatever, and shall not be bound to recognize any equitable or other claim to or interest in such Shares on the part of any other person, whether or not the Company shall have notice thereof, save as expressly required by the laws of Michigan.

2.05 *Replacement.* Upon the presentation to the Company of a proper affidavit attesting the loss, destruction or mutilation of any certificate for Shares, the Board shall direct the issuance of a new certificate to replace the certificate so alleged to be lost, destroyed or mutilated. The Board may require as a condition precedent to the issuance of a new certificate a bond or agreement of indemnity, in such form and amount, and with such sureties as the Board may direct or approve.

**III.
Shareholders**

3.01 *Meetings.* Meetings of Shareholders shall be held at the principal office of the Company or at such other place as determined by the Board and stated in the notice of meeting. The annual meeting of Shareholders shall be held on the first Monday of March at 10:30 o'clock in the morning. Directors shall be elected at each annual meeting and such other business transacted as may come before the meeting. Special meetings of Shareholders may be called by the Board, the Chairman (if such office is filled), the President or any Director, and shall be called by the Secretary at the written request of Shareholders holding a majority of the outstanding Shares and entitled to vote. The request shall state the purpose or purposes for which the meeting is to be called.

3.02 *Notice.* Except as otherwise provided by statute or the Articles, written notice of the time, place and purposes of a meeting of Shareholders shall be given not fewer than ten nor more than 60 days before the date of the meeting to each Shareholder of record entitled to vote at the meeting, either personally or by mailing such notice to his last address as it appears on the books of the

Company. No notice need be given of an adjourned meeting of the Shareholders provided the time and place to which such meeting is adjourned are announced at the meeting at which the adjournment is taken and at the adjourned meeting only such business is transacted as might have been transacted at the original meeting. However, if after the adjournment a new record date is fixed for the adjourned meeting a notice of the adjourned meeting shall be given to each Shareholder of record on the new record date entitled to notice as provided in this Bylaw.

3.03 *Dates.* The Board may fix in advance a date as the record date for the purpose of determining Shareholders entitled to notice of and to vote at a meeting of Shareholders or an adjournment thereof, or to express consent or to dissent from a proposal without a meeting, or for the purpose of determining Shareholders entitled to receive payment of a dividend or allotment of a right, or for the purpose of any other action. The date fixed shall not be more than 60 nor fewer than ten days before the date of the meeting, nor more than 60 days before any other action. In such case only such Shareholders as shall be Shareholders of record on the date so fixed shall be entitled to notice of and to vote at such meeting or adjournment thereof, or to express consent or to dissent from such proposal, or to receive payment of such dividend or to receive such allotment of rights, or to participate in any other action, as the case may be, notwithstanding any transfer of any stock on the books of the Company, or otherwise, after any such record date. Nothing in this Bylaw shall affect the rights of a Shareholder and his transferee or transferor as between themselves.

3.04 *Lists.* The Secretary of the Company or the agent of the Company having charge of the stock transfer records for Shares shall make and certify a complete list of the Shareholders entitled to vote at a Shareholders' meeting or any adjournment thereof. The list shall be arranged alphabetically within each class and series, with the address of, and the number of Shares held by, each Shareholder, be produced at the meeting, be subject to inspection by any Shareholder during the meeting, and be prima facie evidence of the Shareholders entitled to examine the list or vote.

3.05 *Quorum.* Unless a greater or lesser quorum is required in the Articles or by the laws of Michigan, the Shareholders present at a meeting in person or by proxy who, as of the record date for such meeting, were holders of a majority of the outstanding Shares entitled to vote at the meeting shall constitute a quorum. Whether or not a quorum is present, a meeting of Shareholders may be adjourned by a vote of the Shares present in person or by proxy. When the holders of a class or series of Shares are entitled to vote separately on an item of business, this Bylaw applies in determining the presence of a quorum of such class or series for transaction of such item of business.

3.06 *Proxies.* A Shareholder entitled to vote at a meeting of Shareholders or to express consent or dissent without a meeting may authorize other persons to act for the Shareholder by proxy. A proxy shall be signed by the Shareholder or the Shareholder's authorized agent or representative.

3.07 *Voting.* Each outstanding Share is entitled to one vote on each matter submitted to a vote. When an action, other than the election of directors, is to be taken by a vote of the Shareholders, it shall be authorized by a majority of the votes cast by the holders of Shares entitled to vote thereon, unless a greater vote is required by the Articles or by the laws of Michigan. Except as otherwise provided by the Articles, directors shall be elected by a plurality of the votes cast at any election.

IV. Directors

4.01 *Number.* The business and affairs of the Company shall be managed by a Board of one director. No director need be a resident of Michigan or a Shareholder.

4.02 *Tenure.* Directors shall be elected at each annual meeting of the Shareholders, each to hold office until the next annual meeting of Shareholders and until the director's successor is elected and qualified, or until the director's resignation or removal. A director may resign by written notice to the

Company. The resignation is effective upon its receipt by the Company or any later date as set forth in the notice of resignation. A director or the entire Board may be removed, with or without cause, by vote of the holders of a majority of the Shares entitled to vote at an election of directors.

4.03 *Vacancies.* Vacancies in the Board occurring by reason of death, resignation, removal, increase in the number of directors or otherwise shall be filled by the affirmative vote of a majority of the remaining directors though less than a quorum of the Board, unless filled by proper action of the Shareholders. Each person so elected shall be a director for a term of office continuing only until the next election of directors by the Shareholders. A vacancy that will occur at a specific date, by reason of a resignation effective at a later date or otherwise, may be filled before the vacancy occurs, but the newly elected director may not take office until the vacancy occurs.

4.04 *Meetings.* The Board shall meet each year immediately after the annual meeting of the Shareholders, or within two days of such time if such later time is deemed advisable, at the place where such meeting of the Shareholders has been held or such other place as the Board may determine, to elect officers and consider such business that may properly be brought before the meeting. If, however, less than a majority of the directors appear for an annual meeting of the Board, the annual meeting need not be held and the matters that might have been addressed therein may be addressed at any later meeting, or by consent resolution. Regular meetings of the Board may be held at such times and places as the majority of the directors may from time to time determine at a prior meeting or as shall be directed or approved by the vote or written consent of all directors. Special meetings of the Board may be called by the Company's president or any director.

4.05 *Notices.* No notice shall be required for annual or regular meetings of the Board or for adjourned meetings, whether regular or special. Three days' written notice shall be given for special meetings of the Board, and such notice shall state the time, place and purposes of the meeting.

4.06 *Quorum.* A majority of the Board then in office, or of the members of a committee thereof, constitutes a quorum for the transaction of business. The vote of a majority of the directors present at any meeting at which there is a quorum shall be the acts of the Board or of the committee, except as a larger vote may be required by the laws of Michigan. A member of the Board or of a committee designated by the Board may participate in a meeting by means of conference telephone by means of which all persons participating in the meeting can communicate with each other. Participation in a meeting in this manner constitutes presence in person at the meeting.

4.07 *Committees.* The Board may, by resolution passed by a majority of the whole Board, appoint three or more members of the Board as an executive committee to exercise all powers and authorities of the Board in management of the business and affairs of the Company, except that the committee shall not have power or authority to (a) amend the Articles; (b) adopt an agreement of merger or consolidation; (c) recommend to Shareholders the sale, lease or exchange of all or substantially all of the Company's property and assets; (d) recommend to Shareholders a dissolution of the Company or revocation of a dissolution; (e) amend these Bylaws; (f) fill vacancies in the Board; or (g) unless expressly authorized by the Board, declare a dividend or authorize the issuance of stock. The Board from time to time may, by like resolution, appoint such other committees of one or more directors to have such authority as shall be specified by the Board in the resolution making such appointments. The Board may designate one or more directors as alternate members of any committee who may replace an absent or disqualified member at any meeting thereof.

4.08 *Dissent.* A director who is present at a meeting of the Board, or a committee thereof of which the director is a member, at which action on a corporate matter is taken is presumed to have concurred in that action unless the director's dissent is entered in the minutes of the meeting or unless the director files a written dissent to the action with the person acting as secretary of the meeting before the adjournment thereof or shall forward such dissent by registered mail to the Secretary of the Company promptly after the adjournment of the meeting. Such right to dissent does not apply to a

director who voted in favor of such action. A director who is absent from a meeting of the Board, or a committee thereof of which the director is a member, at which any such action is taken is presumed to have concurred in the action unless the director files a written dissent with the Secretary of the Company within a reasonable time after the director has knowledge of the action.

4.09 *Compensation.* The Board, by affirmative vote of a majority of directors in office and irrespective of any personal interest of any of them, may establish reasonable compensation of directors for services to the Company as directors or officers.

V. Procedures

5.01 *Notice.* All notices of meetings to be given to Shareholders, directors or any committee of directors may be given by mail, overnight courier, telefax or e-mail to any Shareholder, director or committee member at his last address as it appears on the books of the Company. Such notice shall be deemed to be given at the time when the same shall be mailed or otherwise dispatched.

5.02 *Waiver.* Notice of the time, place and purpose of any meeting of Shareholders, directors or committee of directors may be waived by mail, overnight courier, telefax or e-mail, either before or after the meeting, or in such other manner as permitted by the laws of Michigan. Attendance of a person at any meeting of Shareholders, in person or by proxy, or at any meeting of directors or of a committee of directors, constitutes a waiver of notice of the meeting except as follows:

(a) In the case of a Shareholder, unless the Shareholder at the beginning of the meeting objects to holding the meeting or transacting business at the meeting, or unless with respect to consideration of a particular matter at the meeting that is not within the purposes described in the meeting notice, the Shareholder objects to considering the matter when it is presented.

(b) In the case of a director, unless he or she at the beginning of the meeting, or upon his or her arrival, objects to the meeting or the transacting of business at the meeting and does not thereafter vote for or assent to any action taken at the meeting.

5.03 *Consent.* Any action permitted at any meeting of directors or committee thereof may be taken without a meeting, without prior notice and without a vote, if all directors or committee members entitled to vote thereon consent thereto in writing, before or after the action is taken. Any action permitted at a meeting of Shareholders may be taken without a meeting, without prior notice and without a vote, if all Shareholders entitled to vote thereon consent thereto in writing, before or after the action is taken or if such action otherwise satisfies the Articles and Michigan law.

VI. Officers

6.01 *Number.* The Board shall elect a President, a Secretary and a Treasurer, and may elect a Chairman, a Chief Operating Officer, and/or one or more Vice Presidents, Assistant Secretaries or Assistant Treasurers. The Chairman (if appointed) shall be a member of the Board. Any two or more of the above offices, except those of President and Vice President, may be held by the same person. Any person appointed by the Board to the office of Treasurer shall hold the equivalent title of Chief Financial Officer, and any person appointed by the Board to the office of Vice President-Finance or the office of Chief Financial Officer shall serve as Treasurer and shall forthwith succeed any incumbent holder of any such title. No officer shall execute an instrument in multiple capacities if the instrument is required by law to be acknowledged or verified by two or more officers.

6.02 *Term.* An officer shall hold office for the term for which he is elected or appointed and until his successor is elected or appointed and qualified, or until his resignation or removal. An officer may resign by written notice to the Company. The resignation is effective upon its receipt by the

Company or at a subsequent time specified in the notice of resignation. An officer may be removed by the Board with or without cause. The removal of an officer shall be without prejudice to his contract rights, if any. The appointment of an officer does not of itself create contract rights.

6.03 *Vacancies.* The Board may fill any vacancies in any office occurring for whatever reason.

6.04 *Authority.* All officers, employees and agents of the Company shall have such authority and perform such duties in the conduct and management of the business and affairs of the Company as may be designated by the Board and these Bylaws, and, in that regard,

(a) all checks, drafts, notes, bonds, bills of exchange and orders for payment by the Company may, subject to any contrary resolution adopted by the Board from time to time, be signed by the President, the Chief Operating Officer, the Chief Financial Officer or any Vice President, and

(b) the Board may in any instance designate the officer and/or agent who shall have authority to execute any contract, conveyance, mortgage or other instrument on behalf of the Company, or may ratify or confirm any execution (although when the execution of any instrument has been authorized without specification of the executing officers or agents, the President, Chief Executive Officer or any Vice President may execute the same and on behalf of the Company).

VII. Duties

7.01 *Chairman.* The Chairman, if any is appointed, shall preside at all meetings of the Shareholders and of the Board at which the Chairman is present. The Chairman shall hold only such further authority as is expressly ascribed to him by these Bylaws and the resolutions of the Board.

7.02 *President.* The President shall be the chief executive officer of the Company, shall see that all resolutions of the Board are carried into effect, shall have the general powers of supervision usually vested in the chief executive officer of a corporation, and, subject to any contrary directives by the Board, shall hold authority (a) to direct (and commit) the Company's resources toward the achievement of the Company's goals, (b) to vote all securities or other interests of other business organizations held by the Company, and (c) to take such further actions to the extent approved by the Board. The President shall also hold authority equivalent to that held by the Chief Operating Officer, although, in the absence of a specific contrary directive by the Board or the President, such authority shall be left to the Chief Operating Officer. In the absence of the Secretary and any Assistant Secretary, the President may exercise the authority otherwise reserved to the Secretary.

7.03 *COO.* The Chief Operating Officer shall assume managerial responsibility over the day-to-day operations of the Company, shall exercise authority subject only to the directives of the President and the Board, and, subject to any contrary directive by the President or Board, shall hold (a) authority to supervise Company personnel, and (b) any further authority granted by the Board.

7.04 *Vice Presidents.* The Vice Presidents, in order of their seniority, shall, in the absence or disability of the President, perform the duties and exercise the powers of the President. Subject to the third sentence of Bylaw 6.01, the Vice Presidents shall in any event hold operating responsibility for those aspects of the Company's business referenced in any specific title of the particular Vice President, and shall perform such other duties as may be delegated by the Board or President.

7.05 *Secretary.* The Secretary shall record all votes and minutes of all proceedings in a book to be kept for that purpose, shall give or cause to be given notice of all meetings of the Shareholders and of the Board, and shall keep in safe custody the seal of the Company and, when authorized by the Board, affix the same to any instrument requiring it, and when so affixed it shall be attested by the signature of the Secretary, or by the signature of the Treasurer or an Assistant Secretary. The Secretary

may delegate any of the duties, powers and authorities of the Secretary to one or more Assistant Secretaries, unless such delegation is disapproved by the Board.

7.06 *Treasurer.* Subject to the authority of any Vice President charged with the responsibility for the Company's finances, the Treasurer shall have the custody of corporate funds and securities, shall keep full and accurate accounts of receipts and disbursements in books of the Company and shall deposit all moneys and other value in the name and to the credit of the Company in such depositories as may be designated by the Board. The Treasurer shall render to the President and directors, whenever they may require it, an account of his or her transactions as Treasurer and of the financial condition of the Company. The Treasurer may delegate any of his or her duties, powers and authorities to one or more Assistant Treasurers unless such delegation is disapproved by the Board.

7.07 *Assistants.* The Assistant Secretaries, in order of their seniority, shall perform the duties and exercise the powers and authorities of the Secretary in case of the Secretary's absence or disability. The Assistant Treasurers, in the order of their seniority, shall perform the duties and exercise the powers and authorities of the Treasurer in case of the Treasurer's absence or disability. The Assistant Secretaries and Assistant Treasurers shall also perform such duties as may be delegated by the Secretary and Treasurer, respectively, and also such duties as the Board may prescribe.

VIII. Records

8.01 *Maintenance.* The proper officers and agents of the Company shall keep and maintain such books, records and accounts of the Company's business and affairs, minutes of the proceedings of its Shareholders, Board and committees, if any, and such stock ledgers and lists of Shareholders, as the Board shall deem advisable, and as shall be required by the laws of Michigan and other states or jurisdictions empowered to impose such requirements. Books, records and minutes may be kept within or without Michigan in a place which the Board shall determine.

8.02 *Reliance.* In discharging his or her duties, a director or an officer of the Company, when acting in good faith, may rely upon information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by (a) one or more directors, officers, or employees of the Company, or of a business organization under joint control or common control, whom the director or officer reasonably believes to be reliable and competent in the matters presented, (b) legal counsel, public accountants, engineers, or other persons as to matters the director or officer reasonably believes are within the person's professional or expert competence, or (c) a committee of the board of which he or she is not a member if the director or officer reasonably believes the committee merits confidence. A director or officer may not rely on any information if he or she has knowledge concerning the matter that makes reliance otherwise permitted unwarranted.

IX. Indemnification

9.01 *Personal.* Subject to all of the other provisions of this Article IX, the Company shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative and whether formal or informal (other than an action by or in the right of the Company) by reason that the person is or was a director or officer of the Company, or is or was serving at the request of the Company as a director, officer, partner, trustee, employee, or agent of another entity or enterprise, against expenses (including reasonable attorneys' fees), judgments, penalties and amounts paid in settlement reasonably incurred by him or her in connection with such action, suit or proceeding, if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the Company or the Shareholders, and, with respect to any criminal action or

proceeding, if the person had no reasonable cause to believe his or her conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which the person reasonably believed to be in or not opposed to the best interests of the Company or the Shareholders, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his or her conduct was unlawful.

9.02 *Derivative.* Subject to all of the provisions of this Article IX, the Company shall indemnify any person who was or is a party to or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Company to procure a judgment in its favor by reason of the fact that the person is or was a director or officer of the Company, or is or was serving at the request of the Company as a director, officer, partner, trustee, employee, or agent of another foreign or domestic corporation, partnership, joint venture, trust or other enterprise, whether for profit or not, against expenses (including attorneys' fees) and amounts paid in settlement reasonably incurred by the person in connection with such action or suit, if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the Company or the Shareholders. However, indemnification shall not be made for any claim, issue or matter in which such person has been found liable to the Company unless and only to the extent that the court in which such action or suit was brought has determined upon application that, despite the adjudication of liability but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnification for the reasonable expenses incurred.

9.03 *Expenses.* To the extent that a person has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Section 9.01 or 9.02 of these Bylaws, or in defense of any claim, issue or matter in the action, suit or proceeding, the person shall be indemnified against actual and reasonable expenses (including attorneys' fees) incurred by such person in connection with the action, suit or proceeding and any action, suit or proceeding brought to enforce the mandatory indemnification provided by this Section 9.03.

9.04 *Definitions.* For purposes of Sections 9.01 and 9.02, "other enterprises" shall include employee benefit plans; "fines" shall include any excise taxes assessed on a person with respect to an employee benefit plan; and "serving at the request of the Company" shall include any service as a director, officer, employee, or agent of the Company that imposes duties on, or involves services by, the director or officer with respect to an employee benefit plan, its participants or beneficiaries; and a person who acted in good faith and in a manner the person reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be considered to have acted in a manner "not opposed to the best interests of the Company or the Shareholders".

9.05 *Parameters.* The right to indemnification conferred in this Article IX shall be a contract right, and shall apply to services of a director or officer as an employee or agent of the Company as well as in such person's capacity as a director or officer. Except as provided in Section 9.03 of these Bylaws, the Company shall have no obligations under this Article IX to indemnify any person in connection with any proceeding, or part thereof, initiated by him or her without Board authorization.

9.06 *Determination.* Any indemnification under Section 9.01 or 9.02 of these Bylaws (unless ordered by a court) shall be made by the Company only as authorized in the specific case upon a determination that indemnification of the person is proper in the circumstances because the person has met the applicable standard of conduct set forth in Section 9.01 or 9.02, whichever is applicable, and upon an evaluation of the reasonableness of expenses and amount paid in settlement. Such determination and evaluation shall be made in any of the following ways:

- (a) By a majority vote of a quorum of the Board consisting of directors who are not parties or threatened to be made parties to such proceeding.

(b) If the quorum described in clause (a) above is not obtainable, then by a majority vote of a committee of directors duly designated by the Board and consisting solely of two or more directors who are not at the time parties or threatened to be made parties to the proceeding.

