

FROM

BARCELIA A. LEMONICIS P. A.
1800 W. HILISCOUS BLVD.

SE LABEL

City/State/Zip

Phone #

Office Use Only

CORPORATION NAME(S) & DOCUMENT NUMBER(S), (if known):

1. _____
(Corporation Name) (Document #)
2. _____
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(Corporation Name) (Document #) 600002211636--6
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☐ Walk in☐ Pick up time _____☐ Certified Copy☐ Mail out☐ Will wait☐ Photocopy☐ Certificate of State

NEW FILINGS	
<input type="checkbox"/>	Profit
<input type="checkbox"/>	NonProfit
<input type="checkbox"/>	Limited Liability
<input type="checkbox"/>	Domestication
<input type="checkbox"/>	Other

AMENDMENTS	
<input type="checkbox"/>	Amendment
<input type="checkbox"/>	Resignation of R.A., Officer/ Director
<input type="checkbox"/>	Change of Registered Agent
<input type="checkbox"/>	Dissolution/Withdrawal
<input type="checkbox"/>	Merger

OTHER FILINGS	
<input type="checkbox"/>	Annual Report
<input type="checkbox"/>	Fictitious Name
<input type="checkbox"/>	Name Reservation

REGISTRATION/ QUALIFICATION	
<input type="checkbox"/>	Foreign
<input type="checkbox"/>	Limited Partnership
<input type="checkbox"/>	Reinstatement
<input type="checkbox"/>	Trademark
<input type="checkbox"/>	Other

FILED
97 JUN 13 AM 11:02
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

*Code Master authorized
to file in date 8-6-97
and 6-30-97 in plan
of merger.*

Merger

6-25-97

Examiner's Initials

LF

AUDIT NUMBER _____

**ARTICLES OF MERGER
OF MELBOURNE MEDICAL LABORATORY, P.A.
INTO OMNI HEALTHCARE, P.A.**

Pursuant to the provisions of Section 607.1101 of the Florida Business Corporation Act, as amended, the undersigned corporations adopt the following Articles of Merger for the purpose of merging them into one of such corporations:

FIRST: The names of the undersigned corporations and the States under the laws of which they are respectively organized are:

<u>Name of Corporation</u>	<u>State</u>
MELBOURNE MEDICAL LABORATORY, P.A.	Florida
OMNI HEALTHCARE, P.A.	Florida

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SECRETARY OF STATE
TALLAHASSEE, FLORIDA

SECOND: The surviving corporation is Omni Healthcare, P.A. and it is to be governed by Chapter 607 of the laws of the State of Florida.

THIRD: The Agreement and Plan of Merger (the "Plan of Merger") attached hereto as Exhibit A was approved by the shareholders of the undersigned corporations in the manner prescribed by Section 607.1103 of the Florida Business Corporation Act, as amended, on June 3, 1997.

FOURTH: As to each of the undersigned corporations, the number of shares outstanding, and the designation and number of outstanding shares of each class entitled to vote as a class on such Plan, are as follows:

<u>ENTITLED TO VOTE AS CLASS</u>			
<u>Name of Corporation</u>	<u>No. Shares Outstanding</u>	<u>Designation of Class</u>	<u>Number of Shares</u>
MELBOURNE MEDICAL LABORATORY, P.A.	One Hundred (100)	Common	One Hundred (100)
OMNI HEALTHCARE, P.A.	One Thousand Three Hundred (1,300)	Common	One Thousand Three Hundred (1,300)

Florida Bar No. 0381195
O'Brien, Riemenschneider,
Kancilia & Lemonidis, P.A.
1686 West Hibiscus Blvd.
Melbourne, FL 32901
(407)728-2800
(407)728-0002 (FAX)

AUDIT NUMBER _____

AUDIT NUMBER _____

FIFTH: As to each of the undersigned corporations, the votes in favor of the merger of each class entitled to vote thereon were sufficient to approve the merger. The total number of shares voted for against such Plan as to each of the undersigned corporations, respectively, and, as to each class entitled to vote thereon as a class, the number of shares of such class voted for and against such Plan, respectively, are as follows:

<u>Name of Corporation</u>	<u>Total Voted For</u>	<u>Total Voted Against</u>	<u>Class</u>
MELBOURNE MEDICAL LABORATORY, INC.	one hundred (100)	0	Common
OMNI HEALTHCARE, P.A.	one thousand three hundred (1,300)	0	Common

SIXTH: The Articles of Incorporation of the Surviving Corporation are hereby amended by amending the first sentence of Article IV to read as follows:


“ARTICLE IV
Capital Stock

The Corporation is authorized to issue one million (1,000,000)
shares of common stock.”

The remaining parts of Article IV remain unchanged.

Dated: June 9, 1997

MELBOURNE MEDICAL LABORATORY, INC.

