

P04000152904

(Requestor's Name)

(Address)

(Address)

(City/State/Zip/Phone #)

☐ PICK-UP

☐ WAIT

☐ MAIL

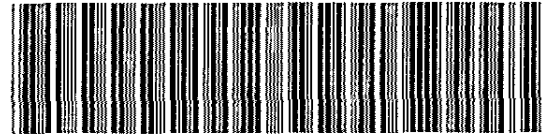
(Business Entity Name)

(Document Number)

Certified Copies \_\_\_\_\_ Certificates of Status \_\_\_\_\_

Special Instructions to Filing Officer:

Office Use Only



600042237016

*Merger*

11/24/04--01046--019 \*\*70.00

EFFECTIVE DATE  
*11/11/04*

FILED  
04 NOV 24 PM 3:27  
SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

RECEIVED  
04 NOV 24 PM 12:26  
DEPARTMENT OF STATE  
TALLAHASSEE, FLORIDA

*DR*  
*11/24/04*



CORPORATION SERVICE COMPANY

ACCOUNT NO. : 072100000032

REFERENCE : 993456 5157781

AUTHORIZATION :

COST LIMIT : \$ PPD

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ORDER DATE : November 24, 2004

ORDER TIME : 10:33 AM

ORDER NO. : 993456-005

CUSTOMER NO: 5157781

CUSTOMER: Patrick J. McIntyre, Esq.  
Brouse & McDowell  
1001 Lakeside Avenue  
1600 North Point Tower  
Cleveland, OH 44114  
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ARTICLES OF MERGER

CARDIO MEDICAL, INC.

INTO

CARDIO MEDICAL, INC.

PLEASE RETURN THE FOLLOWING AS PROOF OF FILING:

XX PLAIN STAMPED COPY

CONTACT PERSON: Justin Cheshire

EXAMINER'S INITIALS: \_\_\_\_\_

**ARTICLES OF MERGER**  
(Profit Corporations)

EFFECTIVE DATE  
12/1/04

FILED  
04 NOV 24 PM 3:4  
SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

The following articles of merger are submitted in accordance with the Florida Business Corporation Act, pursuant to section 607.1105, F.S.

**First:** The name and jurisdiction of the surviving corporation:

<u>Name</u>	<u>Jurisdiction</u>	<u>Document Number</u> (If known/ applicable)
<u>Cardio Medical, Inc.</u>	<u>Florida</u>	<u>P04000152904</u>

**Second:** The name and jurisdiction of each merging corporation:

<u>Name</u>	<u>Jurisdiction</u>	<u>Document Number</u> (If known/ applicable)
<u>Cardio Medical, Inc.</u>	<u>Ohio</u>	

**Third:** The Plan of Merger is attached.

**Fourth:** The merger shall become effective on the date the Articles of Merger are filed with the Florida Department of State.

**OR** 12 / 01 / 04 (Enter a specific date. NOTE: An effective date cannot be prior to the date of filing or more than 90 days in the future.)

**Fifth:** Adoption of Merger by surviving corporation - (COMPLETE ONLY ONE STATEMENT)

The Plan of Merger was adopted by the shareholders of the surviving corporation on 11-23-04.

The Plan of Merger was adopted by the board of directors of the surviving corporation on \_\_\_\_\_ and shareholder approval was not required.

**Sixth:** Adoption of Merger by merging corporation(s) (COMPLETE ONLY ONE STATEMENT)

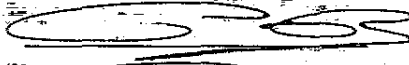
The Plan of Merger was adopted by the shareholders of the merging corporation(s) on 11-23-04.


The Plan of Merger was adopted by the board of directors of the merging corporation(s) on \_\_\_\_\_ and shareholder approval was not required.

(Attach additional sheets if necessary)

**Seventh: SIGNATURES FOR EACH CORPORATION**

<u>Name of Corporation</u>	<u>Signature</u>	<u>Typed or Printed Name of Individual &amp; Title</u>
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<u>Cardio Medical, Inc.</u>		<u>Peter T. Paras, President</u>
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<u>Cardio Medical, Inc.</u>		<u>Peter T. Paras, President</u>
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## **AGREEMENT AND PLAN OF MERGER**

This Agreement and Plan of Merger (the "Agreement") is made and entered into this 23rd day of November, 2004, by and between Cardio Medical, Inc., a Florida corporation (the "Surviving Corporation"), and Cardio Medical, Inc., an Ohio corporation (the "Merging Corporation").