(c) By independent legal counsel in a written opinion, so long as such counsel is selected (i) by the Board or its committee in the manner prescribed in subparagraph (a) or (b), or (ii) if a quorum of the Board cannot be obtained under subparagraph (a) and a committee cannot be designated under subparagraph (b), by the Board.

(d) By the Shareholders, but Shares held by directors or officers who are parties or threatened to be made parties to the action, suit or proceeding may not be voted.

9.07 *Proportionality.* If a person is entitled to indemnification under Section 9.01 or 9.02 of these Bylaws for a portion of expenses, including attorneys' fees, judgments, penalties, fines, and amounts paid in settlement, but not for the total amount thereof, the Company shall indemnify the person for the portion of the expenses, judgments, penalties, fines, or amounts paid in settlement for which the person is entitled to be indemnified.

9.08 *Advances.* The Company may pay or reimburse the reasonable expenses incurred by a person referred to in Section 9.01 or 9.02 of these Bylaws who is a party or threatened to be made a party to an action, suit, or proceeding in advance of final disposition of the proceeding if (a) the person furnishes the Company a written affirmation of his or her good faith belief that he or she has met the applicable standard of conduct set forth in Section 9.01 or 9.02, (b) the person furnishes the Company a written undertaking executed to personally repay the advance if it is ultimately determined that he or she did not meet the standard of conduct, (c) the authorization of payment is made in the manner specified in Section 9.06, and (d) a determination is made that the facts then known to those making the determination would not preclude indemnification under Section 9.01 or 9.02. The undertaking shall be a general obligation of the person, but need not be secured.

9.09 *Scope.* The indemnification or advancement of expenses provided under this Article IX is not exclusive of other rights to which a person seeking indemnification or advancement of expenses may be entitled under a contractual arrangement with the Company. However, the total amount of expenses advanced or indemnified from all sources combined shall not exceed the amount of actual expenses incurred by the person seeking indemnification or advancement of expenses.

9.10 *Agents.* The Company may, to the extent authorized from time to time by the Board, grant rights to indemnification and to the advancement of expenses to any employee or agent of the Company to the fullest extent of the provisions of this Article IX with respect to the indemnification and advancement of expenses of directors and officers of the Company.

9.11 *Succession.* The indemnification provided in this Article IX continues as to a person who has ceased to be a director or officer and shall inure to the benefit of his or her successors.

9.12 *Insurance.* The Company may buy and maintain insurance on behalf of any person who is or was a director, officer, partner, trustee, employee or agent of the Company, or is or was serving at the request of the Company as a director, officer, employee or agent of another entity or enterprise against any liability asserted against the person and incurred by him or her in any such capacity or arising out of his or her status as such, whether or not the Company would have power to indemnify the person against such liability under these Bylaws or the laws of Michigan.

9.13 *Legislation.* Upon any change of the Michigan statutory provisions relating to the subject of this Article IX, the indemnification to which any person shall be entitled hereunder shall be determined by such changed provisions, but only to the extent that any such change permits the Company to provide broader indemnification rights than before any such change. Subject to Section 9.14, the Board may amend these Bylaws to conform to any such changed statutory provisions.

9.14 *Amendment.* No amendment or repeal of this Article IX shall apply to any director or officer of the Company for or with respect to any prior acts or omissions of such director or officer.

**X.
Amendment**

The Bylaws of the Company may be amended, altered or repealed, in whole or in part, by the Shareholders or by the Board at any meeting duly held in accordance with these Bylaws.

STATE OF NORTH CAROLINA
Department of the Secretary of State

ARTICLES OF INCORPORATION

Pursuant to §55-2-02 of the General Statutes of North Carolina, the undersigned does hereby submit these Articles of Incorporation for the purpose of forming a business corporation.

1. The name of the corporation is: LONG TERM CARE—NORTH CAROLINA, INC.

2. The number of shares the corporation is authorized to issue is: 1,000.

These shares shall be: *(check either a or b)*

a. all of one class, designated as common stock; or

b. divided into classes or series within a class as provided in the attached schedule, with the information required by N.C.G.S. Section 55-6-01.

3. The street address and county of the initial registered office of the corporation is:

Number and Street 225 Hillsborough Street

City, State, Zip Code Raleigh, North Carolina 27603 County Wake

4. The mailing address *if different from the street address* of the initial registered office is: n/a

5. The name of the initial registered agent is: C T CORPORATION SYSTEM

6. Any other provisions which the corporation elects to include are attached.

7. The name and address of each incorporator is as follows:

Stuart D. Logan, Esq.
39577 Woodward Avenue, Suite 300
Bloomfield Hills, MI 48304-2820

8. These articles will be effective upon filing, unless a date and/or time is specified:

This the 17th day of August, 2001

/s/ STUART D. LOGAN

Signature

Incorporator

Type or Print Name and Title

NOTES:

1. Filing fee is \$125. This document and one exact or conformed copy of these articles must be filed with the Secretary of State. (Revised October, 1997)

QuickLinks

[STATE OF NORTH CAROLINA Department of the Secretary of State ARTICLES OF INCORPORATION](#)

BYLAWS OF LONG TERM CARE—NORTH CAROLINA, INC.**I.
Offices**

The principal office of Long Term Care—North Carolina, Inc. (the "*Company*") shall be at such place within North Carolina or Maryland as the Company's Board of Directors (the "*Board*") shall select from time to time. The Company may have offices at such other places as the Company's business may require.

**II.
Capital**

2.01 *Issuance.* The shares of capital stock of the Company (the "*Shares*") shall be issued in such amounts, at such times, for such consideration and on such terms as the Board shall deem advisable, subject to the Company's Articles of Incorporation (the "*Articles*") and the laws of North Carolina.

2.02 *Certificates.* The Shares shall be represented by certificates signed by the President. Each such certificate shall state upon its face that the Company is formed under the laws of North Carolina, the person to whom it is issued, the number and class of Shares, and the series designation (if relevant), that the certificate represents, and such other provisions required by North Carolina law.

2.03 *Transfer.* The Shares are transferable only on the books of the Company upon surrender of the certificate therefor, properly endorsed for transfer, and the presentation of such evidences of ownership and validity of the assignment as the Company may require.

2.04 *Registration.* The Company shall be entitled to treat the person in whose name any Share is registered as the owner thereof for purposes of dividends and, other distributions in the course of business, or in the course of recapitalization, merger, plan of share exchange, reorganization, sale of assets, liquidation or otherwise and for the purpose of votes, approvals and consents by shareholders of the Company ("*Shareholders*"), and for the purpose of notices to Shareholders, and for all other purposes whatever, and shall not be bound to recognize any equitable or other claim to or interest in such Shares on the part of any other person, whether or not the Company shall have notice thereof, save as expressly required by the laws of North Carolina.

2.05 *Replacement.* Upon the presentation to the Company of a proper affidavit attesting the loss, destruction or mutilation of any certificate for Shares, the Board shall direct the issuance of a new certificate to replace the certificate so alleged to be lost, destroyed or mutilated. The Board may require as a condition precedent to the issuance of a new certificate a bond or agreement of indemnity, in such form and amount, and with such sureties as the Board may direct or approve.

**III.
Shareholders**

3.01 *Meetings.* Meetings of Shareholders shall be held at the principal office of the Company or at such other place as determined by the Board and stated in the notice of meeting. The annual meeting of Shareholders shall be held on the first Monday of March at 10:30 o'clock in the morning. Directors shall be elected at each annual meeting and such other business transacted as may come before the meeting. Special meetings of Shareholders may be called by the Board, the Chairman (if such office is filled), the President or any Director, and shall be called by the Secretary at the written request of Shareholders holding a majority of the outstanding Shares and entitled to vote. The request shall state the purpose or purposes for which the meeting is to be called.

3.02 *Notice.* Except as otherwise provided by statute or the Articles, written notice of the time, place and purposes of a meeting of Shareholders shall be given not fewer than ten nor more than 60 days before the date of the meeting to each Shareholder of record entitled to vote at the meeting, either personally or by mailing such notice to his last address as it appears on the books of the

Company. No notice need be given of an adjourned meeting of the Shareholders provided the time and place to which such meeting is adjourned are announced at the meeting at which the adjournment is taken and at the adjourned meeting only such business is transacted as might have been transacted at the original meeting. However, if after the adjournment a new record date is fixed for the adjourned meeting a notice of the adjourned meeting shall be given to each Shareholder of record on the new record date entitled to notice as provided in this Bylaw.

3.03 *Dates.* The Board may fix in advance a date as the record date for the purpose of determining Shareholders entitled to notice of and to vote at a meeting of Shareholders or an adjournment thereof, or to express consent or to dissent from a proposal without a meeting, or for the purpose of determining Shareholders entitled to receive payment of a dividend or allotment of a right, or for the purpose of any other action. The date fixed shall not be more than 60 nor fewer than ten days before the date of the meeting, nor more than 60 days before any other action. In such case only such Shareholders as shall be Shareholders of record on the date so fixed shall be entitled to notice of and to vote at such meeting or adjournment thereof, or to express consent or to dissent from such proposal, or to receive payment of such dividend or to receive such allotment of rights, or to participate in any other action, as the case may be, notwithstanding any transfer of any stock on the books of the Company, or otherwise, after any such record date. Nothing in this Bylaw shall affect the rights of a Shareholder and his transferee or transferor as between themselves.

3.04 *Lists.* The Secretary of the Company or the agent of the Company having charge of the stock transfer records for Shares shall make and certify a complete list of the Shareholders entitled to vote at a Shareholders' meeting or any adjournment thereof. The list shall be arranged alphabetically within each class and series, with the address of, and the number of Shares held by, each Shareholder, be produced at the meeting, be subject to inspection by any Shareholder during the meeting, and be prima facie evidence of the Shareholders entitled to examine the list or vote.

3.05 *Quorum.* Unless a greater or lesser quorum is required in the Articles or by the laws of North Carolina, the Shareholders present at a meeting in person or by proxy who, as of the record date for such meeting, were holders of a majority of the outstanding Shares entitled to vote at the meeting shall constitute a quorum. Whether or not a quorum is present, a meeting of Shareholders may be adjourned by a vote of the Shares present in person or by proxy. When the holders of a class or series of Shares are entitled to vote separately on an item of business, this Bylaw applies in determining the presence of a quorum of such class or series for transaction of such item of business.

3.06 *Proxies.* A Shareholder entitled to vote at a meeting of Shareholders or to express consent or dissent without a meeting may authorize other persons to act for the Shareholder by proxy. A proxy shall be signed by the Shareholder or the Shareholder's authorized agent or representative.

3.07 *Voting.* Each outstanding Share is entitled to one vote on each matter submitted to a vote. When an action, other than the election of directors, is to be taken by a vote of the Shareholders, it shall be authorized by a majority of the votes cast by the holders of Shares entitled to vote thereon, unless a greater vote is required by the Articles or by the laws of North Carolina. Except as otherwise provided by the Articles, directors shall be elected by a plurality of the votes cast at any election.

IV. Directors

4.01 *Number.* The business and affairs of the Company shall be managed by a Board of one director. No director need be a resident of North Carolina or a Shareholder.

4.02 *Tenure.* Directors shall be elected at each annual meeting of the Shareholders, each to hold office until the next annual meeting of Shareholders and until the director's successor is elected and qualified, or until the director's resignation or removal. A director may resign by written notice to the

Company. The resignation is effective upon its receipt by the Company or any later date as set forth in the notice of resignation. A director or the entire Board may be removed, with or without cause, by vote of the holders of a majority of the Shares entitled to vote at an election of directors.

4.03 *Vacancies.* Vacancies in the Board occurring by reason of death, resignation, removal, increase in the number of directors or otherwise shall be filled by the affirmative vote of a majority of the remaining directors though less than a quorum of the Board, unless filled by proper action of the Shareholders. Each person so elected shall be a director for a term of office continuing only until the next election of directors by the Shareholders. A vacancy that will occur at a specific date, by reason of a resignation effective at a later date or otherwise, may be filled before the vacancy occurs, but the newly elected director may not take office until the vacancy occurs.

4.04 *Meetings.* The Board shall meet each year immediately after the annual meeting of the Shareholders, or within two days of such time if such later time is deemed advisable, at the place where such meeting of the Shareholders has been held or such other place as the Board may determine, to elect officers and consider such business that may properly be brought before the meeting. If, however, less than a majority of the directors appear for an annual meeting of the Board, the annual meeting need not be held and the matters that might have been addressed therein may be addressed at any later meeting, or by consent resolution. Regular meetings of the Board may be held at such times and places as the majority of the directors may from time to time determine at a prior meeting or as shall be directed or approved by the vote or written consent of all directors. Special meetings of the Board may be called by the Company's president or any director.

4.05 *Notices.* No notice shall be required for annual or regular meetings of the Board or for adjourned meetings, whether regular or special. Three days' written notice shall be given for special meetings of the Board, and such notice shall state the time, place and purposes of the meeting.

4.06 *Quorum.* A majority of the Board then in office, or of the members of a committee thereof, constitutes a quorum for the transaction of business. The vote of a majority of the directors present at any meeting at which there is a quorum shall be the acts of the Board or of the committee, except as a larger vote may be required by the laws of North Carolina. A member of the Board or of a committee designated by the Board may participate in a meeting by means of conference telephone by means of which all persons participating in the meeting can communicate with each other. Participation in a meeting in this manner constitutes presence in person at the meeting.

4.07 *Committees.* The Board may, by resolution passed by a majority of the whole Board, appoint three or more members of the Board as an executive committee to exercise all powers and authorities of the Board in management of the business and affairs of the Company, except that the committee shall not have power or authority to (a) amend the Articles; (b) adopt an agreement of merger or consolidation; (c) recommend to Shareholders the sale, lease or exchange of all or substantially all of the Company's property and assets; (d) recommend to Shareholders a dissolution of the Company or revocation of a dissolution; (e) amend these Bylaws; (f) fill vacancies in the Board; or (g) unless expressly authorized by the Board, declare a dividend or authorize the issuance of stock. The Board from time to time may, by like resolution, appoint such other committees of one or more directors to have such authority as shall be specified by the Board in the resolution making such appointments. The Board may designate one or more directors as alternate members of any committee who may replace an absent or disqualified member at any meeting thereof.

4.08 *Dissent.* A director who is present at a meeting of the Board, or a committee thereof of which the director is a member, at which action on a corporate matter is taken is presumed to have concurred in that action unless the director's dissent is entered in the minutes of the meeting or unless the director files a written dissent to the action with the person acting as secretary of the meeting before the adjournment thereof or shall forward such dissent by registered mail to the Secretary of the Company promptly after the adjournment of the meeting. Such right to dissent does not apply to a

director who voted in favor of such action. A director who is absent from a meeting of the Board, or a committee thereof of which the director is a member, at which any such action is taken is presumed to have concurred in the action unless the director files a written dissent with the Secretary of the Company within a reasonable time after the director has knowledge of the action.

4.09 *Compensation.* The Board, by affirmative vote of a majority of directors in office and irrespective of any personal interest of any of them, may establish reasonable compensation of directors for services to the Company as directors or officers.

V. Procedures

5.01 *Notice.* All notices of meetings to be given to Shareholders, directors or any committee of directors may be given by mail, overnight courier, telefax or e-mail to any Shareholder, director or committee member at his last address as it appears on the books of the Company. Such notice shall be deemed to be given at the time when the same shall be mailed or otherwise dispatched.

5.02 *Waiver.* Notice of the time, place and purpose of any meeting of Shareholders, directors or committee of directors may be waived by mail, overnight courier, telefax or e-mail, either before or after the meeting, or in such other manner as permitted by the laws of North Carolina. Attendance of a person at any meeting of Shareholders, in person or by proxy, or at any meeting of directors or of a committee of directors, constitutes a waiver of notice of the meeting except as follows:

(a) In the case of a Shareholder, unless the Shareholder at the beginning of the meeting objects to holding the meeting or transacting business at the meeting, or unless with respect to consideration of a particular matter at the meeting that is not within the purposes described in the meeting notice, the Shareholder objects to considering the matter when it is presented.

(b) In the case of a director, unless he or she at the beginning of the meeting, or upon his or her arrival, objects to the meeting or the transacting of business at the meeting and does not thereafter vote for or assent to any action taken at the meeting.

5.03 *Consent.* Any action permitted at any meeting of directors or committee thereof may be taken without a meeting, without prior notice and without a vote, if all directors or committee members entitled to vote thereon consent thereto in writing, before or after the action is taken. Any action permitted at a meeting of Shareholders may be taken without a meeting, without prior notice and without a vote, if all Shareholders entitled to vote thereon consent thereto in writing, before or after the action is taken or if such action otherwise satisfies the Articles and North Carolina law.

VI. Officers

6.01 *Number.* The Board shall elect a President, a Secretary and a Treasurer, and may elect a Chairman, a Chief Operating Officer, and/or one or more Vice Presidents, Assistant Secretaries or Assistant Treasurers. The Chairman (if appointed) shall be a member of the Board. Any two or more of the above offices, except those of President and Vice President, may be held by the same person. Any person appointed by the Board to the office of Treasurer shall hold the equivalent title of Chief Financial Officer, and any person appointed by the Board to the office of Vice President-Finance or the office of Chief Financial Officer shall serve as Treasurer and shall forthwith succeed any incumbent holder of any such title. No officer shall execute an instrument in multiple capacities if the instrument is required by law to be acknowledged or verified by two or more officers.

6.02 *Term.* An officer shall hold office for the term for which he is elected or appointed and until his successor is elected or appointed and qualified, or until his resignation or removal. An officer may resign by written notice to the Company. The resignation is effective upon its receipt by the

Company or at a subsequent time specified in the notice of resignation. An officer may be removed by the Board with or without cause. The removal of an officer shall be without prejudice to his contract rights, if any. The appointment of an officer does not of itself create contract rights.

6.03 *Vacancies.* The Board may fill any vacancies in any office occurring for whatever reason.

6.04 *Authority.* All officers, employees and agents of the Company shall have such authority and perform such duties in the conduct and management of the business and affairs of the Company as may be designated by the Board and these Bylaws, and, in that regard,

(a) all checks, drafts, notes, bonds, bills of exchange and orders for payment by the Company may, subject to any contrary resolution adopted by the Board from time to time, be signed by the President, the Chief Operating Officer, the Chief Financial Officer or any Vice President, and

(b) the Board may in any instance designate the officer and/or agent who shall have authority to execute any contract, conveyance, mortgage or other instrument on behalf of the Company, or may ratify or confirm any execution (although when the execution of any instrument has been authorized without specification of the executing officers or agents, the President, Chief Executive Officer or any Vice President may execute the same and on behalf of the Company).

VII. Duties

7.01 *Chairman.* The Chairman, if any is appointed, shall preside at all meetings of the Shareholders and of the Board at which the Chairman is present. The Chairman shall hold only such further authority as is expressly ascribed to him by these Bylaws and the resolutions of the Board.

7.02 *President.* The President shall be the chief executive officer of the Company, shall see that all resolutions of the Board are carried into effect, shall have the general powers of supervision usually vested in the chief executive officer of a corporation, and, subject to any contrary directives by the Board, shall hold authority (a) to direct (and commit) the Company's resources toward the achievement of the Company's goals, (b) to vote all securities or other interests of other business organizations held by the Company, and (c) to take such further actions to the extent approved by the Board. The President shall also hold authority equivalent to that held by the Chief Operating Officer, although, in the absence of a specific contrary directive by the Board or the President, such authority shall be left to the Chief Operating Officer. In the absence of the Secretary and any Assistant Secretary, the President may exercise the authority otherwise reserved to the Secretary.

7.03 *COO.* The Chief Operating Officer shall assume managerial responsibility over the day-to-day operations of the Company, shall exercise authority subject only to the directives of the President and the Board, and, subject to any contrary directive by the President or Board, shall hold (a) authority to supervise Company personnel, and (b) any further authority granted by the Board.

