



August 4, 2021

CO2021-066

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STATE HEALTH PLANNING AND  
DEVELOPMENT AGENCY

**Via Electronic Filing**

Alabama State Health Planning and Development Agency  
Attn: Emily T. Marsal, Executive Director  
RSA Union Building  
100 N. Union Street, Suite 870  
Montgomery, AL 36104  
Email: shpda.online@shpda.alabama.gov

**RE: Medplex Outpatient Surgery Center, Ltd. (ADPH License No. U5901; SHPDA ID No. 117-U5901)**

Dear Ms. Marsal:

I am writing regarding Medplex Outpatient Surgery Center, Ltd. (the "Company"), which owns and operates an outpatient ambulatory surgery center (the "Surgery Center") licensed by the Alabama Department of Public Health ("ADPH") under the above-referenced license number and located at 4511 Southlake Parkway, Birmingham, Alabama 35244. The Surgery Center received Certificate of Need ("CON") approval on February 5, 1986, for its lease and operation from the Alabama State Health Planning and Development Agency ("SHPDA") pursuant to the above-referenced Project Number, which was issued to Hoover Doctors Group, Inc. ("HDG").

It was recently brought to our attention that SHPDA's records reflect that the owner of the Surgery Center is HDG. After further review, it appears that, since the issuance of the CON approval, there were two (2) changes in the ownership of the Surgery Center that were reported and approved by ADPH. However, these changes in ownership were inadvertently not reported to SHPDA. As such, the Company is submitting the enclosed Notice of Change of Ownership/Control and providing information regarding these ownership changes as described below and reflected in the enclosures to this letter.

**First Change in Ownership – November 1, 1991**

After the issuance of the CON approval, the project was completed and the Surgery Center commenced operations in or about November 1991. On November 1, 1991, the Company was formed and owned by an affiliate of Brookwood Medical Center, Brookwood Center Development Corporation ("BCDC"), and physician investors who held their interests through HDG, the holder of the CON. Hoover Doctors Group II, Inc. ("HDG-II") was an entity owned by the same physician investors in HDG and was the owner of the fixed assets of the Surgery Center, including its inventory, accounts receivable, office furniture, fixtures and equipment (the "Fixed Assets"). The Company was organized as a limited partnership with BCDC serving as the general partner of the Company. Pursuant to a Purchase Agreement<sup>1</sup> effective

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<sup>1</sup> Note that the Company is not able to locate a copy of this Purchase Agreement given the passage of time and changes in personnel. However, it is referenced in the definitions and described in Section 8 of the Amended and Restated Limited Partnership Agreement for the Company dated August 1, 2004, a

November 1, 1991, HDG contributed its equity interests to the Company and became a wholly-owned subsidiary of the Company, and HDG-II sold an eighty-five percent (85%) interest in the Fixed Assets to BCDC and retained a fifteen percent (15%) ownership interest in the Fixed Assets (the "1991 Transaction"). As a result of the 1991 Transaction, the CON, as well as the licenses required for the operation of the Surgery Center, and the Fixed Assets succeeded to the Company.

The 1991 Transaction resulted in a change in the tax identification number of the operator of the Surgery Center and holder of the CON. It appears that the 1991 Transaction was not reported to SHPDA or ADPH. However, during the renewal of its ADPH license for the 2008 year, the then-Surgery Center Administrator, Cathy Wilhelm, discovered that the license was improperly issued to HDG instead of the Company and escalated the issue to the Company's leadership. Immediately upon discovery, counsel for the Surgery Center worked with Ray Sherer and Guy Nevins at ADPH to discuss the oversight and was advised to submit an application for a change of ownership. The application was filed with ADPH and the application was approved by ADPH. The license was issued to the Company. It is not clear whether SHPDA was also made aware of the change of ownership.

### **Second Change in Ownership – June 16, 2015**

Effective as of June 16, 2015, BCDC transferred its general partnership units in the Company (the "2015 Transaction") to the current General Partner, Brookwood Baptist Health 3, LLC, formerly known as HCN Alabama Surgery Center Holdings, LLC ("BBH3"), which is a joint venture entity owned by affiliates of Brookwood Baptist Medical Center and United Surgical Partners International, Inc. ("USPI"). The 2015 Transaction was part of a corporate restructuring by Tenet Healthcare Corporation, the ultimate parent company of both Brookwood Baptist Medical Center and USPI. As such, there was no purchase price associated with the 2015 Transaction. Enclosed with this letter is a copy of the Purchase, Sale, Transfer and Contribution Agreement effectuating the 2015 Transaction. As a result of the 2015 Transaction, there was no change in the tax identification number of the Company. However, there was a change in the General Partner of the Company and, as the Company is structured as a limited partnership, this constituted a change in control per SHPDA regulations. The transaction was, unfortunately, not reported to either ADPH or SHPDA.

In 2019, the current Administrator of the Surgery Center, discovered that the Surgery Center's ADPH license was incorrectly issued to BCDC instead of the Company. The Administrator contacted Guy Nevins at ADPH to correct the issue. After providing the information to Mr. Nevins reflecting the change in the General Partner of the Company, Mr. Nevins advised that the Surgery Center submit a change of ownership application to update the Surgery Center's ownership file. As such, the Administrator filed the change of ownership application with the ADPH on September 26, 2019, which was reviewed and accepted by ADPH. While the Surgery Center submitted the required information to update its ownership with ADPH, it does not appear that the Surgery Center submitted this information to SHPDA.

### **Request for SHPDA Review**

Based upon the information above, we hereby respectfully submit the enclosed Notice of Change of Ownership/Control to reflect the change in control from BCDC to BBH3. The operator

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copy of which is enclosed with this letter. Note that this 2004 LPA has been superseded by a Second Amended and Restated Limited Partnership Agreement dated June 1, 2007, as amended, a copy of which is also enclosed with this letter.

of the Surgery Center remains the Company (Medplex Outpatient Surgery Center, Ltd.). We have also enclosed ownership charts reflecting the ownership of the Company prior to and after the 2015 Transaction. If you require any additional information as you review our request, please let me know.

We appreciate your assistance in this matter and look forward to working with you.

Sincerely,



Timothy Puthoff  
President  
Brookwood Baptist Health 3, LLC, as General Partner  
of Medplex Outpatient Surgery Center, Ltd.

Cc: Karen McGuire (via email)  
Ross Mitchell (via email)  
John Snyders (via email)  
Chelsey Hadfield, Esq. (via email)  
Jim Williams, Esq. (via email)

Enclosures:

Notice of Change of Ownership/Control Form – Tab 1

Amended and Restated Certificate and Limited Partnership Agreement of Medplex Outpatient Surgery Center, Ltd. dated August 1, 2004 – Tab 2

Second Amended and Restated Certificate and Limited Partnership Agreement of Medplex Outpatient Surgery Center, Ltd. dated June 1, 2007 – Tab 3

Purchase, Sale, Transfer and Contribution Agreement dated June 16, 2015 – Tab 4

Excerpt of Amended and Restated Limited Liability Company Agreement of Brookwood Baptist Health 3, LLC – Tab 5

Pre- and Post-Transaction Ownership Charts – Tab 6

**NOTICE OF CHANGE OF OWNERSHIP/CONTROL**

The following notification of intent is provided pursuant to all applicable provisions of ALA. CODE § 22-21-270 (1975 as amended) and ALA. ADMIN. CODE r. 410-1-7-.04. This notice must be filed at least twenty (20) days prior to the transaction.

- Change in Direct Ownership or Control (of a vested Facility; ALA. CODE §§ 22-20-271(d), (e))  
 Change in Certificate of Need Holder (ALA. CODE § 22-20-271(f))  
 Change in Facility Management (Facility Operator)

Any transaction other than those above-described requires an application for a Certificate of Need.

**Part I: Facility Information**

SHPDA ID Number: 117-U5901  
 (This can be found at [www.shpda.alabama.gov](http://www.shpda.alabama.gov), Health Care Data, ID Codes)

Name of Facility/Provider: Medplex Outpatient Surgery Center  
 (ADPH Licensure Name)

Physical Address: 4511 Southlake Parkway  
Birmingham, AL 35244

County of Location: SHELBY

Number of Beds/ESRD Stations: 0

CON Authorized Service Area (Home Health and Hospice Providers Only). Attach additional pages if necessary. N/A

**Part II: Current Authority** (Note: If this transaction will result in a change in direct ownership or control, as defined under ALA. CODE § 22-20-271(e), please attach organizational charts outlining current and proposed structures.)

Owner (Entity Name) of Facility named in Part I: Brookwood Center Development Corporation

Mailing Address: 4511 Southlake Parkway  
Birmingham, AL 35244

Operator (Entity Name): Medplex Outpatient Surgery Center, Ltd.

**Part III: Acquiring Entity Information**

Name of Entity: Brookwood Baptist Health 3, LLC

Mailing Address: 14201 Dallas Parkway, 13th Floor  
Dallas, TX 75254

Operator (Entity Name): Medplex Outpatient Surgery Center, Ltd.

Proposed Date of Transaction is on or after: 06/16/2015

**Part IV: Terms of Purchase**

Monetary Value of Purchase: \$ 0.00

Type of Beds: ASC

Number of Beds/ESRD Stations: 0

**Financial Scope:** to Include Preliminary Estimate of the Cost Broken Down by Equipment, Construction, and Yearly Operating Cost:

Projected Equipment Cost: \$ \_\_\_\_\_

Projected Construction Cost: \$ \_\_\_\_\_

Projected Yearly Operating Cost: \$ \_\_\_\_\_

Projected Total Cost: \$ 0.00

**On an Attached Sheet Please Address the Following:**

- 1.) The services to be offered by the proposal (the applicant will state whether he has previously offered the service, whether the service is an extension of a presently offered service, or whether the service is a new service).
- 2.) Whether the proposal will include the addition of any new beds.
- 3.) Whether the proposal will involve the conversion of beds.
- 4.) Whether the assets and stock (if any) will be acquired.

**Part V: Certification of Information**

**Current Authority Signature(s):**

The information contained in this notification is true and correct to the best of my knowledge and belief.

Owner(s):  8/3/21

Operator(s):  8/3/21

Title/Date: CEO \_\_\_\_\_

SWORN to and subscribed before me, this 3 day of AUGUST, 2021.

(Seal)



Barbara Anderson  
Notary Public

My Commission Expires: 12/04/2021

**Acquiring Authority Signature(s)**

I agree to be responsible for reporting of all services provided during the current annual reporting period, as specified in ALA. ADMIN. CODE r. 410-1-3-.12. The information contained in this notification is true and correct to the best of my knowledge and belief.

Purchaser(s): \_\_\_\_\_ [Signature] \_\_\_\_\_ 8/3/21  
Operator(s): \_\_\_\_\_ [Signature] \_\_\_\_\_ 8/3/21  
Title/Date: CEO \_\_\_\_\_

SWORN to and subscribed before me, this 3 day of AUGUST, 2021.

(Seal)



Barbara Anderson  
Notary Public

My Commission Expires: 12/04/2024

Author: Alva M. Lambert  
Statutory Authority: § 22-21-271(c), Code of Alabama, 1975  
History: New Rule

**AMENDED AND RESTATED  
CERTIFICATE AND LIMITED PARTNERSHIP AGREEMENT  
OF  
MEDPLEX OUTPATIENT SURGERY CENTER, LTD.**

THIS AMENDED AND RESTATED CERTIFICATE AND LIMITED PARTNERSHIP AGREEMENT, made and entered into effective as of the 1st day of August, 2004, by and among BROOKWOOD CENTER DEVELOPMENT CORPORATION, an Alabama corporation (the "General Partner") and those persons who may become limited partners of this partnership in accordance with the provisions hereof (the "Limited Partners").

**W I T N E S S E T H:**

WHEREAS, the parties hereto have agreed to organize the Partnership, pursuant to the Act, on the terms and conditions hereinafter set forth; and

WHEREAS, the parties have agreed (i) that this instrument shall constitute the Partnership Agreement and the Certificate of Limited Partnership within the meaning of the applicable provisions of the Act; (ii) to be governed by the terms and conditions hereinafter set forth; and (iii) to set forth the rights, obligations and duties of each of the parties hereto with respect to the Partnership.

NOW, THEREFORE, in consideration of the premises, the mutual covenants expressed below and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties hereto, intending to be legally bound, hereby certify and agree as follows:

1. DEFINITIONS. The following terms shall, unless the context otherwise requires, have the respective meanings set forth below.

(a) "Act" means the Alabama Limited Partnership Act of 1983, as set forth in Ala. Code §§10-9A-1, et. seq. (1987 Repl. Vol.), as the same may be amended from time to time.

(b) "Affiliate" means, with respect to a specified Person, (i) any Person that directly or indirectly through one or more intermediaries controls, is controlled by or is under common control with the specified Person is an officer, director, general partner or trustee, or with respect to which the specified Person serves in a similar capacity; (iii) any Person for which an officer, director, general partner or trustee of, or individual serving in a similar capacity with respect to, the specified Person serves in any such capacity; (iv) any Person that, directly or indirectly, is the beneficial owner of the ten percent (10%) or more of any class of equity securities of the specified Person or of which the specified Person is directly or indirectly the beneficial owner of ten percent (10%) or more of any class of equity securities; or (v) any relative or spouse of the specified Person who makes his or her home with that of the specified Person.

- (c) "Agreement" means this Amended and Restated Certificate and Limited Partnership Agreement of Medplex Outpatient Surgery Center, Ltd., as the same may be amended from time to time.
- (d) "Ambulatory Surgery Center" means the Medplex Outpatient Surgery Center presently located at 4511 Southlake Parkway, Birmingham Alabama 35244.
- (e) "Applicable Federal Rate" means the minimum interest rate necessary to avoid the imputation of interest for federal income Agreement purposes pursuant to the provisions of the Code, including Sections 483 or 1274 thereof.
- (f) "AmSouth" means AmSouth Bank, N.A., a national banking association.
- (g) "BCDC" means Brookwood Center Development Corporation, an Alabama corporation.
- (h) "Brookwood" means Brookwood Medical Center, the general acute care hospital currently operated by an affiliate of BCDC and located at 2010 Brookwood Medical Center Drive, Birmingham, Alabama 35209.
- (i) "Call Option" means the right of BCDC and the Partnership to require a Limited Partner to sell such Limited Partners' interest in the Partnership upon the occurrence of a Put or Call Event.
- (j) "Capital Account" means, with respect to a Partner, the bookkeeping account determined and maintained by the Partnership for such Partner in the manner set forth in Paragraph 9 hereof.
- (k) "Capital Contribution" means, with respect to a Partner, the aggregate amount of money or other property contributed to the Partnership by such Partner, in accordance with the provisions hereof.
- (l) "Certificate of Need" means the Certificate issued on November 20, 1986 by the State Health Planning and Development Agency of the State of Alabama with respect to the construction, equipping and operation of the Ambulatory Surgery Center.
- (m) "Code" means the Internal Revenue Code of 1986, as amended.
- (n) "Distributable Cash" means all cash on hand or in bank accounts of the Partnership, whether derived from operations of the Ambulatory Surgery Center, from disposition of Partnership assets, or otherwise, which the General Partner reasonably determines to be available for distribution to the Partners, after reasonable provision has been made for outstanding current obligations or expenses of the Partnership (including principal and interest due under any indebtedness and rent and other charges due under the Lease Agreement) and after a reasonable reserve has been allowed for Partnership expenditures incurred or reasonably expected to be incurred for the proper operation of the partnership's business.

- (o) "General Partner" means BCDC, together with any Person who is subsequently admitted to the Partnership as an additional, successor or substitute general partner pursuant to the provisions hereof.
- (p) "HDG means Hoover Doctors Group, Inc., an Alabama corporation.
- (q) "HDG-II" means Hoover Doctors Group II, Inc., an Alabama corporation.
- (r) "Health Care Law" means Section 6204 of the Omnibus Budget Reconciliation Act of 1989, the Social Security Act (42 U.S.C. § 1320a-7b(b)) and any similar legislation, regulations or rules promulgated thereunder as may be currently in effect or as may be modified in the future.
- (s) "Lease Agreement" means that certain Real Estate Lease Agreement dated as of October 31, 1991, as amended on June 30, 2001, between Medplex Land Associates, as Landlord, and the Partnership, as Tenant.
- (t) "Licenses and Permits" means the licenses, permits and authorizations required for the operation of the Ambulatory Surgery Center.
- (u) "Limited Partners" means those persons listed on Exhibit "A" hereto and any other Persons who have been admitted to the Partnership as Limited Partners pursuant to the provisions hereof, and "Limited Partner" means any one of them.
- (v) "Losses" means the sum of (i) any Partnership expenditure described under Section 705(a)(2)(B) of the Code or which is treated as such pursuant to Treasury Regulation Section 1.704-1(b)(2)(iv) and (ii) the Partnership's taxable loss for federal income tax purposes, including Partnership deductions taken into account separately by Partners.
- (w) "Management Agreement" means that certain Management Agreement dated as of January 1, 2003 by and between the Partnership and BCDC, with such modification or other terms as the Partnership may deem to be appropriate from time to time.
- (x) "Medplex Assets" means the inventory, accounts receivable, office furniture and fixtures, equipment, and other tangible assets, patient records, goodwill, name and other intangibles, previously owned by HDG-II, which are subject to the terms of the Purchase Agreement.
- (y) "Medplex Land Associates" means Medplex Land Associates, an Alabama general partnership formed by General Partnership Agreement dated as of October 31, 1991, and comprised of HDG-II and BCDC.
- (z) "Medplex Partners" shall mean and include, from time to time, such of the following Persons as shall continue to Limited Partners: Edwyn L. Boyd, Brice H. Brackin, R. Don Bryan, William P. Bryant, C. Steven Daughtry, Larry G. Deep, Dewey H. Jones, III, Jack L. Shaeffer and Robert J. Sciacca.

(aa) "Notice" means a writing containing the information required by any provision hereof to be communicated to a Person, which shall be sufficiently delivered and shall constitute sufficient Notice for purposes of any provision hereof if (i) sent by registered or certified mail, return receipt requested, to any Person at the last known address of such Person; (ii) transmitted by hand delivery or air courier, when actually received at the address of such Person; or (iii) transmitted by telecopy or other form of facsimile transmission, upon acknowledgment of receipt thereof in writing by telecopy or otherwise.

(bb) "Partners" means the General Partner and Limited Partners, collectively as the context may require, and "Partner" means any one of them.

(cc) "Partnership" means Medplex Outpatient Surgery Center, Ltd., an Alabama limited partnership, formed under the Act pursuant to the provisions hereof.

(dd) "Percentage Interest" means the interest of a Partner in the Partnership, or in any item of Profits, losses, distributions and other allocations, relative to that of all Partners. The percentage Interest of a Partner shall determine the share of Profits, Losses, distributions and other allocations to such Partner relative to all Partners entitled to receive their share of Profits, Losses distributions and other allocations on the same basis.

(ee) "Person" means any individual partnership, corporation, trust or other entity.

(ff) "Profits" means the sum of (i) any item of Partnership income not included in a Partner's gross income for federal income tax purposes and (ii) the Partnership's taxable income for federal income tax purposes, including items of income taken into account separately by Partners.

(gg) "Purchase Agreement" means that certain Purchase Agreement dated as of October 16, 1991, by and between BCDC, HDG, HDG-II and the Medplex Partners (in their capacity as the shareholders of HDG and HDG-II).

(hh) "Purchased Medplex Assets" means the undivided eighty-five (85%) interest in the Medplex Assets acquired by BCDC from HDG-II under the Purchase Agreement.

(ii) "Put Option" means the right of a Limited Partner to require that the Partnership purchase his interest in the Partnership upon the occurrence of a Put or Call Event.

(jj) "Put or Call Event" means a determination, made by Recognized Health Care Counsel Pursuant to Paragraph 15(b) of this Agreement, that it is more likely than not that Health Care Law prohibits Limited Partners from referring patients to the Partnership, or prohibits the Partnership billing for services provided to patients referred to the Partnership by Limited Partners.

(kk) "Recognized Health Care Counsel" means an attorney or firm of attorneys having recognized expertise in the area of Health Care Law, including, without limitation, Title XVIII of the Social Security Act, reasonably acceptable to the General Partner.

(ll) "Repurchase Price" means the price applicable to the purchase and sale of a Limited Partner's interest in the Partnership, upon the occurrence of a Put of Call Event, which shall be, with respect to a Limited Partner, (a) the total amount of Capital Contributions made by such Limited Partner plus (unless prohibited by Health Care Law) an amount equal to interest determined at the Applicable Federal Rate (compounded annually) less (b) the amount of any Distributable Cash distributed to such Limited Partner and less such Limited Partner's allocated net Losses from the Partnership.

(mm) "Retained Medplex Assets" means the undivided fifteen percent (15%) interest in the Medplex Assets, retained by HDG-II under the Purchase Agreement, and distributed by HDG-II to the respective Medplex Partners.

(nn) "Shares" means the issued and outstanding shares of partnership interests in Partnership, consisting of eighty-one thousand (81,000) currently outstanding shares.

(oo) "Tax Matters Partner" means the General Partner.

(pp) "Terminating Event" means, with respect to a Limited Partner (i) the bankruptcy or insolvency of such Limited Partner, (ii) the violation by such Limited Partner, or by any of his Affiliates, of Paragraph 22 hereof, relating to nondisclosure of Trade Secrets, as determined in good faith by the General Partner, (iii) the violation by such Limited Partner of Paragraph 21 hereof, relating to non-competition, as determined in good faith by the General Partner, (iv) the failure of such Limited Partner to receive medical staff privileges at the Ambulatory Surgery Center by no later than thirty (30) days following the successful close of any offering of interests in the Partnership or within thirty (30) days following the date applications for medical staff privileges at the Ambulatory Surgery Center are first accepted, or the loss of such medical staff privileges at any time after receiving them (including, without limitation, any loss of medical staff privileges based on conviction of a crime involving moral turpitude, death, retirement or permanent disability), (v) the failure of such Limited Partner to certify his or her compliance with the fraud and abuse safe harbor regulation criteria concerning the one-third revenue test and the one-third procedures test, but only after the Partnership has provided such Limited Partner with a reasonable period of time (as determined in good faith by the General Partner) to come into compliance with such fraud and abuse safe harbor regulation criteria, and such Limited Partner fails to come into compliance within such time period, (vi) the decision by the General Partner to cause the Partnership to repurchase all, but not less than all, of the outstanding Limited Partner interests of the Limited Partners and dissolve the Partnership, if the General Partner reasonably believes that the continuation of the Partnership may result in increased public scrutiny of the Partnership or its Affiliates, (vii) a Limited Partner's conviction or plea of nolo contendere to a felony or misdemeanor or based upon any other event which, in the good faith judgment of the General Partner, involves moral turpitude or is otherwise reasonably likely to jeopardize the reputation or goodwill of the Partnership or the Ambulatory Surgery Center, or (viii) the transfer of all or any portion of such Limited Partner's interest in the Partnership not specifically authorized by this Agreement, including, but not limited to, the distribution of all or any portion of such Limited Partner's interest to his spouse incident to a preliminary or final decree of dissolution or

separation or the execution of a property settlement agreement; provided, however, that subsections (iv) and (v) above shall be inapplicable to any Limited Partner who owned Shares in the Partnership on or prior to January 1, 1992, so long as such Limited Partner annually certifies to Partnership that he or she has made no referrals directly or indirectly to the Ambulatory Surgery Center during the preceding twelve (12) month period.

(qq) "Terminating Limited Partner" means a Limited Partner as to whom a Terminating Event has occurred.

(rr) "Terminating Price" means the purchase price applicable to the purchase of a Terminating Limited Partner's interest in the Partnership, which shall be an amount equal to the pro rata portion that such Terminating Limited Partner would have received had all of the Partnership's property been sold by the Partnership as of the last day of the month in which the Terminating Event occurred with respect to such Partner, determined in accordance with Paragraph 15(c) hereof, less the Terminating Limited Partner's pro rata portion of the debts and liabilities of the Partnership existing as of such date (including, but not limited to, reasonable reserves for contingent liabilities).

(ss) "Trade Secrets" shall mean and include the various trade secrets, business accounts, confidential referral demographics, pricing lists, financial information, patient records, and other records of the Partnership owned by the Partnership or used in the operation of its business.

(tt) "Transfer" means to pledge, encumber, assign, sell, exchange, give, lease, mortgage, dispose of or transfer in any manner, voluntarily or involuntarily, any rights in property, whether tangible or intangible.

## 2. ORGANIZATION OF THE PARTNERSHIP.

(a) Organization Under the Act. The Partners hereby agree to organize the Partnership as a limited partnership under the provisions of the Act and on the terms and conditions set forth herein. The Act shall govern the rights, duties, obligations and liabilities of the Partners, except as otherwise expressly set forth herein.

(b) Execution of Documents. The General Partner shall take all actions required by law and do all things necessary or appropriate to organize maintain and operate the Partnership as a limited partnership under the Act. The parties hereto shall, upon the request of the General Partner, execute any certificates and other documents as may be necessary for the General Partner to effect any filing, recording or other acts in order to accomplish the foregoing.

3. NAME OF THE PARTNERSHIP. The Partnership shall conduct its business under the name MEDPLEX OUTPATIENT SURGERY CENTER, LTD., " or such other name as the General Partner may from time to time designate by Notice to the Partners. The General Partner, in its sole discretion, may change the name of the Partnership at any time and from time to time as it deems necessary, appropriate or advisable, and in connection therewith shall have the authority to make such filings under the Act and under the laws of any other jurisdiction in which the business of the Partnership is conducted to effect any such change in the name of the

Partnership. The parties hereto shall, upon the request of the General Partner, execute any certificates and other documents as may be necessary for the General Partner to effect any filing, recording or other acts in order to accomplish the foregoing.

4. PRINCIPAL OFFICE; AGENT FOR SERVICE OF PROCESS.

(a) Principal Office of the Partnership. The principal office and place of business of the Partnership shall be located and maintained at 2010 Brookwood Medical Center Drive, Birmingham, Alabama 35209, or at such other place as the General Partner may from time to time designate by Notice to the Partners and by filing proper notification thereof with the Secretary of State of Alabama, in accordance with the provisions of the Act. Said office shall constitute the office required to be maintained under the Act and the records required to be maintained by the Partnership under the Act and pursuant to the provisions hereof shall be maintained at such office.

(b) Agent for Service of Process. CT Corporation shall be designated as the agent for service of process at the address of the principal office of the Partnership. The General Partner may from time to time designate any other Person to be such agent for service of process by filing proper notification thereof with the Secretary of State of Alabama, in accordance with the provisions of the Act; provided, however, that any such other Person shall be an individual resident of Alabama, a corporation organized and existing under Alabama law or a foreign corporation qualified to do business in Alabama.

5. PURPOSE OF THE PARTNERSHIP.

(a) Business and Purpose of the Partnership. The principal business and purpose of the Partnership is to operate the Ambulatory Surgery Center.