By: 
CRAIG DELIGDISH, M.D., President

OMNI HEALTHCARE, P.A.

By: 
SCOTT Z. SEMINER, M.D., President

AGREEMENT AND PLAN OF MERGER

This AGREEMENT AND PLAN OF MERGER (the "Agreement") is entered into as of the 7th day of June, 1997 by and among OMNI HEALTHCARE, P.A., a Florida professional services corporation, ("OMNI") and MELBOURNE MEDICAL LABORATORY, INC., a Florida corporation ("LAB").

WITNESSETH:

WHEREAS, this Agreement has been approved by the respective boards of directors of OMNI and LAB; and

WHEREAS, this Agreement will be submitted for approval by the stockholders of OMNI and LAB.

NOW, THEREFORE, in consideration of the mutual and dependent promises and the representations and warranties hereinafter contained, the parties hereto agree as follows:

SECTION 1. THE MERGER.

1.1 **The Merger.** At the Effective Time (as defined in section 1.4) and subject to the terms and conditions hereof and the provisions of Chapter 607, Fla. Stat. and the Florida Business Corporation Act (hereinafter referred to as the "FBCA"), LAB will be merged with and into OMNI in accordance with the FBCA, the separate existence of LAB shall thereupon cease and OMNI shall continue as the surviving corporation (the "Surviving Corporation"). LAB and OMNI are sometimes hereinafter referred to collectively as the "Constituent Corporations." For purposes of the representations, warranties, covenants and agreements contained herein, references to the business, properties, assets, condition or prospects of LAB and/or OMNI will be deemed to refer to such business, properties, assets, conditions and prospects both before the

Closing with respect to LAB and OMNI after the Closing with respect to the Surviving Corporation.

1.2 **Effects of the Merger.** The separate corporate existence of OMNI, as the Surviving Corporation, with all its purposes, objects, rights, privileges, powers, certificates and franchises, shall continue unimpaired by the merger. The Surviving Corporation shall succeed to all the properties and assets of the Constituent Corporations and to all debts, chooses in action and other interests due or belonging to the Constituent Corporations and shall be subject to, and responsible for, all the debts, liabilities and duties of the Constituent Corporations with the effect set forth in Section 607.1106 of the FBCA.

1.3 **Closing.**

(a) The transactions contemplated by this Agreement shall be consummated at a closing (the "Closing") which will take place at the offices of O'Brien, Riemenschneider, Kancilia & Lemonidis, P.A. not later than three (3) business days following the day on which all the conditions to Closing set forth in section 4 have been satisfied or waived in accordance with the terms hereof (such date being referred to herein as the "Closing Date"); provided, however, that (a) LAB and OMNI jointly, and not severally, may waive the satisfaction of any of the conditions set forth in section 4.1, (ii) OMNI exclusively may waive the satisfaction of any of the conditions set forth in section 4.2 and (iii) LAB exclusively may waive the satisfaction of any of the conditions set forth in section 4.3; and provided further, however, that in any event the Closing will not occur later than June 30, 1997.

(b) If all of the conditions set forth in section 4 shall not have been satisfied or waived as provided in section 1.3(a), then the parties shall have the rights of termination specified in section 5.

(c) Notwithstanding anything in this section 1.3 to the contrary, in the event all conditions to Closing have been satisfied or waived on or prior to Closing, then neither party shall be entitled to exercise its right of termination as contemplated in section 4 by reason of the fact that this section 1.3 contemplates that the Closing shall occur three (3) business days after satisfaction or waiver of all such conditions, such provision being included for the convenience of the parties and their counsel in connection with the Closing.

1.4 **Effective Time.** Subject to the terms and conditions hereof, the merger shall be consummated as promptly as practicable after the satisfaction or waiver of the conditions contained in section 4 hereof by filing Articles of Merger (the "Articles of Merger") in the form appended hereto as Exhibit 1.4, executed in accordance with the FBCA. The merger shall be effective at such time as the Articles of Merger shall have been duly filed with the Secretary of State of the State of Florida in accordance with the FBCA (the "Effective Time").

1.5 **Certificate of Incorporation.**

(a) The articles of incorporation of OMNI in effect as of the Effective Time, shall be the articles of incorporation of the Surviving Corporation (the "Articles of Incorporation"). Article IV of said articles of incorporation shall be amended to increase the number of authorized shares from ten thousand (10,000) to one million (1,000,000). In all other respects, said articles of incorporation shall remain in effect.

(b) Prior to the Effective Time, LAB shall cause its articles of incorporation to be amended to become qualified as a professional service corporation under Chapter 621, Fla. Stat.