7.04 *Vice Presidents.* The Vice Presidents, in order of their seniority, shall, in the absence or disability of the President, perform the duties and exercise the powers of the President. Subject to the third sentence of Bylaw 6.01, the Vice Presidents shall in any event hold operating responsibility for those aspects of the Company's business referenced in any specific title of the particular Vice President, and shall perform such other duties as may be delegated by the Board or President.

7.05 *Secretary.* The Secretary shall record all votes and minutes of all proceedings in a book to be kept for that purpose, shall give or cause to be given notice of all meetings of the Shareholders and of the Board, and shall keep in safe custody the seal of the Company and, when authorized by the Board, affix the same to any instrument requiring it, and when so affixed it shall be attested by the signature of the Secretary, or by the signature of the Treasurer or an Assistant Secretary. The Secretary

may delegate any of the duties, powers and authorities of the Secretary to one or more Assistant Secretaries, unless such delegation is disapproved by the Board.

7.06 *Treasurer.* Subject to the authority of any Vice President charged with the responsibility for the Company's finances, the Treasurer shall have the custody of corporate funds and securities, shall keep full and accurate accounts of receipts and disbursements in books of the Company and shall deposit all moneys and other value in the name and to the credit of the Company in such depositories as may be designated by the Board. The Treasurer shall render to the President and directors, whenever they may require it, an account of his or her transactions as Treasurer and of the financial condition of the Company. The Treasurer may delegate any of his or her duties, powers and authorities to one or more Assistant Treasurers unless such delegation is disapproved by the Board.

7.07 *Assistants.* The Assistant Secretaries, in order of their seniority, shall perform the duties and exercise the powers and authorities of the Secretary in case of the Secretary's absence or disability. The Assistant Treasurers, in the order of their seniority, shall perform the duties and exercise the powers and authorities of the Treasurer in case of the Treasurer's absence or disability. The Assistant Secretaries and Assistant Treasurers shall also perform such duties as may be delegated by the Secretary and Treasurer, respectively, and also such duties as the Board may prescribe.

VIII. Records

8.01 *Maintenance.* The proper officers and agents of the Company shall keep and maintain such books, records and accounts of the Company's business and affairs, minutes of the proceedings of its Shareholders, Board and committees, if any, and such stock ledgers and lists of Shareholders, as the Board shall deem advisable, and as shall be required by the laws of North Carolina and other states or jurisdictions empowered to impose such requirements. Books, records and minutes may be kept within or without North Carolina in a place which the Board shall determine.

8.02 *Reliance.* In discharging his or her duties, a director or an officer of the Company, when acting in good faith, may rely upon information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by (a) one or more directors, officers, or employees of the Company, or of a business organization under joint control or common control, whom the director or officer reasonably believes to be reliable and competent in the matters presented, (b) legal counsel, public accountants, engineers, or other persons as to matters the director or officer reasonably believes are within the person's professional or expert competence, or (c) a committee of the board of which he or she is not a member if the director or officer reasonably believes the committee merits confidence. A director or officer may not rely on any information if he or she has knowledge concerning the matter that makes reliance otherwise permitted unwarranted.

IX. Indemnification

9.01 *Personal.* Subject to: all of the other provisions of this Article IX, the Company shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative and whether formal or informal (other than an action by or in the right of the Company) by reason that the person is or was a director or officer of the Company, or is or was serving at the request of the Company as a director, officer, partner, trustee, employee, or agent of another entity or enterprise, against expenses (including reasonable attorneys' fees), judgments, penalties and amounts paid in settlement reasonably incurred by him or her in connection with such action, suit or proceeding, if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the Company or the Shareholders, and, with respect to any criminal action or

proceeding, if the person had no reasonable cause to believe his or her conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which the person reasonably believed to be in or not opposed to the best interests of the Company or the Shareholders, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his or her conduct was unlawful.

9.02 *Derivative.* Subject to all of the provisions of this Article IX, the Company shall indemnify any person who was or is a party to or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Company to procure a judgment in its favor by reason of the fact that the person is or was a director or officer of the Company, or is or was serving at the request of the Company as a director, officer, partner, trustee, employee, or agent of another foreign or domestic corporation, partnership, joint venture, trust or other enterprise, whether for profit or not, against expenses (including attorneys' fees) and amounts paid in settlement reasonably incurred by the person in connection with such action or suit, if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the Company or the Shareholders. However, indemnification shall not be made for any claim, issue or matter in which such person has been found liable to the Company unless and only to the extent that the court in which such action or suit was brought has determined upon application that, despite the adjudication of liability but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnification for the reasonable expenses incurred.

9.03 *Expenses.* To the extent that a person has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Section 9.01 or 9.02 of these Bylaws, or in defense of any claim, issue or matter in the action, suit or proceeding, the person shall be indemnified against actual and reasonable expenses (including attorneys' fees) incurred by such person in connection with the action, suit or proceeding and any action, suit or proceeding brought to enforce the mandatory indemnification provided by this Section 9.03.

9.04 *Definitions.* For purposes of Sections 9.01 and 9.02, "other enterprises" shall include employee benefit plans; "fines" shall include any excise taxes assessed on a person with respect to an employee benefit plan; and "serving at the request of the Company" shall include any service as a director, officer, employee, or agent of the Company that imposes duties on, or involves services by, the director or officer with respect to an employee benefit plan, its participants or beneficiaries; and a person who acted in good faith and in a manner the person reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be considered to have acted in a manner "not opposed to the best interests of the Company or the Shareholders".

9.05 *Parameters.* The right to indemnification conferred in this Article IX shall be a contract right, and shall apply to services of a director or officer as an employee or agent of the Company as well as in such person's capacity as a director or officer. Except as provided in Section 9.03 of these Bylaws, the Company shall have no obligations under this Article IX to indemnify any person in connection with any proceeding, or part thereof, initiated by him or her without Board authorization.

9.06 *Determination.* Any indemnification under Section 9.01 or 9.02 of these Bylaws (unless ordered by a court) shall be made by the Company only as authorized in the specific case upon a determination that indemnification of the person is proper in the circumstances because the person has met the applicable standard of conduct set forth in Section 9.01 or 9.02, whichever is applicable, and upon an evaluation of the reasonableness of expenses and amount paid in settlement. Such determination and evaluation shall be made in any of the following ways:

- (a) By a majority vote of a quorum of the Board consisting of directors who are not parties or threatened to be made parties to such proceeding.

(b) If the quorum described in clause (a) above is not obtainable, then by a majority vote of a committee of directors duly designated by the Board and consisting solely of two or more directors who are not at the time parties or threatened to be made parties to the proceeding.

(c) By independent legal counsel in a written opinion, so long as such counsel is selected (i) by the Board or its committee in the manner prescribed in subparagraph (a) or (b), or (ii) if a quorum of the Board cannot be obtained under subparagraph (a) and a committee cannot be designated under subparagraph (b), by the Board.

(d) By the Shareholders, but Shares held by directors or officers who are parties or threatened to be made parties to the action, suit or proceeding may not be voted.

9.07 *Proportionality.* If a person is entitled to indemnification under Section 9.01 or 9.02 of these Bylaws for a portion of expenses, including attorneys' fees, judgments, penalties, fines, and amounts paid in settlement, but not for the total amount thereof, the Company shall indemnify the person for the portion of the expenses, judgments, penalties, fines, or amounts paid in settlement for which the person is entitled to be indemnified.

9.08 *Advances.* The Company may pay or reimburse the reasonable expenses incurred by a person referred to in Section 9.01 or 9.02 of these Bylaws who is a party or threatened to be made a party to an action, suit, or proceeding in advance of final disposition of the proceeding if (a) the person furnishes the Company a written affirmation of his or her good faith belief that he or she has met the applicable standard of conduct set forth in Section 9.01 or 9.02, (b) the person furnishes the Company a written undertaking executed to personally repay the advance if it is ultimately determined that he or she did not meet the standard of conduct, (c) the authorization of payment is made in the manner specified in Section 9.06, and (d) a determination is made that the facts then known to those making the determination would not preclude indemnification under Section 9.01 or 9.02. The undertaking shall be a general obligation of the person, but need not be secured.

9.09 *Scope.* The indemnification or advancement of expenses provided under this Article IX is not exclusive of other rights to which a person seeking indemnification or advancement of expenses may be entitled under a contractual arrangement with the Company. However, the total amount of expenses advanced or indemnified from all sources combined shall not exceed the amount of actual expenses incurred by the person seeking indemnification or advancement of expenses.

9.10 *Agents.* The Company may, to the extent authorized from time to time by the Board, grant rights to indemnification and to the advancement of expenses to any employee or agent of the Company to the fullest extent of the provisions of this Article IX with respect to the indemnification and advancement of expenses of directors and officers of the Company.

9.11 *Succession.* The indemnification provided in this Article IX continues as to a person who has ceased to be a director or officer and shall inure to the benefit of his or her successors.

9.12 *Insurance.* The Company may buy and maintain insurance on behalf of any person who is or was a director, officer, partner, trustee, employee or agent of the Company, or is or was serving at the request of the Company as a director, officer, employee or agent of another entity or enterprise against any liability asserted against the person and incurred by him or her in any such capacity or arising out of his or her status as such, whether or not the Company would have power to indemnify the person against such liability under these Bylaws or the laws of North Carolina.

9.13 *Legislation.* Upon any change of the North Carolina statutory provisions relating to the subject of this Article IX, the indemnification to which any person shall be entitled hereunder shall be determined by such changed provisions, but only to the extent that any such change permits the Company to provide broader indemnification rights than before any such change. Subject to Section 9.14, the Board may amend these Bylaws to conform to any such changed statutory provisions.

9.14 *Amendment.* No amendment or repeal of this Article IX shall apply to any director or officer of the Company for or with respect to any prior acts or omissions of such director or officer.

**X.
Amendment**

The Bylaws of the Company may be amended, altered or repealed, in whole or in part, by the Shareholders or by the Board at any meeting duly held in accordance with these Bylaws.

DATE:	DOCUMENT ID	DESCRIPTION	FILING	EXPED	PENALTY	CERT	COPY
04/16/2001	200110300204	DOMESTIC ARTICLES/FOR PROFIT(ARF)	100.00	10.00	.00	.00	.00

Receipt

This is not a bill. Please do not remit payment

CSC
700 S. Second Street
Springfield, IL 62704

STATE OF OHIO

Ohio Secretary of State, J. Kenneth Blackwell

1222454

It is hereby certified that the Secretary of State of Ohio has custody of the business records for

SKILLED NURSING—HICKSVILLE, INC.

and, that said business records show the filing and recording of:

Document(s)
DOMESTIC ARTICLES/FOR PROFIT

Document No(s):
200110300204

[SEAL]

Witness my hand and the seal of the Secretary of State at Columbus, Ohio
this 9th day of April, A.D. 2001.

Ohio Secretary of State

[SEAL]

Prescribed by **J. Kenneth Blackwell**

Please obtain fee amount and mailing instructions from the **Forms Inventory List** (using the 3 digit form # located at the bottom of this form). To obtain the **Forms Inventory List** or for assistance, please call Customer Service:
Central Ohio: (614)-466-3910 Toll Free: 1-877-SOS-FILE (1-877-767-3453)

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ARTICLES OF INCORPORATION

(Under Chapter 1701 of the Ohio Revised Code)

Profit Corporation

The undersigned, desiring to form a corporation, for profit, under Sections 1701.01 et seq. of the Ohio Revised Code, do hereby state the following:

FIRST. The name of said corporation shall be:
SKILLED NURSING—HICKSVILLE, INC.

SECOND. The place in Ohio where its principal office is to be located is
401 Fountain Street, Hicksville, Defiance County, Ohio
(city, village or township)

THIRD. The purpose(s) for which this corporation is formed is:
The purpose for which the corporation is organized to transact any or all lawful business for which corporations may be incorporated under the Act.

FOURTH. The number of shares which the corporation is authorized to have outstanding is: 1,000
(Please state whether shares are common or preferred, and their par value, if any. Shares will be recorded as common with no par value unless otherwise indicated.)

IN WITNESS WHEREOF, we have hereunto subscribed our names, on March 2, 2001
(date)

Signature: /s/ PATRICIA RYAN, Incorporator

Name:

Signature: , Incorporator

Name:

Signature: , Incorporator

Name:

BYLAWS OF SKILLED NURSING—HICKSVILLE, INC.**I.
Offices**

The principal office of Skilled Nursing—Hicksville, Inc. (the "Company") shall be at such place within Michigan or Indiana as the Company's Board of Directors (the "Board") shall select from time to time. The Company may have offices at such other places as the Company's business may require.

**II.
Capital**

2.01 *Issuance.* The shares of capital stock of the Company (the "Shares") shall be issued in such amounts, at such times, for such consideration and on such terms as the Board shall deem advisable, subject to the Company's Articles of Incorporation (the "Articles") and the laws of Indiana.

2.02 *Certificates.* The Shares shall be represented by certificates signed by the President. Each such certificate shall state upon its face that the Company is formed under the laws of Indiana, the person to whom it is issued, the number and class of Shares, and the designation of the series, if any, that the certificate represents, and such other provisions as may be required by Indiana law.

2.03 *Transfer.* The Shares are transferable only on the books of the Company upon surrender of the certificate therefor, properly endorsed for transfer, and the presentation of such evidences of ownership and validity of the assignment as the Company may require.

2.04 *Registration.* The Company shall be entitled to treat the person in whose name any Share is registered as the owner thereof for purposes of dividends and other distributions in the course of business, or in the course of recapitalization, merger, plan of share exchange, reorganization, sale of assets, liquidation or otherwise and for the purpose of votes, approvals and consents by shareholders of the Company ("Shareholders"), and for the purpose of notices to Shareholders, and for all other purposes whatever, and shall not be bound to recognize any equitable or other claim to or interest in such Shares on the part of any other person, whether or not the Company shall have notice thereof, save as expressly required by the laws of Indiana.

2.05 *Replacement.* Upon the presentation to the Company of a proper affidavit attesting the loss, destruction or mutilation of any certificate for Shares, the Board shall direct the issuance of a new certificate to replace the certificate so alleged to be lost, destroyed or mutilated. The Board may require as a condition precedent to the issuance of a new certificate a bond or agreement of indemnity, in such form and amount, and with such sureties as the Board may direct or approve.

**III.
Shareholders**

3.01 *Meetings.* Meetings of Shareholders shall be held at the principal office of the Company or at such other place as determined by the Board and stated in the notice of meeting. The annual meeting of Shareholders shall be held on the first Monday of March at 10:30 o'clock in the morning. Directors shall be elected at each annual meeting and such other business transacted as may come before the meeting. Special meetings of Shareholders may be called by the Board, the Chairman (if such office is filled), the President or any Director, and shall be called by the Secretary at the written request of Shareholders holding a majority of the outstanding Shares and entitled to vote. The request shall state the purpose or purposes for which the meeting is to be called.

3.02 *Notice.* Except as otherwise provided by statute or the Articles, written notice of the time, place and purposes of a meeting of Shareholders shall be given not fewer than ten nor more than 60 days before the date of the meeting to each Shareholder of record entitled to vote at the meeting, either personally or by mailing such notice to his last address as it appears on the books of the

Company. No notice need be given of an adjourned meeting of the Shareholders provided the time and place to which such meeting is adjourned are announced at the meeting at which the adjournment is taken and at the adjourned meeting only such business is transacted as might have been transacted at the original meeting. However, if after the adjournment a new record date is fixed for the adjourned meeting a notice of the adjourned meeting shall be given to each Shareholder of record on the new record date entitled to notice as provided in this Bylaw.

3.03 *Dates.* The Board may fix in advance a date as the record date for the purpose of determining Shareholders entitled to notice of and to vote at a meeting of Shareholders or an adjournment thereof, or to express consent or to dissent from a proposal without a meeting, or for the purpose of determining Shareholders entitled to receive payment of a dividend or allotment of a right, or for the purpose of any other action. The date fixed shall not be more than 60 nor fewer than ten days before the date of the meeting, nor more than 60 days before any other action. In such case only such Shareholders as shall be Shareholders of record on the date so fixed shall be entitled to notice of and to vote at such meeting or adjournment thereof, or to express consent or to dissent from such proposal, or to receive payment of such dividend or to receive such allotment of rights, or to participate in any other action, as the case may be, notwithstanding any transfer of any stock on the books of the Company, or otherwise, after any such record date. Nothing in this Bylaw shall affect the rights of a Shareholder and his transferee or transferor as between themselves.

3.04 *Lists.* The Secretary of the Company or the agent of the Company having charge of the stock transfer records for Shares shall make and certify a complete list of the Shareholders entitled to vote at a Shareholders' meeting or any adjournment thereof. The list shall be arranged alphabetically within each class and series, with the address of, and the number of Shares held by, each Shareholder, be produced at the meeting, be subject to inspection by any Shareholder during the meeting, and be prima facie evidence of the Shareholders entitled to examine the list or vote.

3.05 *Quorum.* Unless a greater or lesser quorum is required in the Articles or by the laws of Indiana, the Shareholders present at a meeting in person or by proxy who, as of the record date for such meeting, were holders of a majority of the outstanding Shares entitled to vote at the meeting shall constitute a quorum. Whether or not a quorum is present, a meeting of Shareholders may be adjourned by a vote of the Shares present in person or by proxy. When the holders of a class or series of Shares are entitled to vote separately on an item of business, this Bylaw applies in determining the presence of a quorum of such class or series for transaction of such item of business.

3.06 *Proxies.* A Shareholder entitled to vote at a meeting of Shareholders or to express consent or dissent without a meeting may authorize other persons to act for the Shareholder by proxy. A proxy shall be signed by the Shareholder or the Shareholder's authorized agent or representative.

3.07 *Voting.* Each outstanding Share is entitled to one vote on each matter submitted to a vote. When an action, other than the election of directors, is to be taken by a vote of the Shareholders, it shall be authorized by a majority of the votes cast by the holders of Shares entitled to vote thereon, unless a greater vote is required by the Articles or by the laws of Indiana. Except as otherwise provided by the Articles, directors shall be elected by a plurality of the votes cast at any election.

IV. Directors

4.01 *Number.* The business and affairs of the Company shall be managed by a Board of one director. No director need be a resident of Indiana or a Shareholder.

4.02 *Tenure.* Directors shall be elected at each annual meeting of the Shareholders, each to hold office until the next annual meeting of Shareholders and until the director's successor is elected and qualified, or until the director's resignation or removal. A director may resign by written notice to the

Company. The resignation is effective upon its receipt by the Company or any later date as set forth in the notice of resignation. A director or the entire Board may be removed, with or without cause, by vote of the holders of a majority of the Shares entitled to vote at an election of directors.

4.03 *Vacancies.* Vacancies in the Board occurring by reason of death, resignation, removal, increase in the number of directors or otherwise shall be filled by the affirmative vote of a majority of the remaining directors though less than a quorum of the Board, unless filled by proper action of the Shareholders. Each person so elected shall be a director for a term of office continuing only until the next election of directors by the Shareholders. A vacancy that will occur at a specific date, by reason of a resignation effective at a later date or otherwise, may be filled before the vacancy occurs, but the newly elected director may not take office until the vacancy occurs.

4.04 *Meetings.* The Board shall meet each year immediately after the annual meeting of the Shareholders, or within two days of such time if such later time is deemed advisable, at the place where such meeting of the Shareholders has been held or such other place as the Board may determine, to elect officers and consider such business that may properly be brought before the meeting. If, however, less than a majority of the directors appear for an annual meeting of the Board, the annual meeting need not be held and the matters that might have been addressed therein may be addressed at any later meeting, or by consent resolution. Regular meetings of the Board may be held at such times and places as the majority of the directors may from time to time determine at a prior meeting or as shall be directed or approved by the vote or written consent of all directors. Special meetings of the Board may be called by the Company's president or any director.

4.05 *Notices.* No notice shall be required for annual or regular meetings of the Board or for adjourned meetings, whether regular or special. Three days' written notice shall be given for special meetings of the Board, and such notice shall state the time, place and purposes of the meeting.

