

STATE OF ALABAMA)
SHELBY COUNTY)

GENERAL PARTNERSHIP AGREEMENT

OF

AMERICAN ENTERAL SUPPLY

AN ALABAMA GENERAL PARTNERSHIP

THIS AGREEMENT is made and entered into on this the 28TH day of February, 1995, by and between RICKY H. EARLY, JR., ROBERT C. HIGGINS, and WM. DAVID POWELL (the partners shall hereinafter sometimes be referred to as the "Partners").

W I T N E S S E T H:

WHEREAS, the Partners desire to enter into a written partnership agreement; and

WHEREAS, the Partners desire to distribute and rent enteral nutrition and supplies as the Partners may from time to time so determine;

NOW, THEREFORE, in consideration of the above premises and the mutual covenants and undertakings of the parties, the parties do hereby agree and bind themselves as follows:

ARTICLE I

Formation of General Partnership

The Partners hereto do hereby form a general partnership and constitute themselves as General Partners of the partnership for the purpose of distribution and rental of enteral nutrition and supplies in the name of the partnership at such time and in such places as the Partners feel is in the best interest of the partnership.

ARTICLE II

Partners

The names and addresses of the Partners are as follows:

NAME

ADDRESS

Ricky H. Early, Jr.

3417 B Primm Lane
Hoover, Alabama 35216

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Robert C. Higgins

262 Black Creek Camp Road
Bessemer, Alabama 35023

Wm. David Powell

✓ 510 Navajo Circle
Alabaster, Alabama 35007

ARTICLE III

Name

The name of this general partnership shall be American Enteral Supply.

ARTICLE IV

Place of Business

The principal office of the partnership will be located at 510 Navajo Circle, Alabaster, Alabama. The Partners may from time to time change the office address of the partnership.

ARTICLE V

Duration of Partnership

The partnership shall commence on the date first above written and shall continue until a majority ownership desires terminate and dissolve the partnership or until all the real estate, and other property owned by the partnership is conveyed and proceeds distributed to the Partners. In the event the Partners terminate and dissolve the partnership, the Partners shall proceed promptly thereafter to liquidate the partnership business, and the assets of the partnership shall be used and distributed as provided hereinafter.

ARTICLE VI

Capital

The Partners agree that their interest in this partnership shall be as follows:

| <u>NAME</u> | <u>PERCENTAGE</u> |
|---------------------|-------------------|
| Ricky H. Early, Jr. | 33 1/3 % |
| Robert C. Higgins | 33 1/3 % |
| Wm. David Powell | 33 1/3 % |

The capital of the partnership shall consist of such assets as shall be purchased by the partnership from funds contributed or borrowed by the partnership. The initial capital accounts of the

respective Partners shall be equivalent to the percentages in such capital of the partnership as set forth in this paragraph hereinabove. In the event it is necessary for the Partners to contribute additional capital to the partnership for the partnership business, the Partners shall contribute the necessary capital in accordance with the percentages set out in this paragraph hereinabove. If capital is borrowed, all of the Partners, if required by the lending agency, will sign jointly, but the parties acknowledge that, as among themselves, their liabilities shall be in accordance with the percentages as set out in the paragraph hereinabove.

Each Partner agrees to endorse or otherwise guarantee, jointly and severally, if required, and to obtain the endorsement or guaranty, if required, of his spouse, to any lending agencies and their representatives for indebtedness of the partnership incurred in connection with the business of the partnership. It is understood, however, as above stated, that in the event the Partners sign such obligations so as to be jointly and severally liable, as among themselves, their liability shall be in accordance with the percentages set out hereinabove.

In the event any Partner shall fail to make the advances deemed necessary to be made by the majority ownership of the Partners to the general partnership, or in the event any such Partner shall fail to execute endorsements or guaranties heretofore mentioned, then the other Partners, at their election, may:

(a) Deduct from the amount of capital of the partnership owned by the defaulting Partner, or any drawing account or any other monies due to defaulting Partner, all or any portion of the amount of such required advance; and/or

(b) Treat the amount of such required advance from the defaulting Partner as a sum of money owed the partnership by the defaulting party, due immediately, together with interest at the Commercial Loan base rate as established from time to time by AmSouth Bank, N.A. and may file suit to collect the same, in which case no offsets owed that defaulting Partner shall be permitted to reduce the amount of money otherwise owing to the partnership by the defaulting Partner; and/or

(c) Sell and assign enough of such defaulting Partner's interest, absolutely, to the partnership or the other Partners, or others, so as to supply the funds necessary to pay such required advance; the value of such Partner's interest will be determined as provided in ARTICLE XV of this Agreement.

ARTICLE VII

Profits and Losses

The net profit of the partnership shall be divided among the Partners and the net losses of the partnership shall be borne by the Partners in their respective percentages set out in ARTICLE VI. A separate income account shall be maintained for each Partner. Partnership profits and losses shall be charged or credited to the separate income account of each Partner. If a Partner has no credit balance in his income account, losses shall be charged to his capital account.