1.6 **Bylaws.** The bylaws of OMNI in effect as of the Effective Time, shall from and after the Effective Time be and continue to be the bylaws of the Surviving Corporation (the "Bylaws") until amended as provided by law or such Bylaws.

1.7 **Directors and Officers.** Upon consummation of the merger, the board of directors of the Surviving Corporation will consist of three (3) persons. Each such director shall hold office, subject to the applicable provisions of the Articles of Incorporation and the Bylaws of the Surviving Corporation, until the next annual meeting of stockholders of the Surviving Corporation and until his or her successor shall be duly elected or appointed and shall duly qualify. The officers of the Surviving Corporation shall be:

President: SCOTT SEMINER, M.D.

Secretary: CRAIG DELIGDISH, M.D.

Treasurer: CRAIG DELIGDISH, M.D.

Such officers shall hold office until their respective successors are duly elected or appointed and qualified. If, on or after the Effective Time, a vacancy shall exist in the board of directors or in any of the offices of the Surviving Corporation by reason of death or inability to act, or for any other reason, such vacancy may be filled in the manner provided in the Bylaws of the Surviving Corporation.

1.8 **Conversion of Shares.** At the Effective Time, by virtue of the merger and without any action on the part of OMNI, LAB or the holder of any of the following securities:

(a) Each share of common stock, one dollar (\$1.00) par value, of LAB the only class of stock authorized by the articles of incorporation and bylaws of LAB, ("LAB Common Stock") issued and outstanding immediately prior to the Effective Time (other than Dissenting Shares as defined in section 1.9(a)) shall be converted into the right to receive three hundred (300) shares of common stock, one tenth of one cent (\$0.001) par value of OMNI, the only class of stock authorized by the Articles of Incorporation (after giving effect to the amendment to OMNI's articles of incorporation described in section 1.5) and bylaws of OMNI ("OMNI Common Stock").

(b) Each share of OMNI Common Stock issued and outstanding immediately prior to the Effective Time (other than Dissenting Shares as defined in section 1.9 (a)) shall continue as issued and outstanding OMNI Common Stock. Holders of OMNI Common Stock shall receive ninety-nine (99) shares for each share issued and outstanding upon consummation of the Merger.

(c) As of and after the Effective Time, the Surviving Corporation shall not be bound by any options, warrants, rights or agreements with respect to the issuance or acquisition of LAB Common Stock, OMNI Common Stock or any other shares of capital stock of the LAB or OMNI which would entitle any person to own, purchase or receive any capital stock of the Surviving Corporation.

1.9 Dissenting Shares.

(a) Notwithstanding any provision of this Agreement to the contrary, any shares of LAB Common Stock or OMNI Common Stock held by a holder who has demanded and perfected the right for appraisal of such shares in accordance with section 607.1320 of the

FBCA and as of the Effective Time has not effectively withdrawn or lost such right to such appraisal ("Dissenting Shares") shall not be converted into or continue as OMNI Common Stock pursuant to section 1.8(a), but the holder thereof shall only be entitled to such rights as are granted by section 607.1320 of the FBCA.

(b) Notwithstanding the provisions of section 1.9(a), if any holder of shares of LAB Common Stock or OMNI Common Stock who demands appraisal of such shares under the FBCA shall effectively withdraw or lose (through failure to perfect or otherwise) the right to such appraisal, then, as of the Effective Time or the occurrence of such event, whichever last occurs, such holder's shares of LAB Common Stock or OMNI Common Stock shall automatically be converted into or shall continue as shares of OMNI Common Stock and as provided in section 1.8(a).

(c) Each party shall give the other party:

(i) prompt notice of any written demands for appraisal of any shares, any withdrawals of such demands and any other instruments served pursuant to the FBCA received by the first party, and

(ii) the opportunity to jointly direct all negotiations and proceedings and jointly approve any resolution thereof with respect to demands for appraisal under the FBCA. Each party shall not, except with the prior written consent of the other party, voluntarily make any payment with respect to any demands for appraisal of shares, offers to settle, or the settlement of any such demands.

1.10 Surrender of Certificates; Stock Transfer Books.

(a) At or after the Effective Time, immediately upon surrender to the Surviving Corporation by each holder of LAB Common Stock of a certificate or certificates representing such holder's shares of LAB Common Stock, the Surviving Corporation shall deliver to such holder the shares of the Surviving Corporation pursuant to section 1.8(a).

(b) Until surrendered and exchanged as provided in section 1.10(a) above, each certificate representing shares of LAB Common Stock shall, from and after the Effective Time, be deemed to represent only the right to receive the shares of OMNI Common Stock pursuant to section 1.8(a). Upon surrender of each certificate representing shares of LAB Common Stock, such certificate shall forthwith be canceled.