(b) Authority of the Partnership. In order to carry out its business and purpose, the Partnership is authorized to engage in any kind of lawful activity, and enter into, perform and carry out contracts of any kind that are necessary or advisable in connection therewith. In particular, but without limiting the foregoing, the Partnership may (i) invest in, acquire, own, use operate, lease, improve, sell, exchange, pledge, encumber, develop and otherwise use interests in real and personal property for profit, including, but not limited to, interests in general and limited partnerships; (ii) borrow money and issue evidences of indebtedness in furtherance of the Partnership business and secure any such indebtedness by mortgage, pledge, hypothecation, or the security; (iii) enter into, execute, deliver, perform and carry out contracts, agreements, arrangements or understandings of any kind, including contracts or agreements with Affiliates, which are necessary to, in connection with, or incidental to the accomplishment of the business and purpose of the Partnership; (iv) make payments and distributions of its funds, including payments and distributions to Partners; and (v) engage in any and all activities necessary to, in connection with or incidental to the accomplishment of the business and purpose of the Partnership. Notwithstanding any provision to the contrary under this Agreement or under the Act, the Partnership shall not engage in any line of business that is not directly connected to the health care industry. This Agreement does not, and shall not be construed to, create a partnership relationship among the parties hereto with respect to

any activities other than those specified herein, and no Partner shall have authority to bind another Partner except as otherwise set forth herein.

6. TERM OF THE PARTNERSHIP. The term of the Partnership shall commence as of the date hereof, and shall continue in full force and effect until December 31, 2039, unless dissolved and terminated prior to such date pursuant to the provisions hereof.

7. DESIGNATION AND INTERESTS OF PARTNERS.

(a) General Partner. BCDC, whose address is set forth in Paragraph 23(b) hereof, shall be the General Partner of the Partnership and, as such, shall have all rights, privileges and obligations conferred upon the General Partner by this Agreement and by provisions of the Act which are not inconsistent with the terms hereof. One or more additional General Partners may be hereafter admitted, but only in accordance with the terms and conditions hereof.

(b) Limited Partners. The persons listed on Exhibit "A" hereto initially shall be the Limited Partners of the Partnership. Such Persons, together with any Persons admitted as additional or substitute Limited Partners in accordance with the terms and conditions hereof, shall have all rights and privileges conferred upon Limited Partners by this Agreement and by provision of the Act which are not inconsistent with the terms hereof.

(c) Nature of Partners' Interest. The interests of the Partners in the Partnership shall include the Partners' respective (i) shares of the capital, Profits and Losses of the Partnership and (ii) rights to receive distributions of Partnership assets and allocations of income, gain, loss, deduction, credit or similar items, as set forth herein. The interests of the Partners in the Partnership shall be personal property for all purposes. All property owned by the Partnership, whether real or personal, tangible or intangible, shall be deemed to be owned by the Partnership as an entity and no Partner individually shall have ownership of such property.

8. PARTNERSHIP CAPITAL AND PERCENTAGE INTERESTS.

(a) Capital Contributions. Upon formation of the Partnership, the Partners made the following contributions:

(i) each Partner contributed the following shares of HDG common stock:

<u>Partner</u>	<u>Shares Contributed</u>
BCDC (as General Partner)	8,100
BCDC (as Limited Partner)	60,750
Edwyn L. Boyd	1,350
Brice H. Brackin	1,350
R. Don Bryan	1,350
William P. Bryant	1,350
C. Steven Daughtry	1,350
Larry G. Deep	1,350

Dewey H. Jones, III	1,350
Jack L. Schaeffer	1,350
Robert J. Sciacca	<u>1,350</u>
Total	81,000

(ii) Each of the Limited Partners contributed his entire interest in the Retained Medplex Assets; and

(iii) BCDC contributed its entire interest in the Purchased Medplex Assets.

(b) Percentage Interests. As a consequence of the capital contributions referred to in Paragraph 8(a) hereinabove, the Partners shall have the following Percentage Interests in the Partnership:

<u>Partner</u>	<u>Shares Contributed</u>
BCDC (as General Partner)	10%
BCDC (as Limited Partner)	75%
Edwyn L. Boyd	1 2/3%
Brice H. Brackin	1 2/3%
R. Don Bryan	1 2/3%
William P. Bryant	1 2/3%
C. Steven Daughtry	1 2/3%
Larry G. Deep	1 2/3%
Dewey H. Jones, III	1 2/3%
Jack L. Schaeffer	1 2/3%
Robert J. Sciacca	1 2/3%
Total	100.00%

(c) Additional Capital. No additional capital contribution shall be required of the General Partner or of any of the Limited Partners.

(d) Return of Capital Contributions. No Partner shall have the right to withdraw, or demand or receive any return of, his Capital Contribution or all or any part of his Capital Account, except as otherwise set forth herein. Except as otherwise set forth herein, the General Partner shall not be personally liable for the return of the Limited Partners' Capital Contributions or any portion thereof.

(e) Partnership Borrowings. In the event the General Partner determines that the Partnership requires funds, the General Partner is authorized to cause the Partnership to borrow money upon such terms as the General Partner in its sole discretion may determine and to mortgage, pledge and hypothecate the assets of the Partnership in connection with any such borrowings. No Partner shall be required to lend any funds to the Partnership, but any Partner may do so at the request of the General Partner and upon such reasonable terms and conditions as such lending Partner may agree with the General Partner. No creditor who lends funds to the Partnership may have or acquire at any time, as a result of making any such loan, any interest as a Partner in the Partnership. Nothing

herein shall be construed to prohibit any loan to the Partnership from the General Partner or any Affiliate thereof; provided, however, that the rate of interest charged the Partnership pursuant to such loan shall not be greater than two (2) percentage points in excess of the Prime Rate announced and in effect from time to time at Amsouth Bank N.A., Birmingham, Alabama.

9. CAPITAL ACCOUNTS.

(a) Separate Accounts. A separate Capital Account shall be maintained for each Partner, who shall have a single Capital Amount, regardless of the time or manner in which such Partner's interest in the Partnership was acquired.

(b) Determination and Maintenance. A Partner's Capital Account shall consist of the amount of such Partner's Capital Contribution increased by such Partner's share of Profits, and decreased by (i) distributions to such Partner (other than payments to such Partner on account of loans to the Partnership or on account of services rendered by such Partner to the Partnership); (ii) such Partner's share of Losses; and (iii) such Partner's share of amounts which are paid or incurred by the Partnership to organize the Partnership or to promote the sale of an interest therein (except to the extent properly amortizable for tax purposes). Each Partner's Capital Account shall be maintained and adjusted in accordance with the Code, Treasury Regulations Section 1.704-1(b) as amended from time to time and other applicable Treasury Regulations promulgated from time to time thereunder, and the General Partner shall have the authority to make or cause to be made any adjustments required to conform to such Treasury Regulations or to take into account unexpected events.

(c) Effect of Transfer. In the event of the Transfer by a Partner of all or any portion of such Partner's interest in the Partnership, the Capital Account of the transferor Partner (or portion thereof) that is attributable to the transferred interest in the Partnership shall carry over to the transferee.

10. DISTRIBUTIONS TO PARTNERS.

(a) Time and Manner of Distributions. Distributable Cash shall be distributed to the Partners from time to time, based upon the results of an evaluation conducted at least semi-annually, as the General Partner shall determine upon a review of the Partnership books and records. The General Partner will share the results of any evaluation with the Partners. All such distributions shall be allocated among the Partners in accordance with their respective Percentage Interests.

(b) Good Faith Distributions. Upon the determination in good faith to distribute funds in the manner set forth herein, the General Partner shall incur no liability on account of such distribution, even though such distribution may result in the Partnership retaining insufficient funds for the operation of its business.

11. ALLOCATIONS OF PROFITS AND LOSSES.

(a) Determinations. Profits and Losses shall be determined by the Partnership and its accountants, if any, in accordance with the Code and accounting methods used by the partnership in determining taxable income or loss for federal income tax purposes. Every item of income, gain, loss, deduction, credit or tax preference entering into the computation of Profits or Losses, or applicable to the period for which such Profits or Losses are determined, shall be considered allocated to each Partner in the same proportion as Profits and Losses are allocated to such Partner.

(b) Allocation of Profits or Losses. Profits and Losses shall be allocated among the Partners in accordance with their respective Percentage Interests.

12. MANAGEMENT OF THE PARTNERSHIP.

(a) Reservation to General Partner. Subject to Paragraph 12(e) below, all of the decisions with respect to any matter set forth herein or otherwise arising out of the conduct of the business of the Partnership shall be made by the General Partner, who shall have the exclusive right, power and authority to manage and operate the Partnership's business. The General Partner shall have all rights and powers which (i) by law may be possessed by a general partner, (ii) it deems necessary, appropriate or convenient in the discharge of its responsibilities hereunder and (iii) are conferred upon it by the provisions hereof. All such rights and powers shall be exercised by the General Partner in such manner and on such terms and conditions as the General Partner in its sole discretion determines, without the consent of any other Person.

(b) Execution of Instruments. Any deed, bill of sale, mortgage, security agreement, lease, contract of sale, joint venture agreement, loan agreement, partnership agreement, contract, arrangement, understanding or other instrument for the conveyance or encumbrance of any assets of the Partnership or to bind the Partnership shall be executed on behalf of the Partnership by the General Partner, and on behalf of the General Partner by such signatories as the General Partner may require. No other signatures or consents shall be required. Any person dealing with the Partnership or the General Partner may rely upon a certificate executed by the General Partner as to (i) the identity of any Partner; (ii) the existence or nonexistence of any fact or facts which constitute conditions precedent to acts by the Partnership or General Partner that are related in any way to the business and affairs of the Partnership; (iii) the Persons who are authorized to execute and deliver any instrument or document of or on behalf of the Partnership; and (iv) any act or failure to act by the Partnership.

(c) Tax Matters Partner. The General Partner shall act as Tax Matters Partner of the Partnership, as provided in Treasury Regulations pursuant to Section 6231 of the Code. Each Partner hereby approves of such designation and agrees to execute, certify, acknowledge, deliver, swear to, file and record such documents as may be necessary or appropriate to evidence such approval. To this extent and in the manner provided by the Code and applicable Treasury regulations the Tax Matters Partner shall (i) furnish the name, address, interest and taxpayer identification number of each Partner to the Internal

Revenue Service and (ii) inform each Partner of administrative or judicial proceedings for the adjustment of Partnership items required to be taken into account by Partners for federal income tax purposes. The Partnership shall indemnify and reimburse the Tax Matters Partner for all expenses, fees, claims, liabilities, losses and damages incurred in connection with audit or administrative or judicial proceedings for the adjustment of Partnership items.

(d) Management Agreement. The Partners acknowledge that the Partnership shall engage BCDC to manage the Ambulatory Surgery Center pursuant to the Management Agreement, and authorize BCDC to execute the Management Agreement for and on behalf of the Partnership.

(e) Indemnification. No General Partner or Affiliate shall be liable, responsible or accountable in damages or otherwise for any act or omission made in good faith on behalf of the Partnership, except for acts or omissions of negligence or fraud. The Partnership shall indemnify the General Partner and each Affiliate from and against claims, judgments, fines, amounts paid in settlement and expenses (including reasonable attorney's fees) actually and reasonably incurred in connection with the defense or settlement of any action or suit arising out of the any acts or omissions performed or omitted by such General Partner or Affiliate except acts or omissions of negligence or fraud. All judgments against the Partnership or the General Partner wherein the General Partner is entitled to indemnification shall first be satisfied from Partnership income or assets and no Partner shall have or incur any personal liability on account thereof. In any action, suit or proceeding brought by any Partner against the Partnership or General Partner arising out of any alleged acts or omissions of the Partnership or such General Partner, the General Partner or the Partnership, as the case may be, if it prevails in such action, shall be entitled to payment of its expenses (including reasonable attorney's fees) actually and reasonably incurred in connection with such action, suit or proceeding.

### 13. STATUS OF LIMITED PARTNERS.

(a) Limited Liability. No Limited Partner shall be bound by, or personally liable for, the expenses, liabilities or obligations of the Partnership or the General Partner, and the liability of each such Partner to the Partnership shall be, and hereby is, limited to the amount of such Partner's Capital Contribution pursuant to Paragraph 8 hereof. No Limited Partner (unless he or it is also a General Partner) shall have any liability in respect of the liabilities and obligations of the Partnership; provided, however, that if any such Partner has received the return or any part of his Capital Contribution without violation of this Agreement or the Act, he shall be liable to the Partnership for a period of one (1) year thereafter for the amount of such returned Capital Contribution without violation of this Agreement or the Act, he shall be liable to the Partnership for a period of one (1) year thereafter for the amount of such returned Capital Contribution, but only to the extent necessary to discharge the Partnership's liabilities to creditors who extended credit to the Partnership during the period such Capital Contribution was held by the Partnership; and provided, further, that if any such Partner has received the return of any part of his Capital Contribution in violation of this Agreement or the Act, he shall be

liable to the Partnership for a period of six (6) years thereafter for the amount of the Capital Contribution wrongfully returned.

(b) Notice to Creditors. Nothing contained herein shall remove, diminish or affect the above limitation of liability. The Partner's creditors shall have no right to, and are hereby notified that they may not, look to the personal assets of the Limited Partners hereof for satisfaction of any Partnership debt, liability or obligation (unless he or it is also a General Partner).

(c) No Control of Business or Right to Act for Partnership. A Limited Partner shall take no part, and shall not interfere in any way, in the management, conduct or control of the business of the Partnership and shall have no right or authority to act for or to bind the Partnership. The Partnership may engage Limited Partners or Persons affiliated with Limited Partners on such terms and for such compensation as may be agreed upon; provided, however, that nothing within the scope of any such engagement, or in any agreement relating thereto, shall entitle such Limited Partner to participate in the control of the business of the Partnership.

(d) No Priority. Except as otherwise specifically set forth herein, no Limited Partner shall have the right to demand or receive property other than cash in return of his Capital Contribution or as to any distributions hereunder. No Limited Partner shall have priority over any other Limited Partner either as to the return of his Capital Contribution or as to distributions hereunder, except as otherwise set forth herein. The Limited Partners shall have no right to withdraw their Capital Contributions during the term of the Partner's existence, except as otherwise specifically provided herein.

#### 14. ACCOUNTING AND FINANCIAL MATTERS.

(a) Annual Statements. The General Partner shall cause annual financial statements of the operations of the Partnership, including a detailed description of the use of Partnership funds, to be prepared and distributed to each Partner, as soon as practicable after the close of each fiscal year.

(b) Books and Records. The Partner's books and records and all other documents shall be maintained at the principal office of the Partnership, and all Partners shall have reasonable access to such books and records during regular business hours.

(c) Income Tax Information. The General Partner shall provide to the Partners information concerning the Partner's taxable income or loss and each item of income, gain, loss, deduction or credit that is relevant to reporting Partnership income. Such information with respect to each fiscal year shall reflect each Partner's distributive share of each item of income, gain, loss, deduction or credit and shall be furnished to the Partners after the close of each fiscal year.

(d) Accounting Decisions. All decisions as to accounting matters, except as specifically provided to the contrary herein, shall be made by the General Partner in accordance with the accounting methods adopted by the Partnership for federal income

tax purposes. The General Partner may rely from time to time upon the advice of such certified public accountants as may be engaged by the Partnership.

(e) Banking and Investments. Funds of the Partnership may be deposited in such checking accounts or savings accounts, or invested in certificates of deposit, money market funds, mutual funds or other securities, with such institutions and on such terms as the General Partner shall designate. Checks or withdrawals from any such accounts, or the liquidation of any such Partnership securities, shall be made upon such signatures and other instructions as the General Partner shall designate or determine.

## 15. TRANSFERS OF LIMITED PARTNERS' INTERESTS.

(a) Restrictions on Transfer. Except as specifically required or authorized under Paragraphs 15(b) and 15(c) hereof, no Limited Partner shall Transfer his interest in the Partnership, or any portion thereof, except with the consent of the General Partner, which consent may be withheld or given in the sole discretion of the General Partner and may be conditioned upon the execution of all documents and the performance of all acts by the transferor and transferee as the General Partner determines to be reasonably necessary. It is recognized that the General Partner shall be permitted to transfer all or any portion of its seventy-five (75%) interest as a Limited Partner to such Persons as the General Partner may designate. Any purported Transfer in violation of this Paragraph 15(a) shall be null and void, the Partnership shall not be obligated to recognize or give effect to such Transfer, and such Transfer shall not release the purported transferor from any obligations hereunder or vest any rights hereunder in the purported transferee. The Partnership shall not be required to recognize any Transfer until such time as the instrument conveying such interest in the Partnership has been executed and delivered to the General Partner and the transferor or transferee, as they may agree between themselves, shall have reimbursed the Partnership for all costs, fees and expenses of such Transfer, and prior to such time the transferee's right shall only be against the transferor.

(b) Put or Call Option. If the Partnership, or any Limited Partner, believes that a Put or Call Event has occurred, such party shall provide written notice, together with a copy of an opinion of Recognized Health Care Counsel that such an event has occurred, to the Limited Partners or the Partnership, respectively, on or before the effective date of the Health Care Law giving rise to such Put or Call Event. If the other party disagrees with such opinion, the objecting party must provide a contrary opinion of Recognized Health Care Counsel within thirty (30) days. If such a contrary opinion is delivered, the dispute shall be resolved by arbitration. If the other party fails to dispute the original opinion, then the interests of all Limited Partners who are affected by such Put or Call Event shall be purchased at the Repurchase Price. In such event, the acquisition date shall be as of the effective date of the applicable Health Care Law. The Partnership shall pay to each affected Limited Partner, within thirty (30) days of such acquisition date, not less than twenty percent (20%) of the Repurchase Price in cash, and shall deliver a Promissory Note for the balance, if the Repurchase Price is not paid in full, providing for equal annual payments of principal over the number of full years remaining under the Basic Term, as defined in the Lease Agreement. Such Promissory Note will bear interest on the principal amount outstanding from time to time at the lesser of the Applicable

Federal Rate, compounded annually, or the maximum rate permitted by law. Such Promissory Note may be prepaid by the Partnership at any time prior to maturity without premium or penalty of any kind. If such Promissory Note as described herein is determined, in the opinion of Recognized Health Care Counsel, more likely than not to be prohibited under Health Care Law, then the General Partner shall use its best efforts to acquire (but shall not be obligated to provide or guarantee) the necessary financing to have the Partnership repurchase the Limited Partner's interest for cash within the time allowed by such Health Care Law. In addition to any equitable or other relief which may be available to the Partnership or to BCDC in the case of any breach of the noncompetition covenants provided under Paragraph 21 below, the Partnership shall cancel the entire outstanding principal amount of, and accrued interest on, any Promissory Notes delivered under this Paragraph 15(b) as liquidated damages suffered by the Partnership by reason of any such breach.

(c) Terminating Event. Each Limited Partner hereby grants the option to the Partnership to purchase, for the Terminating Price, all of his interest in the Partnership upon the occurrence of any Terminating Event as to such Limited Partner. Any Limited Partner who has suffered a Terminating Event shall notify the General Partner of the occurrence of the Terminating Event not later than five (5) days after the occurrence thereof. The Partnership shall have the right, privilege and option, but not the obligation, to acquire the interest of the Terminating Limited Partner at the Terminating Price, exercisable during the sixty (60) day period after receipt by the Partnership of actual notice of the Terminating Event. For purposes of determining the Terminating Price, the Partner's property shall be deemed to have been sold (i) for the lesser of book value or appraised market value, if the Terminating Event occurred because of a violation of Paragraph 15(a) or Paragraph 22 hereof and (ii) at the appraised market value, if the Terminating Event occurred because of bankruptcy or marital separation. If "book value" is to be used, the same shall be determined by an accountant or accounting firm designated by the General Partner. If appraised fair market value is to be used, the Terminating Limited Partner and General Partner shall mutually choose an appraiser experienced in appraising comparable property to determine such value. If an appraiser is not selected by their mutual agreement within ten (10) days after written request by either party, then either party may request that the nearest Chapter of MAI appraisers make such selection. The costs of any such appraiser shall be borne equally by the Terminating Limited Partner and the Partnership. Within thirty (30) days after determination of the Terminating Price, the Partnership shall pay to the Terminating Limited Partner, or his authorized representative or successor, not less than ten percent (10%) of the total price to be paid, and shall deliver a Promissory Note for the balance, if the same is not paid in full, providing for equal annual payments of principal over a period not to exceed five (5) years from date of delivery, the first annual payment to be made one (1) year after the day of delivery. Such Promissory Note shall bear interest on the principal amount outstanding from time to time at the lesser of the Applicable Federal Rate, compounded annually, or the maximum rate permitted by law. The Promissory Note may be prepaid by the Partnership at any time prior to maturity without premium or penalty of any kind.

(d) Offer to General Partner. If any Limited Partner desires to Transfer his interest in the Partnership, or any portion thereof, then, except (i) as specifically required or authorized under Paragraphs 15(b) and 15(c) hereof or (ii) in the case of a Transfer by one Medplex Partner to another Medplex Partner, such Limited Partner shall give notice (the "Transfer Notice") to the General Partner, which notice shall contain: (A) a statement of the interest in the Partnership which is proposed to be transferred (the "Offered Interest"); (B) the name and address of the party to whom the Offered Interest is proposed to be transferred (the "Transferee"); and (C) the price and terms of payment with respect to the proposed Transfer. For a period of thirty (30) days following the date of its receipt of the Transfer Notice, the General Partner shall have the right, option, and privilege, but not the obligation, to purchase the Offered Interest at the price and upon the terms and conditions as stated in the Transfer Notice. If such option is not timely exercised, then the Offered Interest may be transferred to the Transferee, on the terms and conditions set forth in the Offer Notice, during the thirty (30) day period after expiration of the General Partner's option. In the event that such transfer is not consummated within said thirty (30) day period, or is not consummated upon the terms and conditions set forth in the Offer Notice, then the proposed Transfer shall again be subject to a right of first refusal in favor of the General Partner.

(e) Admission to Partnership. Any transferee or assignee of a Limited Partner's interest (or any portion thereof) in the Partnership under a Transfer permitted by the terms of this Paragraph 15 shall be admitted to the Partnership only upon the written consent of the General Partner and the execution of such instruments as the General Partner shall determine to be adequate to bind such transferee to the terms and provisions of this Agreement. Each such transferee or assignee who desires to be admitted to the Partnership shall be required to be a natural person who resides in the State of Alabama and who holds an M.D. degree or other degree relating to health care acceptable to the General Partner, and who (a) is licensed to practice by the appropriate governing entity or board in the State of Alabama, (b) agrees to apply to join the medical staff of the Ambulatory Surgery Center within thirty (30) days after admittance of such person as a Limited Partner, and (c) complies with the fraud and abuse safe harbor regulation criteria concerning the one-third revenue test and the one-third procedures test. Only persons who are in a position to refer their patients to, and perform procedures at, the Ambulatory Surgery Center will be eligible to join the Ambulatory Surgery Center's medical staff and be admitted to the Partnership; provided, however, the General Partner may determine, in its sole discretion, other investors to be suitable to be admitted as Limited Partners (i.e., non-referral source investors). In determining whether a person may be admitted as a Limited Partner, the General Partner may consider whether the investment would exceed ten percent (10%) of the proposed investor's net worth. The General Partner shall have the sole discretion in determining whether a person may be admitted as a Limited Partner and may consider any factors it deems appropriate in making this determination, including, without limitation, those factors set forth in any future offering memorandum prepared in connection with any proposed investment in the Partnership. Any Partner who has assigned all of his interest in the Partnership in accordance with the provisions hereof shall cease to be a Limited Partner as of the effective date of such assignment. If a Limited Partner dies, is adjudicated incompetent or becomes bankrupt, his executor, administrator, trustee, guardian, or receiver shall have all rights as such Partner for the

purpose of settling or managing his estate, including such power as that Partner possessed to Transfer all or any portion of his interest in the Partnership as set forth herein.

(f) Rights of Unadmitted Assignees. Any Person who acquires all or any portion of a Partner's interest in the Partnership but who is not admitted as a substituted Partner shall be entitled only to allocations and distributions with respect to the interest acquired, but shall have no right to any information or accounting of the affairs of the Partnership, shall not be entitled to inspect the books or records of the Partnership, and shall not have any of the rights of a Partner under the Act or the provisions hereof.

(g) Consent of Other Limited Partners. The consent of the other Limited Partners shall not be required to effect a Transfer of all or any portion of Partner's interest in the Partnership or the substitution of any such Partner.

16. TRANSFERS BY GENERAL PARTNER.

(a) General Restriction. A General Partner may Transfer all or any portion of its interest as a General Partner in the Partnership only in accordance with the provisions of this Paragraph 16.

(b) Transfers Among Partners. A General Partner may Transfer all or any portion of its interest in the Partnership to a Person who is then serving as another General Partner.

(c) Additional General Partners. A General Partner may Transfer a portion of its interest in the Partnership (but not all of its interest) to a Person who is to be admitted to the Partnership as an additional or substitute General Partner.

(d) Required Consents. The Transfers authorized under the foregoing provisions may be effected only in compliance with the following:

(i) All Partners hereby specifically consent to any Transfer from one General Partner to another General Partner;

(ii) All Partners hereby specifically consent to any Transfer from a General Partner to one or more Affiliates of such General partner, and to the admission of such Affiliates as General Partners;

(iii) All Limited Partners hereby specifically consent to the Transfer to and admission of any additional General Partners, which are not Affiliates of a General Partner, provided that such Transfer and admission are specifically approved at the time by all General Partners, and such Transfer and admission shall not be in connection with the withdrawal of the last remaining General Partner; and

(iv) In the case of a Transfer by the last remaining General Partner, to a Person who is not an Affiliate of a General Partner and who is to be admitted as a substitute General Partner, all Limited Partners hereby specifically consent to such Transfer, provided that a majority in interest of the Limited Partners consent

to such Transfer at the time, pursuant to the provisions of Paragraph 23(f) hereof, in which event the transferee shall be admitted as an additional General Partner immediately prior to the withdrawal or removal of the affected General Partner.

17. ADDITIONAL INTERESTS. The Partnership may, from time to time, offer and sell Limited Partner interests in the Partnership (the "Additional Interests") if the General Partner determines, in its sole discretion, that the Partnership requires additional equity financing or desires new investors. The purchase price for any Additional Interests offered pursuant to this Paragraph 17 shall be established by the General Partner in its sole discretion; provided, however, in no event shall the purchase price be less than the fair market value of such Additional Interests. Purchasers of such Additional Interests shall be admitted as Limited Partners upon the execution of an amendment to this Agreement and satisfaction of all investor suitability standards then required pursuant to the terms hereof. This Agreement shall be amended as necessary to reflect any sale of Additional Interests without the necessity of any Limited Partner's consent or signature. No Limited Partner shall have any preemptive right to purchase any Additional Interests offered in accordance with this Paragraph 17.

18. CONTINUATION OF PARTNERSHIP.

(a) By Remaining General Partners. Upon the occurrence of any event of withdrawal with respect to a General Partner specified in the Act, then the Partnership shall be continued by any remaining General Partners.