From time to time the partnership may distribute to the Partners such sums as the Partners consider advisable. Any such distribution shall be made in proportion to the respective Partner's interests in the profits and losses of the partnership as of the time of distribution, except that if a Partner is indebted to the partnership, the amount of such indebtedness may be withheld from the amount which would otherwise be distributed.

ARTICLE VIII

Management and Control

Whenever any determination is required to be made hereunder concerning the conduct of the general partnership business, including the sale or transfer of all or part of the property owned by the general partnership, the management of the properties of the general partnership, or any type business to be carried on by the general partnership, such determination shall be made by the majority interest of the Partners, provided, however, it is understood that Rickey H. Early, Jr. shall be the Managing Partner and shall manage the partnership business and shall devote such time to the partnership as shall be reasonably required for its welfare and success. The Partners agree that the Managing Partner by necessity will have to make day-to-day decisions concerning the business of the partnership, and he is granted authority to do so. Any decision involving the expenditure of more than \$500.00 shall require advance approval of a majority of the partnership interests.

ARTICLE IX

Accounting Provisions

1. **Fiscal Year:** The fiscal year of the partnership shall be the calendar year, or such other year as the Partners may from time to time determine and as may be approved by the Internal Revenue Service.

2. Books and Records: At all times during the continuation of this partnership, the Partners shall cause to be maintained full and accurate books of accounts, in which shall be entered the transactions of the partnership. Such books shall be maintained in the principal office of the partnership, or at such other office as shall be designated for such purpose by the Partners, and all Partners shall have the right to inspect and examine such books at reasonable times. The books shall be closed and balanced at the end of each partnership accounting year.

3. Annual Operating Statements: Each Partner shall receive an annual statement of gross receipts, operating expenses and net profits as prepared by the Managing Partner or the partnership's accountants, and these statements will be delivered to each Partner within a reasonable time after the close of the partnership accounting year.

ARTICLE X

Admission of Substitute Partners

1. So long as this Agreement shall remain in effect, no Partner shall sell, assign, transfer, mortgage, alienate, hypothecate, or in any way encumber or dispose of all or any part of the interest in the partnership which he now owns or which he may hereafter acquire, except as hereinafter provided.

2. In the event that any Partner desires to sell, assign, transfer, or dispose of the interest which he owns or may hereafter acquire in the partnership, the partnership shall purchase, and the Partner shall sell all of the interest in the partnership, at the price, and upon the terms as set out in ARTICLE XV.

3. Notwithstanding the foregoing, a Partner may assign his interest to members of his immediate family or to a trust established for the benefit of the members of his immediate family. A Partner's immediate family includes his spouse, children and grandchildren.

ARTICLE XI

Ownership, Conveyances, and Contracts Concerning Partnership Property

As a matter of convenience to the partnership, it is hereby mutually agreed and understood that all property or assets purchased by the partnership shall be purchased in the name of the partnership. Partnership property shall be sold by the partnership by deed or by bill of sale executed by all of the Partners.

Contracts, promissory notes, and other instruments of any kind or character to further the business of the partnership may be executed solely by the Managing Partner.

ARTICLE XII

Additional Partners

The partnership shall not be expanded to include additional Partners unless all of the existing Partners consent to the same. The Partners may, however, if they are in agreement, take in new or additional Partners and the percentages of ownership granted to such new or additional Partners shall be taken from the existing Partners hereto in such amounts and in such fashion as may be agreed upon by the parties. A new or additional Partner shall purchase his interest from the partnership at fair market value. Such purchase price shall be payable to the partnership in twelve (12) equal monthly installments with interest at the rate of ten percent (10%) per annum, or on such other terms as the existing Partners and the new or additional Partner may agree upon.

ARTICLE XIII

Death of a Partner

The death of a Partner shall not cause a termination of the partnership; and in such event, the partnership shall continue to exist for the purposes set forth in this Agreement. Upon the death of any Partner, the partnership shall purchase the entire interest in the partnership owned by the deceased Partner on the date of his death, and the estate of the deceased Partner shall sell all of the interest in the partnership owned by it, such purchase to be made by the partnership at the price and on the terms and conditions as set out in ARTICLE XV, except that the applicable date shall be the date of death.

ARTICLE XIV

Disability of a Partner

In the event of the total and permanent disability, as hereinafter defined, of any Partner, for a continuous period of twelve (12) months or more, the partnership shall purchase, and the disabled Partner shall sell, all of the interest in the partnership owned by him, such purchase to be made by the partnership at the price and on the terms and conditions as set out in ARTICLE XV, except that the applicable date shall be the first day of the thirteenth (13th) month following disability. The term "permanent and total disability" shall mean the inability, due to physical or mental illness, to substantially perform the duties which the disabled Partner customarily performed for the partnership immediately prior to such disability.

ARTICLE XV

Retirement of Partner

1. Any Partner shall have the right to retire and withdraw from the partnership at any time. If any Partner shall thus elect to withdraw from the partnership, he shall notify the partnership of his election. The partnership shall purchase the entire interest of the withdrawing Partner in the partnership as herein provided.