(c) At the Effective Time, the stock transfer books of LAB shall be closed and there shall be no further registration of transfers of shares of LAB Common Stock hereafter on the records of LAB. From and after the Effective Time, the holders of certificates evidencing ownership of shares of LAB Common Stock outstanding immediately prior to the merger shall cease to have any rights as stockholders of LAB or otherwise with respect to such shares, except as otherwise provided herein or by law. No dividends or other distribution declared after the Effective Time with respect to any shares of capital stock of the Surviving Corporation shall be paid to the holder of any unsurrendered certificate or certificates formerly representing shares of LAB Common Stock.

(d) Notwithstanding anything to the contrary in this section 1.10, neither of the Surviving Corporation nor any party hereto shall be liable to a holder of a certificate or

certificates formerly representing shares of LAB Common Stock for any amount properly paid to a public official pursuant to any applicable property, escheat or similar law.

SECTION 2. REPRESENTATIONS AND WARRANTIES.

2.1 **Making of Representations and Warranties by LAB.** LAB hereby makes to OMNI the representations and warranties set forth in the LAB Schedule of Representations and Warranties attached hereto, subject to the exceptions set forth in the LAB Disclosure Schedule attached hereto, as if set forth herein in full.

2.2 **Making of Representations and Warranties by OMNI.** OMNI hereby makes to LAB the representations and warranties set forth in the OMNI Schedule of Representations and Warranties attached hereto, subject to the OMNI Disclosure Schedule attached hereto, as if set forth herein in full.

SECTION 3. COVENANTS.

3.1 **Making of Covenants and Agreements.** OMNI and LAB each covenant to the other as set forth in this section 3. The party making the covenant shall be referred to as the "Covenantor". The party in whose favor the covenant is performed is the "Covenantee".

3.2 **Conduct of Business.** Between the date of this Agreement and the Closing Date, Covenantor will do the following, unless the Covenantee shall otherwise consent in writing, which consent shall not be unreasonably withheld:

(a) conduct its business only in the ordinary course and refrain from changing or introducing any method of management or operations except in the ordinary course of business and consistent with past practices;

(b) refrain from making any purchase, sale or disposition of any asset or property other than in the ordinary course of business, from purchasing or selling any capital asset costing more than five thousand dollars (\$5,000.00) and from mortgaging, pledging, subjecting to a lien or otherwise encumbering any of its properties or assets;

(c) refrain from incurring or modifying any contingent liability as a guarantor or otherwise with respect to the obligations of others, and from incurring or modifying any other contingent or fixed obligations or liabilities except in the ordinary course of business and consistent with past practices;

(d) refrain from making any change in its incorporation documents, bylaws or authorized or issued capital stock or from acquiring any securities issued by any other person, other than short-term investment in the ordinary course of business and consistent with past practices;

(e) refrain from declaring, setting aside or paying any dividend, making any other distribution with regard to their respective capital stock, making any direct or indirect redemption, purchase or other acquisition of their respective capital stock or options, warrants or other rights to acquire any such capital stock or issuing, granting, awarding, selling, pledging, disposing of or encumbering or authorizing the issuance, grant, award, sale, pledge, disposition or encumbrance of any shares of or securities convertible or exchangeable for, or options, warrants, class, commitments or rights of any kind to acquire, any shares of its capital stock;

(f) refrain from making any change in the compensation payable or to become payable to any of its officers, employees or agents, except for scheduled increases in salary or wages in the ordinary course of business consistent with past practices, or granting any severance

or termination pay to, or entering into or amending any employment, severance or other agreement or arrangement with, any director, officer or other employee or establishing, adopting or entering into or amending any collective bargaining, bonus, incentive, deferred compensation, profit sharing, stock option or purchase, insurance, pension, retirement or other employee benefit plan;

(g) refrain from prepaying any loans from stockholders, officers or directors (if any), making any change in their borrowing arrangements or modifying, amending or terminating any of their respective contracts except in the ordinary course of business, or waiving, releasing or assigning any material rights or claims;

(h) use its best efforts to prevent any change with respect to management and supervisory personnel or banking arrangements;

(i) use its best efforts to keep intact its business organizations and to preserve the goodwill of and business relationships with all suppliers, customers and others having business relations with it;

(j) pay all accounts payable in the ordinary course of business and consistent with past practices unless they are being disputed in good faith, and otherwise refrain from paying, discharging or satisfying any claim, liability or obligation (absolute, accrued, asserted or unasserted, contingent or otherwise), other than the payment, discharge or satisfaction in the ordinary course of business and consistent with past practices of liabilities reflected or reserved against in the financial statements referred to in section 5 of the Schedule of Representations and Warranties or incurred since the date of such financial statements in the ordinary course of business and consistent with past practices;

(k) use its best efforts to have in effect and maintain at all times all insurance of the kind, in the amount and with the insurers set forth in the Disclosure Schedule or equivalent insurance with any substitute insurers approved by the Company;