(b) By the Partnership. If any such event occurs to the sole General Partner of the Partnership, then the General Partner or its legal representative shall promptly give notice thereof to all Limited Partners, and the Partnership shall be dissolved and its affairs shall be wound up unless all Partners consent, pursuant to the provisions of Paragraph 23(f) hereof, within ninety (90) days after the occurrence of such event, to continue the business of the Partnership with a successor General Partner approved by them.

19. DISSOLUTION, WINDING UP AND TERMINATION OF THE PARTNERSHIP.

(a) Events Causing Dissolution. The Partnership shall be dissolved prior to the expiration of the term set forth in Paragraph 6 hereof upon the occurrence of any of the following events:

(i) any event set forth in Paragraph 18 hereof, unless the business of the Partnership is continued as provided therein;

(ii) the determination of the General Partner; or

(iii) any other event causing the dissolution of a limited partnership under provisions of the Act which are not inconsistent with the terms hereof.

(b) No Right to Dissolve. Except as provided in Paragraph 19(a) hereof, no Partner shall have a right to cause the dissolution of the Partnership before the expiration of its term. The Limited Partners shall have no right to demand or receive the return of their Capital Contributions prior to the liquidation and termination of the Partnership, except

as otherwise provided herein, or to demand or receive property other than cash upon such liquidation. The Partnership shall not be dissolved by the admission of any new Limited Partner, or by the withdrawal, expulsion, death, insolvency, liquidation, incapacity or bankruptcy of a Limited Partner.

(c) Winding Up of Business. Upon the dissolution of the Partnership, unless its business is to be continued as provided hereinabove, its assets shall be liquidated as promptly as is consistent with obtaining their fair value. A reasonable time shall be allowed for the orderly liquidation of the assets of the Partnership so as to minimize any loss attendant upon such liquidation. While the dissolution of the Partnership shall be effective upon the occurrence of an event causing the same, the Partnership shall not be terminated until the complete liquidation and distribution of its assets.

(d) Application of Proceeds. The proceeds from liquidating Partnership assets, together with any property to be distributed in kind, shall be applied or distributed in the following order;

(i) First, to the payment and discharge of all debts and liabilities of the Partnership, including expenses of liquidation, owing to creditors other than Partners or their affiliates;

(ii) Second, to the establishment of any reserve which the General Partner may deem necessary for any contingent or unforeseen liabilities or obligations of the Partnership;

(iii) Third, to the payment and discharge of all debts and liabilities of the Partnership owing to Partners or their Affiliates, but if the amount available for payment is insufficient, then pro rata in accordance with the amounts of such debts and liabilities; and

(iv) Fourth, to distribute among the Partners in proportion to their respective positive Capital Account balances.

(e) Excess Funds. After the expiration of any time period during which the reserves under Paragraph 19(d)(2) hereof shall be maintained, any undisbursed reserves shall be distributed in accordance with the priorities of Paragraph 19(d)(3) and (4) hereof.

(f) Deficient Account. If, after all allocations of Profits and Losses, and all distribution made, or to be made in connection with the liquidation and termination of the Partnership, any Partner has a deficit capital account, then such Partner shall restore such account, by payment to the Partnership, or to its creditors.

(g) Statement of Dissolution. Each of the Partners shall be furnished by the General Partner with a statement which shall set forth the assets and liabilities of the Partnership as of the date of dissolution. This statement shall also schedule the receipts and disbursements made in liquidating and terminating the Partnership under this Paragraph 19.

(h) Certificate of Cancellation. Upon the termination of the Partnership in accordance with the terms hereof, the General Partner shall execute, acknowledge and cause to be filed in the appropriate public offices a Certificate of Cancellation of the Partnership, whereupon it shall cease to exist in all respects.

20. SPECIAL POWER OF ATTORNEY.

(a) Irrevocable Appointment. By his execution of the Agreement or of a Subscription Agreement pursuant to which he has consented to the terms and conditions of this Agreement, each Limited Partner hereby irrevocably constitutes and appoints the general partners of the General Partner, or any of them, with full power of substitution, as his true and lawful attorney-in-fact, in such Limited Partner's name, place and stead, to make, execute, sign, acknowledge, certify, deliver, file or record any of the following:

(i) this Agreement and any amendment hereto in any jurisdiction in which the General Partner considers such filing or recording necessary or appropriate;

(ii) any other certificate or instrument which may be required to be filed by the Partnership or the Partners under the laws of the State of Alabama and under the applicable laws of any other jurisdiction to the extent that the General Partner deems such filing to be necessary or required;

(iii) any and all amendments or modifications of the instruments described in the preceding Paragraphs 20(a)(1) and 20(a)(2) hereof; provided that such amendments or modifications are necessary or desirable to effect the terms and intent of this Agreement, are not in contravention of the terms hereof and are required to reflect any action of the Partners, whether or not such Limited Partner voted in favor of such action;

(iv) All certificates and other instruments which may be required to effect the dissolution, termination or continuation of the business of the Partnership pursuant to the provisions of this Agreement; and

(v) any and all consents or other instruments deemed necessary or desirable by the General Partner for the admission of additional or substitute Partners to the extent permitted by the terms of this Agreement.

(b) Continuing Validity. The foregoing Power of Attorney is irrevocable and shall survive the Transfer by each Limited Partner of the whole or any portion of his interest in the Partnership; provided, however, that where a Limited Partner has transferred his entire interest in the Partnership and the transferee thereof has been admitted as a Partner under Paragraph 16(b) hereof, this Power of Attorney shall survive the delivery of such Transfer for the sole purpose of enabling the General Partner to execute, acknowledge and file any instrument necessary to effect such Transfer. It is expressly understood and agreed that this Power of Attorney:

(i) is a durable Power of Attorney coupled with an interest;

- (ii) is irrevocable;
- (iii) shall survive the death, incompetency, insolvency, incapacity, bankruptcy or dissolution of any Partner;
- (iv) shall be binding on any transferee of an interest in the Partnership, or any portion thereof, including the Transfer of only the distributive rights relating thereto; and
- (v) may be exercised for such Partner by a signature of any general partner of the General Partner or by listing the names of all Limited Partners and then executing any instrument with a single signature of any general partner of the General Partner.

21. NONCOMPETITION COVENANTS.

(a) Limited Partners. Subject to the term and to the exceptions hereinafter provided, the Limited Partners, and their respective Affiliates, shall not develop or be involved in any way, directly or indirectly, in the development of an ambulatory surgery facility within a fifteen (15) mile radius of the Ambulatory Surgery Center.

(b) Term of Covenants. The covenants provided in this Paragraph 21 shall be of no further force or effect on or after the expiration or earlier termination of this Agreement, except that, in the event that any party shall breach any of such covenants, then the same shall be extended, as to such breaching party, for an additional period of time equal to the period during which such breach remains in effect.

(c) Permitted Exceptions. The covenants provided in this Paragraph 21 shall be inapplicable to any Limited Partner who owned Shares in the Partnership on or prior to January 1, 1992.

22. NONDISCLOSURE COVENANTS. During the term of this Agreement, each Limited Partner, and his Affiliates, will have access to and may become acquainted with the Partnership's Trade Secrets. Each Limited Partner acknowledges and agrees that such Trade Secrets are owned exclusively by the Partnership, and are secret, confidential and proprietary property of the Partnership, disclosed to or obtained by such Partner in confidence and trust for the sole purpose of using the same for the sole benefit of the Partnership. During and after the term of this Agreement, without the prior written consent of the Partnership, no Limited Partner, or employee or Affiliates thereof, shall divulge any Trade Secret for his or its own benefit or for the benefit of any other person or entity.

23. MISCELLANEOUS PROVISIONS.

(a) Alabama Law Governing. This Agreement and the rights of the Partners hereunder shall be interpreted and governed in accordance with the laws of the State of Alabama, notwithstanding the residence or principal place of business of any of the parties hereto, the place where this Agreement may be executed by any of the parties

hereto, the place where the Property may be located, or the provisions of any jurisdictions' conflict of laws rules.

(b) Notices. Partnership statements, reports and income tax returns may be mailed to Partners by regular first-class mail. All other Notices under this Agreement shall be in writing, duly signed by the party giving the same, and shall be deemed delivered when made in accordance with Paragraph 1(cc) herein. All Notices shall be addressed to the following addresses or to such other address as may be designated by Notice to all Partners hereunder:

If to the General Partner:

Brookwood Center Development Corporation  
2010 Brookwood Medical Center Drive  
Birmingham, Alabama 35204  
Attention: Garry L. Gause

With copy to:

Tenet Philadelphia Region  
Centre Square  
34<sup>th</sup> Floor, West Tower  
1500 Market Street  
Philadelphia, Pennsylvania 19102  
Attn: Regional Counsel - Law Department

If to the Limited Partners: to their addresses set forth in Exhibit A hereto.

(c) Binding Effect. This Agreement shall be binding upon all the parties hereto, and their respective heirs, executors, administrators, successors and assigns. Subject to the restrictions on Transfer contained herein, this Agreement shall inure to the benefit of the respective heirs, executors, administrators, successors and assigns of the parties hereto.

(d) Severability. If any provision of this Agreement, or the application thereof to any party or circumstance, shall be determined by any court of competent jurisdiction to be invalid or unenforceable to any extent, the remainder of this Agreement, or the application of such provision to any Person or circumstance other than that which is determined to be invalid or unenforceable, shall not be affected thereby. Each provision thereof shall be valid and shall be enforced to the fullest extent permitted by law.

(e) Identification. Throughout this Agreement, wherever the context so permits, the masculine gender shall be deemed to include the feminine and vice versa, and both shall be deemed to include the neuter and vice versa, and the singular shall be deemed to include the plural and vice versa.

(f) Method of Giving Consent. Any consent or affirmative vote which is required by the provisions of this Agreement or of the Act to be obtained or received from the Limited Partners shall be deemed to be given if the same shall be received by the General

partner within the time period for obtaining such consents. If the General Partner delivers Notice to the Limited Partners of any proposal or other matter required to be submitted for the consideration, consent or approval of the Limited Partners, which Notice shall include a description of the matter and may include the General Partner's recommendation as to such matter, then each Limited Partner who fails to deliver a negative vote within the allotted time shall be conclusively presumed to have consented to and approved such matter.

(g) Entire Agreement. This Agreement constitutes the entire understanding and agreement among the parties hereto with respect to the subject matter hereof.

(h) Further Assurances. Each Partner hereby agrees to execute and deliver such further documents and to cooperate in taking such further action as may be necessary or appropriate to effect this Agreement or any provision hereof. Each Person agreeing to become a Limited Partner pursuant to the provisions hereof ratifies and agrees to be bound by all actions taken by the General Partner prior to the date on which such Person became a Limited Partner.

(i) Authority. Each Person executing this Agreement on behalf of another Person represents and warrants that he is authorized to do so, that such execution and the performance of this Agreement does not violate any agreement or restriction to which such party is subject and that this Agreement constitutes a legally binding obligation of such party.

(j) Counterparts. This Agreement may be executed in any number of counterparts and all of such counterparts shall for all purposes constitute one Agreement binding on the parties hereto, notwithstanding that all parties are not signatory to the same counterpart.

(k) Captions. Titles or captions contained in this Agreement are inserted only as a matter of convenience and for reference and shall in no way define, limit, extend or describe the scope or intent of this Agreement or of any provision hereof.

(l) Amendments. This Agreement may be amended at any time upon the consent of the General Partner and a majority in interest of the Limited Partners.

**IN WITNESS WHEREOF** the parties hereto have executed this Amended and Restated Certificate and Limited Partnership Agreement on the day and year first written above.

**GENERAL PARTNER:**

BROOKWOOD CENTER DEVELOPMENT CORPORATION, an Alabama corporation

By:   
Print: Garry L. Gause  
Its: President & CEO

**LIMITED PARTNERS:**

By: \_\_\_\_\_  
Print: \_\_\_\_\_

## **EXHIBIT A**

### **Limited Partners of MEDPLEX OUTPATIENT SURGERY CENTER, INC. as of January 1, 1992**

Brookwood Center Development Corporation

Edwyn L. Boyd

Brice H. Brackin

R. Don Bryan

William P. Bryant

C. Steven Daughtry

Larry G. Deep

Dewey H. Jones, III

Jack L. Schaeffer

Robert J. Sciacca

**SECOND AMENDED AND RESTATED  
CERTIFICATE AND LIMITED PARTNERSHIP AGREEMENT  
OF  
MEDPLEX OUTPATIENT SURGERY CENTER, LTD.**

THIS SECOND AMENDED AND RESTATED CERTIFICATE AND LIMITED PARTNERSHIP AGREEMENT, made and entered into effective as of the 1st day of June, 2007, by and among BROOKWOOD CENTER DEVELOPMENT CORPORATION, an Alabama corporation (the "General Partner") and those persons who may become limited partners of this partnership in accordance with the provisions hereof (the "Limited Partners").

**WITNESSETH:**

WHEREAS, the parties hereto have agreed to organize the Partnership, pursuant to the Act, on the terms and conditions hereinafter set forth; and

WHEREAS, the parties have agreed (i) that this instrument shall constitute the Partnership Agreement and the Certificate of Limited Partnership within the meaning of the applicable provisions of the Act; (ii) to be governed by the terms and conditions hereinafter set forth; and (iii) to set forth the rights, obligations and duties of each of the parties hereto with respect to the Partnership.

NOW, THEREFORE, in consideration of the premises, the mutual covenants expressed below and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties hereto, intending to be legally bound, hereby certify and agree as follows:

1: DEFINITIONS. The following terms shall, unless the context otherwise requires, have the respective meanings set forth below:

(a) "Act" means the Alabama Limited Partnership Act of 1983, as set forth in Ala. Code §§10-9A-1, et. seq. (1987 Repl. Vol.), as the same may be amended from time to time.

(b) "Affiliate" means, with respect to a specified Person, (i) any Person that directly or indirectly through one or more intermediaries controls; is controlled by or is under common control with the specified Person is an officer, director, general partner or trustee, or with respect to which the specified Person serves in a similar capacity; (ii) any Person for which an officer, director, general partner or trustee of, or individual serving in a similar capacity with respect to, the specified Person serves in any such capacity; (iv) any Person that, directly or indirectly, is the beneficial owner of the ten percent (10%) or more of any class of equity securities of the specified Person or of which the specified Person is directly or indirectly the beneficial owner of ten percent (10%) or more of any

class of equity securities; or (v) any relative or spouse of the specified Person who makes his or her home with that of the specified Person.

(c) "Agreement" means this Amended and Restated Certificate and Limited Partnership Agreement of Medplex Outpatient Surgery Center, Ltd., as the same may be amended from time to time.

(d) "Ambulatory Surgery Center" means the Medplex Outpatient Surgery Center presently located at 4511 Southlake Parkway, Birmingham Alabama 35244.

(e) "Applicable Federal Rate" means the minimum interest rate necessary to avoid the imputation of interest for federal income Agreement purposes pursuant to the provisions of the Code, including Sections 483 or 1274 thereof.

(f) "AmSouth" means AmSouth Bank, N.A., a national banking association.

(g) "BCDC" means Brookwood Center Development Corporation, an Alabama corporation.

(h) "Brookwood" means Brookwood Medical Center, the general acute care hospital currently operated by an affiliate of BCDC and located at 2010 Brookwood Medical Center Drive, Birmingham, Alabama 35209.

(i) "Call Option" means the right of BCDC and the Partnership to require a Limited Partner to sell such Limited Partners' interest in the Partnership upon the occurrence of a Put or Call Event.

(j) "Capital Account" means, with respect to a Partner, the bookkeeping account determined and maintained by the Partnership for such Partner in the manner set forth in Paragraph 9 hereof.

(k) "Capital Contribution" means, with respect to a Partner, the aggregate amount of money or other property contributed to the Partnership by such Partner; in accordance with the provisions hereof.

(l) "Certificate of Need" means the Certificate issued on November 20, 1986 by the State Health Planning and Development Agency of the State of Alabama with respect to the construction, equipping and operation of the Ambulatory Surgery Center.

(m) "Code" means the Internal Revenue Code of 1986, as amended.

(n) "Distributable Cash" means all cash on hand or in bank accounts of the Partnership, whether derived from operations of the Ambulatory Surgery Center, from disposition of Partnership assets, or otherwise, which the General Partner reasonably determines to be available for distribution to the Partners, after reasonable provision has been made for outstanding current obligations or expenses of the Partnership (including principal and interest due under any indebtedness and rent and other charges due under

the Lease Agreement) and after a reasonable reserve has been allowed for Partnership expenditures incurred or reasonably expected to be incurred for the proper operation of the partnership's business.

(o) "General Partner" means BCDC, together with any Person who is subsequently admitted to the Partnership as an additional, successor or substitute general partner pursuant to the provisions hereof.

(p) "HDG means Hoover Doctors Group, Inc., an Alabama corporation.

(q) "HDG-II" means Hoover Doctors Group II, Inc., an Alabama corporation.

(r) "Health Care Law" means Section 6204 of the Omnibus Budget Reconciliation Act of 1989, the Social Security Act (42 U.S.C. § 1320a-7b(b)) and any similar legislation, regulations or rules promulgated thereunder as may be currently in effect or as may be modified in the future.

(s) "Lease Agreement" means that certain Real Estate Lease Agreement dated as of October 31, 1991, as amended on June 30, 2001, between Medplex Land Associates, as Landlord, and the Partnership, as Tenant.

(t) "Licenses and Permits" means the licenses, permits and authorizations required for the operation of the Ambulatory Surgery Center.

(u) "Limited Partners" means those persons listed on Exhibit "A" hereto and any other Persons who have been admitted to the Partnership as Limited Partners pursuant to the provisions hereof, and "Limited Partner" means any one of them.

(v) "Losses" means the sum of (i) any Partnership expenditure described under Section 705(a)(2)(B) of the Code or which is treated as such pursuant to Treasury Regulation Section 1.704-1(b)(2)(iv) and (ii) the Partnership's taxable loss for federal income tax purposes, including Partnership deductions taken into account separately by Partners.

(w) "Management Agreement" means that certain Management Services Agreement dated as of \_\_\_\_\_, 2006 by and among the Partnership, BCDC and Alliance Surgery Birmingham, LLC, a Delaware limited liability company (the "Manager").

(x) "Medplex Assets" means the inventory, accounts receivable, office furniture and fixtures, equipment, and other tangible assets, patient records, goodwill, name and other intangibles, previously owned by HDG-II, which are subject to the terms of the Purchase Agreement.

(y) "Medplex Land Associates" means Medplex Land Associates, an Alabama general partnership formed by General Partnership Agreement dated as of October 31, 1991, and comprised of HDG-II and BCDC.

(z) "Medplex Partners" shall mean and include, from time to time, such of the following Persons as shall continue to Limited Partners: Edwyn L. Boyd, Brice H. Brackin, R. Don Bryan, William P. Bryant, C. Steven Daughtry, Larry G. Deep, Dewey H. Jones, III, Jack L. Shaeffer and Robert J. Sciacca.

(aa) "Notice" means a writing containing the information required by any provision hereof to be communicated to a Person, which shall be sufficiently delivered and shall constitute sufficient Notice for purposes of any provision hereof if (i) sent by registered or certified mail, return receipt requested, to any Person at the last known address of such Person; (ii) transmitted by hand delivery or air courier, when actually received at the address of such Person; or (iii) transmitted by telecopy or other form of facsimile transmission, upon acknowledgment of receipt thereof in writing by telecopy or otherwise.

(bb) "Partners" means the General Partner and Limited Partners, collectively as the context may require, and "Partner" means any one of them.

(cc) "Partnership" means Medplex Outpatient Surgery Center, Ltd., an Alabama limited partnership, formed under the Act pursuant to the provisions hereof.

(dd) "Percentage Interest" means the interest of a Partner in the Partnership, or in any item of Profits, losses, distributions and other allocations, relative to that of all Partners. The percentage interest of a Partner shall determine the share of Profits, Losses, distributions and other allocations to such Partner relative to all Partners entitled to receive their share of Profits, Losses distributions and other allocations on the same basis.

(ee) "Person" means any individual partnership, corporation, trust or other entity.

(ff) "Profits" means the sum of (i) any item of Partnership income not included in a Partner's gross income for federal income tax purposes and (ii) the Partnership's taxable income for federal income tax purposes, including items of income taken into account separately by Partners.

(gg) "Purchase Agreement" means that certain Purchase Agreement dated as of October 16, 1991, by and between BCDC, HDG, HDG-II and the Medplex Partners (in their capacity as the shareholders of HDG and HDG-II).

(hh) "Purchased Medplex Assets" means the undivided eighty-five (85%) interest in the Medplex Assets acquired by BCDC from HDG-II under the Purchase Agreement.

(ii) "Put Option" means the right of a Limited Partner to require that the Partnership purchase his interest in the Partnership upon the occurrence of a Put or Call Event.

(jj) "Put or Call Event" means a determination, made by Recognized Health Care Counsel Pursuant to Paragraph 15(b) of this Agreement, that it is more likely than not that Health Care Law prohibits Limited Partners from referring patients to the

Partnership, or prohibits the Partnership billing for services provided to patients referred to the Partnership by Limited Partners.

(kk) "Recognized Health Care Counsel" means an attorney or firm of attorneys having recognized expertise in the area of Health Care Law, including, without limitation, Title XVIII of the Social Security Act, reasonably acceptable to the General Partner.

(ll) "Repurchase Price" means the price applicable to the purchase and sale of a Limited Partner's interest in the Partnership, upon the occurrence of a Put of Call Event, which shall be, with respect to a Limited Partner, (a) the total amount of Capital Contributions made by such Limited Partner plus (unless prohibited by Health Care Law) an amount equal to interest determined at the Applicable Federal Rate (compounded annually) less (b) the amount of any Distributable Cash distributed to such Limited Partner and less such Limited Partner's allocated net Losses from the Partnership.

(mm) "Retained Medplex Assets" means the undivided fifteen percent (15%) interest in the Medplex Assets, retained by HDG-II under the Purchase Agreement, and distributed by HDG-II to the respective Medplex Partners.

(nn) "Shares" means the issued and outstanding shares of partnership interests in Partnership, consisting of eighty-one thousand (81,000) currently outstanding shares.

(oo) "Tax Matters Partner" means the General Partner.

(pp) "Terminating Event" means, with respect to a Limited Partner (i) the bankruptcy or insolvency of such Limited Partner, (ii) the violation by such Limited Partner, or by any of his Affiliates, of Paragraph 22 hereof, relating to nondisclosure of Trade Secrets, as determined in good faith by the General Partner, (iii) the violation by such Limited Partner of Paragraph 21 hereof, relating to non-competition, as determined in good faith by the General Partner, (iv) the failure of such Limited Partner (provided that such Limited Partner is a physician) to receive medical staff privileges at the Ambulatory Surgery Center by no later than thirty (30) days following the successful close of any offering of interests in the Partnership or within thirty (30) days following the date applications for medical staff privileges at the Ambulatory Surgery Center are first accepted, or the loss of such medical staff privileges at any time after receiving them (including, without limitation, any loss of medical staff privileges based on conviction of a crime involving moral turpitude, death, retirement or permanent disability), (v) the failure of such Limited Partner (provided that such Limited Partner is a physician) to certify his or her compliance with the fraud and abuse safe harbor regulation criteria concerning the one-third revenue test and the one-third procedures test, on an annual basis on schedule to be fixed by the General Partner and on a form to be developed by the General Partner, but only after the Partnership has provided such Limited Partner with a reasonable period of time (as determined in good faith by the General Partner) to come into compliance with such fraud and abuse safe harbor regulation criteria, and such Limited Partner fails to come into compliance within such time period, (vi) the decision by the General Partner to cause the Partnership to repurchase all, but not less than all, of the outstanding Limited Partner interests of the Limited Partners and dissolve the

Partnership, if the General Partner reasonably believes that the continuation of the Partnership may result in increased public scrutiny of the Partnership or its Affiliates, (vii) a Limited Partner's conviction or plea of nolo contendere to a felony or misdemeanor or based upon any other event which, in the good faith judgment of the General Partner, involves moral turpitude or is otherwise reasonably likely to jeopardize the reputation or goodwill of the Partnership or the Ambulatory Surgery Center; (viii) the transfer of all or any portion of such Limited Partner's interest in the Partnership not specifically authorized by this Agreement, including, but not limited to, the distribution of all or any portion of such Limited Partner's interest to his spouse incident to a preliminary or final decree of dissolution or separation or the execution of a property settlement agreement; or (ix) the determination by the General Partner in its sole discretion that the Partnership shall purchase the interest of a Limited Partner for any reason or no reason, if such determination is consented to in writing by a majority in interest of the Limited Partners, either at a meeting or in a written instrument.

(qq) "Terminating Limited Partner" means a Limited Partner as to whom a Terminating Event has occurred.

(rr) "Terminating Price" means the purchase price applicable to the purchase of a Terminating Limited Partner's interest in the Partnership, which shall be an amount equal to the pro rata portion that such Terminating Limited Partner would have received had all of the Partnership's property been sold by the Partnership as of the last day of the month in which the Terminating Event occurred with respect to such Partner, determined in accordance with Paragraph 15(c) hereof, less the Terminating Limited Partner's pro rata portion of the debts and liabilities of the Partnership existing as of such date (including, but not limited to, reasonable reserves for contingent liabilities).

(ss) "Trade Secrets" shall mean and include the various trade secrets, business accounts, confidential referral demographics, pricing lists, financial information, patient records, and other records of the Partnership owned by the Partnership or used in the operation of its business.

(tt) "Transfer" means to pledge, encumber, assign, sell, exchange, give, lease, mortgage, dispose of or transfer in any manner, voluntarily or involuntarily, any rights in property, whether tangible or intangible.

## 2. ORGANIZATION OF THE PARTNERSHIP.

(a) Organization Under the Act. The Partners hereby agree to organize the Partnership as a limited partnership under the provisions of the Act and on the terms and conditions set forth herein. The Act shall govern the rights, duties, obligations and liabilities of the Partners, except as otherwise expressly set forth herein.

(b) Execution of Documents. The General Partner shall take all actions required by law and do all things necessary or appropriate to organize maintain and operate the Partnership as a limited partnership under the Act. The parties hereto shall, upon the request of the General Partner, execute any certificates and other documents as may be

necessary for the General Partner to effect any filing, recording or other acts in order to accomplish the foregoing.

3. NAME OF THE PARTNERSHIP. The Partnership shall conduct its business under the name MEDPLEX OUTPATIENT SURGERY CENTER, LTD., " or such other name as the General Partner may from time to time designate by Notice to the Partners. The General Partner, in its sole discretion, may change the name of the Partnership at any time and from time to time as it deems necessary, appropriate or advisable, and in connection therewith shall have the authority to make such filings under the Act and under the laws of any other jurisdiction in which the business of the Partnership is conducted to effect any such change in the name of the Partnership. The parties hereto shall, upon the request of the General Partner, execute any certificates and other documents as may be necessary for the General Partner to effect any filing, recording or other acts in order to accomplish the foregoing.