2. The purchase price of such partnership interest shall be:

(a) The price agreed upon by the parties.

(b) In the event the parties cannot reach an agreement within thirty (30) calendar days of receipt of notice of withdrawal by the partnership, the price shall be determined by an appraisal. In the event the parties cannot agree on an appraiser, the remaining Partners shall name an appraiser and the withdrawing Partner shall name an appraiser, and the appraisers so named shall select the appraiser to make the appraisal.

3. The purchase price of such interest shall be paid in twelve (12) equal monthly installments with interest at a rate of ten percent (10%) per annum, the first payment to begin sixty (60) days after the applicable date, or on such other terms as the Partners may agree upon.

ARTICLE XVI

Controversy

Any controversy or claim arising out of or relating to this Agreement, or to the interpretation, breach, or enforcement thereof, shall be determined by a vote of the majority of partnership interests.

ARTICLE XVII

Termination of Partnership

At the termination of this partnership by the expiration of its terms, and whenever liquidation of the partnership business is otherwise provided for hereunder, the Partners (or the surviving Partners) shall proceed with reasonable promptness to liquidate the business of the partnership. The profits and losses of the business during the period of the liquidation shall be divided among or be borne by the Partners (or the then remaining or surviving Partners, as the case may be), including the estate of a deceased Partner, in the respective percentages in which they share in such profits and losses prior to the event which results in such

liquidation. After the payment of the partnership debts, expenses of liquidation and any loans by Partners to the partnership, the proceeds of the liquidation, as realized, shall be distributed first, in discharge of the undrawn profits of the Partners and of the estate of any deceased Partners, and then proportionately in discharge of the respective capital amounts. Any excess shall be distributed among the surviving Partners and the estate of any deceased Partner in the respective percentages in which they share partnership profits immediately prior to the event which results in such liquidation. In connection with such liquidation, the surviving Partners shall have the sole discretion as to whether to sell any partnership asset, and if so, whether at public or private sale and for what amount and on what terms, or whether (if sale thereof is not required to enable payment of debts, expenses of liquidation, loans by Partners, and undrawn profits of the Partners) to distribute and transfer the same to and among the remaining Partners and the estate of any deceased Partner, in kind, by transferring interest therein in the respective percentages in which profits and losses are shared immediately prior to the event which results in such liquidation. In the event that the surviving Partners determine to sell any property, they shall not be required to sell the same promptly, but they shall have full right and discretion to determine the time when, and in the manner in which, such sale or sales shall be had, having due regard to general financial economic conditions.

ARTICLE XVIII

Miscellaneous Provisions

1. The Partners may employ such persons as they deem advisable to perform services for the partnership and compensate them in such amounts and in such manner as they may determine. The Managing Partner shall have the authority to employ such persons and determine the reasonable compensation to be paid such persons concerning the day-to-day affairs of the partnership; the purchasing, selling and leasing business of the partnership; and the legal and accounting affairs of the partnership.

2. The Partners are authorized, in the name of the partnership, to open and maintain a bank account or accounts in any bank from time to time so designated by the Partners in which shall be deposited all of the cash contributions of the partnership and all other partnership income. Any funds in the partnership bank account or accounts may be withdrawn upon the signature of any two of the Partners.

3. Whenever provisions are made in this Agreement for the giving, service, or delivery of any notice, such notice shall be deemed to have been duly given, served, and delivered, if mailed by United States registered or certified mail, addressed to the party entitled to receive the same at his address; provided, however,

that each party hereto by United States mail, registered or certified, may give written notice to change such address. Except where otherwise specified in this Agreement, any notice, statement, or other instrument shall be deemed to have been given, served and delivered on the date on which such notice was mailed as herein provided.

4. This Agreement contains the entire agreement among the parties, and supersedes any prior understanding (whether written or oral) respecting the subject matter of this partnership. There are no representations, agreements, arrangements, understandings (oral or written) between or among the parties hereto relating to the subject matter of this partnership which are not fully expressed herein.

5. In the event any portion of this Agreement should be held to be invalid or unenforceable at law, the same shall not affect in any respect whatsoever the validity of the remainder of this Agreement.

6. The covenants and agreements herein contained shall inure to the benefit of and be binding upon the parties hereto, their successors, assigns, heirs, administrators, guardians, or other personal representatives.

7. In the event Rickey H. Early, Jr. is unable or unwilling to continue as Managing Partner, or a majority of the partnership interests votes to replace him as Managing Partner, the Partners shall mutually agree upon one of them to assume the role of the Managing Partner of the partnership.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals on the day and year first above written.

(SEAL)

WITNESS

Laura King
NOTARY

MY COMMISSION EXPIRES DEC. 30, 1998

Ricky H. Early, Jr.
RICKY H. EARLY, JR.
(33 1/3 % Interest)

WITNESS:

Kym Melton

Robert C. Higgins
ROBERT C. HIGGINS
(33 1/3 % Interest)

WITNESS:

R. L. Johnson

Wm. David Powell
WM. DAVID POWELL
(33 1/3 % Interest)

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