(l) refrain from changing accounting policies or procedures (including, without limitation, procedures with respect to the payment of accounts payable and collection of accounts receivable) or from making any tax election or settling or compromising any federal, state, local or foreign income tax liability;

(m) refrain from entering into any executory agreement, commitment or undertaking to do any of the activities prohibited by the foregoing provisions; and

(n) permit the Covenantee and its authorized representatives (including without limitation the Covenantee's attorneys, accountants, investment bankers, and pension and environmental consultants) to have full access to all of its properties, assets, books, records, business files, executive personnel, tax returns, contracts and documents and furnish to the Covenantee and its authorized representatives such financial and other information with respect to its business or properties as the Covenantee may from time to time reasonably request.

3.3 **Authorizations from Others.** Covenantor shall use its best efforts to cause all conditions to the obligations of the parties hereunder to be satisfied and to obtain or cause to be obtained prior to the Closing Date, all authorizations, consents and permits of others not heretofore obtained and required to permit the consummation of the transactions contemplated by this Agreement, and such other authorizations, waivers, consents and permits as may be necessary to transfer to the Surviving Corporation and/or to retain in full force and effect subsequent to the closing all permits, licenses and franchises applicable to the business of

Covenantor. In connection with the foregoing Covenantor will provide such notices to any applicable governmental authority, regulatory agency or other person as may be necessary pursuant to the terms of this section 3.3.

3.4 **Breach of Representations and Warranties.** Promptly upon becoming aware of any breach of the impending or threatened occurrence of any event which would cause or constitute a breach, or would have caused or constituted a breach had such event occurred or been known prior to the date hereof, of any of the representations and warranties of Covenantor contained in the Schedule of Representations and Warranties or otherwise or referred to in this Agreement, Covenantor shall give detailed written notice thereof to the Covenantee and shall use its best efforts to prevent or promptly remedy the same.

3.5 **Acquisition Proposals.** Neither Covenantor shall, directly or indirectly, through any director, officer, employee, agent or otherwise:

(a) take any action to solicit, initiate submission of, or encourage proposals or offers from any person relating to any acquisition or purchase of all or (other than in the ordinary course of business) a portion of the assets of, or any equity interest in, Covenantor, any merger or other business combination with Covenantor, any public or private offering of shares of the capital stock of Covenantor, or any other acquisition, transaction or financing involving Covenantor (an "Acquisition Proposal");

(b) participate in any discussions or negotiations regarding an Acquisition Proposal with any person other than the Covenantee and/or its affiliates and representatives;

(c) furnish any information with respect to, or afford access to the properties, books or records of Covenantor to any person who may consider making or has made an offer

with respect to an Acquisition Proposal other than the Covenantee and its affiliates and representatives; or

(d) otherwise cooperate in any way with, or assist or participate in, facilitate or encourage, any effort or attempt by any person other than Covenantee and its affiliates and representatives to do or seek any of the foregoing. Covenantor will promptly notify the Covenantee upon receipt of any offer or indication that any person is considering making an offer with respect to an Acquisition Proposal or any request for information relative to Covenantor or for access to the properties, books and records of Covenantor and will keep the Covenantee fully informed of the status and details of any such offer, indication or request.

3.6 **Consummation of Agreement; Cooperation.** Covenantor shall use its best efforts, in addition to the performance and fulfillment of all covenants, agreements, conditions and obligations on its part to be performed and fulfilled under this Agreement, to the end that the transactions contemplated by this Agreement shall be fully carried out as soon as practicable after the date hereof, and shall cooperate toward such end with all reasonable requests of the Covenantee and its counsel in connection with the consummation of the transactions contemplated hereby.

3.7 **Corporate Action.** Covenantor will call a special meeting of its stockholders to be held as promptly as practicable after the execution of this Agreement for the purpose of obtaining all stockholder approvals set forth as conditions to the Closing in section 4.1(a) hereof or otherwise required in connection with the transactions contemplated hereby (the "Stockholders' Meeting") and in connection therewith will prepare and distribute to stockholders a notice of meeting and proxy or informational materials describing all material aspects of the

merger, this Agreement and the transactions contemplated hereby (such proxy or informational materials, together with any amendments or supplements thereto, being referred to herein as the "Proxy Statement"). The Proxy Statement shall contain the recommendation of the board of directors of Covenantor that the stockholders of Covenantor vote to approve and adopt the merger and this Agreement, and Covenantor shall use its best efforts to solicit from stockholders of Covenantor proxies in favor of such adoption and approval.