4.06 *Quorum.* A majority of the Board then in office, or of the members of a committee thereof, constitutes a quorum for the transaction of business. The vote of a majority of the directors present at any meeting at which there is a quorum shall be the acts of the Board or of the committee, except as a larger vote may be required by the laws of Indiana. A member of the Board or of a committee designated by the Board may participate in a meeting by means of conference telephone by means of which all persons participating in the meeting can communicate with each other. Participation in a meeting in this manner constitutes presence in person at the meeting.

4.07 *Committees.* The Board may, by resolution passed by a majority of the whole Board, appoint three or more members of the Board as an executive committee to exercise all powers and authorities of the Board in management of the business and affairs of the Company, except that the committee shall not have power or authority to (a) amend the Articles; (b) adopt an agreement of merger or consolidation; (c) recommend to Shareholders the sale, lease or exchange of all or substantially all of the Company's property and assets; (d) recommend to Shareholders a dissolution of the Company or revocation of a dissolution; (e) amend these Bylaws; (f) fill vacancies in the Board; or (g) unless expressly authorized by the Board, declare a dividend or authorize the issuance of stock. The Board from time to time may, by like resolution, appoint such other committees of one or more directors to have such authority as shall be specified by the Board in the resolution making such appointments. The Board may designate one or more directors as alternate members of any committee who may replace an absent or disqualified member at any meeting thereof.

4.08 *Dissent.* A director who is present at a meeting of the Board, or a committee thereof of which the director is a member, at which action on a corporate matter is taken is presumed to have concurred in that action unless the director's dissent is entered in the minutes of the meeting or unless the director files a written dissent to the action with the person acting as secretary of the meeting before the adjournment thereof or shall forward such dissent by registered mail to the Secretary of the Company promptly after the adjournment of the meeting. Such right to dissent does not apply to a

director who voted in favor of such action. A director who is absent from a meeting of the Board, or a committee thereof of which the director is a member, at which any such action is taken is presumed to have concurred in the action unless the director files a written dissent with the Secretary of the Company within a reasonable time after the director has knowledge of the action.

4.09 *Compensation.* The Board, by affirmative vote of a majority of directors in office and irrespective of any personal interest of any of them, may establish reasonable compensation of directors for services to the Company as directors or officers.

V. Procedures

5.01 *Notice.* All notices of meetings to be given to Shareholders, directors or any committee of directors may be given by mail, overnight courier, telefax or e-mail to any Shareholder, director or committee member at his last address as it appears on the books of the Company. Such notice shall be deemed to be given at the time when the same shall be mailed or otherwise dispatched.

5.02 *Waiver.* Notice of the time, place and purpose of any meeting of Shareholders, directors or committee of directors may be waived by mail, overnight courier, telefax or e-mail, either before or after the meeting, or in such other manner as may be permitted by the laws of Indiana. Attendance of a person at any meeting of Shareholders, in person or by proxy, or at any meeting of directors or of a committee of directors, constitutes a waiver of notice of the meeting except as follows:

(a) In the case of a Shareholder, unless the Shareholder at the beginning of the meeting objects to holding the meeting or transacting business at the meeting, or unless with respect to consideration of a particular matter at the meeting that is not within the purposes described in the meeting notice, the Shareholder objects to considering the matter when it is presented.

(b) In the case of a director, unless he or she at the beginning of the meeting, or upon his or her arrival, objects to the meeting or the transacting of business at the meeting and does not thereafter vote for or assent to any action taken at the meeting.

5.03 *Consent.* Any action permitted at any meeting of directors or committee thereof may be taken without a meeting, without prior notice and without a vote, if all directors or committee members entitled to vote thereon consent thereto in writing, before or after the action is taken. Any action required or permitted at any meeting of Shareholders may be taken without a meeting, without prior notice and without a vote, if all Shareholders entitled to vote thereon consent thereto in writing, before or after the action is taken or if such action otherwise satisfies the Articles and Indiana law.

VI. Officers

6.01 *Number.* The Board shall elect or appoint a President, a Chief Operating Officer, a Secretary and a Treasurer, and may elect a Chairman, and/or one or more Vice Presidents, Assistant Secretaries or Assistant Treasurers. The Chairman (if appointed) shall be a member of the Board. Any two or more of the above offices, except those of President and Vice President, may be held by the same person. Any person appointed by the Board to the office of Treasurer shall hold the equivalent title of *Chief Financial Officer*, and any person appointed by the Board to the office of *Vice President-Finance* or the office of *Chief Financial Officer* shall serve as Treasurer and shall forthwith succeed any incumbent holder of any such title. No officer shall execute an instrument in multiple capacities if the instrument is required by law to be acknowledged or verified by two or more officers.

6.02 *Term.* An officer shall hold office for the term for which he is elected or appointed and until his successor is elected or appointed and qualified, or until his resignation or removal. An officer may resign by written notice to the Company. The resignation is effective upon its receipt by the

Company or at a subsequent time specified in the notice of resignation. An officer may be removed by the Board with or without cause. The removal of an officer shall be without prejudice to his contract rights, if any. The appointment of an officer does not of itself create contract rights.

6.03 *Vacancies.* The Board may fill any vacancies in any office occurring for whatever reason.

6.04 *Authority.* All officers, employees and agents of the Company shall have such authority and perform such duties in the conduct and management of the business and affairs of the Company as may be designated by the Board and these Bylaws, and, in that regard,

(a) all checks, drafts, notes, bonds, bills of exchange and orders for payment by the Company may, subject to any contrary resolution adopted by the Board from time to time, be signed by the President, the Chief Operating Officer, the Chief Financial Officer or any Vice President, and

(b) the Board may in any instance designate the officer and/or agent who shall have authority to execute any contract, conveyance, mortgage or other instrument on behalf of the Company, or may ratify or confirm any execution (although when the execution of any instrument has been authorized without specification of the executing officers or agents, the President, Chief Executive Officer or any Vice President may execute the same and on behalf of the Company).

VII. Duties

7.01 *Chairman.* The Chairman, if any is appointed, shall preside at all meetings of the Shareholders and of the Board at which the Chairman is present. The Chairman shall hold only such further authority as is expressly ascribed to him by these Bylaws and the resolutions of the Board.

7.02 *President.* The President shall be the chief executive officer of the Company, shall see that all resolutions of the Board are carried into effect, shall have the general powers of supervision usually vested in the chief executive officer of a corporation, and, subject to any contrary directives by the Board, shall hold authority (a) to direct (and commit) the Company's resources toward the achievement of the Company's goals, (b) to vote all securities or other interests of other business organizations held by the Company, and (c) to take such further actions to the extent approved by the Board. The President shall also hold authority equivalent to that held by the Chief Operating Officer, although, in the absence of a specific contrary directive by the Board or the President, such authority shall be left to the Chief Operating Officer. In the absence of the Secretary and any Assistant Secretary, the President may exercise the authority otherwise reserved to the Secretary.

7.03 *COO.* The Chief Operating Officer shall assume managerial responsibility over the day-today operations of the Company, shall exercise authority subject only to the directives of the President and the Board, and, subject to any contrary directive by the President or Board, shall hold (a) authority to supervise Company personnel, and (b) any further authority granted by the Board.

7.04 *Vice Presidents.* The Vice Presidents, in order of their seniority, shall, in the absence or disability of the President, perform the duties and exercise the powers of the President. Subject to the third sentence of Bylaw 6.01, the Vice Presidents shall in any event hold operating responsibility for those aspects of the Company's business referenced in any specific title of the particular Vice President, and shall perform such other duties as may be delegated by the Board or President.

7.05 *Secretary.* The Secretary shall record all votes and minutes of all proceedings in a book to be kept for that purpose, shall give or cause to be given notice of all meetings of the Shareholders and of the Board, and shall keep in safe custody the seal of the Company and, when authorized by the Board, affix the same to any instrument requiring it, and when so affixed it shall be attested by the signature of the Secretary, or by the signature of the Treasurer or an Assistant Secretary. The Secretary

may delegate any of the duties, powers and authorities of the Secretary to one or more Assistant Secretaries, unless such delegation is disapproved by the Board.

7.06 *Treasurer.* Subject to the authority of any Vice President charged with the responsibility for the Company's finances, the Treasurer shall have the custody of corporate funds and securities, shall keep full and accurate accounts of receipts and disbursements in books of the Company and shall deposit all moneys and other value in the name and to the credit of the Company in such depositories as may be designated by the Board. The Treasurer shall render to the President and directors, whenever they may require it, an account of his or her transactions as Treasurer and of the financial condition of the Company. The Treasurer may delegate any of his or her duties, powers and authorities to one or more Assistant Treasurers unless such delegation is disapproved by the Board.

7.07 *Assistants.* The Assistant Secretaries, in order of their seniority, shall perform the duties and exercise the powers and authorities of the Secretary in case of the Secretary's absence or disability. The Assistant Treasurers, in the order of their seniority, shall perform the duties and exercise the powers and authorities of the Treasurer in case of the Treasurer's absence or disability. The Assistant Secretaries and Assistant Treasurers shall also perform such duties as may be delegated by the Secretary and Treasurer, respectively, and also such duties as the Board may prescribe.

VIII. Records

8.01 *Maintenance.* The proper officers and agents of the Company shall keep and maintain such books, records and accounts of the Company's business and affairs, minutes of the proceedings of its Shareholders, Board and committees, if any, and such stock ledgers and lists of Shareholders, as the Board shall deem advisable, and as shall be required by the laws of Indiana and other states or jurisdictions empowered to impose such requirements. Books, records and minutes may be kept within or without Indiana in a place which the Board shall determine.

8.02 *Reliance.* In discharging his or her duties, a director or an officer of the Company, when acting in good faith, may rely upon information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by (a) one or more directors, officers, or employees of the Company, or of a business organization under joint control or common control, whom the director or officer reasonably believes to be reliable and competent in the matters presented, (b) legal counsel, public accountants, engineers, or other persons as to matters the director or officer reasonably believes are within the person's professional or expert competence, or (c) a committee of the board of which he or she is not a member if the director or officer reasonably believes the committee merits confidence. A director or officer may not rely on any information if he or she has knowledge concerning the matter that makes reliance otherwise permitted unwarranted.

IX. Indemnification

9.01 *Personal.* Subject to all of the other provisions of this Article IX, the Company shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative and whether formal or informal (other than an action by or in the right of the Company) by reason that the person is or was a director or officer of the Company, or is or was serving at the request of the Company as a director, officer, partner, trustee, employee, or agent of another entity or enterprise, against expenses (including reasonable attorneys' fees), judgments, penalties and amounts paid in settlement reasonably incurred by him or her in connection with such action, suit or proceeding, if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the Company or the Shareholders, and, with respect to any criminal action or

proceeding, if the person had no reasonable cause to believe his or her conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which the person reasonably believed to be in or not opposed to the best interests of the Company or the Shareholders, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his or her conduct was unlawful.

9.02 *Derivative.* Subject to all of the provisions of this Article IX, the Company shall indemnify any person who was or is a party to or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Company to procure a judgment in its favor by reason of the fact that the person is or was a director or officer of the Company, or is or was serving at the request of the Company as a director, officer, partner, trustee, employee, or agent of another foreign or domestic corporation, partnership, joint venture, trust or other enterprise, whether for profit or not, against expenses (including attorneys' fees) and amounts paid in settlement reasonably incurred by the person in connection with such action or suit, if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the Company or the Shareholders. However, indemnification shall not be made for any claim, issue or matter in which such person has been found liable to the Company unless and only to the extent that the court in which such action or suit was brought has determined upon application that, despite the adjudication of liability but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnification for the reasonable expenses incurred.

9.03 *Expenses.* To the extent that a person has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Section 9.01 or 9.02 of these Bylaws, or in defense of any claim, issue or matter in the action, suit or proceeding, the person shall be indemnified against actual and reasonable expenses (including attorneys' fees) incurred by such person in connection with the action, suit or proceeding and any action, suit or proceeding brought to enforce the mandatory indemnification provided by this Section 9.03.

9.04 *Definitions.* For purposes of Sections 9.01 and 9.02, "other enterprises" shall include employee benefit plans; "fines" shall include any excise taxes assessed on a person with respect to an employee benefit plan; and "serving at the request of the Company" shall include any service as a director, officer, employee, or agent of the Company that imposes duties on, or involves services by, the director or officer with respect to an employee benefit plan, its participants or beneficiaries; and a person who acted in good faith and in a manner the person reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be considered to have acted in a manner "not opposed to the best interests of the Company or the Shareholders".

9.05 *Parameters.* The right to indemnification conferred in this Article IX shall be a contract right, and shall apply to services of a director or officer as an employee or agent of the Company as well as in such person's capacity as a director or officer. Except as provided in Section 9.03 of these Bylaws, the Company shall have no obligations under this Article IX to indemnify any person in connection with any proceeding, or part thereof, initiated by him or her without Board authorization.

9.06 *Determination.* Any indemnification under Section 9.01 or 9.02 of these Bylaws (unless ordered by a court) shall be made by the Company only as authorized in the specific case upon a determination that indemnification of the person is proper in the circumstances because the person has met the applicable standard of conduct set forth in Section 9.01 or 9.02, whichever is applicable, and upon an evaluation of the reasonableness of expenses and amount paid in settlement. Such determination and evaluation shall be made in any of the following ways:

- (a) By a majority vote of a quorum of the Board consisting of directors who are not parties or threatened to be made parties to such proceeding.

(b) If the quorum described in clause (a) above is not obtainable, then by a majority vote of a committee of directors duly designated by the Board and consisting solely of two or more directors who are not at the time parties or threatened to be made parties to the proceeding.

(c) By independent legal counsel in a written opinion, so long as such counsel is selected (i) by the Board or its committee in the manner prescribed in subparagraph (a) or (b), or (ii) if a quorum of the Board cannot be obtained under subparagraph (a) and a committee cannot be designated under subparagraph (b), by the Board.

(d) By the Shareholders, but Shares held by directors or officers who are parties or threatened to be made parties to the action, suit or proceeding may not be voted.

9.07 *Proportionality.* If a person is entitled to indemnification under Section 9.01 or 9.02 of these Bylaws for a portion of expenses, including attorneys' fees, judgments, penalties, fines, and amounts paid in settlement, but not for the total amount thereof, the Company shall indemnify the person for the portion of the expenses, judgments, penalties, fines, or amounts paid in settlement for which the person is entitled to be indemnified.

9.08 *Advances.* The Company may pay or reimburse the reasonable expenses incurred by a person referred to in Section 9.01 or 9.02 of these Bylaws who is a party or threatened to be made a party to an action, suit, or proceeding in advance of final disposition of the proceeding if (a) the person furnishes the Company a written affirmation of his or her good faith belief that he or she has met the applicable standard of conduct set forth in Section 9.01 or 9.02, (b) the person furnishes the Company a written undertaking executed to personally repay the advance if it is ultimately determined that he or she did not meet the standard of conduct, (c) the authorization of payment is made in the manner specified in Section 9.06, and (d) a determination is made that the facts then known to those making the determination would not preclude indemnification under Section 9.01 or 9.02. The undertaking shall be a general obligation of the person, but need not be secured.

9.09 *Scope.* The indemnification or advancement of expenses provided under this Article IX is not exclusive of other rights to which a person seeking indemnification or advancement of expenses may be entitled under a contractual arrangement with the Company. However, the total amount of expenses advanced or indemnified from all sources combined shall not exceed the amount of actual expenses incurred by the person seeking indemnification or advancement of expenses.

9.10 *Agents.* The Company may, to the extent authorized from time to time by the Board, grant rights to indemnification and to the advancement of expenses to any employee or agent of the Company to the fullest extent of the provisions of this Article IX with respect to the indemnification and advancement of expenses of directors and officers of the Company.

9.11 *Succession.* The indemnification provided in this Article IX continues as to a person who has ceased to be a director or officer and shall inure to the benefit of his or her successors.

9.12 *Insurance.* The Company may buy and maintain insurance on behalf of any person who is or was a director, officer, partner, trustee, employee or agent of the Company, or is or was serving at the request of the Company as a director, officer, employee or agent of another entity or enterprise against any liability asserted against the person and incurred by him or her in any such capacity or arising out of his or her status as such, whether or not the Company would have power to indemnify the person against such liability under these Bylaws or the laws of Indiana.

9.13 *Legislation.* Upon any change of the Indiana statutory provisions relating to the subject matter of this Article IX, the indemnification to which any person shall be entitled hereunder shall be determined by such changed provisions, but only to the extent that any such change permits the Company to provide broader indemnification rights than before any such change. Subject to Section 9.14, the Board may amend these Bylaws to conform to any such changed statutory provisions.

9.14 *Amendment.* No amendment or repeal of this Article IX shall apply to any director or officer of the Company for or with respect to any prior acts or omissions of such director or officer.

**X.
Amendment**

The Bylaws of the Company may be amended, altered or repealed, in whole or in part, by the Shareholders or by the Board at any meeting duly held in accordance with these Bylaws.

**ARTICLES OF INCORPORATION
OF**

The undersigned, a natural person of the age of 18 years or more and acting as the incorporator, does hereby adopt the following Articles of Incorporation for the purpose of organizing a corporation pursuant to the provisions of the Texas Business Corporation Act.

FIRST: The name of the corporation is _____.

SECOND: The period of duration of the corporation is perpetual.

THIRD: The purpose or purposes for which the corporation is organized is to transact any or all lawful business for which corporations may be incorporated under the Texas Business Corporation Act.

FOURTH: The aggregate number of shares which the corporation shall have authority to issue is 1,000, all of which are of one class and without par value.

FIFTH: The corporation will not commence business until it has received for the issuance of its shares consideration of the value of at least one thousand dollars.

SIXTH: The following provisions are inserted herein for the purpose of defining, limiting, and regulating the powers of the corporation and of the directors and of the shareholders, provided, however, that said provisions shall not be deemed exclusive of any rights or liabilities otherwise granted or imposed by the laws of the State of Texas:

1. The liability of the directors of the corporation is eliminated to the fullest extent permitted by the provisions of the Texas Business Corporation Act and by the provisions of the Texas Miscellaneous Corporation Laws Act, as the same may be amended and supplemented.
2. The corporation shall, to the fullest extent permitted by the provisions of Article 2.02-1 of the Texas Business Corporation Act, as the same may be amended and supplemented, indemnify any and all persons whom it shall have power to indemnify under said Article from and against any and all of the expenses, liabilities, or other matters referred to or covered by said Article.
3. With respect to any matter for which the affirmative vote of the holders of at least a two-thirds portion of the shares entitled to vote is otherwise required by the Texas Business Corporation Act, the act of the shareholders on that matter shall be the affirmative vote of the holders of at least a majority of the shares entitled to vote on that matter, rather than the affirmative vote otherwise required by the Texas Business Corporation Act. With respect to any matter for which the affirmative vote of the holders of at least two-thirds portion of the shares of any class is otherwise required by the Texas Business Corporation Act, the act of the holders of shares of that class on that matter shall be the affirmative vote of the holders of at least a majority of the shares of that class, rather than the affirmative vote of the holders of shares of that class otherwise required by the Texas Business Corporation Act.
4. Any action required by the Texas Business Corporation Act to be taken at an annual or special meeting of shareholders, or any action which may be taken at an annual or special meeting of shareholders, may be taken without a meeting, without prior notice, and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by the holder or holders of shares having not less than the minimum number of votes that would be necessary to take such action at a meeting at which the holders of all shares entitled to vote on the action were present and voted.

SEVENTH: The post-office address of the initial registered office of the corporation in the State of Texas is c/o Corporation Service Company d/b/a CSC-Lawyers Incorporating Service Company, 800 Brazos, Austin, Texas 78701, and the name of the initial registered agent of the corporation at such address is Corporation Service Company d/b/a CSC-Lawyers Incorporating Service Company.

EIGHTH: The number of directors constituting the initial Board of Directors of the corporation is one. The individual who is to serve as the sole initial director of the corporation is Essel W. Bailey, Jr. Mr. Bailey's address is 900 Victor's Way, Suite 350, Ann Arbor, Michigan 48108.