4. PRINCIPAL OFFICE; AGENT FOR SERVICE OF PROCESS.

(a) Principal Office of the Partnership. The principal office and place of business of the Partnership shall be located and maintained at 2010 Brookwood Medical Center Drive, Birmingham, Alabama 35209, or at such other place as the General Partner may from time to time designate by Notice to the Partners and by filing proper notification thereof with the Secretary of State of Alabama, in accordance with the provisions of the Act. Said office shall constitute the office required to be maintained under the Act and the records required to be maintained by the Partnership under the Act and pursuant to the provisions hereof shall be maintained at such office.

(b) Agent for Service of Process. CT Corporation shall be designated as the agent for service of process at the address of the principal office of the Partnership. The General Partner may from time to time designate any other Person to be such agent for service of process by filing proper notification thereof with the Secretary of State of Alabama, in accordance with the provisions of the Act; provided, however, that any such other Person shall be an individual resident of Alabama, a corporation organized and existing under Alabama law or a foreign corporation qualified to do business in Alabama.

5. PURPOSE OF THE PARTNERSHIP.

(a) Business and Purpose of the Partnership. The principal business and purpose of the Partnership is to operate the Ambulatory Surgery Center.

(b) Authority of the Partnership. In order to carry out its business and purpose, the Partnership is authorized to engage in any kind of lawful activity, and enter into, perform and carry out contracts of any kind that are necessary or advisable in connection therewith. In particular, but without limiting the foregoing, the Partnership may (i) invest in, acquire, own, use operate, lease, improve, sell, exchange, pledge, encumber, develop and otherwise use interests in real and personal property for profit, including, but not limited to, interests in general and limited partnerships; (ii) borrow money and issue evidences of indebtedness in furtherance of the Partnership business and secure any such indebtedness by mortgage, pledge, hypothecation, or the security; (iii) enter into, execute,

deliver, perform and carry out contracts, agreements, arrangements or understandings of any kind, including contracts or agreements with Affiliates, which are necessary to, in connection with, or incidental to the accomplishment of the business and purpose of the Partnership; (iv) make payments and distributions of its funds, including payments and distributions to Partners; and (v) engage in any and all activities necessary to, in connection with or incidental to the accomplishment of the business and purpose of the Partnership. Notwithstanding any provision to the contrary under this Agreement or under the Act, the Partnership shall not engage in any line of business that is not directly connected to the health care industry. This Agreement does not, and shall not be construed to, create a partnership relationship among the parties hereto with respect to any activities other than those specified herein, and no Partner shall have authority to bind another Partner except as otherwise set forth herein.

6. TERM OF THE PARTNERSHIP. The term of the Partnership shall commence as of the date hereof, and shall continue in full force and effect until December 31, 2039, unless dissolved and terminated prior to such date pursuant to the provisions hereof.

7. DESIGNATION AND INTERESTS OF PARTNERS.

(a) General Partner. BCDC, whose address is set forth in Paragraph 23(b) hereof, shall be the General Partner of the Partnership and, as such, shall have all rights, privileges and obligations conferred upon the General Partner by this Agreement and by provisions of the Act which are not inconsistent with the terms hereof. One or more additional General Partners may be hereafter admitted, but only in accordance with the terms and conditions hereof.

(b) Limited Partners. The persons listed on Exhibit "A" hereto initially shall be the Limited Partners of the Partnership. Such Persons, together with any Persons admitted as additional or substitute Limited Partners in accordance with the terms and conditions hereof, shall have all rights and privileges conferred upon Limited Partners by this Agreement and by provision of the Act which are not inconsistent with the terms hereof.

(c) Nature of Partners' Interest. The interests of the Partners in the Partnership shall include the Partners' respective (i) shares of the capital, Profits and Losses of the Partnership and (ii) rights to receive distributions of Partnership assets and allocations of income, gain, loss, deduction, credit or similar items, as set forth herein. The interests of the Partners in the Partnership shall be personal property for all purposes. All property owned by the Partnership, whether real or personal, tangible or intangible, shall be deemed to be owned by the Partnership as an entity and no Partner individually shall have ownership of such property.

8. PARTNERSHIP CAPITAL AND PERCENTAGE INTERESTS.

(a) Capital Contributions. Upon formation of the Partnership, the Partners made the following contributions:

(i) each Partner contributed the following shares of HDG common stock:

<u>Partner</u>	<u>Shares Contributed</u>
BCDC (as General Partner)	8,100
BCDC (as Limited Partner)	60,750
Edwyn L. Boyd	1,350
Brice H. Brackin	1,350
R. Don Bryan	1,350
William P. Bryant	1,350
C. Steven Daughtry	1,350
Larry G. Deep	1,350
Dewey H. Jones, III	1,350
Jack L. Schaeffer	1,350
Robert J. Sciacca	1,350
Total	81,000

(ii) Each of the Limited Partners contributed his entire interest in the Retained Medplex Assets; and

(iii) BCDC contributed its entire interest in the Purchased Medplex Assets.

(b)

(i) Percentage Interests. As a consequence of the capital contributions referred to in Paragraph 8(a) hereinabove, the Partners shall have the following Percentage Interests in the Partnership:

<u>Partner</u>	<u>Shares Contributed</u>
BCDC (as General Partner)	10%
BCDC (as Limited Partner)	75%
Edwyn L. Boyd	1 2/3%
Brice H. Brackin	1 2/3%
R. Don Bryan	1 2/3%
William P. Bryant	1 2/3%
C. Steven Daughtry	1 2/3%
Larry G. Deep	1 2/3%
Dewey H. Jones, III	1 2/3%
Jack L. Schaeffer	1 2/3%
Robert J. Sciacca	1 2/3%
Total	100.00%

(ii) New Percentage Interests. As a consequence of the sale and transfer of the Shares by the General Partner, the Partners shall have the following

Percentage Interests in the Partnership following the completion of such sale and transfer by the General Partner:

<u>Partner</u>	<u>Shares Contributed</u>
BCDC (as General Partner)	10%
BCDC (as Limited Partner)	25%
Edwyn L. Boyd	1 2/3%
Brice H. Brackin	1 2/3%
R. Don Bryan	1 2/3%
William P. Bryant	1 2/3%
C. Steven Daughtry	1 2/3%
Larry G. Deep	1 2/3%
Dewey H. Jones, III	1 2/3%
Jack L. Schaeffer	1 2/3%
Robert J. Sciacca	3 1/3%
Alliance Surgery Birmingham, LLC	20%
J. Christopher Davis	3 1/3%
J. Scott Robertson	3 1/3%
William D. Krauss	3 1/3%
Jane N. Williams	1 2/3%
Keith Fleisher	1 2/3%
Michael F. Blum	3 1/3%
Ted W. Sartin	1 2/3%
Michael J. Sillers	3 1/3%
Donald J. Wittich	1 2/3%
Darryl Dykes	3 1/3%
Matthew Berke	1 2/3%
Total	100.00%

(c) Additional Capital. No additional capital contribution shall be required of the General Partner or of any of the Limited Partners.

(d) Return of Capital Contributions. No Partner shall have the right to withdraw, or demand or receive any return of, his Capital Contribution or all or any part of his Capital Account, except as otherwise set forth herein. Except as otherwise set forth herein, the General Partner shall not be personally liable for the return of the Limited Partners' Capital Contributions or any portion thereof.

(e) Partnership Borrowings. In the event the General Partner determines that the Partnership requires funds, the General Partner is authorized to cause the Partnership to borrow money upon such terms as the General Partner in its sole discretion may determine and to mortgage, pledge and hypothecate the assets of the Partnership in

connection with any such borrowings. No Partner shall be required to lend any funds to the Partnership, but any Partner may do so at the request of the General Partner and upon such reasonable terms and conditions as such lending Partner may agree with the General Partner. No creditor who lends funds to the Partnership may have or acquire at any time, as a result of making any such loan, any interest as a Partner in the Partnership. Nothing herein shall be construed to prohibit any loan to the Partnership from the General Partner or any Affiliate thereof; provided, however, that the rate of interest charged the Partnership pursuant to such loan shall not be greater than two (2) percentage points in excess of the Prime Rate announced and in effect from time to time at Amsouth Bank N.A., Birmingham, Alabama.

9. CAPITAL ACCOUNTS.

(a) Separate Accounts. A separate Capital Account shall be maintained for each Partner, who shall have a single Capital Amount, regardless of the time or manner in which such Partner's interest in the Partnership was acquired.

(b) Determination and Maintenance. A Partner's Capital Account shall consist of the amount of such Partner's Capital Contribution increased by such Partner's share of Profits, and decreased by (i) distributions to such Partner (other than payments to such Partner on account of loans to the Partnership or on account of services rendered by such Partner to the Partnership); (ii) such Partner's share of Losses; and (iii) such Partner's share of amounts which are paid or incurred by the Partnership to organize the Partnership or to promote the sale of an interest therein (except to the extent properly amortizable for tax purposes). Each Partner's Capital Account shall be maintained and adjusted in accordance with the Code, Treasury Regulations Section 1.704-1(b) as amended from time to time and other applicable Treasury Regulations promulgated from time to time thereunder, and the General Partner shall have the authority to make or cause to be made any adjustments required to conform to such Treasury Regulations or to take into account unexpected events.

(c) Effect of Transfer. In the event of the Transfer by a Partner of all or any portion of such Partner's interest in the Partnership, the Capital Account of the transferor Partner (or portion thereof) that is attributable to the transferred interest in the Partnership shall carry over to the transferee.

10. DISTRIBUTIONS TO PARTNERS.

(a) Time and Manner of Distributions. Distributable Cash shall be distributed to the Partners from time to time, based upon the results of an evaluation conducted at least semi-annually, as the General Partner shall determine upon a review of the Partnership books and records. The General Partner will share the results of any evaluation with the Partners. All such distributions shall be allocated among the Partners in accordance with their respective Percentage Interests.

(b) Good Faith Distributions. Upon the determination in good faith to distribute funds in the manner set forth herein, the General Partner shall incur no liability on

account of such distribution, even though such distribution may result in the Partnership retaining insufficient funds for the operation of its business.

## 11. ALLOCATIONS OF PROFITS AND LOSSES.

(a) Determinations. Profits and Losses shall be determined by the Partnership and its accountants, if any, in accordance with the Code and accounting methods used by the partnership in determining taxable income or loss for federal income tax purposes. Every item of income, gain, loss, deduction, credit or tax preference entering into the computation of Profits or Losses, or applicable to the period for which such Profits or Losses are determined, shall be considered allocated to each Partner in the same proportion as Profits and Losses are allocated to such Partner.

(b) Allocation of Profits or Losses. Profits and Losses shall be allocated among the Partners in accordance with their respective Percentage Interests.

## 12. MANAGEMENT OF THE PARTNERSHIP.

(a) Reservation to General Partner. Subject to Paragraph 12(e) below, all of the decisions with respect to any matter set forth herein or otherwise arising out of the conduct of the business of the Partnership shall be made by the General Partner, who shall have the exclusive right, power and authority to manage and operate the Partnership's business. The General Partner shall have all rights and powers which (i) by law may be possessed by a general partner, (ii) it deems necessary, appropriate or convenient in the discharge of its responsibilities hereunder and (iii) are conferred upon it by the provisions hereof. All such rights and powers shall be exercised by the General Partner in such manner and on such terms and conditions as the General Partner in its sole discretion determines, without the consent of any other Person.

(b) Execution of Instruments. Any deed, bill of sale, mortgage, security agreement, lease, contract of sale, joint venture agreement, loan agreement, partnership agreement, contract, arrangement, understanding or other instrument for the conveyance or encumbrance of any assets of the Partnership or to bind the Partnership shall be executed on behalf of the Partnership by the General Partner, and on behalf of the General Partner by such signatories as the General Partner may require. No other signatures or consents shall be required. Any person dealing with the Partnership or the General Partner may rely upon a certificate executed by the General Partner as to (i) the identity of any Partner; (ii) the existence or nonexistence of any fact or facts which constitute conditions precedent to acts by the Partnership or General Partner that are related in any way to the business and affairs of the Partnership; (iii) the Persons who are authorized to execute and deliver any instrument or document of or on behalf of the Partnership; and (iv) any act or failure to act by the Partnership.

(c) Tax Matters Partner. The General Partner shall act as Tax Matters Partner of the Partnership, as provided in Treasury Regulations pursuant to Section 6231 of the Code. Each Partner hereby approves of such designation and agrees to execute, certify, acknowledge, deliver, swear to, file and record such documents as may be necessary or

appropriate to evidence such approval. To this extent and in the manner provided by the Code and applicable Treasury regulations the Tax Matters Partner shall (i) furnish the name, address, interest and taxpayer identification number of each Partner to the Internal Revenue Service and (ii) inform each Partner of administrative or judicial proceedings for the adjustment of Partnership items required to be taken into account by Partners for federal income tax purposes. The Partnership shall indemnify and reimburse the Tax Matters Partner for all expenses, fees, claims, liabilities, losses and damages incurred in connection with audit or administrative or judicial proceedings for the adjustment of Partnership items.

(d) Management Agreement. The Partners acknowledge that the Partnership shall engage Manager to manage the Ambulatory Surgery Center pursuant to the Management Agreement, and authorize BCDC to execute the Management Agreement for and on behalf of the Partnership.

(e) Indemnification. No General Partner or Affiliate shall be liable, responsible or accountable in damages or otherwise for any act or omission made in good faith on behalf of the Partnership, except for acts or omissions of negligence or fraud. The Partnership shall indemnify the General Partner and each Affiliate from and against claims, judgments, fines, amounts paid in settlement and expenses (including reasonable attorney's fees) actually and reasonably incurred in connection with the defense or settlement of any action or suit arising out of the any acts or omissions performed or omitted by such General Partner or Affiliate except acts or omissions of negligence or fraud. All judgments against the Partnership or the General Partner wherein the General Partner is entitled to indemnification shall first be satisfied from Partnership income or assets and no Partner shall have or incur any personal liability on account thereof. In any action, suit or proceeding brought by any Partner against the Partnership or General Partner arising out of any alleged acts or omissions of the Partnership or such General Partner, the General Partner or the Partnership, as the case may be, if it prevails in such action, shall be entitled to payment of its expenses (including reasonable attorney's fees) actually and reasonably incurred in connection with such action, suit or proceeding.

(f) Medical Executive Committee. The Partnership shall establish and maintain a Medical Executive Committee. The Medical Executive Committee shall be composed of a total of seven (7) persons. Four (4) members of the Medical Executive Committee shall be members of the medical staff of the Ambulatory Surgery Center who are elected annually by the Limited Partners. Two (2) members of the Medical Executive Committee shall be appointed by the General Partner and one (1) member of the Medical Executive Committee shall be appointed by the Manager. In addition, both the medical director and the administrator of the Ambulatory Surgery Center shall be ex-officio members of the Medical Executive Committee and shall receive notices of, and be entitled to participate on a non-voting basis in, meetings of the Medical Executive Committee. The Medical Executive Committee will advise and make recommendations to the General Partner in connection with medical aspects of the operations of the Ambulatory Surgery Center, the qualifications of the administrator of the Ambulatory Surgery Center, medical staff bylaws and policies of the Ambulatory Surgery Center, and

developments in and needs for medical equipment at the Ambulatory Surgery Center. The Medical Executive Committee will act solely in an advisory capacity. Neither the Medical Executive Committee nor any individual person serving thereon will have the power or authority to bind the Partnership, and serving on the Medical Executive Committee shall in no way be deemed to affect a Limited Partner's limited liability.

13. STATUS OF LIMITED PARTNERS.

(a) Limited Liability. No Limited Partner shall be bound by, or personally liable for, the expenses, liabilities or obligations of the Partnership or the General Partner, and the liability of each such Partner to the Partnership shall be, and hereby is, limited to the amount of such Partner's Capital Contribution pursuant to Paragraph 8 hereof. No Limited Partner (unless he or it is also a General Partner) shall have any liability in respect of the liabilities and obligations of the Partnership; provided, however, that if any such Partner has received the return or any part of his Capital Contribution without violation of this Agreement or the Act, he shall be liable to the Partnership for a period of one (1) year thereafter for the amount of such returned Capital Contribution without violation of this Agreement or the Act, he shall be liable to the Partnership for a period of one (1) year thereafter for the amount of such returned Capital Contribution, but only to the extent necessary to discharge the Partnership's liabilities to creditors who extended credit to the Partnership during the period such Capital Contribution was held by the Partnership; and provided, further, that if any such Partner has received the return of any part of his Capital Contribution in violation of this Agreement or the Act, he shall be liable to the Partnership for a period of six (6) years thereafter for the amount of the Capital Contribution wrongfully returned.

(b) Notice to Creditors. Nothing contained herein shall remove, diminish or affect the above limitation of liability. The Partner's creditors shall have no right to, and are hereby notified that they may not, look to the personal assets of the Limited Partners hereof for satisfaction of any Partnership debt, liability or obligation (unless he or it is also a General Partner).

(c) No Control of Business or Right to Act for Partnership. A Limited Partner shall take no part, and shall not interfere in any way, in the management, conduct or control of the business of the Partnership and shall have no right or authority to act for or to bind the Partnership. The Partnership may engage Limited Partners or Persons affiliated with Limited Partners on such terms and for such compensation as may be agreed upon; provided, however, that nothing within the scope of any such engagement, or in any agreement relating thereto, shall entitle such Limited Partner to participate in the control of the business of the Partnership.

(d) No Priority. Except as otherwise specifically set forth herein, no Limited Partner shall have the right to demand or receive property other than cash in return of his Capital Contribution or as to any distributions hereunder. No Limited Partner shall have priority over any other Limited Partner either as to the return of his Capital Contribution or as to distributions hereunder, except as otherwise set forth herein. The Limited Partners shall

have no right to withdraw their Capital Contributions during the term of the Partner's existence, except as otherwise specifically provided herein.

14. ACCOUNTING AND FINANCIAL MATTERS.

(a) Annual Statements. The General Partner shall cause annual financial statements of the operations of the Partnership, including a detailed description of the use of Partnership funds, to be prepared and distributed to each Partner, as soon as practicable after the close of each fiscal year.

(b) Books and Records. The Partner's books and records and all other documents shall be maintained at the principal office of the Partnership, and all Partners shall have reasonable access to such books and records during regular business hours.

(c) Income Tax Information. The General Partner shall provide to the Partners information concerning the Partner's taxable income or loss and each item of income, gain, loss, deduction or credit that is relevant to reporting Partnership income. Such information with respect to each fiscal year shall reflect each Partner's distributive share of each item of income, gain, loss, deduction or credit and shall be furnished to the Partners after the close of each fiscal year.

(d) Accounting Decisions. All decisions as to accounting matters, except as specifically provided to the contrary herein, shall be made by the General Partner in accordance with the accounting methods adopted by the Partnership for federal income tax purposes. The General Partner may rely from time to time upon the advice of such certified public accountants as may be engaged by the Partnership.

(e) Banking and Investments. Funds of the Partnership may be deposited in such checking accounts or savings accounts, or invested in certificates of deposit, money market funds, mutual funds or other securities, with such institutions and on such terms as the General Partner shall designate. Checks or withdrawals from any such accounts, or the liquidation of any such Partnership securities, shall be made upon such signatures and other instructions as the General Partner shall designate or determine.

15. TRANSFERS OF LIMITED PARTNERS' INTERESTS.

(a) Restrictions on Transfer. Except as specifically required or authorized under Paragraphs 15(b) and 15(c) hereof, no Limited Partner shall Transfer his interest in the Partnership, or any portion thereof, except with the consent of the General Partner, which consent may be withheld or given in the sole discretion of the General Partner and may be conditioned upon the execution of all documents and the performance of all acts by the transferor and transferee as the General Partner determines to be reasonably necessary. It is recognized that the General Partner shall be permitted to transfer all or any portion of its seventy-five (75%) interest as a Limited Partner to such Persons as the General Partner may designate. Any purported Transfer in violation of this Paragraph 15(a) shall be null and void, the Partnership shall not be obligated to recognize or give effect to such Transfer, and such Transfer shall not release the purported transferor from

any obligations hereunder or vest any rights hereunder in the purported transferee. The Partnership shall not be required to recognize any Transfer until such time as the instrument conveying such interest in the Partnership has been executed and delivered to the General Partner and the transferor or transferee, as they may agree between themselves, shall have reimbursed the Partnership for all costs, fees and expenses of such Transfer, and prior to such time the transferee's right shall only be against the transferor.

(b) Put or Call Option. If the Partnership, or any Limited Partner, believes that a Put or Call Event has occurred, such party shall provide written notice, together with a copy of an opinion of Recognized Health Care Counsel that such an event has occurred, to the Limited Partners or the Partnership, respectively, on or before the effective date of the Health Care Law giving rise to such Put or Call Event. If the other party disagrees with such opinion, the objecting party must provide a contrary opinion of Recognized Health Care Counsel within thirty (30) days. If such a contrary opinion is delivered, the dispute shall be resolved by arbitration. If the other party fails to dispute the original opinion, then the interests of all Limited Partners who are affected by such Put or Call Event shall be purchased at the Repurchase Price. In such event, the acquisition date shall be as of the effective date of the applicable Health Care Law. The Partnership shall pay to each affected Limited Partner, within thirty (30) days of such acquisition date, not less than twenty percent (20%) of the Repurchase Price in cash, and shall deliver a Promissory Note for the balance, if the Repurchase Price is not paid in full, providing for equal annual payments of principal over the number of full years remaining under the Basic Term, as defined in the Lease Agreement. Such Promissory Note will bear interest on the principal amount outstanding from time to time at the lesser of the Applicable Federal Rate, compounded annually, or the maximum rate permitted by law. Such Promissory Note may be prepaid by the Partnership at any time prior to maturity without premium or penalty of any kind. If such Promissory Note as described herein is determined, in the opinion of Recognized Health Care Counsel, more likely than not to be prohibited under Health Care Law, then the General Partner shall use its best efforts to acquire (but shall not be obligated to provide or guarantee) the necessary financing to have the Partnership repurchase the Limited Partner's interest for cash within the time allowed by such Health Care Law. In addition to any equitable or other relief which may be available to the Partnership or to BCDC in the case of any breach of the noncompetition covenants provided under Paragraph 21 below, the Partnership shall cancel the entire outstanding principal amount of, and accrued interest on, any Promissory Notes delivered under this Paragraph 15(b) as liquidated damages suffered by the Partnership by reason of any such breach.

(c) Terminating Event. Each Limited Partner hereby grants the option to the Partnership to purchase, for the Terminating Price, all of his interest in the Partnership upon the occurrence of any Terminating Event as to such Limited Partner. Any Limited Partner who has suffered a Terminating Event shall notify the General Partner of the occurrence of the Terminating Event not later than five (5) days after the occurrence thereof (unless the Terminating Event is described in Paragraph 1(pp)(ix), in which case no notice to the General Partner shall be required).

The Partnership shall have the right, privilege and option, but not the obligation, to acquire the interest of the Terminating Limited Partner at the Terminating Price, exercisable during the sixty (60) day period after the General Partner receives actual notice of the Terminating Events or, in the case of a Terminating Event described in Paragraph 1(pp)(ix), the date on which the General Partner obtains actual knowledge that such Terminating Event has occurred. The Terminating Price shall equal the Terminating Limited Partner's Percentage Interest multiplied by the lesser of (i) book value of the Partnership's assets (excluding goodwill) or the appraised fair market value of the Partnership as a going concern, if the Terminating Event occurred because of a violation of Paragraph 15(a) or Paragraph 22 hereof, and (ii) the appraised fair market value of the Partnership as a going concern, if the Terminating Event occurred as a result of any other action or reason. If "book value" is to be used, the same shall be determined by an accountant or accounting firm designated by the General Partner. If appraised fair market value is to be used, the General Partner shall choose an appraiser experienced in appraising ambulatory surgery centers to determine such value. The costs of any such appraiser shall be borne by the Partnership. The determination of fair market value by the appraiser shall be binding on all parties.

Within thirty (30) days after determination of the Terminating Price, the Partnership shall pay to the Terminating Limited Partner, or his authorized representative or successor, not less than ten percent (10%) of the total price to be paid (the "Initial Installment"), and shall deliver a Promissory Note for the balance, if the same is not paid in full, providing for equal annual payments of principal over a period not to exceed five (5) years from date of delivery, the first annual payment to be made one (1) year after the day of delivery. Such Promissory Note shall bear interest on the principal amount outstanding from time to time at the prime rate (compounded annually) as published by the Wall Street Journal on the day preceding the date on which such note is delivered (or the next preceding date on which the Wall Street Journal is published if the Wall Street Journal is not published on such date). The interest of the Terminating Limited Partner shall be deemed to have been transferred to the Partnership as of the last day of the month in which the delivery of the Initial Installment occurs, and the Terminating Limited Partner shall have no interest whatsoever in the Partnership after such date, other than (1) the Terminating Limited Partner's interest in the Promissory Note, and (2) the right to receive a pro rata distribution of Distributable Cash on the date the next distribution is made, such proration to be made based on the period of time that the Terminating Limited Partner held his interest since the immediately prior distribution. No party shall be required to execute any document in order to effectuate the termination of the Terminating Partner's interest in the Partnership, other than the execution and delivery of the Promissory Note by the Partnership. The Promissory Note may be prepaid by the Partnership at any time prior to maturity without premium or penalty of any kind.

(d) Offer to General Partner. If any Limited Partner desires to Transfer his interest in the Partnership, or any portion thereof, then, except (i) as specifically required or authorized under Paragraphs 15(b) and 15(e) hereof or (ii) in the case of a Transfer by one Medplex Partner to another Medplex Partner, such Limited Partner shall give notice (the "Transfer Notice") to the General Partner, which notice shall contain: (A) a

statement of the interest in the Partnership which is proposed to be transferred (the "Offered Interest"); (B) the name and address of the party to whom the Offered Interest is proposed to be transferred (the "Transferee"); and (C) the price and terms of payment with respect to the proposed Transfer. For a period of thirty (30) days following the date of its receipt of the Transfer Notice, the General Partner shall have the right, option, and privilege, but not the obligation, to purchase the Offered Interest at the price and upon the terms and conditions as stated in the Transfer Notice. If such option is not timely exercised, then the Offered Interest may be transferred to the Transferee, on the terms and conditions set forth in the Offer Notice, during the thirty (30) day period after expiration of the General Partner's option. In the event that such transfer is not consummated within said thirty (30) day period, or is not consummated upon the terms and conditions set forth in the Offer Notice, then the proposed Transfer shall again be subject to a right of first refusal in favor of the General Partner.