3.8 **Regulatory Matters.** Covenantor shall make or file all filings, document submissions, applications, statements and reports to all federal, state or local government agencies or entities which are required to be made prior to the Closing Date by or on behalf of Covenantor pursuant to any applicable statute, rule or regulation in connection with this Agreement and the transactions contemplated hereby. Covenantor shall:

- (a) file such information and documentary materials as may be requested pursuant to such laws and regulations;
- (b) furnish to the Covenantee copies of all filings and such necessary information and reasonable assistance as may be requested by the Covenantee in connection with its preparation of required filings or submissions to any governmental agency, including, without limitation, any additional filings necessary under the laws and regulations referred to above; and
- (c) keep the Covenantee informed of the status of any inquiries made of it by any federal, state or local governmental agency or authority or members of its staff with respect to this Agreement or the transactions contemplated hereby.

SECTION 4. CONDITIONS.

4.1 **Mutual Conditions.** The respective obligations of each party to consummate the merger are subject to the satisfaction, at or before the Effective Time, of each of the following conditions:

(a) **Stockholder Approval.**

(i) The holders of shares of LAB Common Stock representing not less than fifty-one percent (51%) of all shares of LAB Common Stock issued and outstanding shall have affirmatively approved this Agreement and the merger and LAB shall have delivered to OMNI a certificate dated as of the Closing Date to the foregoing effect and stating whether any holders of capital stock of LAB have demanded or perfected the right for appraisal of their shares in accordance with the FBCA; the approval of the merger by the stockholders of LAB shall have been obtained in compliance with the FBCA; LAB has not been advised by counsel that any of the transactions contemplated hereby or by any agreement or instrument contemplated hereby violates any fiduciary duty of the board of directors or any stockholders of LAB under applicable law or do not comply with the requirements of Sections 607.0831 and 607.0832 of the FBCA.

(ii) The holders of shares of OMNI Common Stock representing not less than fifty-one percent (51%) of all shares of OMNI Common Stock issued and outstanding shall have affirmatively approved this Agreement and the merger and OMNI shall have delivered to LAB a certificate dated as of the Closing Date to the foregoing effect and stating whether any holders of capital stock of OMNI have demanded or perfected the right for appraisal of their shares in accordance with the FBCA; the approval of the merger by the stockholders of OMNI shall have been obtained in compliance with the FBCA; OMNI has not been advised by counsel

that any of the transactions contemplated hereby or any agreement or instrument contemplated hereby violates any fiduciary duty of the board of directors or any stockholders of OMNI under applicable law or do not comply with the requirements of Sections 607.0831 and 607.0832 of the FBCA.

4.2 **Conditions to the Obligations of OMNI.** The obligation of OMNI to consummate this Agreement and the transactions contemplated hereby are subject to the fulfillment, prior to or at the Closing, of the following conditions precedent:

(a) **Representations; Warranties; Covenants.** Each of the representations and warranties of LAB made pursuant to this Agreement or contained in the LAB Schedule of Representations and Warranties shall be true and correct in all material respects on and as of the Closing Date with the same effect as though made on and as of the Closing Date (it being understood that representations and warranties made "as of the date hereof" shall be deemed to have been made as of the Closing Date); LAB shall, on or before the Closing Date, have performed and satisfied all agreements hereunder which by the terms hereof are to be performed and satisfied by LAB on or before the Closing Date; and LAB shall have delivered to OMNI a certificate signed on its behalf by its president and dated as of the Closing Date certifying to the foregoing effect.

(b) **Approvals and Consents.** LAB shall have made all filings with and notifications of governmental authorities, regulatory agencies and other entities required to be made by LAB in connection with the execution, delivery and performance of this Agreement, the consummation of the transactions contemplated hereby and the continued operation of the business of LAB subsequent to the Effective Time, and LAB shall have received all required

authorizations, waivers, consents and permits to allow the consummation of the transactions contemplated by this Agreement, in form and substance reasonably satisfactory to OMNI, from all third parties, including, without limitation, applicable governmental authorities, regulatory agencies, lessors, lenders and contract parties, required in connection with the merger or LAB's permits, leases, licenses and franchises, to avoid a breach, default, termination, acceleration or modification of any agreement, contract, instrument, mortgage, lien, lease, permit, authorization, order, writ, judgment, injunction, decree, determination or arbitration award as a result of the execution or performance of this Agreement, or otherwise in connection with the execution and performance of this Agreement.

(c) **No Actions or Proceedings.** No action or proceeding by any stockholder of LAB (excluding statutory appraisal proceedings initiated by dissenting stockholders of LAB pursuant to Section 607.1320 of the FBCA) shall have been commenced or threatened against LAB, OMNI or any officer, director, employee, stockholder, agent or affiliate of either of them. No action or proceeding by or before any court, administrative body or governmental agency shall have been instituted or threatened which seeks to enjoin, restrain or prohibit, or might result in damages in respect of, this Agreement or the complete consummation of the transactions contemplated by this Agreement, and which would in the reasonable judgment of OMNI make it inadvisable to consummate such transactions. No law or regulation shall be in effect and no court order shall have been entered in any action or proceeding instituted by any party which enjoins, restrains or prohibits this Agreement or the complete consummation of the transactions as contemplated by this Agreement.

