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Division of Corporations

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**MERGER OR SHARE EXCHANGE**

**BONTA BAY SURGERY CENTER, LTD.**

|                       |          |
|-----------------------|----------|
| Certificate of Status | 0        |
| Certified Copy        | 0        |
| Page Count            | 14       |
| Estimated Charge      | \$105.00 |

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EFFECTIVE DATE

3-10-05

**ARTICLES OF MERGER  
OF  
NEW BONITA BAY SURGERY CENTER, LTD.  
INTO  
BONITA BAY SURGERY CENTER, LTD.**

The following Articles of Merger are being submitted in accordance with Section 620.203, Florida Statutes.

**FIRST:** The exact name, street address of principal office, and jurisdiction of the constituent limited partnerships which are to merge are as follows:

- | Name and Street Address:                                                               | Jurisdiction: |
|----------------------------------------------------------------------------------------|---------------|
| 1. New Bonita Bay Surgery Center, Ltd.<br>One Park Plaza<br>Nashville, Tennessee 37202 | Delaware      |
| Florida Document/Registration Number: N/A<br>FEI Number: 56-2499469                    |               |
| 2. Bonita Bay Surgery Center, Ltd.<br>One Park Plaza<br>Nashville, Tennessee 37202     | Florida       |
| Florida Document/Registration Number: A95000001265<br>FEI Number: 62-1614365           |               |

**SECOND:** The name of the surviving Florida limited partnership in the merger is Bonita Bay Surgery Center, Ltd.

**THIRD:** The attached Agreement and Plan of Merger meets the requirements of Section 620, Florida Statutes and was approved by Bonita Bay Surgery Center, Ltd. in accordance therewith.

**FOURTH:** The attached Agreement and Plan of Merger was approved by New Bonita Bay Surgery Center, Ltd. in accordance with the requirements of the Delaware Revised Uniform Limited Partnership Act.

**FIFTH:** Bonita Bay Surgery Center, Ltd. has obtained the written consent of each person who, as a result of the merger, will become or continue to be a general partner of the Bonita Bay Surgery Center, Ltd. pursuant to Section 620.202(2), Florida Statutes.

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**SIXTH:** The merger is permitted under the respective laws of the States of Florida and Delaware and is not prohibited by the agreement of limited partnership of either of the constituent limited partnerships.

**SEVENTH:** The merger shall become effective at 5:00 p.m., E.S.T., on March 10, 2005.

**EIGHTH:** These Articles of Merger have been executed by the undersigned in accordance with the applicable laws of the States of Florida and Delaware as of this 9<sup>th</sup> day of March, 2005.

**BONITA BAY SURGERY CENTER, LTD.**

BY: BONITA BAY SURGERY CENTER, INC.,  
its sole general partner

BY:   
NAME: Greg Beasley  
TITLE: President

**NEW BONITA BAY SURGERY CENTER, LTD.**

BY: BONITA BAY SURGERY CENTER, INC.,  
its sole general partner

BY:   
NAME: Greg Beasley  
TITLE: President

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*Attachment A***AGREEMENT AND PLAN OF MERGER**

THIS AGREEMENT AND PLAN OF MERGER is made and entered into as of February 7, 2005, by and among BONITA BAY SURGERY CENTER, LTD., a Florida limited partnership ("Partnership"), and NEW BONITA BAY SURGERY CENTER, LTD., a Delaware limited partnership ("New Partnership"). The Partnership and the New Partnership are herein sometimes collectively referred to as the "Constituent Partnerships."

**RECITALS:**

WHEREAS, BONITA BAY SURGERY CENTER, INC., a Florida corporation ("Company"), as the general partner of each of the Constituent Partnerships, has determined that it is in the best interests of the respective partners of each of such partnerships that the New Partnership be merged with and into the Partnership upon the terms and conditions set forth herein ("Merger").

WHEREAS, Section 620.201 of the Florida Revised Uniform Limited Partnership Act (1986), Section 620.101, *et seq.*, Florida Statutes ("Florida RULPA"), and Section 17-211 of the Delaware Revised Uniform Limited Partnership Act, 6 Del.C §17-101, *et seq.* ("Delaware RULPA"), authorize the merger of the New Partnership with and into the Partnership.