NINTH: The name and address of the incorporator is Stuart D. Logan, Esq., Dykema Gossett PLLC, 1577 N. Woodward Avenue, Suite 300, Bloomfield Hills, Michigan 48304-2820.

TENTH: From time to time any of the provisions of these Articles of Incorporation may be amended, altered, or repealed, and other provisions authorized by the laws of the State of Texas at the time in force may be added or inserted in the manner and at the time prescribed by said laws, and all contracts and rights at any time conferred upon the shareholders of the corporation by these Articles of Incorporation are granted subject to the provisions of this Article.

Signed on this 23rd day of February, 2000.

/s/ STUART D. LOGAN

Stuart D. Logan, Incorporator

BYLAWS OF _____

**I.
Offices**

The principal office of _____ (the "Company") shall be at such place within Texas or Michigan as the Board of Directors of the Company (the "Board") shall from time to time determine. The Company also may have offices at such other places as the business of the Company may require.

**II.
Seal**

The Company may have a seal in such form as the Board may from time to time determine. The seal, if so authorized, may be used by causing it or a facsimile to be impressed, affixed or copied.

**III.
Capital**

3.01 *Issuance.* The shares of capital stock of the Company (the "Shares") shall be issued in such amounts, at such times, for such consideration and on such terms as the Board shall deem advisable, subject to the Company's Articles of Incorporation (the "Articles") and the laws of Texas.

3.02 *Certificates.* The Shares shall be represented by certificates signed by the President. Each such certificate shall state upon its face that the Company is formed under the laws of Texas, the person to whom it is issued, the number and class of Shares, and the designation of the series, if any, that the certificate represents, and such other provisions as may be required by Texas law.

3.03 *Transfer.* The Shares are transferable only on the books of the Company upon surrender of the certificate therefor, properly endorsed for transfer, and the presentation of such evidences of ownership and validity of the assignment as the Company may require.

3.04 *Registration.* The Company shall be entitled to treat the person in whose name any Share is registered as the owner thereof for purposes of dividends and other distributions in the course of business, or in the course of recapitalization, merger, plan of share exchange, reorganization, sale of assets, liquidation or otherwise and for the purpose of votes, approvals and consents by shareholders of the Company ("Shareholders"), and for the purpose of notices to Shareholders, and for all other purposes whatever, and shall not be bound to recognize any equitable or other claim to or interest in such Shares on the part of any other person, whether or not the Company shall have notice thereof, save as expressly required by the laws of Texas.

3.05 *Replacement.* Upon the presentation to the Company of a proper affidavit attesting the loss, destruction or mutilation of any certificate for Shares, the Board shall direct the issuance of a new certificate to replace the certificate so alleged to be lost, destroyed or mutilated. The Board may require as a condition precedent to the issuance of a new certificate a bond or agreement of indemnity, in such form and amount, and with such sureties as the Board may direct or approve.

**IV.
Shareholders**

4.01 *Meetings.* Meetings of Shareholders shall be held at the principal office of the Company or at such other place as determined by the Board and stated in the notice of meeting. The annual meeting of Shareholders shall be held on the first Monday of March at 10:30 o'clock in the morning. Directors shall be elected at each annual meeting and such other business transacted as may come before the meeting. Special meetings of Shareholders may be called by the Board, the CEO (if such office is filled), the President or any Director, and shall be called by the Secretary at the written

request of Shareholders holding a majority of the outstanding Shares and entitled to vote. The request shall state the purpose or purposes for which the meeting is to be called.

4.02 *Notice.* Except as otherwise provided by statute or the Articles, written notice of the time, place and purposes of a meeting of Shareholders shall be given not fewer than ten nor more than 60 days before the date of the meeting to each Shareholder of record entitled to vote at the meeting, either personally or by mailing such notice to his last address as it appears on the books of the Company. No notice need be given of an adjourned meeting of the Shareholders provided the time and place to which such meeting is adjourned are announced at the meeting at which the adjournment is taken and at the adjourned meeting only such business is transacted as might have been transacted at the original meeting. However, if after the adjournment a new record date is fixed for the adjourned meeting a notice of the adjourned meeting shall be given to each Shareholder of record on the new record date entitled to notice as provided in this Bylaw.

4.03 *Dates.* The Board may fix in advance a date as the record date for the purpose of determining Shareholders entitled to notice of and to vote at a meeting of Shareholders or an adjournment thereof, or to express consent or to dissent from a proposal without a meeting, or for the purpose of determining Shareholders entitled to receive payment of a dividend or allotment of a right, or for the purpose of any other action. The date fixed shall not be more than 60 nor less than ten days before the date of the meeting, nor more than 60 days before any other action. In such case only such Shareholders as shall be Shareholders of record on the date so fixed shall be entitled to notice of and to vote at such meeting or adjournment thereof, or to express consent or to dissent from such proposal, or to receive payment of such dividend or to receive such allotment of rights, or to participate in any other action, as the case may be, notwithstanding any transfer of any stock on the books of the Company, or otherwise, after any such record date. Nothing in this Bylaw shall affect the rights of a Shareholder and his transferee or transferor as between themselves.

4.04 *Lists.* The Secretary of the Company or the agent of the Company having charge of the stock transfer records for Shares shall make and certify a complete list of the Shareholders entitled to vote at a Shareholders' meeting or any adjournment thereof. The list shall be arranged alphabetically within each class and series, with the address of, and the number of Shares held by, each Shareholder, be produced at the meeting, be subject to inspection by any Shareholder during the meeting, and be prima facie evidence of the Shareholders entitled to examine the list or vote.

4.05 *Quorum.* Unless a greater or lesser quorum is required in the Articles or by the laws of Texas, the Shareholders present at a meeting in person or by proxy who, as of the record date for such meeting, were holders of a majority of the outstanding Shares entitled to vote at the meeting shall constitute a quorum. Whether or not a quorum is present, a meeting of Shareholders may be adjourned by a vote of the Shares present in person or by proxy. When the holders of a class or series of Shares are entitled to vote separately on an item of business, this Bylaw applies in determining the presence of a quorum of such class or series for transaction of such item of business.

4.06 *Proxies.* A Shareholder entitled to vote at a meeting of Shareholders or to express consent or dissent without a meeting may authorize other persons to act for the Shareholder by proxy. A proxy shall be signed by the Shareholder or the Shareholder's authorized agent or representative.

4.07 *Voting.* Each outstanding Share is entitled to one vote on each matter submitted to a vote, unless otherwise provided in the Articles. When an action, other than the election of directors, is to be taken by a vote of the Shareholders, it shall be authorized by a majority of the votes cast by the holders of Shares entitled to vote thereon, unless a greater vote is required by the Articles or by the laws of Texas. Except as otherwise provided by the Articles, directors shall be elected by a plurality of the votes cast at any election.

V.
Directors

5.01 *Number.* The business and affairs of the Company shall be managed by a Board of one director. No director need be a resident of Texas or Shareholder.

5.02 *Tenure.* Directors shall be elected at each annual meeting of the Shareholders, each to hold office until the next annual meeting of Shareholders and until the director's successor is elected and qualified, or until the director's resignation or removal. A director may resign by written notice to the Company. The resignation is effective upon its receipt by the Company or a subsequent time as set forth in the notice of resignation. A director or the entire Board may be removed, with or without cause, by vote of the holders of a majority of the Shares entitled to vote at an election of directors.

5.03 *Vacancies.* Vacancies in the Board occurring by reason of death, resignation, removal, increase in the number of directors or otherwise shall be filled by the affirmative vote of a majority of the remaining directors though less than a quorum of the Board, unless filled by proper action of the Shareholders. Each person so elected shall be a director for a term of office continuing only until the next election of directors by the Shareholders. A vacancy that will occur at a specific date, by reason of a resignation effective at a later date or otherwise, may be filled before the vacancy occurs, but the newly elected director may not take office until the vacancy occurs.

5.04 *Meetings.* The Board shall meet each year immediately after the annual meeting of the Shareholders, or within three days of such time excluding Sundays and legal holidays if such later time is deemed advisable, at the place where such meeting of the Shareholders has been held or such other place as the Board may determine, for the purpose of election of officers and consideration of such business that may properly be brought before the meeting; provided, that if less than a majority of the directors appear for an annual meeting of the Board the holding of such annual meeting shall not be required and the matters which might have been taken up therein may be taken up at any later special or annual meeting, or by consent resolution. Regular meetings of the Board may be held at such times and places as the majority of the directors may from time to time determine at a prior meeting or as shall be directed or approved by the vote or written consent of all directors. Special meetings of the Board may be called by the President and shall be called by the Secretary upon the written request of any director.

5.05 *Notices.* No notice shall be required for annual or regular meetings of the Board or for adjourned meetings, whether regular or special. Three days' written notice shall be given for special meetings of the Board, and such notice shall state the time, place and purposes of the meeting.

5.06 *Quorum.* A majority of the Board then in office, or of the members of a committee thereof, constitutes a quorum for the transaction of business. The vote of a majority of the directors present at any meeting at which there is a quorum shall be the acts of the Board or of the committee, except as a larger vote may be required by the laws of Texas. A member of the Board or of a committee designated by the Board may participate in a meeting by means of conference telephone by means of which all persons participating in the meeting can communicate with each other. Participation in a meeting in this manner constitutes presence in person at the meeting.

5.07 *Committees.* The Board may, by resolution passed by a majority of the whole Board, appoint three or more members of the Board as an executive committee to exercise all powers and authorities of the Board in management of the business and affairs of the Company, except that the committee shall not have power or authority to (a) amend the Articles; (b) adopt an agreement of merger or consolidation; (c) recommend to Shareholders the sale, lease or exchange of all or substantially all of the Company's property and assets; (d) recommend to Shareholders a dissolution of the Company or revocation of a dissolution; (e) amend these Bylaws; (f) fill vacancies in the Board; or (g) unless expressly authorized by the Board, declare a dividend or authorize the issuance of stock. The

Board from time to time may, by like resolution, appoint such other committees of one or more directors to have such authority as shall be specified by the Board in the resolution making such appointments. The Board may designate one or more directors as alternate members of any committee who may replace an absent or disqualified member at any meeting thereof.

5.08 *Dissent.* A director who is present at a meeting of the Board, or a committee thereof of which the director is a member, at which action on a corporate matter is taken is presumed to have concurred in that action unless the director's dissent is entered in the minutes of the meeting or unless the director files a written dissent to the action with the person acting as secretary of the meeting before the adjournment thereof or shall forward such dissent by registered mail to the Secretary of the Company promptly after the adjournment of the meeting. Such right to dissent does not apply to a director who voted in favor of such action. A director who is absent from a meeting of the Board, or a committee thereof of which the director is a member, at which any such action is taken is presumed to have concurred in the action unless the director files a written dissent with the Secretary of the Company within a reasonable time after the director has knowledge of the action.

5.09 *Compensation.* The Board, by affirmative vote of a majority of directors in office and irrespective of any personal interest of any of them, may establish reasonable compensation of directors for services to the Company as directors or officers.

VI. Procedures

6.01 *Notice.* All notices of meetings to be given to Shareholders, directors or any committee of directors may be given by mail, overnight courier, telefax or e-mail to any Shareholder, director or committee member at his last address as it appears on the books of the Company. Such notice shall be deemed to be given at the time when the same shall be mailed or otherwise dispatched.

6.02 *Waiver.* Notice of the time, place and purpose of any meeting of Shareholders, directors or committee of directors may be waived by mail, overnight courier, telefax or e-mail, either before or after the meeting, or in such other manner as may be permitted by the laws of Texas. Attendance of a person at any meeting of Shareholders, in person or by proxy, or at any meeting of directors or of a committee of directors, constitutes a waiver of notice of the meeting except as follows:

(a) In the case of a Shareholder, unless the Shareholder at the beginning of the meeting objects to holding the meeting or transacting business at the meeting, or unless with respect to consideration of a particular matter at the meeting that is not within the purposes described in the meeting notice, the Shareholder objects to considering the matter when it is presented.

(b) In the case of a director, unless he or she at the beginning of the meeting, or upon his or her arrival, objects to the meeting or the transacting of business at the meeting and does not thereafter vote for or assent to any action taken at the meeting.

6.03 *Consent.* Any action required or permitted at any meeting of directors or committee thereof may be taken without a meeting, without prior notice and without a vote, if all directors or committee members entitled to vote thereon consent thereto in writing, before or after the action is taken. Any action required or permitted at any meeting of Shareholders may be taken without a meeting, without prior notice and without a vote, if all Shareholders entitled to vote thereon consent thereto in writing, before or after the action is taken or if such action otherwise satisfies the Articles and Texas law.

VII.
Officers

7.01 *Number.* The Board shall elect or appoint a President, a Secretary and a Treasurer, and may elect a Chief Executive Officer (the "CEO"), a Chief Operating Officer (the "COO"), and/or one or more Vice Presidents, Assistant Secretaries or Assistant Treasurers. The CEO (if appointed) shall be a member of the Board. Any two or more of the above offices, except those of President and Vice President, may be held by the same person. No officer shall execute or verify an instrument in more than one capacity if the instrument is required by law, the Articles or these Bylaws to be executed, acknowledged, or verified by one or more officers.

7.02 *Term.* An officer shall hold office for the term for which he is elected or appointed and until his successor is elected or appointed and qualified, or until his resignation or removal. An officer may resign by written notice to the Company. The resignation is effective upon its receipt by the Company or at a subsequent time specified in the notice of resignation. An officer may be removed by the Board with or without cause. The removal of an officer shall be without prejudice to his contract rights, if any. The appointment of an officer does not of itself create contract rights.

7.03 *Vacancies.* The Board may fill any vacancies in any office occurring for whatever reason.

7.04 *Authority.* All officers, employees and agents of the Company shall have such authority and perform such duties in the conduct and management of the business and affairs of the Company as may be designated by the Board and these Bylaws.

VIII.
Duties

8.01 *CEO.* The CEO, if any is appointed, shall preside at all meetings of the Shareholders and of the Board at which the CEO is present. The CEO shall be the chief executive officer of the Company, shall see that all resolutions of the Board are carried into effect, and shall have the general powers of supervision usually vested in the chief executive officer of a corporation. Subject to any contrary directives by the Board, the CEO shall hold (a) authority to direct (and commit) the Company's resources toward the achievement of the Company's goals, (b) authority to vote all securities or other interests of other corporations and business organizations held by the Company, and (c) any further authority as may hereafter be vested in him by the Board.

8.02 *President.* In the absence of the CEO, the President shall hold and exercise all authority ascribed to the CEO. In addition, the President shall exercise any and all authority as may be granted to him by the Board, and, subject only to the directives of the CEO, shall ensure that all resolutions of the Board are carried into effect. In the absence of the COO, the President shall also shall hold and exercise all authority ascribed to the COO. In the absence of the Secretary and any Assistant Secretary, the President may exercise the authority otherwise reserved to the Secretary.

8.03 *COO.* The COO shall be the chief operating officer of the Company. The President shall have the general powers of management usually vested in the chief operating officer of a corporation, and, subject to any contrary directives by the Board, shall hold (a) authority to supervise corporation personnel and to implement the directives of the Board, the President and the CEO, and (b) any further authority as may hereafter be vested in him by the Board.

8.04 *Vice Presidents.* The Vice Presidents, in order of their seniority, shall, in the absence or disability of the President, perform the duties and exercise the powers of the President. The Vice Presidents shall in any event assume operating responsibility for those aspects of the Company's business referenced in any specific title of the particular Vice President, and shall perform such other duties as may be delegated by the Board, the CEO, the COO or the President. In any event, any Vice President whose title includes the phrase chief financial officer shall be deemed to have been charged

with the responsibility for the Company's finances, shall have been granted custody of corporate funds and securities, shall be obligated to keep full and accurate accounts of receipts and disbursements in books of the Company, and shall deposit all moneys and other value in the name and to the credit of the Company in such depositories as may be designated by the Board. Moreover, any Vice President whose title includes the phrase general counsel shall be deemed to have been charged with the responsibility for the Company's legal affairs and shall be deemed the Company's principal liaison with the Company's outside counsel and regulatory authorities.

8.05 *Secretary.* The Secretary shall record all votes and minutes of all proceedings in a book to be kept for that purpose, shall give or cause to be given notice of all meetings of the Shareholders and of the Board, and shall keep in safe custody the seal of the Company and, when authorized by the Board, affix the same to any instrument requiring it, and when so affixed it shall be attested by the signature of the Secretary, or by the signature of the Treasurer or an Assistant Secretary. The Secretary may delegate any of the duties, powers and authorities of the Secretary to one or more Assistant Secretaries, unless such delegation is disapproved by the Board.

8.06 *Treasurer.* Subject to the authority of any Vice President charged with the responsibility for the Company's finances, the Treasurer shall have the custody of corporate funds and securities, shall keep full and accurate accounts of receipts and disbursements in books of the Company and shall deposit all moneys and other value in the name and to the credit of the Company in such depositories as may be designated by the Board. The Treasurer shall render to the President and directors, whenever they may require it, an account of his or her transactions as Treasurer and of the financial condition of the Company. The Treasurer may delegate any of his or her duties, powers and authorities to one or more Assistant Treasurers unless such delegation is disapproved by the Board.

8.07 *Assistants.* The Assistant Secretaries, in order of their seniority, shall perform the duties and exercise the powers and authorities of the Secretary in case of the Secretary's absence or disability. The Assistant Treasurers, in the order of their seniority, shall perform the duties and exercise the powers and authorities of the Treasurer in case of the Treasurer's absence or disability. The Assistant Secretaries and Assistant Treasurers shall also perform such duties as may be delegated by the Secretary and Treasurer, respectively, and also such duties as the Board may prescribe.

IX. Actions

9.01 *Payment.* All checks, drafts, notes, bonds, bills of exchange and orders for payment of money of the Company may, subject to any contrary resolution adopted by the Board from time to time, be signed by the CEO, the President or any other officer as may be authorized by the Board.

9.02 *Contracts.* The Board may in any instance designate the officer and/or agent who shall have authority to execute any contract, conveyance, mortgage or other instrument on behalf of the Company, or may ratify or confirm any execution. When the execution of any instrument has been authorized without specification of the executing officers or agents, the CEO or President may execute the same in the name and on behalf of the Company and may affix the corporate seal thereto.

X. Records

10.01 *Maintenance.* The proper officers and agents of the Company shall keep and maintain such books, records and accounts of the Company's business and affairs, minutes of the proceedings of its Shareholders, Board and committees, if any, and such stock ledgers and lists of Shareholders, as the Board shall deem advisable, and as shall be required by the laws of Texas and other states or jurisdictions empowered to impose such requirements. Books, records and minutes may be kept within or without Texas in a place which the Board shall determine.

10.02 *Reliance.* In discharging his or her duties, a director or an officer of the Company, when acting in good faith, may rely upon information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by (a) one or more directors, officers, or employees of the Company, or of a business organization under joint control or common control, whom the director or officer reasonably believes to be reliable and competent in the matters presented, (b) legal counsel, public accountants, engineers, or other persons as to matters the director or officer reasonably believes are within the person's professional or expert competence, or (c) a committee of the board of which he or she is not a member if the director or officer reasonably believes the committee merits confidence. A director or officer may not rely on any information if he or she has knowledge concerning the matter that makes reliance otherwise permitted unwarranted.

XI. Indemnification

11.01 *Personal.* Subject to all of the other provisions of this Article XI, the Company shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative and whether formal or informal (other than an action by or in the right of the Company) by reason that the person is or was a director or officer of the Company, or is or was serving at the request of the Company as a director, officer, partner, trustee, employee, or agent of another entity or enterprise, against expenses (including reasonable attorneys' fees), judgments, penalties and amounts paid in settlement reasonably incurred by him or her in connection with such action, suit or proceeding, if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the Company or the Shareholders, and, with respect to any criminal action or proceeding, if the person had no reasonable cause to believe his or her conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which the person reasonably believed to be in or not opposed to the best interests of the Company or the Shareholders, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his or her conduct was unlawful.