### **RECITALS:**

A. The Boards of Directors of the Merging Corporation and the Surviving Corporation have determined that the Merging Corporation should be merged with and into the Surviving Corporation under and pursuant to the Florida Business Corporation Act and the Ohio General Corporation Law.

B. The Boards of Directors of the Surviving Corporation and the Merging Corporation and the shareholders of the Merging Corporation have approved and adopted this Agreement providing for the merger of the Merging Corporation with and into the Surviving Corporation (the "Merger"), under and pursuant to the Florida Business Corporation Act and the Ohio General Corporation Law, and pursuant to the terms and conditions of this Agreement hereafter set forth.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements herein contained, the parties hereto, intending to be legally bound, agree as follows:

#### **1. The Merger.**

At the Effective Date (as defined in Section 5) and subject to and upon the terms and conditions of this Agreement and the laws of the States of Florida and Ohio, the Merging Corporation shall be merged with and into the Surviving Corporation, the separate corporate existence of the Merging Corporation shall cease, and the Surviving Corporation shall continue as the surviving corporation (hereinafter referred to as the "Merger").

#### **2. Effect of Merger.**

a. At the Effective Date, the Merging Corporation shall be merged into the Surviving Corporation in accordance with the provisions of this Agreement, and the separate existence of the Merging Corporation shall cease except to the extent that it is deemed to continue by the laws of the States of Florida and Ohio. All of the assets of the Merging Corporation shall become the assets of the Surviving Corporation and all of the liabilities of the Merging Corporation shall become liabilities of the Surviving Corporation.

b. The Surviving Corporation shall continue to be governed by the laws of the State of Florida.

c. The Surviving Corporation, at the Effective Date of the Merger, shall possess all of the rights, privileges, powers, immunities and franchises of both a public and private nature, and shall be subject to all of the restrictions, disabilities, and duties of the Merging Corporation

and the Surviving Corporation, as so merged. All of the rights, privileges, immunities, powers and franchises of the Merging Corporation and the Surviving Corporation, all property, real, personal and mixed and all debts due to either the Merging Corporation or the Surviving Corporation on whatever account, shall remain or be vested in the Surviving Corporation as the surviving corporation at the Effective Date. All and every other property, right, privilege, immunity, power and franchise, and all and every other interest of or belonging to or due to either the Merging Corporation or the Surviving Corporation shall remain and be, after the Effective Date, the property of the Surviving Corporation as they were the property of the respective Merging Corporation and Surviving Corporation prior to the Effective Date, and they shall be taken and transferred to and vested in the Surviving Corporation without further act or deed. The title to any real estate or interest therein vested by deed or otherwise in either the Merging Corporation or the Surviving Corporation shall not revert or be in any way impaired by reason of the Merger; provided, however, that all rights of creditors and all liens upon any property of either the Merging Corporation or the Surviving Corporation shall continue and be preserved unimpaired, and all debts, liabilities, obligations, penalties and duties, including liability to dissenting shareholders, and claims or actions or proceedings, civil or criminal, pending by or against either of such corporations shall thenceforth attach to the Surviving Corporation, and may be enforced and prosecuted against it to the same extent as if said debts, liabilities and duties had been incurred or contracted by it, and the Surviving Corporation may be substituted for the Merging Corporation, which shall be the disappearing corporation in the Merger. Any judgments rendered against the Merging Corporation or the Surviving Corporation may be enforced against the Surviving Corporation as the surviving corporation.

### **3. Articles of Incorporation; Bylaws; Directors and Officers.**

a. At the Effective Date, the Articles of Incorporation of the Surviving Corporation in effect immediately prior to the Merger shall remain the Articles of Incorporation of the Surviving Corporation without change or amendment.

b. At the Effective Date, the Bylaws of the Surviving Corporation in effect immediately prior to the Merger shall remain the Bylaws of the Surviving Corporation without change or amendment.

c. At the Effective Date, the directors of the Surviving Corporation in office immediately prior to the Effective Date shall at the Effective Date remain as the directors of the surviving corporation.

d. The officers of the Surviving Corporation in office immediately prior to the Effective Date shall at the Effective Date remain as the officers of the surviving corporation.

e. At the Effective Date, the directors of the Merging Corporation shall be deemed to have resigned and their resignations accepted, and each of the officers of the Merging Corporation shall be deemed to have been terminated from his office and the authority thereof, saving and excepting the continuing authority requisite to fill the undertakings and agreements set forth herein.