WHEREAS, the parties desire to set forth in writing the terms and conditions under which the Merger will be consummated.

**AGREEMENT:**

NOW, THEREFORE, in consideration of the premises and the mutual representations, warranties and agreements herein contained, and for the purpose of prescribing the terms and conditions of the Merger, the manner and basis of converting the partnership interests of the Partnership into cash, and such other provisions as are deemed necessary or desirable, the parties agree that the Merger shall be effected on the terms and subject to the conditions set forth below and in accordance with the applicable laws of the States of Florida and Delaware.

**1. THE MERGER.**

**1.1 The Merger.** At the Effective Time (as defined in Section 1.2), the New Partnership shall be merged with and into the Partnership in accordance with the provisions of this Merger Agreement and the Florida RULPA, and the separate existence of the New Partnership shall thereupon cease, and the Partnership, as the surviving partnership in the Merger ("Surviving Partnership"), shall continue its existence under the Florida RULPA. The name of the Surviving Partnership shall be "Bonita Bay Surgery Center, Ltd."

**1.2 Effective Time of the Merger.** On the Closing Date (as defined in Section 8), after satisfaction or, to the extent permitted hereunder, waiver of all conditions to the Merger, as the Partnership and the New Partnership shall determine, the Partnership, which shall be the surviving limited partnership, shall merge with the New Partnership and shall file Articles of Merger substantially in the form of Exhibit A hereto with the Secretary of State of the State of Florida and

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make all other filings or recordings required by Florida law in connection with the Merger, and the New Partnership shall file a Certificate of Merger substantially in the form of Exhibit B hereto with the Secretary of State of the State of Delaware and make all other filings or recordings required by Delaware law in connection with the Merger. The Merger shall become effective at 5:00 p.m., E.S.T. on March 10, 2005, or if later, on the date on which the Articles of Merger are actually filed with the Secretary of State of the State of Florida ("Effective Time").

**1.3 Surviving Partnership.** At the Effective Time, the Surviving Partnership shall thereafter, consistent with its Limited Partnership Agreement, possess all the rights, privileges, immunities, powers and franchises of each of the Constituent Partnerships; all the property, real, personal and mixed, including subscriptions to units, causes of action and every other asset of each of the Constituent Partnerships, shall vest in the Surviving Corporation without further act or deed; the Surviving Partnership shall be liable for all debts, liabilities and duties of each of the Constituent Partnerships; no liability or obligation due or to become due, claim or demand for any cause existing against either Constituent Partnership, or any other rights of creditors or liens upon property of either Constituent Partnership shall be released or impaired by the Merger; and no action or proceeding, whether civil, criminal or administrative, then pending by or against either Constituent Partnership, shall abate or be discontinued by the Merger, but may be enforced, prosecuted, settled or compromised as if the Merger had not occurred, or the Surviving Partnership may be substituted in such action or special proceeding in place of either Constituent Partnership.

## **2. CERTIFICATE OF LIMITED PARTNERSHIP AND PARTNERSHIP AGREEMENT.**

**2.1 Certificate of Limited Partnership.** The Certificate of Limited Partnership of the Partnership as in effect immediately prior to the Effective Time shall be the Certificate of Limited Partnership of the Surviving Partnership, until thereafter amended in accordance with its terms and as provided by the Florida RULPA.

**2.2 Partnership Agreement.** The Limited Partnership Agreement of the Partnership ("Partnership Agreement"), as in effect immediately prior to the Effective Time, shall be the Partnership Agreement of the Surviving Partnership.

**2.3 General Partner.** The name and business address of the general partner of the Surviving Partnership are as follows: Bonita Bay Surgery Center, Inc., a Florida corporation, One Park Place, Nashville, Tennessee 37203. The execution of this Merger Agreement by the Company constitutes its consent to the transactions contemplated hereby and its agreement to serve as the general partner of the Surviving Partnership in accordance with Section 620.202(2)(a) of the Florida RULPA.