(e) Admission to Partnership. Any transferee or assignee of a Limited Partner's interest (or any portion thereof) in the Partnership under a Transfer permitted by the terms of this Paragraph 15 shall be admitted to the Partnership only upon the written consent of the General Partner and the execution of such instruments as the General Partner shall determine to be adequate to bind such transferee to the terms and provisions of this Agreement. Each such transferee or assignee who desires to be admitted to the Partnership shall be required to be a natural person who resides in the State of Alabama and who holds an M.D. degree or other degree relating to health care acceptable to the General Partner, and who (a) is licensed to practice by the appropriate governing entity or board in the State of Alabama, (b) agrees to apply to join the medical staff of the Ambulatory Surgery Center within thirty (30) days after admittance of such person as a Limited Partner, and (c) complies with the fraud and abuse safe harbor regulation criteria concerning the one-third revenue test and the one-third procedures test. Only persons who are in a position to refer their patients to, and perform procedures at, the Ambulatory Surgery Center will be eligible to join the Ambulatory Surgery Center's medical staff and be admitted to the Partnership; provided, however, the General Partner may determine, in its sole discretion, other investors to be suitable to be admitted as Limited Partners (i.e., non-referral source investors). In determining whether a person may be admitted as a Limited Partner, the General Partner may consider whether the investment would exceed ten percent (10%) of the proposed investor's net worth. The General Partner shall have the sole discretion in determining whether a person may be admitted as a Limited Partner and may consider any factors it deems appropriate in making this determination, including, without limitation, those factors set forth in any future offering memorandum prepared in connection with any proposed investment in the Partnership. Any Partner who has assigned all of his interest in the Partnership in accordance with the provisions hereof shall cease to be a Limited Partner as of the effective date of such assignment. If a Limited Partner dies, is adjudicated incompetent or becomes bankrupt, his executor, administrator, trustee, guardian, or receiver shall have all rights as such Partner for the purpose of settling or managing his estate, including such power as that Partner possessed to Transfer all or any portion of his interest in the Partnership as set forth herein.

(f) Rights of Unadmitted Assignees. Any Person who acquires all or any portion of a Partner's interest in the Partnership but who is not admitted as a substituted Partner shall be entitled only to allocations and distributions with respect to the interest acquired, but shall have no right to any information or accounting of the affairs of the Partnership, shall not be entitled to inspect the books or records of the Partnership, and shall not have any of the rights of a Partner under the Act or the provisions hereof.

(g) Consent of Other Limited Partners. The consent of the other Limited Partners shall not be required to effect a Transfer of all or any portion of Partner's interest in the Partnership or the substitution of any such Partner.

16. TRANSFERS BY GENERAL PARTNER.

(a) General Restriction. A General Partner may Transfer all or any portion of its interest as a General Partner in the Partnership only in accordance with the provisions of this Paragraph 16.

(b) Transfers Among Partners. A General Partner may Transfer all or any portion of its interest in the Partnership to a Person who is then serving as another General Partner.

(c) Additional General Partners. A General Partner may Transfer a portion of its interest in the Partnership (but not all of its interest) to a Person who is to be admitted to the Partnership as an additional or substitute General Partner.

(d) Required Consents. The Transfers authorized under the foregoing provisions may be effected only in compliance with the following:

- (i) All Partners hereby specifically consent to any Transfer from one General Partner to another General Partner;
- (ii) All Partners hereby specifically consent to any Transfer from a General Partner to one or more Affiliates of such General partner, and to the admission of such Affiliates as General Partners;
- (iii) All Limited Partners hereby specifically consent to the Transfer to and admission of any additional General Partners, which are not Affiliates of a General Partner, provided that such Transfer and admission are specifically approved at the time by all General Partners, and such Transfer and admission shall not be in connection with the withdrawal of the last remaining General Partner; and
- (iv) In the case of a Transfer by the last remaining General Partner, to a Person who is not an Affiliate of a General Partner and who is to be admitted as a substitute General Partner, all Limited Partners hereby specifically consent to such Transfer, provided that a majority in interest of the Limited Partners consent to such Transfer at the time, pursuant to the provisions of Paragraph 23(f) hereof, in which event the transferee shall be admitted as

an additional General Partner immediately prior to the withdrawal or removal of the affected General Partner.

17. ADDITIONAL INTERESTS. The Partnership may, from time to time, offer and sell Limited Partner interests in the Partnership (the "Additional Interests") if the General Partner determines, in its sole discretion, that the Partnership requires additional equity financing or desires new investors. The purchase price for any Additional Interests offered pursuant to this Paragraph 17 shall be established by the General Partner in its sole discretion; provided, however, in no event shall the purchase price be less than the fair market value of such Additional Interests. Purchasers of such Additional Interests shall be admitted as Limited Partners upon the execution of an amendment to this Agreement and satisfaction of all investor suitability standards then required pursuant to the terms hereof. This Agreement shall be amended as necessary to reflect any sale of Additional Interests without the necessity of any Limited Partner's consent or signature. No Limited Partner shall have any preemptive right to purchase any Additional Interests offered in accordance with this Paragraph 17.

18. CONTINUATION OF PARTNERSHIP.

(a) By Remaining General Partners. Upon the occurrence of any event of withdrawal with respect to a General Partner specified in the Act, then the Partnership shall be continued by any remaining General Partners.

(b) By the Partnership. If any such event occurs to the sole General Partner of the Partnership, then the General Partner or its legal representative shall promptly give notice thereof to all Limited Partners, and the Partnership shall be dissolved and its affairs shall be wound up unless all Partners consent, pursuant to the provisions of Paragraph 23(f) hereof, within ninety (90) days after the occurrence of such event, to continue the business of the Partnership with a successor General Partner approved by them.

19. DISSOLUTION, WINDING UP AND TERMINATION OF THE PARTNERSHIP.

(a) Events Causing Dissolution. The Partnership shall be dissolved prior to the expiration of the term set forth in Paragraph 6 hereof upon the occurrence of any of the following events:

- (i) any event set forth in Paragraph 18 hereof, unless the business of the Partnership is continued as provided therein;
- (ii) the determination of the General Partner; or
- (iii) any other event causing the dissolution of a limited partnership under provisions of the Act which are not inconsistent with the terms hereof.

(b) No Right to Dissolve. Except as provided in Paragraph 19(a) hereof, no Partner shall have a right to cause the dissolution of the Partnership before the expiration of its term. The Limited Partners shall have no right to demand or receive the return of their Capital Contributions prior to the liquidation and termination of the Partnership, except

as otherwise provided herein, or to demand or receive property other than cash upon such liquidation. The Partnership shall not be dissolved by the admission of any new Limited Partner, or by the withdrawal, expulsion, death, insolvency, liquidation, incapacity or bankruptcy of a Limited Partner.

(c) Winding Up of Business. Upon the dissolution of the Partnership, unless its business is to be continued as provided hereinabove, its assets shall be liquidated as promptly as is consistent with obtaining their fair value. A reasonable time shall be allowed for the orderly liquidation of the assets of the Partnership so as to minimize any loss attendant upon such liquidation. While the dissolution of the Partnership shall be effective upon the occurrence of an event causing the same, the Partnership shall not be terminated until the complete liquidation and distribution of its assets.

(d) Application of Proceeds. The proceeds from liquidating Partnership assets, together with any property to be distributed in kind, shall be applied or distributed in the following order;

- (i) First, to the payment and discharge of all debts and liabilities of the Partnership, including expenses of liquidation, owing to creditors other than Partners or their affiliates;
- (ii) Second, to the establishment of any reserve which the General Partner may deem necessary for any contingent or unforeseen liabilities or obligations of the Partnership;
- (iii) Third, to the payment and discharge of all debts and liabilities of the Partnership owing to Partners or their Affiliates, but if the amount available for payment is insufficient, then pro rata in accordance with the amounts of such debts and liabilities; and
- (iv) Fourth, to distribute among the Partners in proportion to their respective positive Capital Account balances.

(e) Excess Funds. After the expiration of any time period during which the reserves under Paragraph 19(d)(2) hereof shall be maintained, any undisbursed reserves shall be distributed in accordance with the priorities of Paragraph 19(d)(3) and (4) hereof.

(f) Deficient Account. If, after all allocations of Profits and Losses, and all distribution made, or to be made in connection with the liquidation and termination of the Partnership, any Partner has a deficit capital account, then such Partner shall restore such account, by payment to the Partnership, or to its creditors.

(g) Statement of Dissolution. Each of the Partners shall be furnished by the General Partner with a statement which shall set forth the assets and liabilities of the Partnership as of the date of dissolution. This statement shall also schedule the receipts and disbursements made in liquidating and terminating the Partnership under this Paragraph 19.

(h) Certificate of Cancellation. Upon the termination of the Partnership in accordance with the terms hereof, the General Partner shall execute, acknowledge and cause to be filed in the appropriate public offices a Certificate of Cancellation of the Partnership, whereupon it shall cease to exist in all respects.

20. SPECIAL POWER OF ATTORNEY.

(a) Irrevocable Appointment. By his execution of the Agreement or of a Subscription Agreement pursuant to which he has consented to the terms and conditions of this Agreement, each Limited Partner hereby irrevocably constitutes and appoints the general partners of the General Partner, or any of them, with full power of substitution, as his true and lawful attorney-in-fact, in such Limited Partner's name, place and stead, to make, execute, sign, acknowledge, certify, deliver, file or record any of the following:

- (i) this Agreement and any amendment hereto in any jurisdiction in which the General Partner considers such filing or recording necessary or appropriate;
- (ii) any other certificate or instrument which may be required to be filed by the Partnership or the Partners under the laws of the State of Alabama and under the applicable laws of any other jurisdiction to the extent that the General Partner deems such filing to be necessary or required;
- (iii) any and all amendments or modifications of the instruments described in the preceding Paragraphs 20(a)(1) and 20(a)(2) hereof; provided that such amendments or modifications are necessary or desirable to effect the terms and intent of this Agreement, are not in contravention of the terms hereof and are required to reflect any action of the Partners, whether or not such Limited Partner voted in favor of such action;
- (iv) All certificates and other instruments which may be required to effect the dissolution, termination or continuation of the business of the Partnership pursuant to the provisions of this Agreement; and
- (v) any and all consents or other instruments deemed necessary or desirable by the General Partner for the admission of additional or substitute Partners to the extent permitted by the terms of this Agreement.

(b) Continuing Validity. The foregoing Power of Attorney is irrevocable and shall survive the Transfer by each Limited Partner of the whole or any portion of his interest in the Partnership; provided, however, that where a Limited Partner has transferred his entire interest in the Partnership and the transferee thereof has been admitted as a Partner under Paragraph 16(b) hereof, this Power of Attorney shall survive the delivery of such Transfer for the sole purpose of enabling the General Partner to execute, acknowledge and file any instrument necessary to effect such Transfer. It is expressly understood and agreed that this Power of Attorney:

- (i) is a durable Power of Attorney coupled with an interest;
- (ii) is irrevocable;
- (iii) shall survive the death, incompetency, insolvency, incapacity, bankruptcy or dissolution of any Partner;
- (iv) shall be binding on any transferee of an interest in the Partnership, or any portion thereof, including the Transfer of only the distributive rights relating thereto; and
- (v) may be exercised for such Partner by a signature of any general partner of the General Partner or by listing the names of all Limited Partners and then executing any instrument with a single signature of any general partner of the General Partner.

21. NONCOMPETITION COVENANTS.

(a) Limited Partners. Subject to the term and to the exceptions hereinafter provided, the Limited Partners, and their respective Affiliates, shall not develop or be involved in any way, directly or indirectly, in the development of an ambulatory surgery facility within a fifteen (15) mile radius of the Ambulatory Surgery Center.

(b) Term of Covenants. The covenants provided in this Paragraph 21 shall be of no further force or effect on or after the expiration or earlier termination of this Agreement, except that, in the event that any party shall breach any of such covenants, then the same shall be extended, as to such breaching party, for an additional period of time equal to the period during which such breach remains in effect.

(c) Permitted Exceptions. The covenants provided in this Paragraph 21 shall be inapplicable to any Limited Partner who owned Shares in the Partnership on or prior to January 1, 1992.

22. NONDISCLOSURE COVENANTS. During the term of this Agreement, each Limited Partner, and his Affiliates, will have access to and may become acquainted with the Partnership's Trade Secrets. Each Limited Partner acknowledges and agrees that such Trade Secrets are owned exclusively by the Partnership, and are secret, confidential and proprietary property of the Partnership, disclosed to or obtained by such Partner in confidence and trust for the sole purpose of using the same for the sole benefit of the Partnership. During and after the term of this Agreement, without the prior written consent of the Partnership, no Limited Partner, or employee or Affiliates thereof, shall divulge any Trade Secret for his or its own benefit or for the benefit of any other person or entity.

23. MISCELLANEOUS PROVISIONS.

(a) Alabama Law Governing. This Agreement and the rights of the Partners hereunder shall be interpreted and governed in accordance with the laws of the State of

Alabama, notwithstanding the residence or principal place of business of any of the parties hereto, the place where this Agreement may be executed by any of the parties hereto, the place where the Property may be located, or the provisions of any jurisdictions' conflict of laws rules.

(b) Notices. Partnership statements, reports and income tax returns may be mailed to Partners by regular first-class mail. All other Notices under this Agreement shall be in writing, duly signed by the party giving the same, and shall be deemed delivered when made in accordance with Paragraph 1(cc) herein. All Notices shall be addressed to the following addresses or to such other address as may be designated by Notice to all Partners hereunder:

If to the General Partner:

Brookwood Center Development Corporation  
2010 Brookwood Medical Center Drive  
Birmingham, Alabama 35204  
Attention: John R. Nickens, III

With copy to:

Tenet Health System  
13737 Noel Road, Suite 100  
Dallas, Texas 75240  
Attention: Regional Legal Counsel

If to the Limited Partners: to their addresses set forth in Exhibit A hereto.

(c) Binding Effect. This Agreement shall be binding upon all the parties hereto, and their respective heirs, executors, administrators, successors and assigns. Subject to the restrictions on Transfer contained herein, this Agreement shall inure to the benefit of the respective heirs, executors, administrators, successors and assigns of the parties hereto.

(d) Severability. If any provision of this Agreement, or the application thereof to any party or circumstance, shall be determined by any court of competent jurisdiction to be invalid or unenforceable to any extent, the remainder of this Agreement, or the application of such provision to any Person or circumstance other than that which is determined to be invalid or unenforceable, shall not be affected thereby. Each provision thereof shall be valid and shall be enforced to the fullest extent permitted by law.

(e) Identification. Throughout this Agreement, wherever the context so permits, the masculine gender shall be deemed to include the feminine and vice versa, and both shall be deemed to include the neuter and vice versa, and the singular shall be deemed to include the plural and vice versa.

(f) Method of Giving Consent. Any consent or affirmative vote which is required by the provisions of this Agreement or of the Act to be obtained or received from the

Limited Partners shall be deemed to be given if the same shall be received by the General partner within the time period for obtaining such consents. If the General Partner delivers Notice to the Limited Partners of any proposal or other matter required to be submitted for the consideration, consent or approval of the Limited Partners, which Notice shall include a description of the matter and may include the General Partner's recommendation as to such matter, then each Limited Partner who fails to deliver a negative vote within the allotted time shall be conclusively presumed to have consented to and approved such matter.

(g) Entire Agreement. This Agreement constitutes the entire understanding and agreement among the parties hereto with respect to the subject matter hereof.

(h) Further Assurances. Each Partner hereby agrees to execute and deliver such further documents and to cooperate in taking such further action as may be necessary or appropriate to effect this Agreement or any provision hereof. Each Person agreeing to become a Limited Partner pursuant to the provisions hereof ratifies and agrees to be bound by all actions taken by the General Partner prior to the date on which such Person became a Limited Partner.

(i) Authority. Each Person executing this Agreement on behalf of another Person represents and warrants that he is authorized to do so, that such execution and the performance of this Agreement does not violate any agreement or restriction to which such party is subject and that this Agreement constitutes a legally binding obligation of such party.

(j) Counterparts. This Agreement may be executed in any number of counterparts and all of such counterparts shall for all purposes constitute one Agreement binding on the parties hereto, notwithstanding that all parties are not signatory to the same counterpart.

(k) Captions. Titles or captions contained in this Agreement are inserted only as a matter of convenience and for reference and shall in no way define, limit, extend or describe the scope or intent of this Agreement or of any provision hereof.

(l) Amendments. This Agreement may be amended at any time upon the consent of the General Partner and a majority in interest of the Limited Partners.

**IN WITNESS WHEREOF** the Partners have adopted this Second Amended and Restated Certificate and Limited Partnership Agreement in accordance with Sections 23(f) and 23(l) hereof.

**GENERAL PARTNER:**

BROOKWOOD CENTER DEVELOPMENT CORPORATION, an Alabama corporation

By: *[Signature]*  
Print: Garry L. Gross  
Its: 1/26/01

*1/26/01*

**EXHIBIT A**

**Limited Partners of  
MEDPLEX OUTPATIENT SURGERY CENTER, INC.  
as of February 1, 2006**

**Brookwood Center Development Corporation**

Edwyn L. Boyd  
Brice H. Brackin  
R. Don Bryan  
William P. Bryant  
C. Steven Daughtry  
Larry G. Deep  
Dewey H. Jones, III  
Jack L. Schaeffer  
Robert J. Sciacca

**Alliance Surgery Birmingham, LLC**

J. Christopher Davis  
J. Scott Robertson  
William D. Krauss  
Jane N. Williams  
Keith Fleisher  
Michael F. Blum  
Ted W. Sartin  
Michael J. Sillers  
Donald J. Wittich  
Darryl Dykes  
Matthew Berke

**EXHIBIT B**

---

**OPERATING AGREEMENT  
OF  
NORTH TEXAS HEALTH ALLIANCE, L.L.C.**

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## PURCHASE, SALE, TRANSFER AND CONTRIBUTION AGREEMENT

PURCHASE, SALE, TRANSFER AND CONTRIBUTION AGREEMENT, dated as of June 16, 2015 (this "Agreement"), among HCN Alabama Surgery Center Holdings, LLC, a Delaware limited liability company ("Alabama Holdings"), Brookwood Center Development Corporation, an Alabama corporation ("Brookwood Development"), Brookwood Diagnostic Imaging Center, LLC, a Delaware limited liability company ("Brookwood Imaging"), Brookwood Women's Diagnostic Center, LLC, a Delaware limited liability company ("Brookwood Women's"), Alabama Digestive Health Endoscopy Center, LLC., an Alabama limited liability company ("ADHEC"), Medplex Outpatient Medical Centers, Inc., an Alabama corporation ("Medplex Medical"), Medplex Outpatient Surgery Center, Ltd., an Alabama limited partnership ("Medplex Surgery"), Hoover Doctors Group, Inc., an Alabama corporation ("Hoover"), and HCN Surgery Center Holdings, Inc., a Delaware corporation ("Surgery Holdings"). Capitalized terms used herein but not otherwise defined shall have the meanings set forth in the Contribution Agreement (as defined below).

### RECITALS

A. Tenet Healthcare Corporation, a Nevada corporation ("Tenet"), has entered into that certain Contribution and Purchase Agreement (the "Contribution Agreement"), dated as of March 23, 2015, by and among Tenet, USPI Group Holdings, Inc., Ulysses JV Holding I LLC, Ulysses JV Holding II LLC and BB Blue Holdings, Inc., pursuant to which Tenet is undertaking certain reorganization transactions (the "Tenet Reorganization").

B. In connection with the Tenet Reorganization, the parties hereto wish to effect the transactions provided for in this Agreement.

### AGREEMENT

In consideration of the foregoing and the mutual covenants and agreements herein contained, and intending to be legally bound hereby, the parties agree as follows:

### ARTICLE I

#### PURCHASE, SALE, TRANSFER AND CONTRIBUTION

Section 1.1 Transfers Related to the Tenet Reorganization. Effective immediately prior to the closing of the transactions contemplated by the Contribution Agreement (A) each entity set forth as a transferor on Schedule 1 attached hereto (each such transferor, a "Transferor") hereby transfers, assigns, conveys and contributes to Alabama Holdings (in such capacity, the "Transferee") the consideration set forth on Schedule 1 across from such Transferor's name, and (B) in exchange and as consideration for such transfer, assignment, conveyance and contribution, Surgery Holdings (in such capacity, the "Payor") hereby transfers and assigns to each such Transferor the consideration set forth on Schedule 1 across from such Transferor's name.

Section 1.2 Amount of Interests Transferred. The parties agree that for each transferred interest set forth on Schedule 1 attached hereto that is a transfer of equity (each, a “Transferred Interest”), it is the parties’ intent that the Transferor transfer all of its and its affiliates’ ownership in the entity the equity of which is to be transferred (each such entity, a “Transferred Entity”). In the event that there is an inconsistency between the Transferred Interest as set forth in Schedule 1 attached hereto and the aggregate interest in the Transferred Entity owned by the Transferor and its affiliates, such aggregate interest in the Transferred Entity owned by the Transferor and its affiliates shall be the interest transferred to the Transferee pursuant hereto.

## **ARTICLE II REPRESENTATIONS AND WARRANTIES OF THE TRANSFERORS**

The Transferors hereby represent and warrant to the Transferee as follows:

Section 2.1 Organization. Each Transferor is a corporation duly organized, validly existing and in good standing under the laws of Alabama and has all limited corporate power required to carry on their business as now conducted.

Section 2.2 Authority. Each Transferor has full corporate power and authority to execute, deliver and perform its obligations under this Agreement. This Agreement has been duly executed and delivered by each Transferor and is legal, valid, binding and enforceable upon and against each Transferor.

Section 2.3 No Conflict; Required Filings and Consents. The execution, delivery and performance by each Transferor of this Agreement and the consummation by each Transferor of the transactions contemplated hereby do not and will not (a) violate any provision of the certificate of incorporation or bylaws (or similar organizational documents) of such Transferor; (b) violate any federal, state or local statute, law, regulation, order, injunction or decree (“Law”); or (c) require any consent or approval of any person, including any registration or filing with, or notice to any federal, state or local governmental authority or any agency or instrumentality thereof (a “Governmental Authority”).

Section 2.4 Equity Interests. Each Transferor is the record and beneficial owner of its respective Transferred Interest as set forth in Schedule 1, free and clear of any charge, limitation, condition, mortgage, lien, security interest, adverse claim, encumbrance or restriction of any kind (collectively, “Encumbrances”). Each Transferor has the right, authority and power to sell, assign and transfer the Transferred Interests to the Transferee. Upon delivery to the Transferee of Transferred Interests, the Transferee shall acquire good, valid and marketable title to the Transferred Interests, free and clear of any Encumbrance.

**ARTICLE III  
REPRESENTATIONS AND WARRANTIES OF THE TRANSFEREE**

The Transferee hereby represents and warrants to the Transferor as follows:

Section 3.1 Organization. The Transferee is a limited liability company duly organized, validly existing and in good standing under the laws of Delaware and has all corporate power required to carry on its business as not conducted.

Section 3.2 Authority. The Transferee has full limited liability company power and authority to execute, deliver and perform its obligations under this Agreement. This Agreement has been duly executed and delivered by the Transferee and is legal, valid, binding and enforceable upon and against the Transferee.

Section 3.3 Required Filings and Consents. The execution, delivery and performance by the Transferee of this Agreement and the consummation by the Transferee of the transactions contemplated hereby do not and will not (a) violate any provision of the certificate of incorporation or bylaws (or similar organizational documents) of the Transferee; (b) violate any Law; or (c) require any consent or approval of any person, including any registration or filing with, or notice to any Governmental Authority.

**ARTICLE IV  
GENERAL PROVISIONS**

Section 4.1 Amendment and Modification. This Agreement may not be amended, modified or supplemented in any manner, whether by course of conduct or otherwise, except by an instrument in writing specifically designated as an amendment hereto, signed on behalf of each party.

Section 4.2 Interpretation. When a reference is made in this Agreement to a Section, Article or Schedule such reference shall be to a Section, Article or Schedule of this Agreement unless otherwise indicated. The headings contained in this Agreement or in any Schedule are for convenience of reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. All words used in this Agreement will be construed to be of such gender or number as the circumstances require. Any capitalized terms used in any Schedule but not otherwise defined therein shall have the meaning as defined in this Agreement. All Schedules annexed hereto or referred to herein are hereby incorporated in and made a part of this Agreement as if set forth herein. The word "including" and words of similar import when used in this Agreement will mean "including, without limitation," unless otherwise specified. The words "hereof," "herein" and "hereunder" and words of similar import when used in this Agreement shall refer to the Agreement as a whole and not to any particular provision in this Agreement. The term "or" is not exclusive. The word "will" shall be construed to have the same meaning and effect as the word "shall." References to days mean calendar days unless otherwise specified.

Section 4.3 No Third-Party Beneficiaries. Nothing in this Agreement, express or implied, is intended to or shall confer upon any Person other than the parties and their respective successors and permitted assigns any legal or equitable right, benefit or remedy of any nature under or by reason of this Agreement.

Section 4.4 Governing Law. This Agreement and all disputes or controversies arising out of or relating to this Agreement or the transactions contemplated hereby shall be governed by, and construed in accordance with, the internal laws of the State of Delaware (including in respect of the statute of limitations or other limitations period applicable to any such dispute or controversy), without regard to the laws of any other jurisdiction that might be applied because of the conflicts of laws principles of the State of Delaware.

Section 4.5 Submission to Jurisdiction. Each of the parties irrevocably agrees that any legal action or proceeding arising out of or relating to this Agreement brought by any party or its Affiliates against any other party or its Affiliates shall be brought and determined in the Court of Chancery of the State of Delaware, provided, that if jurisdiction is not then available in the Court of Chancery of the State of Delaware, then any such legal action or proceeding may be brought in any federal court located in the State of Delaware. Each of the parties hereby irrevocably submits to the jurisdiction of the aforesaid courts for itself and with respect to its property, generally and unconditionally, with regard to any such action or proceeding arising out of or relating to this Agreement and the transactions contemplated hereby. Each of the parties agrees not to commence any action, suit or proceeding relating thereto except in the courts described above in Delaware, other than actions in any court of competent jurisdiction to enforce any judgment, decree or award rendered by any such court in Delaware as described herein. Each of the parties further agrees that notice as provided herein shall constitute sufficient service of process and the parties further waive any argument that such service is insufficient. Each of the parties hereby irrevocably and unconditionally waives, and agrees not to assert, by way of motion or as a defense, counterclaim or otherwise, in any action or proceeding arising out of or relating to this Agreement or the transactions contemplated hereby, (a) any claim that it is not personally subject to the jurisdiction of the courts in Delaware as described herein for any reason, (b) that it or its property is exempt or immune from jurisdiction of any such court or from any legal process commenced in such courts (whether through service of notice, attachment prior to judgment, attachment in aid of execution of judgment, execution of judgment or otherwise) and (c) that (i) the suit, action or proceeding in any such court is brought in an inconvenient forum, (ii) the venue of such suit, action or proceeding is improper or (iii) this Agreement, or the subject matter hereof, may not be enforced in or by such courts.