**4. Terms of Merger.**

The treatment of the shareholders of the Merging Corporation and the Surviving Corporation as a result of the Merger shall be as follows as of the Effective Date:

The shares of common stock of the Merging Corporation outstanding immediately prior to the Effective Date and all rights in respect thereof shall, without any action on the part of the holders thereof, cease to exist or be outstanding and shall be canceled and retired. The shareholder of the Surviving Corporation shall retain his shares of stock in the Surviving Corporation.

**5. Effective Date.**

If this Agreement and Plan of Merger shall have been approved and adopted by written consent or at meetings to be called and held in accordance with the applicable provisions of the General Corporation Law of Ohio, the Florida Business Corporation Act, and the respective Articles of Incorporation and Bylaws/Code of Regulations of the Merging Corporation and the Surviving Corporation, and if the Merger is not thereafter terminated as permitted by the provisions hereof, then the proper officers of the Surviving Corporation and the Merging Corporation shall sign and verify a Certificate of Merger and shall deliver said Certificate for filing with the Secretary of State of Ohio, and the proper officers of the Merging Corporation and the Surviving Corporation shall sign and verify Articles of Merger and shall deliver said Articles for filing with the Secretary of State of Florida. The Merger shall become effective upon filing of the Articles of Merger and Certificate of Merger (the "Effective Date").

**6. Expenses.**

All costs and expenses incurred in connection with this Agreement and the transactions contemplated hereby, with the exception of any payment of fair value of shares subject to dissenters' rights, shall be paid by the Surviving Corporation.

**7. Termination.**

This Agreement may be terminated and the Merger abandoned at any time prior to the filing of the Certificate of Merger and the Articles of Merger by mutual consent of the Boards of Directors of the Merging Corporation and the Surviving Corporation. Upon such termination, this Agreement shall forthwith become wholly void and of no effect.

**8. Amendment and Waiver.**

At any time prior to the Effective Date, the respective Boards of Directors of the Merging Corporation and the Surviving Corporation, or the respective duly elected and authorized officers of each corporation, may amend or waive any of the terms or conditions of this Agreement, but any such amendment or waiver must be in writing and signed by both parties.

**9. Counterparts.**

This Agreement may be executed in any number of counterparts all of which shall constitute one and the same instrument, and any party hereto may execute this Agreement by signing one or more counterparts.

**10. Headings.**

The headings and captions contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

**11. Severability.**

If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any rule of law, or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner adverse to any party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in acceptable manner to the end that transactions contemplated hereby are fulfilled to the extent possible.

**12. Entire Agreement.**

This Agreement and the agreements and other documents delivered pursuant hereto set forth the entire understanding between the parties concerning the subject matter of this Agreement and incorporate or supersede all prior negotiations and understandings. There are no covenants, promises, agreements, conditions or understandings, either oral or written, between the parties relating to the subject matter of this Agreement other than those set forth herein. No representation or warranty has been made by or on behalf of any party to this Agreement (or any officer, director, employee or agent thereof) to induce any other party to enter into this Agreement or to abide by or consummate any transactions contemplated by any terms of this Agreement, except representations and warranties, expressly set forth herein.

**13. Successors.**

Each and all of the provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto, and except as otherwise specifically provided in this Agreement, their respective successors and assigns; provided, however, that neither this Agreement, nor any rights herein granted may be assigned, transferred or encumbered by any party.

**14. Third Parties.**

Nothing herein expressed or implied is intended or shall be construed to confer upon or give any person, other than the parties hereto and their successors or assigns, any rights or remedies under or by reason of this Agreement.



**15. Joint Preparation.**

This Agreement is to be deemed to have been prepared jointly by the parties hereto, and any uncertainty or ambiguity existing herein, if any, shall not be interpreted against any party, but shall be interpreted according to the application of the rules of interpretation for arm's length agreements.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized officers as of the day and year above first written.