## **3. CONVERSION OF PARTNERSHIP INTERESTS.**

**3.1 Conversion of Partnership Interests.** At the Effective Time, by virtue of the Merger and without any action on the part of the holders thereof, the manner and basis of converting the partnership interests of each of the Constituent Partnerships shall be as follows:

(a) Each general partner unit and limited partner unit in the New Partnership shall be converted into a limited partner unit in the Surviving Partnership;

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(b) Each limited partner unit in the Partnership ("LP Unit") (other than LP Units held by partners who shall have perfected their dissenter's rights pursuant to Section 620.205 of the Florida RULPA and shall not have withdrawn or otherwise lost such rights) shall be canceled and converted into the right to receive \$500.00 in cash, without interest, prorated for fractional LP Units ("Merger Consideration"); and

(c) Each general partner unit in the Partnership shall remain outstanding and owned by the Company.

**3.2 Dissenting Partners.** Each LP Unit with respect to which the holder thereof is entitled to dissenters' rights pursuant to Section 620.205 of the Florida RULPA shall be converted into the right to receive such consideration as may be determined to be due to such holder pursuant to Section 620.205 of the Florida RULPA unless the holder thereof shall have effectively withdrawn or forfeited (through failure to perfect or otherwise) such dissenters' rights, at which time such LP Unit shall automatically be converted into and represent a right to receive the consideration payable in respect thereof in accordance with Section 3.1(b), without interest thereon.

**3.3 Payment for Interests.**

(a) As soon as practicable after the Effective Time, the Surviving Partnership shall send a notice to each registered holder of LP Units advising such registered holder of the effectiveness of the Merger and accompanied by a check for the Merger Consideration payable in respect of such LP Units. No interest will be paid to partners with respect to the Merger Consideration.

(b) If the Merger Consideration (or any portion thereof) is to be delivered to a person other than the registered holder, it shall be a condition to the payment of such Merger Consideration that an appropriate assignment be provided to the Surviving Partnership with respect to such transfer, that such transfer otherwise be proper and that the person requesting such transfer pay to the Surviving Partnership any transfer or other taxes payable by reason of the foregoing or establish to the satisfaction of the Surviving Partnership that such taxes have been paid or are not required to be paid.

(c) After the Effective Time, there shall be no further transfers on the partnership records of the Surviving Partnership of LP Units which were issued and outstanding immediately prior to the Effective Time. At and after the Effective Time, all LP Units issued and outstanding immediately prior to the Effective Time (including without limitation fractional LP Units) shall be canceled and cease to exist, and each holder of an LP Unit shall cease to have any rights as a limited partner of the Partnership with respect to such LP Unit, except for the right of a holder of an LP Unit to receive the Merger Consideration, or the right of a holder to receive payment for such holder's LP Units pursuant to Section 620.205 of the Florida RULPA and Section 3.2 hereof if such holder has validly exercised and not withdrawn or forfeited such holder's right to receive payment for such holder's Units pursuant to Section 620.205 of the Florida RULPA.

**3.4 Capital Accounts.** The Capital Accounts (as defined in the Partnership Agreement) of the general and limited partners of the Surviving Partnership shall, in the aggregate, be the same as the

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Capital Accounts of the general and limited partners of the Partnership immediately prior to the Effective Time.

**4. REPRESENTATIONS AND WARRANTIES OF THE PARTNERSHIP.** The Partnership represents and warrants to the New Partnership as follows:

**4.1 Organization, Standing and Power.** The Partnership is a limited partnership duly organized, validly existing and in good standing under the laws of the State of Florida, has all requisite power and authority to own, lease and operate its properties and to carry on its business as now being conducted and is duly qualified and in good standing to do business in each jurisdiction in which the nature of its business or the ownership or leasing of its properties makes such qualification necessary.