(d) **Material Adverse Changes.** There shall not have been any change or series of changes that, in the reasonable business judgment of OMNI, acting in good faith, materially adversely affect the business, operations, results of operations, assets, condition (financial or other) or prospects of LAB since the date of this Agreement.

4.3 **Conditions to the Obligations of LAB.** The obligations of LAB to consummate this Agreement and the transactions contemplated hereby are subject to the fulfillment, prior to or at the Closing Date, of the following conditions precedent:

(a) **Representations; Warranties; Covenants.** Each of the representations and warranties of OMNI made pursuant to this Agreement as contained in the OMNI Schedule of Representations and Warranties shall be true and correct on and as of the Closing Date, with the same effect as though made on and as of the Closing Date (it being understood that representations and warranties made "as of the date hereof" shall be deemed to have been made as of the Closing Date); OMNI shall, on or before the Closing Date, have performed and satisfied all agreements and conditions hereunder which by the terms hereof are to be performed and satisfied by OMNI on or before the Closing Date; and OMNI shall have delivered to LAB a certificate signed on its behalf by its President and dated as of the Closing Date certifying to the foregoing effect.

(b) **No Actions or Procedures.** No action or proceeding by any stockholder of OMNI (excluding statutory appraisal proceedings initiated by dissenting stockholders of OMNI pursuant to Section 607.1320 of the FBCA) shall have been commenced or threatened against OMNI, LAB, or any officer, director, employee, stockholder, agent or affiliate of either of them. No action or proceeding by or before any court, administrative body or governmental

agency shall have been instituted or threatened which seeks to enjoin, restrain or prohibit, or might result in damages in respect of, this Agreement or the complete consummation of the transactions as contemplated by this Agreement and which would in the reasonable judgment of LAB make it advisable to consummate such transactions, and no law or regulation shall be in effect and no court order shall have been entered in any action or proceeding instituted by any party which enjoins, restrains or prohibits this Agreement or the complete consummation of the transactions as contemplated by this Agreement.

(c) **Approvals and Consents.** OMNI shall have made all filings with and notifications of governmental authorities, regulatory agencies and other entities required to be made by OMNI in connection with the execution, delivery and performance of this Agreement, the consummation of the transactions contemplated hereby and the continued operation of the business of OMNI subsequent to the Effective Time, and OMNI shall have received all required authorizations, waivers, consents and permits to allow the consummation of the transactions contemplated by this Agreement, in form and substance reasonably satisfactory to LAB, from all third parties, including, without limitation, applicable governmental authorities, regulatory agencies, lessors, lenders and contract parties, required in connection with the merger or OMNI's permits, leases, licenses and franchises, to avoid a breach, default, termination, acceleration or modification of any agreement, contract, instrument, mortgage, lien, lease, permit, authorization, order, writ, judgment, injunction, decree, determination or arbitration award as a result of the execution or performance of this Agreement, or otherwise in connection with the execution and performance of this Agreement.

SECTION 5. TERMINATION OF AGREEMENT.

5.1 Termination.

(a) At any time prior to the Closing Date, this Agreement may be terminated:

(i) by mutual written consent of LAB and OMNI;

(ii) by LAB if OMNI fails to comply with any of its covenants and agreements contained herein in any material respect or if any of the representations and warranties of OMNI shall have been correct in any material respect where made or shall have ceased to be true and correct in all material respects; or

(iii) by OMNI if LAB fails to comply with any of its covenants and agreements contained herein in any material respect or if any of the representations and warranties of LAB shall have been incorrect in any material respect when made or shall have ceased to be true and correct in all material respects.

(b) If either LAB or OMNI exercises its right to terminate this Agreement, then this Agreement shall thereupon terminate and no party to this Agreement shall have any liability, responsibility or obligation to any other party hereto on account of this Agreement and the transactions contemplated by this Agreement; provided, however, that nothing herein shall relieve any party to this Agreement from liability on account of a material and fraudulent breach of any of its representations and warranties contained herein or an intentional and material failure to comply with any of its conditions, agreements or covenants contained herein.

SECTION 6. SURVIVAL OF REPRESENTATIONS, WARRANTIES, ETC.; EXPENSES.

6.1 **Survival of Warranties.** All representations, warranties, agreements, covenants and obligations herein or in any schedule or certificate delivered by any party incident to the

transactions contemplated hereby are material and may be relied upon by the party receiving the same and shall survive the Closing regardless of any investigation and shall not merge into the performance of any obligation by any party hereto, for a period of two (2) years.