11.02 *Derivative.* Subject to all of the provisions of this Article XI, the Company shall indemnify any person who was or is a party to or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Company to procure a judgment in its favor by reason of the fact that the person is or was a director or officer of the Company, or is or was serving at the request of the Company as a director, officer, partner, trustee, employee, or agent of another foreign or domestic corporation, partnership, joint venture, trust or other enterprise, whether for profit or not, against expenses (including attorneys' fees) and amounts paid in settlement reasonably incurred by the person in connection with such action or suit, if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the Company or the Shareholders. However, indemnification shall not be made for any claim, issue or matter in which such person has been found liable to the Company unless and only to the extent that the court in which such action or suit was brought has determined upon application that, despite the adjudication of liability but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnification for the reasonable expenses incurred.

11.03 *Expenses.* To the extent that a person has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Section 11.01 or 11.02 of these Bylaws, or in defense of any claim, issue or matter in the action, suit or proceeding, the person shall be indemnified against actual and reasonable expenses (including attorneys' fees) incurred by such person in connection with the action, suit or proceeding and any action, suit or proceeding brought to enforce the mandatory indemnification provided by this Section 11.03.

11.04 *Definitions.* For purposes of Sections 11.01 and 11.02, "other enterprises" shall include employee benefit plans; "fines" shall include any excise taxes assessed on a person with respect to an employee benefit plan; and "serving at the request of the Company" shall include any service as a director, officer, employee, or agent of the Company that imposes duties on, or involves services by, the director or officer with respect to an employee benefit plan, its participants or beneficiaries; and a person who acted in good faith and in a manner the person reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be considered to have acted in a manner "not opposed to the best interests of the Company or the Shareholders".

11.05 *Parameters.* The right to indemnification conferred in this Article XI shall be a contract right, and shall apply to services of a director or officer as an employee or agent of the Company as well as in such person's capacity as a director or officer. Except as provided in Section 11.03 of these Bylaws, the Company shall have no obligations under this Article XI to indemnify any person in connection with any proceeding, or part thereof, initiated by him or her without Board authorization.

11.06 *Determination.* Any indemnification under Section 11.01 or 11.02 of these Bylaws (unless ordered by a court) shall be made by the Company only as authorized in the specific case upon a determination that indemnification of the person is proper in the circumstances because the person has met the applicable standard of conduct set forth in Section 11.01 or 11.02, whichever is applicable, and upon an evaluation of the reasonableness of expenses and amount paid in settlement. Such determination and evaluation shall be made in any of the following ways:

(a) By a majority vote of a quorum of the Board consisting of directors who are not parties or threatened to be made parties to such proceeding.

(b) If the quorum described in clause (a) above is not obtainable, then by a majority vote of a committee of directors duly designated by the Board and consisting solely of two or more directors who are not at the time parties or threatened to be made parties to the proceeding.

(c) By independent legal counsel in a written opinion, so long as such counsel is selected (i) by the Board or its committee in the manner prescribed in subparagraph (a) or (b), or (ii) if a quorum of the Board cannot be obtained under subparagraph (a) and a committee cannot be designated under subparagraph (b), by the Board.

(d) By the Shareholders, but Shares held by directors or officers who are parties or threatened to be made parties to the action, suit or proceeding may not be voted.

11.07 *Proportionality.* If a person is entitled to indemnification under Section 11.01 or 11.02 of these Bylaws for a portion of expenses, including attorneys' fees, judgments, penalties, fines, and amounts paid in settlement, but not for the total amount thereof, the Company shall indemnify the person for the portion of the expenses, judgments, penalties, fines, or amounts paid in settlement for which the person is entitled to be indemnified.

11.08 *Advances.* The Company may pay or reimburse the reasonable expenses incurred by a person referred to in Section 11.01 or 11.02 of these Bylaws who is a party or threatened to be made a party to an action, suit, or proceeding in advance of final disposition of the proceeding if (a) the person furnishes the Company a written affirmation of his or her good faith belief that he or she has met the applicable standard of conduct set forth in Section 11.01 or 11.02, (b) the person furnishes the Company a written undertaking executed to personally repay the advance if it is ultimately determined that he or she did not meet the standard of conduct, (c) the authorization of payment is made in the manner specified in Section 11.06, and (d) a determination is made that the facts then known to those making the determination would not preclude indemnification under Section 11.01 or 11.02. The undertaking shall be a general obligation of the person, but need not be secured.

11.09 *Scope.* The indemnification or advancement of expenses provided under this Article XI is not exclusive of other rights to which a person seeking indemnification or advancement of expenses may be entitled under a contractual arrangement with the Company. However, the total amount of expenses advanced or indemnified from all sources combined shall not exceed the amount of actual expenses incurred by the person seeking indemnification or advancement of expenses.

11.10 *Agents.* The Company may, to the extent authorized from time to time by the Board, grant rights to indemnification and to the advancement of expenses to any employee or agent of the Company to the fullest extent of the provisions of this Article XI with respect to the indemnification and advancement of expenses of directors and officers of the Company.

11.11 *Succession.* The indemnification provided in this Article XI continues as to a person who has ceased to be a director or officer and shall inure to the benefit of his or her successors.

11.12 *Insurance.* The Company may buy and maintain insurance on behalf of any person who is or was a director, officer, partner, trustee, employee or agent of the Company, or is or was serving at the request of the Company as a director, officer, employee or agent of another entity or enterprise against any liability asserted against the person and incurred by him or her in any such capacity or arising out of his or her status as such, whether or not the Company would have power to indemnify the person against such liability under these Bylaws or the laws of Texas.

11.13 *Legislation.* Upon any change of the Texas statutory provisions relating to the subject matter of this Article XI, the indemnification to which any person shall be entitled hereunder shall be determined by such changed provisions, but only to the extent that any such change permits the Company to provide broader indemnification rights than before any such change. Subject to Section 11.14, the Board may amend these Bylaws to conform to any such changed statutory provisions.

11.14 *Amendment.* No amendment or repeal of this Article XI shall apply to any director or officer of the Company for or with respect to any prior acts or omissions of such director or officer.

XII. Amendment

The Bylaws of the Company may be amended, altered or repealed, in whole or in part, by the Shareholders or by the Board at any meeting duly held in accordance with these Bylaws.

Articles of Incorporation of

THE UNDERSIGNED INCORPORATOR, being a 44-year-old individual, hereby these articles of incorporation to organize a corporation under the Texas Business Corporation Act (the "Act").

FIRST: The name of the corporation is _____.

SECOND: The period of duration of the corporation is perpetual.

THIRD: The purposes for which the corporation is organized is to transact any or all lawful business for which corporations may be incorporated under the Act, although the corporation shall commence business only after it shall have received, for the issuance of its shares, at least \$1,000.

FOURTH: The corporation is authorized to issue is 1,000 shares, of one class, without par value.

FIFTH: The liability of the directors of the corporation is eliminated to the fullest extent Permitted by the Act and by the Texas Miscellaneous Corporation Laws Act, as the same may be amended and supplemented, and, accordingly, the corporation shall, to the fullest extent permitted by Article 2.02-1 of the Act, as the same maybe amended and supplemented, indemnify any and all persons whom it shall have power to indemnify under such Article 2.02-1 from and against any and all of the expenses, liabilities, or other matters referred to or covered by such Article 2.02-1.

SIXTH: The post-office address of the initial registered office of the corporation in the State of Texas is c/o Corporation Service Company d/b/a CSC-Lawyers Incorporating Service Company, 800 Brazos, Austin, Texas 78701, and the name of the initial registered agent of the corporation at such address is Corporation Service Company d/b/a CSC-Lawyers Incorporating Service Company.

SEVENTH: The number of directors constituting the initial Board of Directors of the corporation is one. The individual who is to serve as the sole initial director of the corporation is F. Scott Kellman. Mr. Kellman's address is 900 Victor's Way, Suite 350, Ann Arbor, Michigan 48304-2820.

EIGHTH: The name and address of the incorporator is Stuart D. Logan, Esq., Dykema Gossett PLLC, 39577 Woodward Avenue, Suite 300, Bloomfield Hills, Michigan 48304-2820.

NINTH: From time to time hereafter, any provision of these Articles of Incorporation maybe amended or repealed, and other provisions authorized by Texas law at the time in force may be added in the manner prescribed by such laws, and all contracts and rights at any time conferred upon the corporation's shareholders by these Articles of Incorporation are granted subject to this Article.

SO EXECUTED on this 30th day of March, 2001.

/s/ STUART D. LOGAN

Stuart D. Logan, *Incorporator*

BYLAWS OF _____

**I.
Offices**

The principal office of _____ (the "Company") shall be at such place within Michigan or Texas as the Company's Board of Directors (the "Board") shall select from time to time. The Company may have offices at such other places as the Company's business may require.

**II.
Capital**

2.01 *Issuance.* The shares of capital stock of the Company (the "Shares") shall be issued in such amounts, at such times, for such consideration and on such terms as the Board shall deem advisable, subject to the Company's Articles of Incorporation (the "Articles") and the laws of Texas.

2.02 *Certificates.* The Shares shall be represented by certificates signed by the President. Each such certificate shall state upon its face that the Company is formed under the laws of Texas, the person to whom it is issued, the number and class of Shares, and the designation of the series, if any, that the certificate represents, and such other provisions as may be required by Texas law.

2.03 *Transfer.* The Shares are transferable only on the books of the Company upon surrender of the certificate therefor, properly endorsed for transfer, and the presentation of such evidences of ownership and validity of the assignment as the Company may require.

2.04 *Registration.* The Company shall be entitled to treat the person in whose name any Share is registered as the owner thereof for purposes of dividends and other distributions in the course of business, or in the course of recapitalization, merger, plan of share exchange, reorganization, sale of assets, liquidation or otherwise and for the purpose of votes, approvals and consents by shareholders of the Company ("Shareholders"), and for the purpose of notices to Shareholders, and for all other purposes whatever, and shall not be bound to recognize any equitable or other claim to or interest in such Shares on the part of any other person, whether or not the Company shall have notice thereof, save as expressly required by the laws of Texas.

2.05 *Replacement.* Upon the presentation to the Company of a proper affidavit attesting the loss, destruction or mutilation of any certificate for Shares, the Board shall direct the issuance of a new certificate to replace the certificate so alleged to be lost, destroyed or mutilated. The Board may require as a condition precedent to the issuance of a new certificate a bond or agreement of indemnity, in such form and amount, and with such sureties as the Board may direct or approve.

**III.
Shareholders**

3.01 *Meetings.* Meetings of Shareholders shall be held at the principal office of the Company or at such other place as determined by the Board and stated in the notice of meeting. The annual meeting of Shareholders shall be held on the first Monday of March at 10:30 o'clock in the morning. Directors shall be elected at each annual meeting and such other business transacted as may come before the meeting. Special meetings of Shareholders may be called by the Board, the Chairman (if such office is filled), the President or any Director, and shall be called by the Secretary at the written request of Shareholders holding a majority of the outstanding Shares and entitled to vote. The request shall state the purpose or purposes for which the meeting is to be called.

3.02 *Notice.* Except as otherwise provided by statute or the Articles, written notice of the time, place and purposes of a meeting of Shareholders shall be given not fewer than ten nor more than 60 days before the date of the meeting to each Shareholder of record entitled to vote at the meeting, either personally or by mailing such notice to his last address as it appears on the books of the

Company. No notice need be given of an adjourned meeting of the Shareholders provided the time and place to which such meeting is adjourned are announced at the meeting at which the adjournment is taken and at the adjourned meeting only such business is transacted as might have been transacted at the original meeting. However, if after the adjournment a new record date is fixed for the adjourned meeting a notice of the adjourned meeting shall be given to each Shareholder of record on the new record date entitled to notice as provided in this Bylaw.

3.03 *Dates.* The Board may fix in advance a date as the record date for the purpose of determining Shareholders entitled to notice of and to vote at a meeting of Shareholders or an adjournment thereof, or to express consent or to dissent from a proposal without a meeting, or for the purpose of determining Shareholders entitled to receive payment of a dividend or allotment of a right, or for the purpose of any other action. The date fixed shall not be more than 60 nor fewer than ten days before the date of the meeting, nor more than 60 days before any other action. In such case only such Shareholders as shall be Shareholders of record on the date so fixed shall be entitled to notice of and to vote at such meeting or adjournment thereof, or to express consent or to dissent from such proposal, or to receive payment of such dividend or to receive such allotment of rights, or to participate in any other action, as the case may be, notwithstanding any transfer of any stock on the books of the Company, or otherwise, after any such record date. Nothing in this Bylaw shall affect the rights of a Shareholder and his transferee or transferor as between themselves.

3.04 *Lists.* The Secretary of the Company or the agent of the Company having charge of the stock transfer records for Shares shall make and certify a complete list of the Shareholders entitled to vote at a Shareholders' meeting or any adjournment thereof. The list shall be arranged alphabetically within each class and series, with the address of, and the number of Shares held by, each Shareholder, be produced at the meeting, be subject to inspection by any Shareholder during the meeting, and be prima facie evidence of the Shareholders entitled to examine the list or vote.

3.05 *Quorum.* Unless a greater or lesser quorum is required in the Articles or by the laws of Texas, the Shareholders present at a meeting in person or by proxy who, as of the record date for such meeting, were holders of a majority of the outstanding Shares entitled to vote at the meeting shall constitute a quorum. Whether or not a quorum is present, a meeting of Shareholders may be adjourned by a vote of the Shares present in person or by proxy. When the holders of a class or series of Shares are entitled to vote separately on an item of business, this Bylaw applies in determining the presence of a quorum of such class or series for transaction of such item of business.

3.06 *Proxies.* A Shareholder entitled to vote at a meeting of Shareholders or to express consent or dissent without a meeting may authorize other persons to act for the Shareholder by proxy. A proxy shall be signed by the Shareholder or the Shareholder's authorized agent or representative.

3.07 *Voting.* Each outstanding Share is entitled to one vote on each matter submitted to a vote. When an action, other than the election of directors, is to be taken by a vote of the Shareholders, it shall be authorized by a majority of the votes cast by the holders of Shares entitled to vote thereon, unless a greater vote is required by the Articles or by the laws of Texas. Except as otherwise provided by the Articles, directors shall be elected by a plurality of the votes cast at any election.

IV. Directors

4.01 *Number.* The business and affairs of the Company shall be managed by a Board of one director. No director need be a resident of Texas or a Shareholder.

4.02 *Tenure.* Directors shall be elected at each annual meeting of the Shareholders, each to hold office until the next annual meeting of Shareholders and until the director's successor is elected and qualified, or until the director's resignation or removal. A director may resign by written notice to the Company. The resignation is effective upon its receipt by the Company or any later date as set forth in the notice of resignation. A director or the entire Board may be removed, with or without cause, by vote of the holders of a majority of the Shares entitled to vote at an election of directors.

4.03 *Vacancies.* Vacancies in the Board occurring by reason of death, resignation, removal, increase in the number of directors or otherwise shall be filled by the affirmative vote of a majority of the remaining directors though less than a quorum of the Board, unless filled by proper action of the Shareholders. Each person so elected shall be a director for a term of office continuing only until the next election of directors by the Shareholders. A vacancy that will occur at a specific date, by reason of a resignation effective at a later date or otherwise, may be filled before the vacancy occurs, but the newly elected director may not take office until the vacancy occurs.

4.04 *Meetings.* The Board shall meet each year immediately after the annual meeting of the Shareholders, or within two days of such time if such later time is deemed advisable, at the place where such meeting of the Shareholders has been held or such other place as the Board may determine, to elect officers and consider such business that may properly be brought before the meeting. If, however, less than a majority of the directors appear for an annual meeting of the Board, the annual meeting need not be held and the matters that might have been addressed therein may be addressed at any later meeting, or by consent resolution. Regular meetings of the Board may be held at such times and places as the majority of the directors may from time to time determine at a prior meeting or as shall be directed or approved by the vote or written consent of all directors. Special meetings of the Board may be called by the Company's president or any director.

4.05 *Notices.* No notice shall be required for annual or regular meetings of the Board or for adjourned meetings, whether regular or special. Three days' written notice shall be given for special meetings of the Board, and such notice shall state the time, place and purposes of the meeting.

4.06 *Quorum.* A majority of the Board then in office, or of the members of a committee thereof, constitutes a quorum for the transaction of business. The vote of a majority of the directors present at any meeting at which there is a quorum shall be the acts of the Board or of the committee, except as a larger vote may be required by the laws of Texas. A member of the Board or of a committee designated by the Board may participate in a meeting by means of conference telephone by means of which all persons participating in the meeting can communicate with each other. Participation in a meeting in this manner constitutes presence in person at the meeting.

4.07 *Committees.* The Board may, by resolution passed by a majority of the whole Board, appoint three or more members of the Board as an executive committee to exercise all powers and authorities of the Board in management of the business and affairs of the Company, except that the committee shall not have power or authority to (a) amend the Articles; (b) adopt an agreement of merger or consolidation; (c) recommend to Shareholders the sale, lease or exchange of all or substantially all of the Company's property and assets; (d) recommend to Shareholders a dissolution of the Company or revocation of a dissolution; (e) amend these Bylaws; (f) fill vacancies in the Board; or (g) unless expressly authorized by the Board, declare a dividend or authorize the issuance of stock. The Board from time to time may, by like resolution, appoint such other committees of one or more directors to have such authority as shall be specified by the Board in the resolution making such appointments. The Board may designate one or more directors as alternate members of any committee who may replace an absent or disqualified member at any meeting thereof.

4.08 *Dissent.* A director who is present at a meeting of the Board, or a committee thereof of which the director is a member, at which action on a corporate matter is taken is presumed to have concurred in that action unless the director's dissent is entered in the minutes of the meeting or unless the director files a written dissent to the action with the person acting as secretary of the meeting before the adjournment thereof or shall forward such dissent by registered mail to the Secretary of the Company promptly after the adjournment of the meeting. Such right to dissent does not apply to a director who voted in favor of such action. A director who is absent from a meeting of the Board, or a committee thereof of which the director is a member, at which any such action is taken is presumed to have concurred in the action unless the director files a written dissent with the Secretary of the Company within a reasonable time after the director has knowledge of the action.

4.09 *Compensation.* The Board, by affirmative vote of a majority of directors in office and irrespective of any personal interest of any of them, may establish reasonable compensation of directors for services to the Company as directors or officers.

V.
Procedures

5.01 *Notice.* All notices of meetings to be given to Shareholders, directors or any committee of directors may be given by mail, overnight courier, telefax or e-mail to any Shareholder, director or committee member at his last address as it appears on the books of the Company. Such notice shall be deemed to be given at the time when the same shall be mailed or otherwise dispatched.

5.02 *Waiver.* Notice of the time, place and purpose of any meeting of Shareholders, directors or committee of directors may be waived by mail, overnight courier, telefax or e-mail, either before or after the meeting, or in such other manner as may be permitted by the laws of Texas. Attendance of a person at any meeting of Shareholders, in person or by proxy, or at any meeting of directors or of a committee of directors, constitutes a waiver of notice of the meeting except as follows:

(a) In the case of a Shareholder, unless the Shareholder at the beginning of the meeting objects to holding the meeting or transacting business at the meeting, or unless with respect to consideration of a particular matter at the meeting that is not within the purposes described in the meeting notice, the Shareholder objects to considering the matter when it is presented.

(b) In the case of a director, unless he or she at the beginning of the meeting, or upon his or her arrival, objects to the meeting or the transacting of business at the meeting and does not thereafter vote for or assent to any action taken at the meeting.

5.03 *Consent.* Any action permitted at any meeting of directors or committee thereof may be taken without a meeting, without prior notice and without a vote, if all directors or committee members entitled to vote thereon consent thereto in writing, before or after the action is taken. Any action required or permitted at any meeting of Shareholders may be taken without a meeting, without prior notice and without a vote, if all Shareholders entitled to vote thereon consent thereto in writing, before or after the action is taken or if such action otherwise satisfies the Articles and Texas law.