**4.2 Authority and Validity.** The Partnership has all requisite power and authority to enter into this Merger Agreement and, subject to obtaining limited partner approval of the Merger as required by applicable law and the Partnership Agreement, to carry out the transactions contemplated hereby. The execution and delivery of this Merger Agreement by the Partnership and the consummation by the Partnership of the transactions contemplated hereby have been approved by the general partner of the Partnership and, subject to limited partner approval of this Merger Agreement, no other corporate action on the part of the Partnership is necessary to authorize the execution and delivery by the Partnership of this Merger Agreement and the consummation by the Partnership of the transactions contemplated hereby. This Merger Agreement has been duly executed and delivered by the Partnership and constitutes a legal, valid and binding agreement of the Partnership enforceable in accordance with the terms hereof.

**4.3 Conflicts and Required Filings.** Neither the execution and delivery of this Merger Agreement by the Partnership, nor the consummation by it of the transactions contemplated hereby, subject to obtaining limited partner approval of the Merger as required by applicable law and the Partnership Agreement, (i) conflicts with or will conflict with the Certificate of Limited Partnership or the Partnership Agreement of the Partnership, (ii) conflicts with or will conflict with, or results in or will result in a breach of, or constitutes or will constitute a default (or an event which, with the giving of notice or lapse of time or both, would constitute a default) under, or results in or will result in the creation of any lien upon any of the properties or assets of the Partnership under, any of the terms, conditions or provisions of any note, bond, mortgage, indenture, lease, license, franchise, agreement or other instrument or obligation to which the Partnership is bound or by which any of its properties or assets is subject, (iii) violates or will violate in any material respect any judgment, order, writ, injunction, stipulation, decree, law, ordinance, rule or regulation applicable to the Partnership or any of its properties or assets, or (iv) requires any consent, approval, authorization or order of, or any registration, declaration or filing with, any United States Federal, state or local governmental department, commission, board, bureau, agency or instrumentality, or any other person or entity, except for the filing of an appropriate certificate in accordance with the Florida RULPA; provided that, there shall be excluded from the foregoing clauses (ii), (iii) and (iv) conflicts, breaches, defaults, liens and violations which, and consents, approvals, authorizations, orders, registrations, declarations and filings the absence of which, in the aggregate, would not have a material adverse effect upon the Partnership.

**5. REPRESENTATIONS AND WARRANTIES OF THE NEW PARTNERSHIP.** The New Partnership, represents and warrants to the Partnership as follows:

**5.1 Organization, Standing and Power.** The New Partnership is a limited partnership, duly organized, validly existing and in good standing under the laws of the State of Delaware. The New Partnership has the requisite power and authority to own, lease and operate its properties and to carry on its business as now being conducted.

**5.2 Authority and Validity.** The New Partnership has all requisite power and authority to enter into this Merger Agreement and to carry out the transactions contemplated hereby. The execution and delivery of this Merger Agreement by the New Partnership and the consummation by the Partnership of the transactions contemplated hereby have been approved by the New Partnership's general partner and its limited partner and no other corporate action on the part of the New Partnership is necessary to authorize the execution and delivery by the New Partnership of this Merger Agreement and the consummation by the New Partnership of the transactions contemplated hereby. This Merger Agreement has been duly executed and delivered by the New Partnership and constitutes a legal, valid and binding agreement of the New Partnership enforceable in accordance with the terms hereof.

**5.3 Conflicts and Required Filings.** Neither the execution and delivery of this Merger Agreement by the New Partnership, nor the consummation by it of the transactions contemplated hereby, (i) conflicts with or will conflict with the Certificate of Limited Partnership or the Partnership Agreement of the New Partnership, (ii) conflicts with or will conflict with, or results in or will result in a breach of, or constitutes or will constitute a default (or an event which, with the giving of notice or lapse of time or both, would constitute a default) under, or results in or will result in the creation of any lien upon any of the properties or assets of the New Partnership under, any of the terms, conditions or provisions of any note, bond, mortgage, indenture, lease, license, franchise, agreement or other instrument or obligation to which the New Partnership is bound or by which any of its properties or assets is subject, (iii) violates or will violate in any material respect any judgment, order, writ, injunction, stipulation, decree, law, ordinance, rule or regulation applicable to the New Partnership or any of its properties or assets, or (iv) requires any consent, approval, authorization or order of, or any registration, declaration or filing with, any United States Federal, state or local governmental department, commission, board, bureau, agency or instrumentality, or any other person or entity, except for the filing of an appropriate certificate in accordance with the Delaware RULPA; provided that, there shall be excluded from the foregoing clauses (ii), (iii) and (iv) conflicts, breaches, defaults, liens and violations which, and consents, approvals, authorizations, orders, registrations, declarations and filings the absence of which, in the aggregate, would not have a material adverse effect upon the New Partnership.