Section 4.6 Assignment; Successors. Neither this Agreement nor any of the rights, interests or obligations under this Agreement may be assigned or delegated, in whole or in part, by operation of law or otherwise, by any party without the prior written consent of the other parties hereto, and any such assignment without such prior written consent shall be null and void; provided, that no assignment shall limit the assignor's obligations hereunder. Subject to the preceding sentence, this Agreement will be binding

upon, inure to the benefit of, and be enforceable by, the parties and their respective successors and assigns.

Section 4.7 Currency. All references to “dollars” or “\$” or “US\$” in this Agreement refer to United States dollars, which is the currency used for all purposes in this Agreement and any Ancillary Agreement.

Section 4.8 Severability. Whenever possible, each provision or portion of any provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable Law, but if any provision or portion of any provision of this Agreement is held to be invalid, illegal or unenforceable in any respect under any applicable Law or rule in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision or portion of any provision in such jurisdiction, and this Agreement shall be reformed, construed and enforced in such jurisdiction as if such invalid, illegal or unenforceable provision or portion of any provision had never been contained herein.

Section 4.9 Waiver of Jury Trial. EACH OF THE PARTIES TO THIS AGREEMENT HEREBY IRREVOCABLY WAIVES ALL RIGHT TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

Section 4.10 Further Assurances. Promptly, upon request, the parties hereto shall execute and deliver, or cause to be executed and delivered, at any time from time to time, any and all further agreements, documents, certificates, instruments, agreements and other writings and to take, or cause to be taken, any and all further actions which may be required under applicable Law or which may be reasonably requested in order to consummate or implement as promptly as practicable the transactions contemplated by this Agreement.

Section 4.11 Counterparts. This Agreement may be executed in two or more counterparts, all of which shall be considered one and the same instrument and shall become effective when one or more counterparts have been signed by each of the parties and delivered to the other party.

Section 4.12 Facsimile or .pdf Signature. This Agreement may be executed by facsimile or .pdf signature and a facsimile or .pdf signature shall constitute an original for all purposes.

*[The remainder of this page is intentionally left blank]*

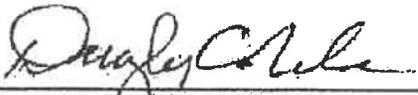
IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives.

**TRANSFERORS**

**BROOKWOOD CENTER DEVELOPMENT CORPORATION**

MEDPLEX OUTPATIENT MEDICAL CENTERS, INC.

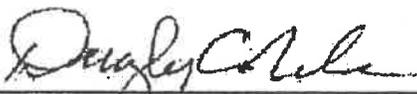
HOOVER DOCTORS GROUP, INC.

By:   
Name: Douglas Rabe  
Title: Vice President

**TRANSFeree**

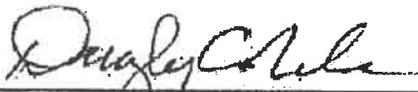
HCN ALABAMA SURGERY CENTER HOLDINGS, LLC

By: NATIONAL SURGERY CENTER HOLDINGS, INC. and BROOKWOOD CENTER DEVELOPMENT CORPORATION, its Members

By:   
Name: Douglas Rabe  
Title: Vice President

**PAYOR**

HCN SURGERY CENTER HOLDINGS, INC.

By:   
Name: Douglas Rabe  
Title: Vice President

**CONSENTING PARTIES**

Acknowledged and Agreed:

ALABAMA DIGESTIVE HEALTH  
ENDOSCOPY CENTER, LLC

By: BROOKWOOD CENTER  
DEVELOPMENT CORPORATION, its  
Member

BROOKWOOD DIAGNOSTIC IMAGING  
CENTER, LLC

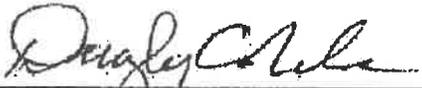
By: BROOKWOOD CENTER  
DEVELOPMENT CORPORATION,  
ITS MEMBER

BROOKWOOD WOMEN'S DIAGNOSTIC  
CENTER, LLC

By: BROOKWOOD CENTER  
DEVELOPMENT CORPORATION,  
ITS GENERAL PARTNER

MEDPLEX OUTPATIENT SURGERY  
CENTER, LTD.

By: BROOKWOOD CENTER  
DEVELOPMENT CORPORATION, its  
General Partner

By:   
Name: Douglas Rabe  
Title: Vice President

**Schedule 1**

**Transfers Related to the Tenet Reorganization**

<b>Transferor</b>	<b>Name of Transferred Entity/Asset</b>	<b>Transferred Interest/Cash Consideration</b>	<b>Transferee</b>	<b>Payor</b>	<b>Consideration</b>
Brookwood Development	ADHEC	51% ownership interest in ADHEC	Alabama Holdings	Surgery Holdings	186 shares of Surgery Holdings
Brookwood Development	Assets related to Brookwood Imaging	All assets related to business conducted at 513 Brookwood Blvd. #100, Birmingham, AL 35209	Brookwood Imaging	N/A	N/A
Brookwood Development	Brookwood Imaging	100% ownership interest in Brookwood Imaging	Alabama Holdings	Surgery Holdings	2 shares of Surgery Holdings
Brookwood Development	Assets related to Brookwood Women's	All assets related to business conducted at 2006 Brookwood Med Center Drive #112, Birmingham, AL 35209	Brookwood Women's	N/A	N/A
Brookwood Development	Brookwood Women's	100% ownership interest in Brookwood Women's	Alabama Holdings	Surgery Holdings	7 shares of Surgery Holdings
Brookwood Development	Medplex Surgery	8.36966% General Partner interest and 18.657367% Limited Partner interest in Medplex Surgery	Alabama Holdings	Surgery Holdings	62 shares of Surgery Holdings
Medplex Medical	Medplex Surgery	1.0462075% Limited Partner interest in Medplex Surgery	Alabama Holdings	Surgery Holdings	4 shares of Surgery Holdings
Hoover	Medplex Surgery	1.0462075% Limited Partner interest in Medplex Surgery	Alabama Holdings	Surgery Holdings	4 shares of Surgery Holdings

**AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT**

This Amended and Restated Limited Liability Company Agreement of Brookwood Baptist Health 3, LLC, a Delaware limited liability company (formerly known as HCN Alabama Surgery Center Holdings, LLC) (the "Company"), is entered into on October 2, 2015, and effective as of October 3, 2015 (the "Effective Date"), by and between Baptist Health System, Inc., an Alabama nonprofit corporation ("BHS") and National Surgery Center Holdings, Inc., a Delaware corporation ("Tenet Sub"), and such other Persons (as defined below) as are later admitted as Members (as defined below) of the Company pursuant to the terms of this Agreement (as defined below).

**RECITALS**

**WHEREAS**, the Company was formed as "HCN Alabama Surgery Center Holdings, LLC" on June 12, 2015 as a limited liability company pursuant to the Act (as defined below);

**WHEREAS**, the Company entered into a Limited Liability Company Agreement dated June 16, 2015 (the "Existing Agreement");

**WHEREAS**, the Members desire to amend and restate the provisions of the Existing Agreement, in accordance with the terms and conditions provided in this Agreement, pursuant to the provisions of the Act;

**WHEREAS**, in connection with a reorganization transaction (the "Reorganization") by Tenet Parent, the Company was formed and issued equity interests in the Company (i) to Tenet Sub representing an ownership interest of sixty percent (60%) and (ii) to an Affiliate of Tenet Sub, Brookwood Center Development Corporation, an Alabama corporation ("BCDC") representing an ownership interest of forty percent (40%) and thereafter BCDC contributed, conveyed and assigned, or caused a subsidiary to contribute, convey and assign, the assets and operations of certain outpatient ambulatory surgery center and imaging center facilities and businesses incidental to the operation of Brookwood Medical Center located in Birmingham, Alabama (such outpatient ambulatory surgery center and imaging center facilities and businesses are referred to as the "Healthcare Businesses") to the Company and subsidiaries thereof;

**WHEREAS**, BBH DevelopmentCo, LLC, a Delaware limited liability company (formerly known as Brookwood Baptist Health 3, LLC), the Company, BCDC and BHS entered into that certain Amended and Restated Contribution and Unit Purchase Agreement (ASC and Imaging Businesses) (the "Brookwood Contribution Agreement (ASC and Imaging Businesses)") dated September 30, 2015 but effective as of June 22, 2015, pursuant to which (i) BCDC transferred Units representing a Percentage Interest of forty percent (40%) to Brookwood Ancillary Holdings, Inc., a Delaware corporation ("BAH") and (ii) BAH transferred Units representing a Percentage Interest of forty percent (40%) to BHS;

**WHEREAS**, following the Reorganization and the transactions contemplated by the Brookwood Contribution Agreement (ASC and Imaging Businesses), as of the Effective Date Tenet Sub owns Units representing a Percentage Interest of sixty percent (60%) and BHS owns Units representing a Percentage Interest of forty percent (40%);

**WHEREAS**, in accordance with the terms of this Agreement, BHS and Tenet Sub will (i) participate in the ownership and operation of the Healthcare Businesses in accordance with the terms of this Agreement, (ii) seek new opportunities to improve the quality, cost and scope of healthcare services available to the communities served by the Healthcare Businesses and (iii) evaluate other development opportunities within the State of Alabama;

**WHEREAS**, concurrently with the execution of this Agreement, BHS, Tenet Sub or one or more Affiliates thereof will establish (i) a company to own and operate Brookwood Medical Center, located in Birmingham, Alabama, and its related hospital-based healthcare facilities and other businesses and facilities and (ii) a company to own and operate the assets and operations of Princeton Baptist Medical Center, located in Birmingham, Alabama, Shelby Baptist Medical Center located in Alabaster, Alabama, Walker Baptist Medical Center located in Jasper, Alabama and Citizens Baptist Medical Center, located in Talladega, Alabama, and their related healthcare facilities and businesses, the BHS outpatient assets and certain Tenet Sub 2 (as such term is defined below) or its Affiliates' outpatient assets that are incidental to the operation of Brookwood Medical Center, located in Birmingham, Alabama, and that are not hospital based and certain other identified businesses and facilities; and

**WHEREAS**, the Members intend that the Healthcare Businesses shall be managed and operated on an integrated basis with the assets of BBH 1 (as such term is defined below) and BBH 2 (as such term is defined below) such that BBH 1, BBH 2 and the Company shall for all intents and purposes be managed and operated as a single, integrated entity.

**NOW, THEREFORE**, in consideration of the mutual covenants and promises contained herein and for other good and valuable consideration the receipt and adequacy of which are hereby acknowledged, the Members hereby agree as follows:

## **ARTICLE I DEFINITIONS**

Section 1.01 Defined Terms. As used herein, the following terms shall have the following meanings:

“AAA” means the American Arbitration Association.

“Accounting Impediment” means any change in GAAP accounting standards or any applicable Law or stock exchange rules (such as any change mandating adoption of International Financial Reporting Standards by Tenet Parent for financial accounting purposes) adopted or implemented after the Effective Date which, in the written reasoned opinion of a nationally recognized accounting firm, would preclude Tenet Parent from consolidating the financial statements of the Company, each Company Subsidiary, each Subsidiary and each Affiliated Entity, in each case, with those of Tenet Parent.

“Accounting Impediment Event” shall have the meaning set forth in Section 2.08.

“Act” means the Delaware Limited Liability Company Act (6 Del. Code Section 18-101 et. seq.) and any successor statute, as amended from time to time.

**IN WITNESS WHEREOF**, the undersigned Members have executed this Amended and Restated Limited Liability Company Agreement as of the Effective Date.

**MEMBERS:**

**BAPTIST HEALTH SYSTEM, INC.**

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

**NATIONAL SURGERY CENTER HOLDINGS, INC.**

By:   
Name: **M. KYLE BURNETT**  
Title: **PRESIDENT**

IN WITNESS WHEREOF, the undersigned Members have executed this Amended and Restated Limited Liability Company Agreement as of the Effective Date.

**MEMBERS:**

**BAPTIST HEALTH SYSTEM, INC.**

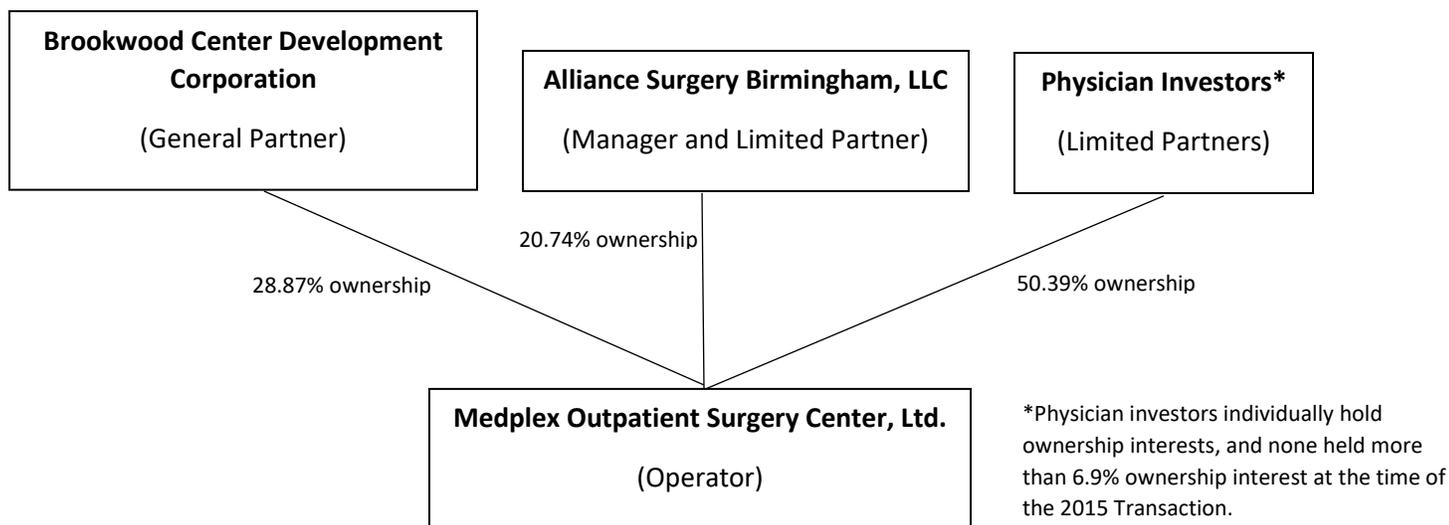
By:   
Name: Kertin Marrott  
Title: CEO

**NATIONAL SURGERY CENTER HOLDINGS, INC.**

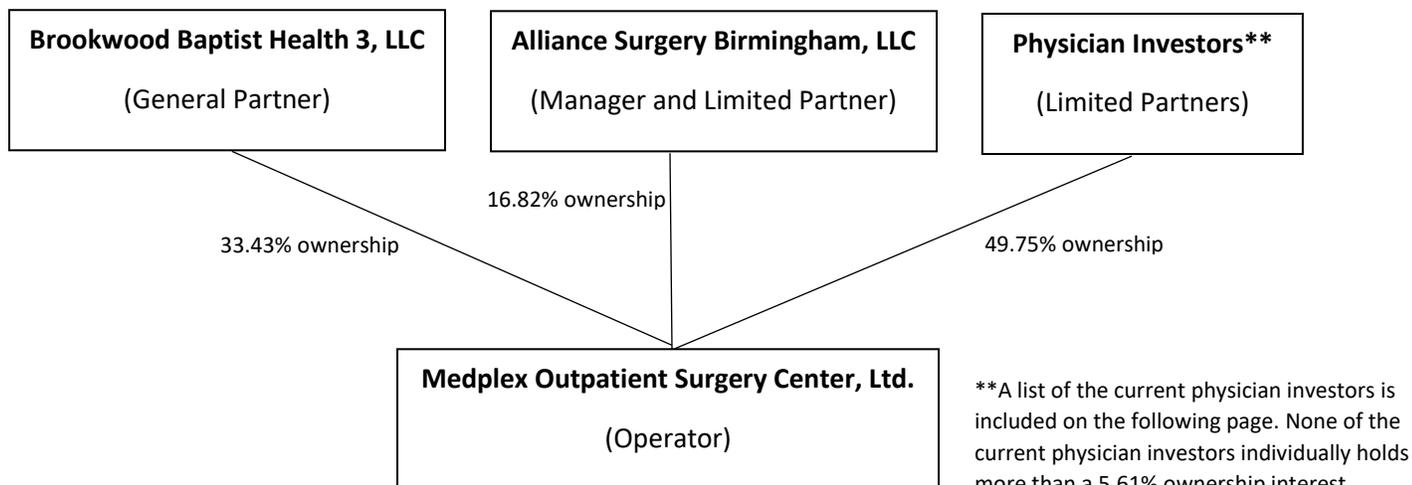
By: \_\_\_\_\_  
Name:  
Title:

MedPlex Outpatient Surgery Center

Pre-2015 Transaction Ownership Chart



Ownership Chart as of August 1, 2021



**MedPlex Outpatient Surgery Center**

**List of Physician Investors (as of August 1, 2021)**

Tarika Bhuta, M.D.
Michael F. Blum, M.D.
George Booker, M.D.
S. Evan Carstensen, M.D.
William Craig, M.D.
Matthew S. Davis, M.D.
Daryl G. Dykes, M.D.
John S. Kirchner, M.D.
William K. Krauss, D.O.
Brian McCool, M.D.
Robert J. Sciacca, M.D.
Michael D. Smith, M.D.



September 24, 2021

CO2021-066  
**RECEIVED**  
**Sep 24 2021**

STATE HEALTH PLANNING AND  
DEVELOPMENT AGENCY

**Via Electronic Filing**

Alabama State Health Planning and Development Agency  
Attn: Emily T. Marsal, Executive Director  
RSA Union Building  
100 N. Union Street, Suite 870  
Montgomery, AL 36104  
Email: shpda.online@shpda.alabama.gov

**RE: Supplemental Filing for Medplex Outpatient Surgery Center, Ltd. (ADPH License No. U5901; SHPDA ID No. 117-U5901)**

Dear Ms. Marsal:

I am writing regarding Medplex Outpatient Surgery Center, Ltd. (the "Company"), which submitted a notice of change in control to the Alabama State Health Planning and Development Agency (the "Agency") on August 4, 2021.

In follow up to our submission and at the request of the Agency, I am providing the enclosed Certificate and Limited Partnership Agreement of the Company dated October 31, 1991 (the "Partnership Agreement"). Section 12(d) of the Partnership Agreement describes the disposition of the CON from Hoover Doctors Group, Inc. ("HDG") to the Company as of November 1, 1991. Although the Company is not able to locate the Purchase Agreement referenced in the cover letter to the Company's initial August 4, 2021, filing we believe Section 12(d) of the Partnership Agreement provides sufficient documentation of the transfer as further described in the cover letter.

We appreciate your continued assistance in this matter. Please contact me if you have any further questions.

Sincerely,

Chelsey Hadfield  
Senior Operations Counsel

Cc: Karen McGuire (via email)  
Ross Mitchell (via email)  
John Snyders (via email)  
Kelli Fleming, Esq. (via email)

Enclosure: Certificate and Limited Partnership Agreement of Medplex Outpatient Surgery Center, Ltd. dated October 31, 1991

521

CERTIFICATE AND LIMITED PARTNERSHIP AGREEMENT  
OF  
MEDPLEX OUTPATIENT SURGERY CENTER, LTD.

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*Burharts*

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CERTIFICATE AND LIMITED PARTNERSHIP AGREEMENT  
OF  
MEDPLEX OUTPATIENT SURGERY CENTER, LTD.

THIS CERTIFICATE AND LIMITED PARTNERSHIP AGREEMENT, made and entered into as of the 31st day of October, 1991, by and among BROOKWOOD CENTER DEVELOPMENT CORPORATION, an Alabama corporation (the "General Partner") and those persons listed on Exhibit "A" hereto, as well as any additional persons who may become limited partners of this partnership in accordance with the provisions hereof (the "Limited Partners").

W I T N E S S E T H:

WHEREAS, the parties hereto have agreed to organize the Partnership, pursuant to the Act, on the terms and conditions hereinafter set forth; and

WHEREAS, the parties have agreed (i) that this instrument shall constitute the Partnership Agreement and the Certificate of Limited Partnership within the meaning of the applicable provisions of the Act; (ii) to be governed by the terms and conditions hereinafter set forth; and (iii) to set forth the rights, obligations and duties of each of the parties hereto with respect to the Partnership.

NOW, THEREFORE, in consideration of the premises, the mutual covenants expressed below and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties hereto, intending to be legally bound, hereby certify and agree as follows:

1. DEFINITIONS. The following terms shall, unless the context otherwise requires, have the respective meanings set forth below.

(a) "Act" means the Alabama Limited Partnership Act of 1983, as set forth in Ala. Code §§10-9A-1, et. seq. (1987 Repl. Vol.), as the same may be amended from time to time.

(b) "Affiliate" means, with respect to a specified Person, (i) any Person that directly or indirectly through one or more intermediaries controls, is controlled by or is under common control with the specified Person; (ii) any Person that is an officer, director, general partner or trustee of, or serves in a similar capacity with respect to, the specified Person, with respect to which the specified Person is an officer, director, general partner or trustee, or with respect to which the specified Person serves in a similar capacity; (iii) any Person for which an officer, director, general partner or trustee of, or individual serving in a similar capacity with respect to, the specified Person

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serves in any such capacity; (iv) any Person that, directly or indirectly, is the beneficial owner of ten percent (10%) or more of any class of equity securities of the specified Person or of which the specified Person is directly or indirectly the beneficial owner of ten percent (10%) or more of any class of equity securities; or (v) any relative or spouse of the specified Person who makes his or her home with that of the specified Person.

(c) "Agreement" means this Certificate and Limited Partnership Agreement of Medplex Outpatient Medical Centers, Ltd., as the same may be amended from time to time.

(d) "Ambulatory Surgery Center" means the Medplex Outpatient Medical Center presently located at 4511 Southlake Parkway, Birmingham, Alabama 35244.

(e) "AMI Brookwood" means AMI Brookwood Medical Center, the general acute care hospital currently operated by an affiliate of BCDC and located at 2010 Brookwood Medical Center Drive, Birmingham, Alabama 35209.

(f) "Applicable Federal Rate" means the minimum interest rate necessary to avoid the imputation of interest for federal income tax purposes pursuant to the provisions of the Code, including Sections 483 or 1274 thereof.

(g) "AmSouth" means AmSouth Bank, N.A., a national banking association.

(h) "BCDC" means Brookwood Center Development Corporation, an Alabama corporation.

(i) "Brookwood Loans" means, collectively, the Equipment Loan, the Line Of Credit Loan and the Working Capital Loan.

(j) "Call Option" means the right of BCDC and the Partnership to require a Limited Partner to sell such Limited Partner's interest in the Partnership upon the occurrence of a Put or Call Event.

(k) "Capital Account" means, with respect to a Partner, the bookkeeping account determined and maintained by the Partnership for such Partner in the manner set forth in Paragraph 9 hereof.

(l) "Capital Contribution" means, with respect to a Partner, the aggregate amount of money or other property contributed to the Partnership by such Partner, in accordance with the provisions hereof.

(m) "Certificate of Need" means the Certificate issued on November 20, 1986 by the State Health Planning and Development Agency of the State of Alabama to HDG with respect to the construction, equipping and operation of the Ambulatory Surgery Center.

(n) "Code" means the Internal Revenue Code of 1986, as amended.

(o) "Distributable Cash" means all cash on hand or in bank accounts of the Partnership, whether derived from operations of the Ambulatory Surgery Center, from disposition of Partnership assets, or otherwise, which the General Partner reasonably determines to be available for distribution to the Partners, after reasonable provision has been made for outstanding current obligations or expenses of the Partnership (including principal and interest due under the Brookwood Loans and rent and other charges due under the Lease Agreement) and after a reasonable reserve has been allowed for Partnership expenditures incurred or reasonably expected to be incurred for the proper operation of the Partnership's business.

(p) "Equipment Loan" means that certain loan, in the original principal amount of \$304,966.76, made by or to be made BCDC to the Partnership, payable by the Partnership to the order of BCDC in accordance with the terms of the Loan Agreement, the proceeds of which shall be used to pay and discharge the obligations of HDG-II to AmSouth under that certain Promissory Note dated January 13, 1988, in the original principal amount of \$600,000.

(q) "General Partner" means BCDC, together with any Person who is subsequently admitted to the Partnership as an additional, successor or substitute general partner pursuant to the provisions hereof.

(r) "HDG" means Hoover Doctors Group, Inc., an Alabama corporation.

(s) "HDG-II" means Hoover Doctors Group II, Inc., an Alabama corporation.

(t) "Health Care Law" means and includes Section 6204 of the Omnibus Budget Reconciliation Act of 1989, the Social Security Act [42 U.S.C. § 1320a-7b(b)] or any similar legislation, regulation or rules promulgated thereunder.

(u) "Lease Agreement" means that certain Real Estate Lease Agreement dated as of October 31, 1991 between Medplex Land Associates, as Landlord, and the Partnership, as Tenant.

(v) "Licenses and Permits" means the licenses, permits and authorizations held by HDG and required for the operation of the Ambulatory Surgery Center.

(w) "Limited Partners" means those Persons listed on Exhibit "A" hereto and any other Persons who have been admitted to the Partnership as Limited Partners pursuant to the provisions hereof, and "Limited Partner" means any one of them.

(x) "Line of Credit Loan" means that certain loan, in the original principal amount of \$324,929.76, made or to be made by BCDC to the Partnership, payable by the Partnership to the order of BCDC in accordance with the terms of the Loan agreement, the proceeds of which have been used to discharge the obligations of HDG-II to AmSouth under that certain Line of Credit Agreement dated August 8, 1988.

(y) "Loan Agreement" means that certain Loan Agreement dated as of October 31, 1991 by and between the Partnership and BCDC.

(z) "Losses" means the sum of (i) any Partnership expenditure described under section 705(a)(2)(B) of the Code or which is treated as such pursuant to Treasury Regulation Section 1.704-1(b)(2)(iv) and (ii) the Partnership's taxable loss for federal income tax purposes, including Partnership deductions taken into account separately by Partners.

(aa) "Management Agreement" means that certain Management Agreement dated as of October 31, 1991 by and between the Partnership and BCDC, substantially in the form of the proposed Agreement attached hereto as Exhibit "B," with such modifications or other terms as the Partnership may deem appropriate from time to time.

(bb) "Medplex Assets" means the inventory, accounts receivable, office furniture and fixtures, equipment, and other tangible assets, patient records, goodwill, name and other intangibles, previously owned by HDG-II, which are subject to the terms of the Purchase Agreement.

(cc) "Medplex Land Associates" means Medplex Land Associates, an Alabama general partnership formed by General Partnership Agreement dated as of October 31, 1991, and comprised of HDG-II and BCDC.

(dd) "Medplex Partners" shall mean and include, from time to time, such of the following Persons as shall continue to be Limited Partners: Edwyn L. Boyd, Brice H. Brackin, R. Don Bryan, William P. Bryant, C. Steven Daughtry, Larry G. Deep, Dewey H. Jones, III, Jack L. Schaeffer and Robert J. Sciacca.