6.2 **Expenses.** All expenses and costs (including attorneys' fees) of the parties hereto in connection with this Agreement and the transactions contemplated hereby whether or not such transactions are consummated, shall be paid by the party incurring the expense.

SECTION 7. MISCELLANEOUS.

7.1 **Law Governing.** This Agreement shall be construed under and governed by the internal laws, and not the law of conflicts, of the State of Florida.

7.2 **Notices.** Any notice, request, demand other communication required or permitted hereunder shall be in writing and shall be deemed to have been given if delivered or sent by facsimile transmission, upon receipt, or if sent by registered or certified mail upon the sooner of the expiration of three (3) days after deposit in United States post office facilities properly addressed with postage prepaid or acknowledgment or receipt, as follows:

To OMNI: OMNI HEALTHCARE, INC.
1334 Valentine Street
Melbourne, FL 32901
Att: Scott Z. Seminer, M.D.

To LAB: MELBOURNE MEDICAL LABORATORY, INC.
95 Bulldog Blvd., Suite 100
Melbourne, FL 32901
Att: Craig Deligdish, M.D.

or to such other address of which any party may notify the other parties as provided above.

7.3 **Prior Agreements Superseded.** This Agreement and any agreements executed by the parties in connection herewith supersede all prior understandings and agreements among the parties relating to the subject matter hereof.

7.4 **Assignability.** This Agreement may not be assigned by LAB or OMNI without the prior written consent of the other party hereto. This Agreement shall be binding upon and enforceable by, and shall inure to the benefit of the parties hereto and their respective successors, heirs, executors, administrators and permitted assigns, and no others.

7.5 **Publicity and Disclosures.** A joint initial press release shall be made at the time of execution of this Agreement announcing that this Agreement has been signed; such press release shall be in form and substance reasonably acceptable to LAB and OMNI. Thereafter, until the Effective Time, so long as this Agreement is in effect, neither LAB nor OMNI nor any of their respective stockholders, subsidiaries or affiliates shall issue or cause the publication of any press release or other announcement with respect to the merger, this Agreement or the other transactions contemplated hereby without the prior written consent of the other party hereto, which consent shall not be unreasonably withheld, except to the extent disclosure is required by any applicable law or regulation or by any court or authorized administrative or governmental agency.

7.6 **Captions and Gender.** The captions in this Agreement are for convenience only and shall not affect the construction or interpretation of any term or provision hereof. The use in this Agreement of the masculine pronoun in reference to a party hereto shall be deemed to include the feminine or neuter pronoun, as the context may require.

7.7 **Certain Definitions.** For purposes of this Agreement, the term:

(a) "affiliate" of a person shall mean a person that directly or indirectly, through one (1) or more intermediaries, controls, is controlled by, or is under common control with, the first mentioned person;

(b) "control" (including the terms "controlled by" and "under common control with") means the possession, directly or indirectly or as trustee or executor, of the power to direct or cause the direction of the management policies of a person, whether through the ownership of stock, as trustee or executor, by contract or credit arrangement or otherwise;

(c) "person" means an individual, corporation, partnership, association, trust or any unincorporated organization; and

(d) "subsidiary" of a person means any corporation more than fifty percent (50%) of whose outstanding voting securities, or any partnership, joint venture or other entity more than fifty percent (50%) of whose total equity interest, is directly or indirectly owned by such person.

7.8 **Execution in Counterparts.** For the convenience of the parties to facilitate execution, this Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which shall constitute one (1) and the same document.

7.9 **Amendments; Waivers.** This Agreement may not be amended or modified except by a writing duly and validly executed by each party hereto. No delay on the part of any party in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any waiver on the part of any party of any such right, power or privilege, or any single or

partial exercise of any such right, power or privilege, preclude any further exercise thereof or the exercise of any other such right, power or privilege.

7.10 **Dual Representation.** The parties have each engaged John R. Kancilia, Esq. to represent them in the preparation of documents to consummate this transaction. Each party acknowledges that any communication made by it to John R. Kancilia, Esq. in connection with this transaction was not confidential. Each party waives the conflict of interest of John R. Kancilia, Esq. with respect to dual representation in this matter.

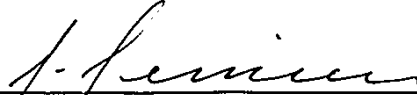
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date set forth above by their duly authorized representatives.

OMNI HEALTHCARE, P.A.

Attest:



CRAIG DELIGDISH, M.D., Secretary


By: 

SCOTT SEMINER, M.D., President

MELBOURNE MEDICAL LABORATORY, INC.



CRAIG DELIGDISH, M.D., Secretary

By: 

CRAIG DELIGDISH, M.D., President