## 6. CERTAIN AGREEMENTS.

**6.1 Conduct of the Business of the Partnership Prior to the Effective Time.** Prior to the Effective Time, except as expressly contemplated by this Merger Agreement or to the extent that New Partnership shall consent in writing:

(a) The Partnership shall carry on its business in, and only in, the usual and ordinary course and consistent with past practice;

(b) The Partnership shall not declare, pay or set aside for payment any distribution in respect of the LP Units and the Partnership shall not amend its Certificate of Limited Partnership or Partnership Agreement; and

(c) The Partnership shall not, directly or indirectly, issue, grant or sell or redeem, purchase or otherwise acquire any LP Units.

**6.2 Access to Properties and Records.** Prior to the Effective Time, the Partnership shall, upon reasonable request by New Partnership, provide New Partnership and its agents, representatives and advisors full access, during reasonable business hours, and under reasonable circumstances, to any and all premises, properties, contracts, commitments, books, records and other information (including tax returns filed and those in preparation) of the Partnership and shall cause its representatives to furnish to such persons any and all financial, technical and operating data and other information pertaining to the business of the Partnership as New Partnership shall from time to time reasonably request.

**6.3 Approval of Limited Partners and Proxy Statement.** Company, as general partner of the Partnership, shall cause a meeting of the Partnership's limited partners to be duly called and held as soon as reasonably practicable for the purpose of voting on the Merger. In connection with such meeting, Company shall prepare a proxy or information statement relating to the Merger, and cause a proxy or information statement to be mailed to the Partnership's limited partners (the proxy or information statement so mailed being hereinafter called the "Proxy Statement"), all as soon as reasonably practicable.

**6.4 Best Efforts.** Upon the terms and subject to the conditions hereof, each of the parties hereto agrees to use its best efforts to take, or cause to be taken, all action and to do, or cause to be done, all things necessary, proper or advisable to consummate and make effective the transactions contemplated by this Merger Agreement as soon as practical and shall use its best efforts to promptly obtain all waivers, permits, consents and approvals and to effect all filings and notices with or to third parties or governmental or public bodies or authorities which are, in the reasonable opinion of the New Partnership or the Partnership, necessary or desirable in connection with the transactions contemplated by this Merger Agreement. If at any time after the Effective Time, any further action is necessary or desirable to carry out the purposes of this Merger Agreement, the proper directors, partners or officers (as the case may be) of each of the parties hereto shall take such action.

## 7. CONDITIONS PRECEDENT TO THE MERGER.

**7.1 Conditions to Obligations of Each Party.** The obligation of each party to consummate the Merger shall be subject to the satisfaction, on or prior to the Closing Date, of each of the following conditions, each of which may be waived by all parties except as otherwise provided by law:

(a) The Merger shall have been approved by those limited partners of the Partnership who own a majority of the outstanding LP Units as required by applicable law; and

(b) No preliminary or permanent injunction or other order shall have been issued by a Federal or state court of competent jurisdiction in the United States or by a United States Federal, state or local governmental or regulatory authority and shall be in effect which shall prevent the consummation of the Merger, and no statute, rule, regulation or executive order shall have been promulgated or enacted by a United States Federal, state or local governmental or regulatory authority and shall be in effect which shall prevent the consummation of the Merger. No action or proceeding by any United States Federal, state or local governmental or regulatory authority shall have been commenced (and be pending) against the Partnership, the New Partnership, Company or any of their respective affiliates, associates, directors or officers seeking to prevent or delay the transactions contemplated hereby or challenging any of the terms or provisions of this Merger Agreement or seeking material damages in connection therewith.