(ee) "Medplex POB 1" means the 31,047 sq. ft. office building currently under construction by Medplex Associates, Inc., an Alabama corporation, on the approximately 2.647 acre parcel known as Lot 1A, Medplex Resurvey.

(ff) "Medplex POB 2" means the proposed medical office building to be constructed on the approximately 1.767 acre parcel presently owned by Riverchase Medical Developers, an Alabama general partnership, and known as Lot 2A, Medplex Resurvey.

(gg) "Notice" means a writing containing the information required by any provision hereof to be communicated to a Person, which shall

be sufficiently delivered and shall constitute sufficient Notice for purposes of any provision hereof if (i) sent by registered or certified mail, return receipt requested, to any Person at the last known address of such Person; (ii) transmitted by hand delivery or air courier, when actually received at the address of such Person; or (iii) transmitted by telecopy or other form of facsimile transmission, upon acknowledgment of receipt thereof in writing by telecopy or otherwise.

(hh) "Partners" means the General Partner and Limited Partners, collectively as the context may require, and "Partner" means any one of them.

(ii) "Partnership" means Medplex Outpatient Surgery Center, Ltd., an Alabama limited partnership, formed under the Act pursuant to the provisions hereof.

(jj) "Percentage Interest" means the interest of a Partner in the Partnership, or in any item of Profits, Losses, distributions and other allocations, relative to that of all Partners. The Percentage Interest of a Partner shall determine the share of Profits, Losses, distributions and other allocations to such Partner relative to all Partners entitled to receive their share of Profits, Losses, distributions and other allocations on the same basis.

(kk) "Person" means any individual, partnership, corporation, trust or other entity.

(ll) "Profits" means the sum of (i) any item of Partnership income not included in a Partner's gross income for federal income tax purposes and (ii) the Partnership's taxable income for federal income tax purposes, including items of income taken into account separately by Partners.

(mm) "Purchase Agreement" means that certain Purchase Agreement dated as of October 16, 1991, by and between BCDC, HDG, HDG-II and the Medplex Partners (in their capacity as the shareholders of HDG and HDG-II).

(nn) "Purchased Medplex Assets" means the undivided 85% interest in the Medplex Assets acquired by BCDC from HDG-II under the Purchase Agreement.

(oo) "Put Option" means the right of a Limited Partner to require that the Partnership purchase his interest in the Partnership upon the occurrence of a Put or Call Event.

(pp) "Put or Call Event" means a determination, made by Recognized Health Care Counsel pursuant to Paragraph 15(b) of this Agreement, that it is more likely than not that Health Care Law prohibits Limited Partners from referring patients to the Partnership, or

prohibits the Partnership from billing for services provided to patients referred to the Partnership by Limited Partners.

(qq) "Real Estate" means Lot 1, according to the survey of Medplex, as recorded in Map Book 11, Page 105, in the Probate Office of Shelby County, Alabama, together with the appurtenant access easement arising under instrument recorded in Real 170, Page 303-307, in said Probate Office.

(rr) "Recognized Health Care Counsel" means an attorney or firm of attorneys having recognized expertise in the area of Health Care Law, including, without limitation, Title XVIII of the Social Security Act, reasonably acceptable to the General Partner.

(ss) "Repurchase Price" means the price applicable to the purchase and sale of a Limited Partner's interest in the Partnership, upon the occurrence of a Put or Call Event, which shall be, with respect to a Limited Partner, (a) the total amount of Capital Contributions made by such Limited Partner plus (unless prohibited by Health Care Law) an amount equal to interest determined at the Applicable Federal Rate (compounded annually) less (b) the amount of any Distributable Cash distributed to such Limited Partner and less such Limited Partner's allocated net Losses from the Partnership.

(tt) "Retained Medplex Assets" means the undivided 15% interest in the Medplex Assets, retained by HDG-II under the Purchase Agreement, and distributed by HDG-II to the respective Medplex Partners.

(uu) "Shares" means the issued and outstanding stock of HDG, consisting of 81,000 shares of common stock, having a par value of \$.10 per share.

(vv) "Tax Matters Partner" means the General Partner.

(ww) "Terminating Event" means, with respect to a Limited Partner (i) the bankruptcy or insolvency of such Limited Partner, (ii) the violation by such Limited Partner, or by any of his Affiliates, of Paragraph 21 hereof, relating to nondisclosure of Trade Secrets, as determined in good faith by the General Partner; or (iii) the transfer of all or any portion of such Limited Partner's interest in the Partnership not specifically authorized by this Agreement, including, but not limited to, the distribution of all or any portion of such Limited Partner's interest to his spouse incident to a preliminary or final decree of dissolution or separation or the execution of a property settlement agreement.

(xx) "Terminating Limited Partner" means a Limited Partner as to whom a Terminating Event has occurred.

(yy) "Terminating Price" means the purchase price applicable to the purchase of a Terminating Limited Partner's interest in the

Partnership, which shall be an amount equal to the pro rata portion that such Terminating Limited Partner would have received had all of the Partnership's property been sold by the Partnership as of the last day of the month in which the Terminating Event occurred with respect to such Partner, determined in accordance with Paragraph 15(c) hereof, less the Terminating Limited Partner's pro rata portion of the debts and liabilities of the Partnership existing as of such date (including, but not limited to, reasonable reserves for contingent liabilities).

(zz) "Trade Secrets" shall mean and include the various trade secrets, business accounts, confidential referral demographics, pricing lists, financial information, patient records, and other records of the Partnership owned by the Partnership or used in the operation of its business.

(aaa) "Transfer" means to pledge, encumber, assign, sell, exchange, give, lease, mortgage, dispose of or transfer in any manner, voluntarily or involuntarily, any rights in property, whether tangible or intangible.

(bbb) "Working Capital Loan" means a revolving loan, not to exceed the principal sum of \$300,000 outstanding at any time, made or to be made by BCDC to the Partnership in accordance with the terms of the Loan Agreement.

2. ORGANIZATION OF THE PARTNERSHIP.

(a) Organization Under the Act. The Partners hereby agree to organize the Partnership as a limited partnership under the provisions of the Act and on the terms and conditions set forth herein. The Act shall govern the rights, duties, obligations and liabilities of the Partners, except as otherwise expressly set forth herein.

(b) Execution of Documents. The General Partner shall take all actions necessary to assure the prompt recording of this Agreement and shall further take all other actions required by law and do all things necessary or appropriate to organize, maintain and operate the Partnership as a limited partnership under the Act. The parties hereto shall, upon the request of the General Partner, execute any certificates and other documents as may be necessary for the General Partner to effect any filing, recording or other acts in order to accomplish the foregoing.

3. NAME OF THE PARTNERSHIP. The Partnership shall conduct its business under the name MEDPLEX OUTPATIENT SURGERY CENTER, LTD., or such other name as the General Partner may from time to time designate by Notice to the Partners. The General Partner, in its sole discretion, may change the name of the Partnership at any time and from time to time as it deems necessary, appropriate or advisable, and in connection therewith shall have the authority to

make such filings under the Act and under the laws of any other jurisdiction in which the business of the Partnership is conducted to effect any such change in the name of the Partnership. The parties hereto shall, upon the request of the General Partner, execute any certificates and other documents as may be necessary for the General Partner to effect any filing, recording or other acts in order to accomplish the foregoing.

4. PRINCIPAL OFFICE; AGENT FOR SERVICE OF PROCESS.

(a) Principal Office of the Partnership. The principal office and place of business of the Partnership shall be located and maintained at 2010 Brookwood Medical Center Drive, Birmingham, Alabama 35209, or at such other place as the General Partner may from time to time designate by Notice to the Partners and by filing proper notification thereof with the Secretary of State of Alabama, in accordance with the provisions of the Act. Said office shall constitute the office required to be maintained under the Act and the records required to be maintained by the Partnership under the Act and pursuant to the provisions hereof shall be maintained at such office.

(b) Agent for Service of Process. Gregory H. Burfitt, an individual resident of the State of Alabama, is hereby designated as the agent for service of process at the address of the principal office of the Partnership. The General Partner may from time to time designate any other Person to be such agent for service of process by filing proper notification thereof with the Secretary of State of Alabama, in accordance with the provisions of the Act; provided, however, that any such other Person shall be an individual resident of Alabama, a corporation organized and existing under Alabama law or a foreign corporation qualified to do business in Alabama.

5. PURPOSE OF THE PARTNERSHIP.

(a) Business and Purpose of the Partnership. The principal business and purpose of the Partnership is, directly or through HDG or another corporation owned by the Partnership, to lease the Real Estate and Ambulatory Surgery Center from Medplex Land Associates pursuant to the Lease Agreement, and to operate the Ambulatory Surgery Center.

(b) Authority of the Partnership. In order to carry out its business and purpose, the Partnership is authorized to engage in any kind of lawful activity, and enter into, perform and carry out contracts of any kind that are necessary or advisable in connection therewith. In particular, but without limiting the foregoing, the Partnership may (i) invest in, acquire, own, use, operate, lease, improve, sell, exchange, pledge, encumber, develop and otherwise use interests in real and personal property for profit, including, but not limited to, interests in general and limited partnerships;

(ii) borrow money and issue evidences of indebtedness in furtherance of the Partnership business and secure any such indebtedness by mortgage, pledge, hypothecation or other security; (iii) enter into, execute, deliver, perform and carry out contracts, agreements, arrangements or understandings of any kind, including contracts or agreements with Affiliates, which are necessary to, in connection with, or incidental to the accomplishment of the business and purpose of the Partnership; (iv) make payments and distributions of its funds, including payments and distributions to Partners; and (v) engage in any and all activities necessary to, in connection with or incidental to the accomplishment of the business and purpose of the Partnership. Notwithstanding any provision to the contrary under this Agreement or under the Act, the Partnership shall not engage in any line of business that is not directly connected to the health care industry. This Agreement does not, and shall not be construed to, create a partnership relationship among the parties hereto with respect to any activities other than those specified herein, and no Partner shall have authority to bind another Partner except as otherwise set forth herein.

6. TERM OF THE PARTNERSHIP. The term of the Partnership shall commence as of the date hereof, and shall continue in full force and effect until December 31, 2039, unless dissolved and terminated prior to such date pursuant to the provisions hereof.

7. DESIGNATION AND INTERESTS OF PARTNERS.

(a) General Partner. BCDC, whose address is set forth in Paragraph 20(b) hereof, shall be the General Partner of the Partnership and, as such, shall have all rights, privileges and obligations conferred upon the General Partner by this Agreement and by provisions of the Act which are not inconsistent with the terms hereof. One or more additional General Partners may be hereafter admitted, but only in accordance with the terms and conditions hereof.

(b) Limited Partners. The Persons listed on Exhibit "A" hereto initially shall be the Limited Partners of the Partnership. Such Persons, together with any Persons admitted as additional or substitute Limited Partners in accordance with the terms and conditions hereof, shall have all rights and privileges conferred upon Limited Partners by this Agreement and by provisions of the Act which are not inconsistent with the terms hereof.

(c) Nature of Partners' Interests. The interests of the Partners in the Partnership shall include the Partners' respective (i) shares of the capital, Profits and Losses of the Partnership and (ii) rights to receive distributions of Partnership assets and allocations of income, gain, loss, deduction, credit or similar items, as set forth herein. The interests of the Partners in the Partnership shall be personal property for all purposes. All

property owned by the Partnership, whether real or personal, tangible or intangible, shall be deemed to be owned by the Partnership as an entity and no Partner individually shall have ownership of such property.

8. PARTNERSHIP CAPITAL AND PERCENTAGE INTERESTS.

(a) Capital Contributions. Upon formation of the Partnership, the Partners have made the following contributions:

(i) each Partner has contributed the following Shares:

<u>Partner</u>	<u>Shares Contributed</u>
[BCDC] (as General Partner)	8,100
[BCDC] (as Limited Partner)	60,750
Edwyn L. Boyd	1,350
Brice H. Brackin	1,350
R. Don Bryan	1,350
William P. Bryant	1,350
C. Steven Daughtry	1,350
Larry G. Deep	1,350
Dewey H. Jones, III	1,350
Jack L. Schaeffer	1,350
Robert J. Sciacca	1,350
Total	81,000

(ii) Each of the Limited Partners has contributed his entire interest in the Retained Medplex Assets; and

(iii) BCDC has contributed its entire interest in the Purchased Medplex Assets.

(b) Percentage Interests. As a consequence of the capital contributions referred to in Paragraph 8(a) hereinabove, the Partners shall have the following Percentage Interests in the Partnership:

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<u>Partner</u>	<u>Percentage Interests</u>
[BCDC] (as General Partner)	10%
[BCDC] (as Limited Partner)	75%
Edwyn L. Boyd	1 2/3%
Brice H. Brackin	1 2/3%
R. Don Bryan	1 2/3%
William P. Bryant	1 2/3%
C. Steven Daughtry	1 2/3%
Larry G. Deep	1 2/3%
Dewey H. Jones, III	1 2/3%
Jack L. Schaeffer	1 2/3%
Robert J. Sciacca	1 2/3%
Total	100.00%

(c) Additional Capital. No additional capital contribution shall be required of the General Partner or of any of the Limited Partners.

(d) Return of Capital Contributions. No Partner shall have the right to withdraw, or demand or receive any return of, his Capital Contribution or all or any part of his Capital Account, except as otherwise set forth herein. Except as otherwise set forth herein, the General Partner shall not be personally liable for the return of the Limited Partners' Capital Contributions or any portion thereof.

(e) Partnership Borrowings. Each Partner hereby authorizes and ratifies the Loan Agreement and the Brookwood Loans. In the event the General Partner determines that the Partnership requires funds, the General Partner is authorized to cause the Partnership to borrow money upon such terms as the General Partner in its sole discretion may determine and to mortgage, pledge and hypothecate the assets of the Partnership in connection with any such borrowings. No Partner shall be required to lend any funds to the Partnership, but any Partner may do so at the request of the General Partner and upon such reasonable terms and conditions as such lending Partner may agree with the General Partner. No creditor who lends funds to the Partnership may have or acquire at any time, as a result of making any such loan, any interest as a Partner in the Partnership. Nothing herein shall be construed to prohibit any loan to the Partnership from the General Partner or any Affiliate thereof; provided, however, that the rate of interest charged the Partnership pursuant to such loan shall not be greater than two (2) percentage points in excess of the Prime Rate announced and in effect from time to time at Amsouth Bank N.A., Birmingham, Alabama].

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9. CAPITAL ACCOUNTS.

(a) Separate Accounts. A separate Capital Account shall be maintained for each Partner, who shall have a single Capital Account, regardless of the time or manner in which such Partner's interest in the Partnership was acquired.

(b) Determination and Maintenance. A Partner's Capital Account shall consist of the amount of such Partner's Capital Contribution increased by such Partner's share of Profits, and decreased by (i) distributions to such Partner (other than payments to such Partner on account of loans to the Partnership or on account of services rendered by such Partner to the Partnership); (ii) such Partner's share of Losses; and (iii) such Partner's share of amounts which are paid or incurred by the Partnership to organize the Partnership or to promote the sale of an interest therein (except to the extent properly amortizable for tax purposes). Each Partner's Capital Account shall be maintained and adjusted in accordance with the Code, Treasury Regulations Section 1.704-1(b) as amended from time to time and other applicable Treasury Regulations promulgated from time to time thereunder, and the General Partner shall have the authority to make or cause to be made any adjustments required to conform to such Treasury Regulations or to take into account unexpected events.

(c) Effect of Transfer. In the event of the Transfer by a Partner of all or any portion of such Partner's interest in the Partnership, the Capital Account of the transferor Partner (or portion thereof) that is attributable to the transferred interest in the Partnership shall carry over to the transferee.

10. DISTRIBUTIONS TO PARTNERS.

(a) Time and Manner of Distributions. Distributable Cash shall be distributed to the Partners from time to time at least semi-annually and at such other times as the General Partner shall determine upon a review of the Partnership books and records. All such distributions shall be allocated among the Partners in accordance with their respective Percentage Interests.

(b) Good Faith Distributions. Upon the determination in good faith to distribute funds in the manner set forth herein, the General Partner shall incur no liability on account of such distribution, even though such distribution may result in the Partnership retaining insufficient funds for the operation of its business.

11. ALLOCATIONS OF PROFITS AND LOSSES.

(a) Determination. Profits and Losses shall be determined by the Partnership and its accountants, if any, in accordance with the Code and accounting methods used by the partnership in determining

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taxable income or loss for federal income tax purposes. Every item of income, gain, loss, deduction, credit or tax preference entering into the computation of Profits or Losses, or applicable to the period for which such Profits or Losses are determined, shall be considered allocated to each Partner in the same proportion as Profits and Losses are allocated to such Partner.

(b) Allocation of Profits or Losses. Profits and Losses shall be allocated among the Partners in accordance with their respective Percentage Interests.

12. MANAGEMENT OF THE PARTNERSHIP.

(a) Reservation to General Partner. Subject to Paragraph 12(e) below, all of the decisions with respect to any matter set forth herein or otherwise arising out of the conduct of the business of the Partnership shall be made by the General Partner, who shall have the exclusive right, power and authority to manage and operate the Partnership's business. The General partner shall have all rights and powers which (i) by law may be possessed by a general partner, (ii) it deems necessary, appropriate or convenient in the discharge of its responsibilities hereunder and (iii) are conferred upon it by the provisions hereof. All such rights and powers shall be exercised by the General Partner in such manner and on such terms and conditions as the General Partner in its sole discretion determines, without the consent of any other Person.

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(b) Execution of Instruments. Any deed, bill of sale, mortgage, security agreement, lease, contract of sale, joint venture agreement, loan agreement, partnership agreement, contract, arrangement, understanding or other instrument for the conveyance or encumbrance of any assets of the Partnership or to bind the Partnership shall be executed on behalf of the Partnership by the General Partner, and on behalf of the General Partner by such signatories as the General Partner may require. No other signatures or consents shall be required. Any person dealing with the Partnership or the General Partner may rely upon a certificate executed by the General Partner as to (i) the identity of any Partner; (ii) the existence or nonexistence of any fact or facts which constitute conditions precedent to acts by the Partnership or General Partner that are related in any way to the business and affairs of the Partnership; (iii) the Persons who are authorized to execute and deliver any instrument or document of or on behalf of the Partnership; or (iv) any act or failure to act by the Partnership.

(c) Tax Matters Partner. The General Partner shall act as Tax Matters Partner of the Partnership, as provided in Treasury Regulations pursuant to section 6231 of the Code. Each Partner hereby approves of such designation and agrees to execute, certify, acknowledge, deliver, swear to, file and record such documents as may be necessary or appropriate to evidence such approval. To this

extent and in the manner provided by the Code and applicable Treasury regulations the Tax Matters Partner shall (i) furnish the name, address, interest and taxpayer identification number of each Partner to the Internal Revenue Service and (ii) inform each Partner of administrative or judicial proceedings for the adjustment of Partnership items required to be taken into account by Partners for federal income tax purposes. The Partnership shall indemnify and reimburse the Tax Matters Partner for all expenses, fees, claims, liabilities, losses and damages incurred in connection with audit or administrative or judicial proceedings for the adjustment of Partnership items.

(d) Dissolution of HDG. The Partners acknowledge and intend (i) that by virtue of the contribution of the Shares to the capital of the Partnership, the Partnership shall be and become the sole shareholder of HDG; (ii) that the Partnership, as sole shareholder of HDG, may cause HDG to be dissolved and liquidated; and (iii) that the Partnership shall succeed to and become the owner of the Certificate of Need and the Licenses and Permits as a result of any such dissolution and liquidation of HDG. The General Partner is hereby authorized, by and on behalf of the Partnership, to execute, acknowledge and deliver any and all instruments which are necessary or appropriate to effect the foregoing.

(e) Certain Restrictions. Without the consent, pursuant to the provisions of Paragraph 22(f) hereof, of a majority in interest of the Medplex Partners, the General Partner shall not (i) at any time on or before the 10th anniversary of the date hereof, relocate the Ambulatory Surgery Center; (ii) at any time on or before the 10th anniversary of the date hereof, cause the Partnership to transfer the Certificate of Need or the Licenses and Permits; or (iii) cause the Partnership to discontinue the use of the name "Medplex" as a part of the name of the Ambulatory Surgery Center.

(f) Management Agreement. The Partners acknowledge that the Partnership shall engage BCDC to manage the Ambulatory Surgery Center pursuant to the Management Agreement, and authorize BCDC to execute the Management Agreement for and on behalf of the Partnership.

(g) Indemnification. No General Partner or Affiliate shall be liable, responsible or accountable in damages or otherwise for any act or omission made in good faith on behalf of the Partnership, except for acts or omissions of negligence or fraud. The Partnership shall indemnify the General Partner and each Affiliate from and against claims, judgments, fines, amounts paid in settlement and expenses (including reasonable attorney's fees) actually and reasonably incurred in connection with the defense or settlement of any action or suit arising out of any acts or omissions performed or omitted by such General Partner or Affiliate except acts or omissions of negligence or fraud. All judgments against the Partnership or the General Partner wherein the General

Partner is entitled to indemnification shall first be satisfied from Partnership income or assets and no Partner shall have or incur any personal liability on account thereof. In any action, suit or proceeding brought by any Partner against the Partnership or General Partner arising out of any alleged acts or omissions of the Partnership or such General Partner, the General Partner or the Partnership, as the case may be, if it prevails in such action, shall be entitled to payment of its expenses (including reasonable attorney's fees) actually and reasonably incurred in connection with such action, suit or proceeding.

13. STATUS OF LIMITED PARTNERS.

(a) Limited Liability. No Limited Partner shall be bound by, or personally liable for, the expenses, liabilities or obligations of the Partnership or the General Partner, and the liability of each such Partner to the Partnership shall be, and hereby is, limited to the amount of such Partner's Capital Contribution pursuant to Paragraph 8 hereof. No Limited Partner (unless he or it is also a General Partner) shall have any liability in respect of the liabilities and obligations of the Partnership; provided, however, that if any such Partner has received the return of any part of his Capital Contribution without violation of this Agreement or the Act, he shall be liable to the Partnership for a period of one (1) year thereafter for the amount of such returned Capital Contribution, but only to the extent necessary to discharge the Partnership's liabilities to creditors who extended credit to the Partnership during the period such Capital Contribution was held by the Partnership; and provided, further, that if any such Partner has received the return of any part of his Capital Contribution in violation of this Agreement or the Act, he shall be liable to the Partnership for a period of six (6) years thereafter for the amount of the Capital Contribution wrongfully returned.

(b) Notice to Creditors. Nothing contained herein shall remove, diminish or affect the above limitation of liability. The Partnership's creditors shall have no right to, and are hereby notified that they may not, look to the personal assets of the Limited Partners hereof for satisfaction of any Partnership debt, liability or obligation (unless he or it is also a General Partner).

(c) No Control of Business or Right to Act for Partnership. A Limited Partner shall take no part, and shall not interfere in any way, in the management, conduct or control of the business of the Partnership and shall have no right or authority to act for or to bind the Partnership. The Partnership may engage Limited Partners or Persons affiliated with Limited Partners on such terms and for such compensation as may be agreed upon; provided, however, that nothing within the scope of any such engagement, or in any agreement relating thereto, shall entitle such Limited Partner to participate in the control of the business of the Partnership.

(d) No Priority. Except as otherwise specifically set forth herein, no Limited Partner shall have the right to demand or receive property other than cash in return of his Capital Contribution or as to any distributions hereunder. No Limited Partner shall have priority over any other Limited Partner either as to the return of his Capital Contribution or as to distributions hereunder, except as otherwise set forth herein. The Limited Partners shall have no right to withdraw their Capital Contributions during the term of the Partnership's existence, except as otherwise specifically provided herein.

14. ACCOUNTING AND FINANCIAL MATTERS.

(a) Annual Statements. The General Partner shall cause annual financial statements of the operations of the Partnership, including a detailed description of the use of Partnership funds, to be prepared and distributed to each Partner, as soon as practicable after the close of each calendar year.

(b) Books and Records. The Partnership's books and records and all other documents shall be maintained at the principal office of the Partnership, and all Partners shall have reasonable access to such books and records during regular business hours.

(c) Income Tax Information. The General Partner shall provide to the Partners information concerning the Partnership's taxable income or loss and each item of income, gain, loss, deduction or credit that is relevant to reporting Partnership income. Such information with respect to each fiscal year shall reflect each Partner's distributive share of each item of income, gain, loss, deduction or credit and shall be furnished to the Partners after the close of each fiscal year.

(d) Accounting Decisions. All decisions as to accounting matters, except as specifically provided to the contrary herein, shall be made by the General Partner in accordance with the accounting methods adopted by the Partnership for federal income tax purposes. The General Partner may rely from time to time upon the advice of such certified public accountants as may be engaged by the Partnership.

(e) Banking and Investments. Funds of the Partnership may be deposited in such checking accounts or savings accounts, or invested in certificates of deposit, money market funds, mutual funds or other securities, with such institutions and on such terms as the General Partner shall designate; provided, however, that Partnership funds shall not be commingled with the funds of any other Person. Checks or withdrawals from any such accounts, or the liquidation of any such Partnership securities, shall be made upon such signatures and other instructions as the General Partner shall designate or determine.

15. TRANSFERS OF LIMITED PARTNERS' INTERESTS.

(a) Restrictions on Transfer. Except as specifically required or authorized under Paragraphs 15(b) and 15(c) hereof, no Limited Partner shall Transfer his interest in the Partnership, or any portion thereof, except with the consent of the General Partner, which consent may be withheld or given in the sole discretion of the General Partner and may be conditioned upon the execution of all documents and the performance of all acts by the transferor and transferee as the General Partner determines to be reasonably necessary. It is recognized that the General Partner shall be permitted to transfer all or any portion of its 75% interest as a Limited Partner to such Persons as the General Partner may designate. Any purported Transfer in violation of this Paragraph 15(a) shall be null and void, the Partnership shall not be obligated to recognize or give effect to such Transfer, and such Transfer shall not release the purported transferor from any obligations hereunder or vest any rights hereunder in the purported transferee. The Partnership shall not be required to recognize any Transfer until such time as the instrument conveying such interest in the Partnership has been executed and delivered to the General Partner, and the transferor or transferee, as they may agree between themselves, shall have reimbursed the Partnership for all costs, fees and expenses of such Transfer, and prior to such time the transferee's rights shall only be against the transferor.