VI.
Officers

6.01 *Number.* The Board shall elect or appoint a President, a Chief Operating Officer, a Secretary and a Treasurer, and may elect a Chairman, and/or one or more Vice Presidents, Assistant Secretaries or Assistant Treasurers. The Chairman (if appointed) shall be a member of the Board. Any two or more of the above offices, except those of President and Vice President, may be held by the same person. Any person appointed by the Board to the office of Treasurer shall hold the equivalent title of *Chief Financial Officer*, and any person appointed by the Board to the office of *Vice President-Finance* or the office of *Chief Financial Officer* shall serve as Treasurer and shall forthwith succeed any incumbent holder of any such title. No officer shall execute an instrument in multiple capacities if the instrument is required by law to be acknowledged or verified by two or more officers.

6.02 *Term.* An officer shall hold office for the term for which he is elected or appointed and until his successor is elected or appointed and qualified, or until his resignation or removal. An officer may resign by written notice, to the Company. The resignation is effective upon its receipt by the Company or at a subsequent time specified in the notice of resignation. An officer may be removed by the Board with or without cause. The removal of an officer shall be without prejudice to his contract rights, if any. The appointment of an officer does not of itself create contract rights.

6.03 *Vacancies.* The Board may fill any vacancies in any office occurring for whatever reason.

6.04 *Authority.* All officers, employees and agents of the Company shall have such authority and perform such duties in the conduct and management of the business and affairs of the Company as may be designated by the Board and these Bylaws, and, in that regard,

(a) all checks, drafts, notes, bonds, bills of exchange and orders for payment by the Company may, subject to any contrary resolution adopted by the Board from time to time, be signed by the President, the Chief Operating Officer, the Chief Financial Officer or any Vice President, and

(b) the Board may in any instance designate the officer and/or agent who shall have authority to execute any contract, conveyance, mortgage or other instrument on behalf of the Company, or may ratify or confirm any execution (although when the execution of any instrument has been authorized without specification of the executing officers or agents, the President, Chief Executive Officer or any Vice President, may execute the same and on behalf of the Company).

VII. Duties

7.01 *Chairman.* The Chairman, if any is appointed, shall preside at all meetings of the Shareholders and of the Board at which the Chairman is present. The Chairman shall hold only such further authority as is expressly ascribed to him by these Bylaws and the resolutions of the Board.

7.02 *President.* The President shall be the chief executive officer of the Company, shall see that all resolutions of the Board are carried into effect, shall have the general powers of supervision usually vested in the chief executive officer of a corporation, and, subject to any contrary directives by the Board, shall hold authority (a) to direct (and commit) the Company's resources toward the achievement of the Company's goals, (b) to vote all securities or other interests of other business organizations held by the Company, and (c) to take such further actions to the extent approved by the Board. The President shall also hold authority equivalent to that held by the Chief Operating Officer, although, in the absence of a specific contrary directive by the Board or the President, such authority shall be left to the Chief Operating Officer. In the absence of the Secretary and any Assistant Secretary, the President may exercise the authority otherwise reserved to the Secretary.

7.03 *COO.* The Chief Operating Officer shall assume managerial responsibility over the day-to-day operations of the Company, shall exercise authority subject only to the directives of the President and the Board, and, subject to any contrary directive by the President or Board, shall hold (a) authority to supervise Company personnel, and (b) any further authority granted by the Board.

7.04 *Vice Presidents.* The Vice Presidents, in order of their seniority, shall, in the absence or disability of the President, perform the duties and exercise the powers of the President. Subject to the third sentence of Bylaw 6.01, the Vice Presidents shall in any event hold operating responsibility for those aspects of the Company's business referenced in any specific title of the particular Vice President, and shall perform such other duties as may be delegated by the Board or President

7.05 *Secretary.* The Secretary shall record all votes and minutes of all proceedings in a book to be kept for that purpose, shall give or cause to be given notice of all meetings of the Shareholders and of the Board, and shall keep in safe custody the seal of the Company and, when authorized by the Board, affix the same to any instrument requiring it, and when so affixed it shall be attested by the signature of the Secretary, or by the signature of the Treasurer or an Assistant Secretary. The Secretary may delegate any of the duties, powers and authorities of the Secretary to one or more Assistant Secretaries, unless such delegation is disapproved by the Board.

7.06 *Treasurer.* Subject to the authority of any Vice President charged with the responsibility for the Company's finances, the Treasurer shall have the custody of corporate funds and securities, shall keep full and accurate accounts of receipts and disbursements in books of the Company and shall deposit all moneys and other value in the name and to the credit of the Company in such depositories as may be designated by the Board. The Treasurer shall render to the President and directors,

whenever they may require it, an account of his or her transactions as Treasurer and of the financial condition of the Company. The Treasurer may delegate any of his or her duties, powers and authorities to one or more Assistant Treasurers unless such delegation is disapproved by the Board.

7.07 *Assistants.* The Assistant Secretaries, in order of their seniority, shall perform the duties and exercise the powers and authorities of the Secretary in case of the Secretary's absence or disability. The Assistant Treasurers, in the order of their seniority, shall perform the duties and exercise the powers and authorities of the Treasurer in case of the Treasurer's absence or disability. The Assistant Secretaries and Assistant Treasurers shall also perform such duties as may be delegated by the Secretary and Treasurer, respectively, and also such duties as the Board may prescribe.

VIII. Records

8.01 *Maintenance.* The proper officers and agents of the Company shall keep and maintain such books, records and accounts of the Company's business and affairs, minutes of the proceedings of its Shareholders, Board and committees, if any, and such stock ledgers and lists of Shareholders, as the Board shall deem advisable, and as shall be required by the laws of Texas and other states or jurisdictions empowered to impose such requirements. Books, records and minutes may be kept within or without Texas in a place which the Board shall determine.

8.02 *Reliance.* In discharging his or her duties, a director or an officer of the Company, when acting in good faith, may rely upon information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by (a) one or more directors, officers, or employees of the Company, or of a business organization under joint control or common control, whom the director or officer reasonably believes to be reliable and competent in the matters presented, (b) legal counsel, public accountants, engineers, or other persons as to matters the director or officer reasonably believes are within the person's professional or expert competence, or (c) a committee of the board of which he or she is not a member if the director or officer reasonably believes the committee merits confidence. A director or officer may not rely on any information if he or she has knowledge concerning the matter that makes reliance otherwise permitted unwarranted:

IX. Indemnification

9.01 *Personal.* Subject to all of the other provisions of this Article IX, the Company shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative and whether formal or informal (other than an action by or in the right of the Company) by reason that the person is or was a director or officer of the Company, or is or was serving at the request of the Company as a director, officer, partner, trustee, employee, or agent of another entity or enterprise, against expenses (including reasonable attorneys' fees), judgments, penalties and amounts paid in settlement reasonably incurred by him or her in connection with such action, suit or proceeding, if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the Company or the Shareholders, and, with respect to any criminal action or proceeding, if the person had no reasonable cause to believe his or her conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which the person reasonably believed to be in or not opposed to the best interests of the Company or the Shareholders, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his or her conduct was unlawful.

9.02 *Derivative.* Subject to all of the provisions of this Article IX, the Company shall indemnify any person who was or is a party to or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Company to procure a judgment in its favor by reason of the fact that the person is or was a director or officer of the Company, or is or was serving at

the request of the Company as a director, officer, partner, trustee, employee, or agent of another foreign or domestic corporation, partnership, joint venture, trust or other enterprise, whether for profit or not, against expenses (including attorneys' fees) and amounts paid in settlement reasonably incurred by the person in connection with such action or suit, if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the Company or the Shareholders. However, indemnification shall not be made for any claim, issue or matter in which such person has been found liable to the Company unless and only to the extent that the court in which such action or suit was brought has determined upon application that, despite the adjudication of liability but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnification for the reasonable expenses incurred.

9.03 *Expenses.* To the extent that a person has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Section 9.01 or 9.02 of these Bylaws, or in defense of any claim, issue or matter in the action, suit or proceeding, the person shall be indemnified against actual and reasonable expenses (including attorneys' fees) incurred by such person in connection with the action, suit or proceeding and any action, suit or proceeding brought to enforce the mandatory indemnification provided by this Section 9.03.

9.04 *Definitions.* For purposes of Sections 9.01 and 9.02, "other enterprises" shall include employee benefit plans; "fines" shall include any excise taxes assessed on a person with respect to an employee benefit plan; and "serving at the request of the Company" shall include any service as a director, officer, employee, or agent of the Company that imposes duties on, or involves services by, the director or officer with respect to an employee benefit plan, its participants or beneficiaries; and a person who acted in good faith and in a manner the person reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be considered to have acted in a manner "not opposed to the best interests of the Company or the Shareholders".

9.05 *Parameters.* The right to indemnification conferred in this Article IX shall be a contract right, and shall apply to services of a director or officer as an employee or agent of the Company as well as in such person's capacity as a director or officer. Except as provided in Section 9.03 of these Bylaws, the Company shall have no obligations under this Article IX to indemnify any person in connection with any proceeding, or part thereof, initiated by him or her without Board authorization.

9.06 *Determination.* Any indemnification under Section 9.01 or 9.02 of these Bylaws (unless ordered by a court) shall be made by the Company only as authorized in the specific case upon a determination that indemnification of the person is proper in the circumstances because the person has met the applicable standard of conduct set forth in Section 9.01 or 9.02, whichever is applicable, and upon an evaluation of the reasonableness of expenses and amount paid in settlement. Such determination and evaluation shall be made in any of the following ways:

(a) By a majority vote of a quorum of the Board consisting of directors who are not parties or threatened to be made parties to such proceeding.

(b) If the quorum described in clause (a) above is not obtainable, then by a majority vote of a committee of directors duly designated by the Board and consisting solely of two or more directors who are not at the time parties or threatened to be made parties to the proceeding.

(c) By independent legal counsel in a written opinion, so long as such counsel is selected (i) by the Board or its committee in the manner prescribed in subparagraph (a) or (b), or (ii) if a quorum of the Board cannot be obtained under subparagraph (a) and a committee cannot be designated under subparagraph (b), by the Board.

(d) By the Shareholders, but Shares held by directors or officers who are parties or threatened to be made parties to the action, suit or proceeding may not be voted.

9.07 *Proportionality.* If a person is entitled to indemnification under Section 9.01 or 9.02 of these Bylaws for a portion of expenses, including attorneys' fees, judgments, penalties, fines, and amounts paid in settlement, but not for the total amount thereof, the Company shall indemnify the person for

the portion of the expenses, judgments, penalties, fines, or amounts paid in settlement for which the person is entitled to be indemnified.

9.08 *Advances.* The Company may pay or reimburse the reasonable expenses incurred by a person referred to in Section 9.01 or 9.02 of these Bylaws who is a party or threatened to be made a party to an action, suit, or proceeding in advance of final disposition of the proceeding if (a) the person furnishes the Company a written affirmation of his or her good faith belief that he or she has met the applicable standard of conduct set forth in Section 9.01 or 9.02, (b) the person furnishes the Company a written undertaking executed to personally repay the advance if it is ultimately determined that he or she did not meet the standard of conduct, (c) the authorization of payment is made in the manner specified in Section 9.06, and (d) a determination is made that the facts then known to those making the determination would not preclude indemnification under Section 9.01 or 9.02. The undertaking shall be a general obligation of the person, but need not be secured.

9.09 *Scope.* The indemnification or advancement of expenses provided under this Article IX is not exclusive of other rights to which a person seeking indemnification or advancement of expenses may be entitled under a contractual arrangement with the Company. However, the total amount of expenses advanced or indemnified from all sources combined shall not exceed the amount of actual expenses incurred by the person seeking indemnification or advancement of expenses.

9.10 *Agents.* The Company may, to the extent authorized from time to time by the Board, grant rights to indemnification and to the advancement of expenses to any employee or agent of the Company to the fullest extent of the provisions of this Article IX with respect to the indemnification and advancement of expenses of directors and officers of the Company.

9.11 *Succession.* The indemnification provided in this Article IX continues as to a person who has ceased to be a director or officer and shall inure to the benefit of his or her successors.

9.12 *Insurance.* The Company may buy and maintain insurance on behalf of any person who is or was a director, officer, partner, trustee, employee or agent of the Company, or is or was serving at the request of the Company as a director, officer, employee or agent of another entity or enterprise against any liability asserted against the person and incurred by him or her in any such capacity or arising out of his or her status as such, whether or not the Company would have power to indemnify the person against such liability under these Bylaws or the laws of Texas.

9.13 *Legislation.* Upon any change of the Texas statutory provisions relating to the subject matter of this Article IX, the indemnification to which any person shall be entitled hereunder shall be determined by such changed provisions, but only to the extent that any such change permits the Company to provide broader indemnification rights than before any such change. Subject to Section 9.14, the Board may amend these Bylaws to conform to any such changed statutory provisions.

9.14 *Amendment.* No amendment or repeal of this Article IX shall apply to any director or officer of the Company for or with respect to any prior acts or omissions of such director or officer.

X. Amendment

The Bylaws of the Company may be amended, altered or repealed, in whole or in part, by the Shareholders or by the Board at any meeting duly held in accordance with these Bylaws.

FIRST SUPPLEMENTAL INDENTURE

THIS FIRST SUPPLEMENTAL INDENTURE (the "*First Supplemental Indenture*") is dated as of July 20, 2004, among OMEGA HEALTHCARE INVESTORS, INC., a Maryland corporation (the "*Issuer*"), each of the SUBSIDIARY GUARANTORS listed on Schedule I hereto (the "*Subsidiary Guarantors*"), OHI ASSET II (TX), LLC, a Delaware limited liability company and wholly owned subsidiary of the Issuer (the "*Texas Sub*"), and U.S. BANK NATIONAL ASSOCIATION, a national banking association organized and existing under the laws of the United States of America, as trustee (the "*Trustee*").

WITNESSETH:

WHEREAS, the Issuer and the Subsidiary Guarantors have heretofore executed and delivered to the Trustee an indenture (the "*Indenture*"), dated as of March 22, 2004, providing for the issuance of the Issuer's 7% Senior Notes due 2014 (the "*Notes*");

WHEREAS, Section 9.01 of the Indenture authorizes the Issuer, the Subsidiary Guarantors and the Trustee, together, to amend or supplement the Indenture, without notice to or consent of any Holder (as defined in the Indenture) of the Notes, in order to make any change that would not materially adversely affect the rights of any Holder of the Notes;

WHEREAS, in Section 1.01 of the Indenture the term "Subsidiary Guarantor" is defined to include each Restricted Subsidiary (as defined in the Indenture) of the Issuer on the Closing Date;

WHEREAS, Section 10.01 of the Indenture provides that each Subsidiary Guarantor shall be a guarantor of the Issuer's obligations under the Notes, subject to the terms and conditions described in the Indenture;

WHEREAS, the Texas Sub existed as a Restricted Subsidiary as of the Closing Date, but was inadvertently not included as a named Subsidiary Guarantor in the Indenture;

WHEREAS, Section 4.03 of the Indenture provides that the Issuer shall not be required to maintain the existence of any Restricted Subsidiary if the preservation thereof is no longer desirable in the conduct of the business of the Issuer and its Restricted Subsidiaries, taken as a whole, and the loss thereof is not adverse in any material respect to the Holders of the Notes;

WHEREAS, OHI (Greensboro), Inc. and OHI (Clemmons), Inc. (collectively, the "*Dissolved Subsidiaries*") are Restricted Subsidiaries under the Indenture and were dissolved under the laws of the state of North Carolina, effective as of June 14, 2004;

WHEREAS, (i) the Dissolved Subsidiaries were single asset entities, (ii) the respective properties owned by each of the Dissolved Subsidiaries were distressed properties, (iii) each of these properties were sold at auctions conducted pursuant to the applicable regulations set forth by the US Department of Housing and Urban Development ("*HUD*"), and (iv) all of the proceeds received from such auctions were retained by HUD to be applied toward outstanding debt secured by each of the aforementioned properties;

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt of which is hereby acknowledged, the Issuer, the Subsidiary Guarantors, the Texas Sub and the Trustee mutually covenant and agree for the equal and ratable benefit of the Holders of the Notes as follows:

1. CAPITALIZED TERMS. Capitalized terms used herein without definition shall have the meanings assigned to them in the Indenture.
 2. RELEASE OF DISSOLVED SUBSIDIARIES. The Dissolved Subsidiaries are hereby released as Subsidiary Guarantors under the Indenture as a result of the dissolution thereof.
-

3. **AGREEMENT TO GUARANTEE.** The Texas Sub hereby agrees, jointly and severally with all other Subsidiary Guarantors, to guarantee the Issuer's obligations under the Notes on the terms and subject to the conditions set forth in the Indenture, and to be bound by, and to receive the benefit of, all other applicable provisions of the Indenture as a Subsidiary Guarantor. Such guarantee shall be evidenced by the Texas Sub's execution of a Subsidiary Guarantee, the form of which is attached as Exhibit E to the Indenture, and shall be effective as of March 22, 2004.

3. **NO RECOURSE AGAINST OTHERS.** No past, present or future director, officer, employee, partner, affiliate, beneficiary or stockholder of the Texas Sub, as such, shall have any liability for any obligations of the Issuer or any Subsidiary Guarantor under the Notes, any Guarantees, the Indenture or this First Supplemental Indenture or for any claim based on, in respect of, or by reason of, such obligations or their creation. Each Holder of the Notes by accepting a Note waives and releases all such liability. The waiver and release are part of the consideration for issuance of the Notes.

4. **NEW YORK LAW TO GOVERN.** The laws of the State of New York shall govern and be used to construe this First Supplemental Indenture.

5. **COUNTERPARTS.** The parties may sign any number of copies of this First Supplemental Indenture. Each signed copy shall be an original, but all of them together represent the same agreement.

6. **EFFECT OF HEADINGS.** The Section headings herein are for convenience only and shall not affect the construction hereof.

7. **THE TRUSTEE.** The Trustee shall not be responsible in any manner whatsoever for or in respect of the validity or sufficiency of this First Supplemental Indenture or for or in respect of the recitals contained herein, all of which recitals are made solely by the Issuer, the Subsidiary Guarantors and the Texas Sub.

IN WITNESS WHEREOF, the parties hereto have caused this First Supplemental Indenture to be duly executed and attested, all as of the date first above written.

Dated as of July 20, 2004

OMEGA HEALTHCARE INVESTORS, INC.

By: /s/ C. TAYLOR PICKETT

Name: C. Taylor Pickett
Title: President and Chief Executive Officer

On behalf of each Subsidiary Guarantor named on the attached Schedule I

By: /s/ C. TAYLOR PICKETT

Name: C. Taylor Pickett
Title: President and Chief Executive Officer

OHI ASSET II (TX), LLC

By: /s/ C. TAYLOR PICKETT

Name: C. Taylor Pickett
Title: President and Chief Executive Officer

U.S. BANK NATIONAL ASSOCIATION, as Trustee

By: /s/ TERESA L. DAVIS

Name: Teresa L. Davis
Title: Vice President

Schedule I

SUBSIDIARY GUARANTORS

Omega Healthcare Investors, Inc.

Arizona Lessor—Infinia, Inc.

Bayside Alabama Healthcare Second, Inc.

Bayside Arizona Healthcare Associates, Inc.

Bayside Arizona Healthcare Second, Inc.

Bayside Colorado Healthcare Associates, Inc.

Bayside Colorado Healthcare Second, Inc.

Bayside Indiana Healthcare Associates, Inc.

Bayside Street II, Inc.

Bayside Street, Inc.

Care Holdings, Inc

Center Healthcare Associates, Inc.

Cherry Street—Skilled Nursing, Inc.

Colorado Lessor—Conifer, Inc.

Dallas Skilled Nursing, Inc.

Delta Investors I, LLC

Delta Investors II, LLC

Florida Lessor—Crystal Springs, Inc.