**7.2 Conditions to Obligations of the New Partnership.** The obligation of the New Partnership to consummate the Merger shall be subject to the satisfaction, on or prior to the Closing Date, of each of the following conditions, each of which may be waived by the New Partnership as provided herein except as otherwise provided by law:

(a) The representations and warranties of the Partnership contained herein shall be true and correct in all material respects at the Closing Date with the same effect as though made at and as of such date, except insofar as any of such representations and warranties relate solely to a particular date or period, in which case they shall be true and correct in all material respects at the Closing Date with respect to such date or period;

(b) Each of the obligations of the Partnership to be performed by it on or before the Closing Date pursuant to the terms hereof shall have been duly performed in all material respects by the Closing; and

(c) All actions, proceedings, instruments, opinions and documents required to carry out this Merger Agreement shall be reasonably satisfactory to counsel for the New Partnership and the Partnership shall have delivered to the New Partnership such additional certificates and other documents as the New Partnership shall reasonably request to evidence the foregoing.

**7.3 Conditions to Obligations of the Partnership.** The obligation of the Partnership to consummate the Merger shall be subject to the satisfaction, on or prior to the Closing Date, of each of the following conditions, each of which may be waived by the Partnership as provided herein except as otherwise provided by law:

(a) The representations and warranties of the Company and the New Partnership contained herein shall be true and correct in all material respects at the Closing Date with the same effect as though made at and as of such date, except insofar as any of such representations and warranties relate solely to a particular date or period;

(b) Each of the obligations of the New Partnership to be performed by each of them on or before the Closing Date pursuant to the terms hereof shall have been duly performed in all material respects by the Closing; and

(c) All actions, proceedings, instruments, opinions and documents required to carry out this Merger Agreement shall be reasonably satisfactory to the Partnership and the New Partnership shall have delivered to the Partnership such additional certificates and other documents as the Partnership shall reasonably request to evidence the foregoing.

8. **CLOSING.** Subject to the provisions of Section 9, promptly after satisfaction or waiver of the conditions set forth in Section 7, the parties will conduct a closing of the Merger ("Closing") at the offices of Company, or such other place as the parties may mutually agree. Following the successful completion of the Closing (or concurrently therewith) the parties will take such action as is required by law to make the Merger effective, including the filing of a Certificate of Merger with the Delaware Secretary of State in accordance with the requirements of the Delaware RULPA, and the filing of Articles of Merger with the Florida Secretary of State in accordance with the requirements of the Florida RULPA. As used in this Merger Agreement, the term "Closing Date" shall be the date upon which the Closing shall occur.

#### 9. **TERMINATION OF MERGER AGREEMENT AND ABANDONMENT OF THE MERGER.**

9.1 **Termination.** This Merger Agreement may be terminated (subject to the provisions of Section 9.2) and the Merger abandoned (notwithstanding approval of the Merger by the Partnership's limited partners) prior to the Effective Time:

(a) by mutual written consent of the Partnership and the New Partnership at any time; or

(b) by the Partnership or the New Partnership at any time after March 10, 2005, in the event that the Merger has not been consummated by such date.

9.2 **Effect of Termination.** In the event of the termination of this Merger Agreement and the abandonment of the Merger by either the Partnership or the New Partnership, or both, pursuant to Section 9.1, written notice thereof shall forthwith be given to the other party specifying the provision thereof pursuant to which such termination is made and this Merger Agreement shall become void and have no effect, and there shall be no liability hereunder on the part of any party or any of their respective directors, officers, partners, employees, agents, consultants, stockholders or principals, except, in each case, for a breach of this Merger Agreement. Notwithstanding the foregoing, Section 10.1 shall survive any termination of this Merger Agreement.

## 10. MISCELLANEOUS.

**10.1 Fees and Expenses.** All expenses incurred in connection with this Merger Agreement and the consummation of the transactions contemplated hereby shall be paid by the party incurring such expenses.