**"SURVIVING CORPORATION"**

**Cardio Medical, Inc.,** a Florida corporation

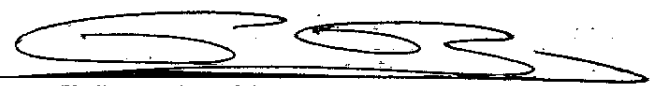
By: \_\_\_\_\_

  
Peter T. Paras, President

**"MERGING CORPORATION"**

**Cardio Medical, Inc.,** an Ohio corporation

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

  
Peter T. Paras, President

**ACTION BY WRITTEN CONSENT  
OF THE SOLE SHAREHOLDER OF  
CARDIO MEDICAL, INC.  
A Florida corporation**

The following actions were taken by the undersigned, being the sole shareholder of Cardio Medical, Inc., a Florida corporation (the "Company"), without a meeting and by means of written consent, as of this 23rd day of November, 2004.

**RESOLVED**, that Cardio Medical, Inc., an Ohio corporation ("Cardio Medical Ohio"), shall merge with and into the Company, and the Company shall be the survivor of such merger.

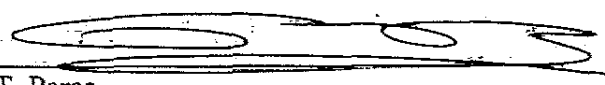
**RESOLVED FURTHER**, that the Agreement and Plan of Merger between the Company and Cardio Medical Ohio is approved and adopted in the form attached hereto, subject to such modifications and revisions thereto as the officers of the Company shall deem appropriate.

**RESOLVED FURTHER**, that the President, or any other officer of the Company, either alone or in conjunction with any other officer, is hereby authorized and directed for and on behalf of the Company to execute and deliver the aforementioned agreement, and to take any and all other actions as may be necessary or appropriate to carry out the intents and purposes of the foregoing, including, without limitation, the filing of a Certificate of Merger with the Ohio Secretary of State and Articles of Merger with the Florida Secretary of State.

**RESOLVED FURTHER**, that any and all actions taken by the officers of the Company with respect to and in contemplation of the transaction authorized by these resolutions are hereby authorized, approved, and ratified.

**RESOLVED FURTHER**, that this action may be signed in two or more counterparts, each and all of which will be deemed an original and all of which together will constitute but one and the same instrument; and that signatures on this action transmitted by facsimile shall be deemed to be original signatures and constitute effective execution and delivery and may be used for all purposes in lieu of originals.

IN WITNESS WHEREOF, the undersigned has hereunto set his signature as of the date and year set forth above.

  
Peter T. Paras

**SOLE SHAREHOLDER**

**ACTION BY WRITTEN CONSENT  
OF THE SOLE SHAREHOLDER OF  
CARDIO MEDICAL, INC.  
An Ohio corporation**

The following actions were taken by the undersigned, being the sole shareholder of Cardio Medical, Inc., an Ohio corporation (the "Company"), without a meeting and by means of written consent, as of this 23rd day of November, 2004.

**RESOLVED**, that the Company shall merge with and into Cardio Medical, Inc., a Florida corporation ("Cardio Medical Florida"), and the separate legal existence of the Company shall cease upon such merger.

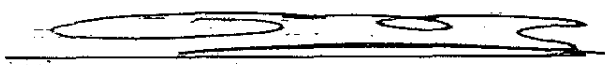
**RESOLVED FURTHER**, that the Agreement and Plan of Merger between the Company and Cardio Medical Florida is approved and adopted in the form attached hereto, subject to such modifications and revisions thereto as the officers of the Company shall deem appropriate.

**RESOLVED FURTHER**, that the President, or any other officer of the Company, either alone or in conjunction with any other officer, is hereby authorized and directed for and on behalf of the Company to execute and deliver the aforementioned agreement, and to take any and all other actions as may be necessary or appropriate to carry out the intents and purposes of the foregoing, including, without limitation, the filing of a Certificate of Merger with the Ohio Secretary of State and Articles of Merger with the Florida Secretary of State.

**RESOLVED FURTHER**, that any and all actions taken by the officers of the Company with respect to and in contemplation of the transaction authorized by these resolutions are hereby authorized, approved, and ratified.

**RESOLVED FURTHER**, that this action may be signed in two or more counterparts, each and all of which will be deemed an original and all of which together will constitute but one and the same instrument; and that signatures on this action transmitted by facsimile shall be deemed to be original signatures and constitute effective execution and delivery and may be used for all purposes in lieu of originals.

IN WITNESS WHEREOF, the undersigned has hereunto set his signature as of the date and year set forth above.

  
Peter T. Paras

**SHAREHOLDER**