Florida Lessor—Emerald, Inc.

Florida Lessor—Five Facilities, Inc.

Florida Lessor—Lakeland, Inc.

Florida Lessor—Meadowview, Inc.

Florida Lessor—West Palm Beach and Southpoint, Inc.

Georgia Lessor—Bonterra/Parkview, Inc.

Heritage Texarkana Healthcare Associates, Inc.

Indiana Lessor—Jeffersonville, Inc.

Indiana Lessor—Wellington Manor, Inc.

Jefferson Clark, Inc.

Lake Park Skilled Nursing, Inc.

Long Term Care—Michigan, Inc.

Long Term Care—North Carolina, Inc.

Long Term Care Associates—Illinois, Inc.

Long Term Care Associates—Indiana, Inc.

Long Term Care Associates—Texas, Inc.

NRS Ventures, LLC

OHI (Clemmons), Inc.*

OHI (Connecticut), Inc.

OHI (Florida), Inc.

OHI (Greensboro), Inc.*

* Entity dissolved on June 14, 2004.

OHI (Illinois), Inc.
OHI (Indiana), Inc.
OHI (Iowa), Inc.
OHI (Kansas), Inc.
OHI Asset (CA), LLC
OHI Asset (FL) Tarpon Springs, Pinellas Park & Gainesville, LLC
OHI Asset (FL), LLC
OHI Asset (ID), LLC
OHI Asset (IN), LLC
OHI Asset (LA), LLC
OHI Asset (MI/NC), LLC
OHI Asset (MO), LLC
OHI Asset (OH), LLC
OHI Asset (TX), LLC
OHI Asset II (CA), LLC
OHI Asset II (TX), LLC
OHI Asset, LLC
Ohio Lessor Waterford & Crestwood, Inc.
OHI of Kentucky, Inc.
OHI of Texas, Inc.
OHI Sunshine, Inc.
OHIMA, Inc.
Omega (Kansas), Inc.
Omega Acquisition Facility I, LLC
Omega TRS I, Inc.
OS Leasing Company
Parkview—Skilled Nursing, Inc.
Pine Texarkana Healthcare Associates, Inc.
Reunion Texarkana Healthcare Associates, Inc.
San Augustine Healthcare Associates, Inc.
Skilled Nursing—Gaston, Inc.
Skilled Nursing—Herrin, Inc.
Skilled Nursing—Hicksville, Inc.
Skilled Nursing—Paris, Inc.

South Athens Healthcare Associates, Inc.

Sterling Acquisition Corp.

Sterling Acquisition Corp. II

Texas Lessor—Stonegate GP, Inc.

Texas Lessor—Stonegate Limited, Inc.

Texas Lessor—Stonegate, L.P.

Texas Lessor—Treemont, Inc.

Washington Lessor—Silverdale, Inc.

Waxahachie Healthcare Associates, Inc.

West Athens Healthcare Associates, Inc.

[Powell, Goldstein, Frazer & Murphy LLP letterhead]

July 26, 2004

Omega Healthcare Investors, Inc.
9690 Derreco Road
Suite 100
Timonium, Maryland 21093

Re: Registration Statement on Form S-4 filed by Omega Healthcare Investors, Inc.

Ladies and Gentlemen:

In connection with the above-captioned Registration Statement on Form S-4 (the "Registration Statement") filed by Omega Healthcare Investors, Inc., a Maryland corporation (the "Company"), and certain of its subsidiaries named therein (collectively, the "Guarantors") with the Securities and Exchange Commission (the "Commission") on June 21, 2004 under the Securities Act of 1933, as amended (the "Act"), we have been requested to render our opinion with respect to the offering (the "Exchange Offer") of up to \$200,000,000 in aggregate principal amount of the registered 7% Senior Notes due 2014 (the "Exchange Notes") of the Company in exchange for all of the outstanding unregistered 7% Senior Notes due 2014 (the "Initial Notes") of the Company. The Exchange Notes will be issued pursuant to the Indenture dated as of March 22, 2004 among the Company, the Guarantors and U.S. Bank National Association, as trustee (the "Trustee"). The Exchange Notes will be unconditionally guaranteed (the "Exchange Guarantees") by the Guarantors.

In rendering this opinion, we have examined such corporate records, documents, certificates and instruments as we have deemed necessary for purposes of this opinion. We have assumed the genuineness of all signatures, the legal capacity of all natural persons, the authenticity of all documents submitted to us as originals, the conformity to original documents of all documents submitted to us as certified or photostatic copies and the authenticity of the originals of such documents.

This opinion is limited to the Maryland General Corporation Law, the laws of the State of New York, and the federal laws of the United States, and we do not express any opinions herein concerning any other law. While our Firm does not maintain an office or an active practice in the State of New York, members of our Firm are admitted to the Bar of the State of New York, and have reviewed this opinion letter and, to the extent the opinions expressed herein relate to the laws of the State of New York law, we advise you that we have, with your permission, considered only those laws of the State of New York which are typically applicable to transactions similar to the transactions contemplated by the Indenture and the Guaranties, and we express no opinion with respect to any other laws of the State of New York. Except as otherwise indicated herein, we have not undertaken any independent investigation of factual matters.

Based upon the foregoing, and in reliance thereon, and subject to the assumptions, limitations and qualifications stated herein, we are of the opinion that upon exchange of the Initial Notes as contemplated by the prospectus constituting part of the Registration Statement, the Exchange Notes will constitute valid and legally binding obligations of the Company, and the Exchange Guarantees will constitute valid and legally binding obligations of the Guarantors, enforceable against the Company and each such Guarantor, respectively, in accordance with their terms except as enforcement may be limited by bankruptcy, insolvency, fraudulent conveyance or transfer, reorganization or other laws of general applicability relating to or affecting creditors' rights and general principles of equity.

We consent to the filing of this opinion as Exhibit 5.1 to the Registration Statement and to the reference to our firm under the heading "Legal Matters" in the prospectus constituting part of the Registration Statement. Our consent to such reference does not constitute a consent under Section 7 of the Act and in consenting to such reference we have not certified any part of the Registration

Statement and do not otherwise come within the categories of persons whose consent is required under Section 7 or under the rules and regulations of the Securities and Exchange Commission thereunder.

Very truly yours,

/s/ Powell, Goldstein, Frazer & Murphy LLP

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Exhibit 23.1

Consent of Registered Independent Public Accounting Firm

We consent to the reference to our firm under the caption "Experts" in the Registration Statement (Form S-4 No. 333-116690) and related Prospectus of Omega Healthcare Investors, Inc. for the registration of \$200,000,000 7% Senior Notes due 2014 and to the incorporation by reference therein of our report dated January 27, 2004, except for Note 20, as to which the date is February 13, 2004, with respect to the consolidated financial statements and schedules of Omega Healthcare Investors, Inc. included in its Annual Report (Form 10-K) for the year ended December 31, 2003, filed with the Securities and Exchange Commission.

/s/ Ernst & Young LLP

McLean, Virginia
July 22, 2004

QuickLinks

[Consent of Registered Independent Public Accounting Firm](#)

OMEGA HEALTHCARE INVESTORS, INC.
OFFER TO EXCHANGE REGISTERED
7% SENIOR NOTES DUE 2014
FOR ANY AND ALL OUTSTANDING
UNREGISTERED 7% SENIOR NOTES DUE 2014

THE EXCHANGE OFFER WILL EXPIRE AT 5:00 P.M. NEW YORK CITY TIME, ON
, 2004, UNLESS EXTENDED (THE "EXPIRATION DATE").

To Our Clients:

Enclosed for your consideration is a prospectus dated _____, 2004 (as the same may be amended or supplemented from time to time, the "Prospectus") relating to the offer (the "Exchange Offer") by Omega Healthcare Investors, Inc., a Maryland corporation (the "Company") to exchange an aggregate principal amount of up to \$200,000,000 of its 7% Senior Notes due 2014 (the "Exchange Notes"), which have been registered under the Securities Act of 1933, as amended (the "Securities Act"), for a like principal amount of its outstanding 7% Senior Notes due 2014 (the "Initial Notes"). The Exchange Offer is being made in order to satisfy certain obligations of the Company contained in the Registration Rights Agreement, dated March 22, 2004, by and among the Company, substantially all of the subsidiaries of the Company and the initial purchasers referred to therein. As set forth in the Prospectus, the terms of the Exchange Notes are identical in all material respects to the Initial Notes, except that the Exchange Notes have been registered under the Securities Act and therefore (1) will not be subject to certain restrictions on their transfer, (2) will not be entitled to registration rights and (3) will not contain provisions providing for an increase in the interest rate thereon under the circumstances set forth in the Registration Rights Agreement as described in the Prospectus. Initial Notes may be tendered in a principal amount of \$1,000 and integral multiples of \$1,000.

We are forwarding the enclosed materials to you as the beneficial owner of Initial Notes held by us for your account or benefit but not registered in your name. We may tender Initial Notes in the Exchange Offer as the registered holder only if you so instruct us. Therefore, the Company urges you, as a beneficial owner of Initial Notes registered in our name, to contact us promptly if you wish to exchange Initial Notes in the Exchange Offer.

Accordingly, we request instructions as to whether you wish us to exchange any or all Initial Notes held by us for your account or benefit pursuant to the terms and conditions set forth in the Prospectus. We urge you to read carefully the Prospectus before instructing us to exchange your Initial Notes.

You should forward instructions to us as promptly as possible in order to permit us to exchange Initial Notes on your behalf in accordance with the terms of the Exchange Offer. The Exchange Offer will expire at 5:00 p.m., New York City time, on _____, 2004, unless extended (the "Expiration Date"). A tender of Initial Notes may be withdrawn at any time prior to 5:00 p.m., New York City time, on the Expiration Date.

We call your attention to the following:

1. The Exchange Offer is for the exchange of \$1,000 principal amount of Exchange Notes for each \$1,000 principal amount of Initial of Initial Notes. \$200,000,000 aggregate principal amount of the 7% Senior Notes due 2014 are outstanding as of the date of the Prospectus.
 2. Based upon interpretations by the staff of the Securities and Exchange Commission (the "SEC") set forth in no action letters issued to unrelated third parties in other transactions, Exchange Notes issued pursuant to the Exchange offer in exchange for Initial Notes may be offered for resale, resold and otherwise transferred by a holder thereof (other than a holder that is an "affiliate" of the Company within the meaning of Rule 405 under the Securities Act or a "broker" or "dealer" registered under the Securities Exchange Act of 1934, as amended (the "Exchange Act")), without compliance with the registration and prospectus delivery
-

provisions of the Securities Act, provided that such Exchange Notes are acquired in the ordinary course of such holder's business and such holder has not engaged in, does not intend to engage in, and has no arrangement or understanding with any person to participate in, the distribution of such Exchange Notes. See "Shearman & Sterling," SEC No-Action Letter (available July 2, 1993), "Morgan Stanley & Co., Inc.," SEC No-Action Letter (available June 5, 1991) and "Exxon Capital Holding Corporation," SEC No-Action Letter (available May 13, 1988). Accordingly, each broker or dealer that receives Exchange Notes for its own account pursuant to the Exchange Offer must acknowledge that it will deliver a prospectus meeting the requirements of the Securities Act in connection with any resale of such Exchange Notes; however, by so acknowledging and by delivering a prospectus meeting the requirements of the Securities Act, the undersigned will not be deemed to admit that it is an "underwriter" within the meaning of the Securities Act.

3. The Exchange Offer is subject to the conditions described in the section entitled "The Exchange Offer—Conditions to the Exchange Offer" of the Prospectus. Notwithstanding any other provisions of the Exchange Offer, or any extension of the Exchange Offer, the Company will not be required to accept for exchange, or to exchange any Exchange Notes for, any Initial Notes and may terminate the Exchange Offer (whether or not any Initial Notes have been accepted for exchange) or may waive any conditions to or amend the Exchange Offer, if any of the conditions described under "The Exchange Offer—Conditions of the Exchange Offer" in the Prospectus have occurred or exist or have not been satisfied.
4. The Exchange Offer is not conditioned on any minimum aggregate principal amount of Initial Notes being tendered. The Exchange Notes will be exchanged for the Initial Notes at the rate of \$1,000 principal amount of Initial Notes.
5. The Company has agreed to pay certain of the expenses of the Exchange Offer, and will pay any transfer taxes incident to the transfer of Initial Notes from the tendering holder to the Company, except as provided in the Prospectus.

Omega is not making the Exchange Offer to, nor will it accept tenders from or on behalf of, holders of Initial Notes residing in any jurisdiction in which the making of the Exchange Offer or the acceptance of tenders would not be in compliance with the laws of that jurisdiction.

If you wish us to tender any or all of your Initial Notes held by us for your account or benefit, please so instruct us by completing, executing and returning to us the attached instruction form.

INSTRUCTIONS

The undersigned acknowledge(s) receipt of your letter and the materials relating to the Exchange Offer enclosed with and referred to in your letter.

These instructions describe the procedure to tender for exchange, pursuant to the terms and conditions set forth in the Prospectus, the aggregate principal amount of Initial Notes indicated below or, if no aggregate principal amount is indicated below, all Initial Notes held by you for the account or benefit of the undersigned.

The undersigned expressly agree(s) to be bound by the terms and subject to the conditions of the Prospectus and that such terms and conditions may be enforced against the undersigned, unless your instructions are withdrawn timely.

If the undersigned instruct(s) you to tender Initial Notes held by you for the account of the undersigned, it is understood that you are authorized to make, on behalf of the undersigned (and the undersigned, by its signature below, hereby make(s) to you), the representations and warranties contained in the Prospectus that are to be made with respect to the undersigned as a beneficial owner, including but not limited to the representations that (i) the Exchange Notes acquired pursuant to the Exchange Offer are being obtained in the ordinary course of business of the person receiving such Exchange Notes, whether or not such person is the undersigned, (ii) neither the undersigned nor any

other person has engaged in, intends to engage in, or has any arrangement or understanding with any person to participate in the distribution of such Exchange Notes, (iii) the undersigned is not an "affiliate," as defined under Rule 405 of the Securities Act, of the Company. If any of the undersigned is a broker or dealer that will receive Exchange Notes for its own account in exchange for Initial Notes that were acquired as a result of market-making activities or other trading activities, it acknowledges that it will deliver a copy of a prospectus in connection with any resale of the Exchange Notes; however, by so acknowledging and by delivering a prospectus, the undersigned will not be deemed to admit that it is an "underwriter" within the meaning of the Securities Act.

Please tender the Initial Notes held by you for my account as indicated below:

Aggregate principal amount of Initial Notes to be tendered for exchange: \$ _____ *

* I (we) understand that if I (we) sign this instruction form without indicating an aggregate principal amount of Initial Notes in the space above, all Initial Notes held by you for my (our) account will be tendered for exchange.

Please do not tender any Initial Notes held by you for my account.

Signature(s):

Name(s) (Please type or print):

Tax Identification or Social Security Number(s):

Capacity (full title), if signing in a fiduciary or representative capacity:

Telephone Number(s) (including area code): Address(es) (including zip code(s)):

Date:

OMEGA HEALTHCARE INVESTORS, INC.

**OFFER TO EXCHANGE REGISTERED
7% SENIOR NOTES DUE 2014
FOR ANY AND ALL OUTSTANDING
UNREGISTERED 7% SENIOR NOTES DUE 2014**

THE EXCHANGE OFFER WILL EXPIRE AT 5:00 P.M., NEW YORK CITY TIME, ON
2004, UNLESS EXTENDED (THE "EXPIRATION DATE")

To Brokers, Dealers, Commercial Banks, Trust Companies and Other Nominees:

Omega Healthcare Investors, Inc., ("we" or the "Company") are offering upon the terms and subject to the conditions set forth in the prospectus dated _____, 2004 (as, the same maybe amended or supplemented from time to time, the "Prospectus") to exchange (the "Exchange Offer") up to \$200,000,000 aggregate principal amount of our 7% Senior Notes Due 2014 (the "Exchange Notes"), which have been registered under the Securities Act of 1933, as amended (the "Securities Act"), for a like principal amount of our outstanding 7% Senior Notes Due 2014 (the "Initial Notes"). The Exchange Offer is being made in order to satisfy certain obligations of the Company contained in the Registration Rights Agreement, dated March 22, 2004, by and among the Company, substantially all of the subsidiaries of the Company and the initial purchasers referred to therein. As set forth in the Prospectus, the terms of the Exchange Notes are identical in all material respects to the Initial Notes, except that the Exchange Notes have been registered under the Securities Act and therefore (1) will not be subject to certain restrictions on their transfer, (2) will not be entitled to registration rights and (3) will not contain provisions providing for an increase in the interest rate thereon under the circumstances set forth in the Registration Rights Agreement as described in the Prospectus.

The Exchange Offer is not conditioned on any minimum aggregate principal amount of Initial Notes being tendered, except that the Initial Notes may be tendered only in a principal amount of \$1,000 and integral multiples of \$1,000.

The Exchange Offer is subject to the conditions described in the section entitled "The Exchange Offer—Conditions of the Exchange Offer" of the Prospectus. Notwithstanding any other provisions of the Exchange Offer, or any extension of the Exchange Offer, the Company will not be required to accept for exchange, or to exchange any Exchange Notes for, any Initial Notes and may terminate the Exchange Offer (whether or not any Initial Notes have been accepted for exchange) or may waive any conditions to or amend the Exchange Offer, if any of the conditions described in the Prospectus under "The Exchange Offer—Conditions of the Exchange Offer" have occurred or exist or have not been satisfied.

We are requesting that you contact your clients for whom you hold Initial Notes regarding the Exchange Offer. Enclosed herewith for your information and forwarding to your clients for whom you hold Initial Notes registered in your name or in the name of your nominee, or who hold Initial Notes registered in their own names, are copies of the following documents:

1. The Prospectus, dated _____, 2004;
2. A form of letter which may be sent to your clients for whose accounts you hold Initial Notes registered in your name or in the name of your nominee, with space provided for obtaining such clients' instructions with regard to the Exchange Offer; and
3. Guidelines of the Internal Revenue Service for Certification of Taxpayer Identification Number on Substitute Form W-9.

Your prompt action is requested. Please note the Exchange Offer will expire at 5:00 p.m., New York City time, on _____, 2004, unless extended. Please furnish copies of the enclosed materials

to those of your clients for whom you hold Initial Notes registered in your name or in the name of your nominee as quickly as possible.

Depository Trust Company ("DTC") participants will be able to execute tenders through the DTC Automated Tender Offer Program.

In all cases (other than with respect to the guaranteed delivery procedures described below), exchanges of Initial Notes pursuant to the Exchange Offer will be made only after the Exchange Agent (as defined in the Prospectus) receives the following documents by 5:00 p.m., New York City time, on the Expiration Date: (1) a book-entry confirmation (as defined in the Prospectus), (2) an agent's message (as defined in the Prospectus) and (3) any other required documents.

We are not making the Exchange offer to, nor will we accept tenders from or on behalf of, holders of Initial Notes residing in any jurisdiction in which the making of the Exchange Offer or the acceptance of tenders would not be in compliance with the laws of such jurisdiction.

We will not make any payments to brokers, dealers or other persons for soliciting acceptances of the Exchange Offer. We will, however, upon request, reimburse you for customary clerical and mailing expenses incurred by you in forwarding any of the enclosed materials to your clients. We will pay or cause to be paid any transfer taxes payable on the transfer of Initial Notes to us, except as otherwise provided in the Prospectus.

Questions and requests for assistance with respect to the Exchange Offer or for copies of the Prospectus may be directed to the Exchange Agent at its numbers and address set forth in the Prospectus.

Very truly yours,

OMEGA HEALTHCARE INVESTORS, INC.

Nothing contained in this letter or in the enclosed documents shall establish you or any other person as an agent of the Company, any affiliate of the Company or the Exchange Agent, or authorize you or any other person to make any statements or use any document on behalf of any of them in connection with the Exchange Offer other than the enclosed documents and the statements contained therein.