**10.2 Parties in Interest.** This Merger Agreement shall be binding upon and inure solely to the benefit of each party hereto, and nothing in this Merger Agreement, express or implied, is intended to confer upon any other person any rights or remedies of any nature whatsoever under or by reason of this Merger Agreement.

**10.3 Nonsurvival of Representations, Warranties and Agreements.** No representations, warranties or agreements in this Merger Agreement or in any instrument delivered pursuant hereto shall survive the Effective Time.

**10.4 Headings.** The descriptive headings of the Sections of this Merger Agreement are inserted for convenience only, do not constitute a part of this Merger Agreement and shall not affect in any way the meaning or interpretation of this Merger Agreement.

**10.5 Notices.** All notices or other communications which are required or permitted hereunder to be delivered to any party hereto shall be in writing and shall be effective upon receipt at the address of such party set forth below (or at such other address for such party as such party shall designate by prior written notice to the other parties hereto):

**(a) If to the Partnership:**

Bonita Bay Surgery Center, Ltd.  
26800 Tamiami Trail South, Suite 100  
Bonita Springs, Florida 34134

With a copy to:  
Bonita Bay Surgery Center, Inc.  
One Park Plaza  
Nashville, Tennessee 37203

**(b) If to the New Partnership:**

Bonita Bay Surgery Center, Inc.  
One Park Plaza  
Nashville, Tennessee 37203

**10.6 Assignment.** This Merger Agreement and all of the provisions hereof shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns, but neither this Merger Agreement nor any of the rights, interests or obligations hereunder shall be assigned by any of the parties hereto without the prior written consent of the other parties.

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**10.7 Complete Merger Agreement.** This Merger Agreement, including other writings referred to herein or delivered pursuant hereto, contains the entire understanding of the parties with respect to the subject matter contained herein and supersedes all prior arrangements or understanding with respect thereto.

**10.8 Modifications, Amendments and Waivers.** Subject to the provisions contained in Section 7, at any time prior to the Effective Time (notwithstanding any limited partner approval), if authorized by their respective general partners and to the extent permitted by law, (i) the parties hereto may, by written agreement, modify, amend or supplement any term or provision of this Merger Agreement, and (ii) any term or provision of this Merger Agreement may be waived by the party which is, or whose partners are, entitled to the benefits thereof. Any written instrument or agreement referred to in this Section 10.8 shall be validly and sufficiently authorized for the purposes of this Merger Agreement if signed on behalf of the Partnership or the New Partnership by a person authorized to sign this Merger Agreement.

**10.9 Counterparts.** This Merger Agreement may be executed in two or more counterparts, all of which shall be considered one and the same agreement and each of which shall be deemed an original.

**10.10 Governing Law.** This Merger Agreement shall be governed by and construed under the internal laws of the State of Florida (without reference to the conflicts of law provisions thereof).

**10.11 Severability.** If any term, provision, covenant or restriction of this Merger Agreement is held by a court of competent jurisdiction or other authority to be invalid, void, unenforceable or against its regulatory policy, the remainder of the terms, provisions, covenants and restrictions of this Merger Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

SIGNATURE PAGE FOLLOWS

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IN WITNESS WHEREOF, the parties hereto have caused this Merger Agreement to be executed and delivered as of the day and year first above written.

**THE PARTNERSHIP:**

**BONITA BAY SURGERY CENTER, LTD.**

By: Bonita Bay Surgery Center, Inc., its  
General Partner

By: [Signature]  
Name: Greg Beasley  
Title: President

**THE NEW PARTNERSHIP:**

**NEW BONITA BAY SURGERY CENTER, LTD.**

By: Bonita Bay Surgery Center, Inc., its  
General Partner

By: [Signature]  
Name: Greg Beasley  
Title: President

The undersigned has executed this Merger Agreement to evidence its agreement to continue to serve as the General Partner of Bonita Bay Surgery Center, Ltd., the Surviving Partnership in the Merger.

**BONITA BAY SURGERY CENTER, INC.**

By: [Signature]  
Name: Greg Beasley  
Title: President

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