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(b) Put or Call Option. If the Partnership, or any Limited Partner, believes that a Put or Call Event has occurred, such party shall provide written notice, together with a copy of an opinion of Recognized Health Care Counsel that such an event has occurred, to the Limited Partners or the Partnership, respectively, on or before the later of (i) December 1, 1991, or (ii) the effective date of the Health Care Law giving rise to such Put or Call Event. If the other party disagrees with such opinion, the objecting party must provide a contrary opinion of Recognized Health Care Counsel within thirty (30) days. If such a contrary opinion is delivered, the dispute shall be resolved by arbitration. If the other party fails to dispute the original opinion, or if a dispute is resolved in favor of the original opinion, then the interests of all Limited Partners who are affected by such Put or Call Event shall be purchased at the Repurchase Price. In such event, the acquisition date shall be as of the later of (i) December 1, 1991, or (ii) the effective date of the applicable Health Care Law. The Partnership shall pay to each affected Limited Partner, within thirty (30) days of such acquisition date, not less than twenty percent (20%) of the Repurchase Price in cash, and shall deliver a Promissory Note for the balance, if the Repurchase Price is not paid in full, providing for equal annual payments of principal over the number of full years remaining under the Basic Term, as defined in the Lease Agreement. Such Promissory Note will bear interest on the principal amount outstanding from time to time at the lesser of the Applicable Federal Rate, compounded annually, or the maximum rate

permitted by law. Such Promissory Note may be prepaid by the Partnership at any time prior to maturity without premium or penalty of any kind. If such Promissory Note as described herein is determined, in the opinion of Recognized Health Care Counsel, more likely than not to be prohibited under Health Care Law, then the General Partner shall use its best efforts to acquire (but shall not be obligated to provide or guarantee) the necessary financing to have the Partnership repurchase the Limited Partner's interest for cash within the time allowed by such Health Care Law. In addition to any equitable or other relief which may be available to the Partnership or to BCDC in the case of any breach of the noncompetition covenants provided under Paragraph 20 below, the Partnership shall cancel the entire outstanding principal amount of, and accrued interest on, any Promissory Notes delivered under this Paragraph 15(b) as liquidated damages suffered by the Partnership by reason of any such breach.

(c) Terminating Event. Each Limited Partner hereby grants the option to the Partnership to purchase, for the Terminating Price, all of his interest in the Partnership upon the occurrence of any Terminating Event as to such Limited Partner. Any Limited Partner who has suffered a Terminating Event shall notify the General Partner of the occurrence of the Terminating Event not later than five (5) days after the occurrence thereof. The Partnership shall have the right, privilege and option, but not the obligation, to acquire the interest of the Terminating Limited Partner at the Terminating Price, exercisable during the sixty (60) day period after receipt by the Partnership of actual notice of the Terminating Event. For purposes of determining the Terminating Price, the Partnership's property shall be deemed to have been sold (i) for the lesser of book value or appraised market value, if the Terminating Event occurred because of a violation of Paragraph 15(a) or Paragraph 21 hereof and (ii) at the appraised market value, if the Terminating Event occurred because of bankruptcy or marital separation. If "book value" is to be used, the same shall be determined by an accountant or accounting firm designated by the General Partner. If appraised fair market value is to be used, the Terminating Limited Partner and General Partner shall mutually choose an appraiser experienced in appraising comparable property to determine such value. If an appraiser is not selected by their mutual agreement within ten (10) days after written request by either party, then either party may request that the nearest Chapter of MAI appraisers make such apportionment. Within thirty (30) days after determination of the Terminating Price, the Partnership shall pay to the Terminating Limited Partner, or his authorized representative or successor, not less than ten percent (10%) of the total price to be paid, and shall deliver a Promissory Note for the balance, if the same is not paid in full, providing for equal annual payments of principal over a period not to exceed five (5) years from date of delivery, the first annual payment to be made one (1) year after the day of delivery. Such Promissory Note shall bear interest on the principal amount outstanding from

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time to time at the lesser of the Applicable Federal Rate, compounded annually, or the maximum rate permitted by law. The Promissory Note may be prepaid by the Partnership at any time prior to maturity without premium or penalty of any kind.

(d) Offer to General Partner. If any Limited Partner desires to Transfer his interest in the Partnership, or any portion thereof, then, except (i) as specifically required or authorized under Paragraphs 15(b) and 15(c) hereof or (ii) in the case of a Transfer by one Medplex Partner to another Medplex Partner, such Limited Partner shall give notice (the "Transfer Notice") to the General Partner, which notice shall contain: (A) a statement of the interest in the Partnership which is proposed to be transferred (the "Offered Interest"); (B) the name and address of the party to whom the Offered Interest is proposed to be transferred (the "Transferee"); and (C) the price and terms of payment with respect to the proposed Transfer. For a period of thirty (30) days following the date of its receipt of the Transfer Notice, the General Partner shall have the right, option, and privilege, but not the obligation, to purchase the Offered Interest at the price and upon the terms and conditions as stated in the Transfer Notice. If such option is not timely exercised, then the Offered Interest may be transferred to the Transferee, on the terms and conditions set forth in the Offer Notice, during the thirty (30) day period after expiration of the General Partner's option. In the event that such Transfer is not consummated within said thirty (30) day period, or is not consummated upon the terms and conditions set forth in the Offer Notice, then the proposed Transfer shall again be subject to a right of first refusal in favor of the General Partner.

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(e) Admission to Partnership. Any transferee or assignee of a Limited Partner's interest (or any portion thereof) in the Partnership under a Transfer permitted by the terms of this Paragraph 15 shall be admitted to the Partnership only upon the written consent of the General Partner and the execution of such instruments as the General Partner shall determine to be adequate to bind such transferee to the terms and provisions of this Agreement. Any Partner who has assigned all of his interest in the Partnership in accordance with the provisions hereof shall cease to be a Limited Partner as of the effective date of such assignment. If a Limited Partner dies, is adjudicated incompetent or becomes bankrupt, his executor, administrator, trustee, guardian, or receiver shall have all rights as such Partner for the purpose of settling or managing his estate, including such power as that Partner possessed to Transfer all or any portion of his interest in the Partnership as set forth herein.

(f) Rights of Unadmitted Assignees. Any Person who acquires all or any portion of a Partner's interest in the Partnership but who is not admitted as a substituted Partner shall be entitled only to allocations and distributions with respect to the interest

acquired, but shall have no right to any information or accounting of the affairs of the Partnership, shall not be entitled to inspect the books or records of the Partnership, and shall not have any of the rights of a Partner under the Act or the provisions hereof.

(g) Consent of Other Limited Partners. The consent of the other Limited Partners shall not be required to effect a Transfer of all or any portion of Partner's interest in the Partnership or the substitution of any such Partner.

16. TRANSFERS BY GENERAL PARTNER.

(a) General Restriction. A General Partner may Transfer all or any portion of its interest as a General Partner in the Partnership only in accordance with the provisions of this Paragraph 16.

(b) Transfers Among Partners. A General Partner may Transfer all or any portion of its interest in the Partnership to a Person who is then serving as another General Partner.

(c) Additional General Partners. A General Partner may Transfer a portion of its interest in the Partnership (but not all of its interest) to a Person who is to be admitted to the Partnership as an additional or substitute General Partner.

(d) Required Consents. The Transfers authorized under the foregoing provisions may be effected only in compliance with the following:

(i) All Partners hereby specifically consent to any Transfer from one General Partner to another General Partner;

(ii) All Partners hereby specifically consent to any Transfer from a General Partner to one or more Affiliates of such General partner, and to the admission of such Affiliates as General Partners;

(iii) All Limited Partners hereby specifically consent to the Transfer to and admission of any additional General Partners, which are not Affiliates of a General Partner, provided that such Transfer and admission are specifically approved at the time by all General Partners, and such Transfer and admission shall not be in connection with the withdrawal of the last remaining General Partner; and

(iv) In the case of a Transfer by the last remaining General Partner, to a Person who is not an Affiliate of a General Partner and who is to be admitted as a substitute General Partner, all Limited Partners hereby specifically consent to such Transfer, provided that a majority in interest of the Limited Partners consent to such Transfer at the time, pursuant to the provisions of Paragraph 22(f) hereof, in which

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event the transferee shall be admitted as an additional General Partner immediately prior to the withdrawal or removal of the affected General Partner.

17. CONTINUATION OF PARTNERSHIP.

(a) By Remaining General Partners. Upon the occurrence of any event of withdrawal with respect to a General Partner specified in the Act, then the Partnership shall be continued by any remaining General Partners.

(b) By the Partnership. If any such event occurs to the sole General Partner of the Partnership, then the General Partner or its legal representative shall promptly give notice thereof to all Limited Partners, and the Partnership shall be dissolved and its affairs shall be wound up unless all Partners consent, pursuant to the provisions of Paragraph 22(f) hereof, within ninety (90) days after the occurrence of such event, to continue the business of the Partnership with a successor General Partner approved by them.

18. DISSOLUTION, WINDING UP AND TERMINATION OF THE PARTNERSHIP.

(a) Events Causing Dissolution. The Partnership shall be dissolved prior to the expiration of the term set forth in Paragraph 6 hereof upon the occurrence of any of the following events:

(1) any event set forth in Paragraph 17 hereof, unless the business of the Partnership is continued as provided therein;

(2) the determination of the General Partner; or

(3) any other event causing the dissolution of a limited partnership under provisions of the Act which are not inconsistent with the terms hereof.

(b) No Right to Dissolve. Except as provided in Paragraph 18(a) hereof, no Partner shall have a right to cause the dissolution of the Partnership before the expiration of its term. The Limited Partners shall have no right to demand or receive the return of their Capital Contributions prior to the liquidation and termination of the Partnership, except as otherwise provided herein, or to demand or receive property other than cash upon such liquidation. The Partnership shall not be dissolved by the admission of any new Limited Partner, or by the withdrawal, expulsion, death, insolvency, liquidation, incapacity or bankruptcy of a Limited Partner.

(c) Winding Up of Business. Upon the dissolution of the Partnership, unless its business is to be continued as provided hereinabove, its assets shall be liquidated as promptly as is consistent with obtaining their fair value. A reasonable time

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shall be allowed for the orderly liquidation of the assets of the Partnership so as to minimize any loss attendant upon such liquidation. While the dissolution of the Partnership shall be effective upon the occurrence of an event causing the same, the Partnership shall not be terminated until the complete liquidation and distribution of its assets.

(d) Application of Proceeds. The proceeds from liquidating Partnership assets, together with any property to be distributed in kind, shall be applied or distributed in the following order:

(1) First, to the payment and discharge of all debts and liabilities of the Partnership, including expenses of liquidation, owing to creditors other than Partners or their Affiliates;

(2) Second, to the establishment of any reserve which the General Partner may deem necessary for any contingent or unforeseen liabilities or obligations of the Partnership;

(3) Third, to the payment and discharge of all debts and liabilities of the Partnership owing to Partners or their Affiliates, but if the amount available for payment is insufficient, then pro rata in accordance with the amounts of such debts and liabilities; and

(4) Fourth, to distribute among the Partners in proportion to their respective positive Capital Account balances.

(e) Excess Funds. After the expiration of any time period during which the reserves under Paragraph 18(d)(2) hereof shall be maintained, any undisbursed reserves shall be distributed in accordance with the priorities of Paragraph 18(d)(3) and (4) hereof.

(f) Deficit Account. If, after all allocations of Profits and Losses, and all distribution made, or to be made in connection with the liquidation and termination of the Partnership, any Partner has a deficit capital account, then such Partner shall restore such account, by payment to the Partnership, or to its creditors.

(g) Statement of Dissolution. Each of the Partners shall be furnished by the General Partner with a statement which shall set forth the assets and liabilities of the Partnership as of the date of dissolution. This statement shall also schedule the receipts and disbursements made in liquidating and terminating the Partnership under this Paragraph 18.

(h) Certificate of Cancellation. Upon the termination of the Partnership in accordance with the terms hereof, the General Partner shall execute, acknowledge and cause to be filed in the appropriate public offices a Certificate of Cancellation of the Partnership, whereupon it shall cease to exist in all respects.

19. SPECIAL POWER OF ATTORNEY.

(a) Irrevocable Appointment. By his execution of the Agreement or of a Subscription Agreement pursuant to which he has consented to the terms and conditions of this Agreement, each Limited Partner hereby irrevocably constitutes and appoints the general partners of the General Partner, or any of them, with full power of substitution, as his true and lawful attorney-in-fact, in such Limited Partner's name, place and stead, to make, execute, sign, acknowledge, certify, deliver, file or record any of the following:

(1) this Agreement and any amendment hereto in any jurisdiction in which the General Partner considers such filing or recording necessary or appropriate;

(2) any other certificate or instrument which may be required to be filed by the Partnership or the Partners under the laws of the State of Alabama and under the applicable laws of any other jurisdiction to the extent that the General Partner deems such filing to be necessary or required;

(3) any and all amendments or modifications of the instruments described in the preceding Paragraphs 19(a)(1) and 19(a)(2) hereof; provided that such amendments or modifications are necessary or desirable to effect the terms and intent of this Agreement, are not in contravention of the terms hereof and are required to reflect any action of the Partners, whether or not such Limited Partner voted in favor of such action;

(4) all certificates and other instruments which may be required to effect the dissolution, termination or continuation of the business of the Partnership pursuant to the provisions of this Agreement; and

(5) any and all consents or other instruments deemed necessary or desirable by the General Partner for the admission of additional or substitute Partners to the extent permitted by the terms of this Agreement.

(b) Continuing Validity. The foregoing Power of Attorney is irrevocable and shall survive the Transfer by each Limited Partner of the whole or any portion of his interest in the Partnership; provided, however, that where a Limited Partner has transferred his entire interest in the Partnership and the transferee thereof has been admitted as a Partner under Paragraph 16(b) hereof, this Power of Attorney shall survive the delivery of such Transfer for the sole purpose of enabling the General Partner to execute, acknowledge and file any instrument necessary to effect such Transfer. It is expressly understood and agreed that this Power of Attorney:

(1) is a durable Power of Attorney coupled with an interest;

(2) is irrevocable;

(3) shall survive the death, incompetency, insolvency, incapacity, bankruptcy or dissolution of any Partner;

(4) shall be binding on any transferee of an interest in the Partnership, or any portion thereof, including the Transfer of only the distributive rights relating thereto; and

(5) may be exercised for such Partner by a signature of any general partner of the General Partner or by listing the names of all Limited Partners and then executing any instrument with a single signature of any general partner of the General Partner.

20. NONCOMPETITION COVENANTS.

(a) Limited Partners. Subject to the term and to the exceptions hereinafter provided, the Limited Partners, and their respective Affiliates, shall not develop or be involved in any way, directly or indirectly, in the development of a medical office complex or an ambulatory surgery facility within a ten (10) mile radius of the Real Estate.

(b) General Partner. Subject to the term and to the exceptions hereinafter provided, BCDC shall not develop or be involved in any way, directly or indirectly, in the development of an ambulatory surgery facility within a ten (10) mile radius of the Real Estate, without giving to each of the Medplex Partners, the proportional right to participate in the interest available to BCDC in such development, to the extent of each such Medplex Partner's Percentage Interest.

(c) Term of Covenants. The covenants provided in this Paragraph 20 shall be of no further force or effect on or after the tenth anniversary of the date of this Agreement, except that, in the event that any party shall breach any of such covenants, then the same shall be extended, as to such breaching party, for an additional period of time equal to the period during which such breach remains in effect.

(d) Permitted Exceptions. The covenants provided in this Paragraph 20 shall be inapplicable to (i) as to BCDC, any facility on the campus of AMI Brookwood or within one (1) mile thereof; (ii) Brice H. Brackin, M.D.; (iii) Medplex POB 1; (iv) Medplex POB 2; (v) as to R. Don Bryan, M.D. and Edwyn L. Boyd, M.D. with respect to any medical office complex; and (vi) any "private medical office," which shall mean a free-standing medical office building in which 40% or more of the leasable space is occupied by an individual Medplex Partner. A Limited Partner may invest in one or more projects within the prohibited area if his investment therein does not exceed two percent (2%) of the total equity of such project, and if he is not involved in any way, directly or

indirectly, in the management, development or operations of such project.

21. NONDISCLOSURE COVENANTS. During the term of this Agreement, each Limited Partner, and his Affiliates, will have access to and may become acquainted with the Partnership's Trade Secrets. Each Limited Partner acknowledges and agrees that such Trade Secrets are owned exclusively by the Partnership, and are secret, confidential and proprietary property of the Partnership, disclosed to or obtained by such Partner in confidence and trust for the sole purpose of using the same for the sole benefit of the Partnership. During and after the term of this Agreement, without the prior written consent of the Partnership, no Limited Partner, or employee or Affiliate thereof, shall divulge any Trade Secret to any other person or entity, or use any Trade Secret for his or its own benefit or for the benefit of any other person or entity.

22. MISCELLANEOUS PROVISIONS.

(a) Alabama Law Governing. This Agreement and the rights of the Partners hereunder shall be interpreted and governed in accordance with the laws of the State of Alabama, notwithstanding the residence or principal place of business of any of the parties hereto, the place where this Agreement may be executed by any of the parties hereto, the place where the Property may be located, or the provisions of any jurisdiction's conflict of laws rules.

045 PAGE 444 (b) Notices. Partnership statements, reports and income tax returns may be mailed to Partners by regular first-class mail. All other Notices under this Agreement shall be in writing, duly signed by the party giving the same, and shall be deemed delivered when made in accordance with Paragraph 1(gg) herein. All Notices shall be addressed to the following addresses or to such other address as may be designated by Notice to all Partners hereunder:

BOOK If to the General Partner:

Brookwood Center Development Corporation  
2010 Brookwood Medical Center Drive  
Birmingham, Alabama 35204

Attention: Gregory H. Burfitt

With copy to:

Harold B. Kushner, Esq.  
Berkowitz, Lefkovits, Isom & Kushner,  
A Professional Corporation  
1600 SouthTrust Tower  
Birmingham, Alabama 35203

If to the Limited Partners: to their addresses set forth in Exhibit A hereto.

(c) Binding Effect. This Agreement shall be binding upon all the parties hereto, and their respective heirs, executors, administrators, successors and assigns. Subject to the restrictions on Transfer contained herein, this Agreement shall inure to the benefit of the respective heirs, executors, administrators, successors and assigns of the parties hereto.

(d) Severability. If any provision of this Agreement, or the application thereof to any party or circumstance, shall be determined by any court of competent jurisdiction to be invalid or unenforceable to any extent, the remainder of this Agreement, or the application of such provision to any Person or circumstance other than that which is determined to be invalid or unenforceable, shall not be affected thereby. Each provision hereof shall be valid and shall be enforced to the fullest extent permitted by law.

(e) Identification. Throughout this Agreement, wherever the context so permits, the masculine gender shall be deemed to include the feminine and vice-versa, and both shall be deemed to include the neuter and vice-versa, and the singular shall be deemed to include the plural and vice-versa.

(f) Method of Giving Consent. Any consent or affirmative vote which is required by the provisions of this Agreement or of the Act to be obtained or received from the Limited Partners shall be deemed to be given if the same shall be received by the General Partner within the time period for obtaining such consents. If the General Partner delivers Notice to the Limited Partners of any proposal or other matter required to be submitted for the consideration, consent or approval of the Limited Partners, which Notice shall include a description of the matter and may include the General Partner's recommendation as to such matter, then each Limited Partner who fails to deliver a negative vote within the allotted time shall be conclusively presumed to have consented to and approved such matter.

(g) Entire Agreement. This Agreement constitutes the entire understanding and agreement among the parties hereto with respect to the subject matter hereof.

(h) Further Assurances. Each Partner hereby agrees to execute and deliver such further documents and to cooperate in taking such further action as may be necessary or appropriate to effect this Agreement or any provision hereof. Each Person agreeing to become a Limited Partner pursuant to the provisions hereof ratifies and agrees to be bound by all actions taken by the General Partner prior to the date on which such Person became a Limited Partner.

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(i) Authority. Each Person executing this Agreement on behalf of another Person represents and warrants that he is authorized to do so, that such execution and the performance of this Agreement does not violate any agreement or restriction to which such party is subject and that this Agreement constitutes a legally binding obligation of such party.

(j) Counterparts. This Agreement may be executed in any number of counterparts and all of such counterparts shall for all purposes constitute one Agreement binding on the parties hereto, notwithstanding that all parties are not signatory to the same counterpart.

(k) Captions. Titles or captions contained in this Agreement are inserted only as a matter of convenience and for reference and shall in no way define, limit, extend or describe the scope or intent of this Agreement or of any provision hereof.

(l) Amendments. This Agreement may be amended at any time upon the consent of the General Partner and a majority in interest of the Limited Partners.

IN WITNESS WHEREOF the parties hereto have executed this Certificate and Limited Partnership Agreement on the day and year first above written.

GENERAL PARTNER:

BROOKWOOD CENTER DEVELOPMENT CORPORATION, an Alabama corporation

By: Cathy Daseu  
Its: Vice President

LIMITED PARTNERS:

Edwyn L. Boyd  
Edwyn L. Boyd

Brice H. Brackin  
Brice H. Brackin

R. Don Bryan  
R. Don Bryan

William P. Bryant  
William P. Bryant

C. Steven Daughtry  
C. Steven Daughtry

Larry G. Deep  
Larry G. Deep

Dewey H. Jones, III  
Dewey H. Jones, III

Jack D. Schaeffer  
Jack D. Schaeffer

Robert J. Sciacca  
Robert J. Sciacca

STATE OF ALABAMA )  
Shelby COUNTY )

I, the undersigned authority, a Notary Public in, and for said County, in said State, hereby certify that Cathy Nizeen, whose name as Vice President of Brookwood Center Development Corporation, an Alabama corporation, is signed to the foregoing Certificate and Limited Partnership Agreement of Medplex Outpatient Surgery Center, Ltd. and who is known to me, acknowledged before me on this day that, being informed of the contents of said Certificate and Limited Partnership Agreement, he, in his capacity as such officer and with full authority, executed the same voluntarily for and as the act of said corporation on the day the same bears date.

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Given under my hand this the 31<sup>st</sup> day of October, 1991.

[Signature]  
Notary Public  
My Commission Expires: June 13, 1993

STATE OF ALABAMA )  
Shelby COUNTY )

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Edwyn L. Boyd, whose name is signed to the foregoing Certificate and Limited Partnership Agreement of Medplex Outpatient Surgery Center, Ltd., and who is known to me,

acknowledged before me on this day that, being informed of the contents of said Certificate and Limited Partnership Agreement, he executed the same voluntarily on the day the same bears date.

Given under my hand this 31<sup>st</sup> day of October, 1991.

[Signature]  
Notary Public  
My Commission Expires: June 13, 1993

STATE OF ALABAMA )  
Stelby COUNTY )

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Brice H. Brackin, whose name is signed to the foregoing Certificate and Limited Partnership Agreement of Medplex Outpatient Surgery Center, Ltd., and who is known to me, acknowledged before me on this day that, being informed of the contents of said Certificate and Limited Partnership Agreement, he executed the same voluntarily on the day the same bears date.

Given under my hand this 1<sup>st</sup> day of October, 1991.

[Signature]  
Notary Public  
My Commission Expires: June 13, 1993

STATE OF ALABAMA )  
Stelby COUNTY )

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that R. Don Bryan, whose name is signed to the foregoing Certificate and Limited Partnership Agreement of Medplex Outpatient Surgery Center, Ltd., and who is known to me, acknowledged before me on this day that, being informed of the contents of said Certificate and Limited Partnership Agreement, he executed the same voluntarily on the day the same bears date.

Given under my hand this 1<sup>st</sup> day of October, 1991.

[Signature]  
Notary Public  
My Commission Expires: June 13, 1993

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STATE OF ALABAMA )

Shelby COUNTY )

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that William P. Bryant, whose name is signed to the foregoing Certificate and Limited Partnership Agreement of Medplex Outpatient Surgery Center, Ltd., and who is known to me, acknowledged before me on this day that, being informed of the contents of said Certificate and Limited Partnership Agreement, he executed the same voluntarily on the day the same bears date.

Given under my hand this 31<sup>st</sup> day of October, 1991.

[Signature]  
Notary Public  
My Commission Expires: June 13, 1993

STATE OF ALABAMA )

Shelby COUNTY )

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that C. Steven Daughtry, whose name is signed to the foregoing Certificate and Limited Partnership Agreement of Medplex Outpatient Surgery Center, Ltd., and who is known to me, acknowledged before me on this day that, being informed of the contents of said Certificate and Limited Partnership Agreement, he executed the same voluntarily on the day the same bears date.

Given under my hand this 31<sup>st</sup> day of October, 1991.

[Signature]  
Notary Public  
My Commission Expires: June 13, 1993

STATE OF ALABAMA )

Shelby COUNTY )

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Larry G. Deep, whose name is signed to the foregoing Certificate and Limited Partnership Agreement of Medplex Outpatient Surgery Center, Ltd., and who is known to me, acknowledged before me on this day that, being informed of the

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contents of said Certificate and Limited Partnership Agreement, he executed the same voluntarily on the day the same bears date.

Given under my hand this 31<sup>st</sup> day of October, 1991.

D. J. Jones  
Notary Public  
My Commission Expires: June 13, 1993

STATE OF ALABAMA )

Stelby COUNTY )

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Dewey H. Jones, III, whose name is signed to the foregoing Certificate and Limited Partnership Agreement of Medplex Outpatient Surgery Center, Ltd., and who is known to me, acknowledged before me on this day that, being informed of the contents of said Certificate and Limited Partnership Agreement, he executed the same voluntarily on the day the same bears date.

Given under my hand this 31<sup>st</sup> day of October, 1991.

D. J. Jones  
Notary Public  
My Commission Expires: June 13, 1993

STATE OF ALABAMA )

Stelby COUNTY )

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Jack L. Schaeffer, whose name is signed to the foregoing Certificate and Limited Partnership Agreement of Medplex Outpatient Surgery Center, Ltd., and who is known to me, acknowledged before me on this day that, being informed of the contents of said Certificate and Limited Partnership Agreement, he executed the same voluntarily on the day the same bears date.

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Given under my hand this 31<sup>st</sup> day of October, 1991.

D. J. Jones  
Notary Public  
My Commission Expires: June 13, 1993

STATE OF ALABAMA )  
Selby COUNTY )

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Robert J. Sciacca, whose name is signed to the foregoing Certificate and Limited Partnership Agreement of Medplex Outpatient Surgery Center, Ltd., and who is known to me, acknowledged before me on this day that, being informed of the contents of said Certificate and Limited Partnership Agreement, he executed the same voluntarily on the day the same bears date.

Given under my hand this 31<sup>st</sup> day of October, 1991.

D. J. Sciacca  
Notary Public  
My Commission Expires: June 13, 1993

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EXHIBIT A

Limited Partners of  
MEDPLEX OUTPATIENT SURGERY CENTER, INC.

Edwyn L. Boyd  
Brice H. Brackin  
R. Don Bryan  
William P. Bryant  
C. Steven Daughtry  
Larry G. Deep  
Dewey H. Jones, III  
Jack L. Schaeffer  
Robert J. Sciacca

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1. Deed Tax	\$	
2. Mtg. Tax	\$	
3. Recording Fee	\$	82.50
4. Indexing Fee	\$	5.00
5. No Tax Fee	\$	
6. Certified Fee	\$	1.00
Total	\$	86.50

STATE OF ALA. SHERIFF  
I CERTIFY THIS  
INSTRUMENT WAS FILED

91 NOV -1 PM 12: 18

JUDGE OF PROBATE