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UNITED STATES  
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WASHINGTON, D.C.

WHITE & CASE  
LIMITED LIABILITY PARTNERSHIP

FIRST UNION FINANCIAL CENTER  
200 SOUTH BISCAYNE BOULEVARD  
MIAMI, FLORIDA 33131-2352

TELEPHONE: (1-305) 371-2700

FACSIMILE: (1-305) 358-5744

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JOHANNESBURG

September 21, 1999

VIA FACSIMILE AND FEDERAL EXPRESS

Ms. Susan Payne  
Florida Department of State  
409 East Gaines Street  
Tallahassee, FL 32399

800002994108--7  
-09/22/99-01001-019  
\*\*\*\*\*35.00 \*\*\*\*\*35.00

Re: Orbus Medical Technologies, Inc./New Filings

Dear Susan:

800002994108--7  
-09/22/99-01001-020  
\*\*\*\*\*8.75 \*\*\*\*\*8.75

Enclosed are executed copies of the Amended and Restated Articles of Merger and the Amended and Restated Agreement and Plan of Merger to be filed with the Florida Department of State and to be effective as of September 21, 1999. Also, enclosed is a check for \$35 and \$8.75 in connection with the filings.

We would appreciate if you could fax us at (305)358-5744 (attention: Jenny Jordan) any confirmation or proof of filing for record purposes.

On behalf of Jeff Taylor and our Firm, I would like to express our sincere gratitude for your kind attention throughout this matter.

Sincerely,

  
Mark M. Cho

MMC:mmc

B. PAYNE

SEP 22 1999

Amended +  
Restated  
Articles +  
plan y

SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

99 SEP 21 PM 2:15

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## WHITE & CASE

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JOHANNESBURG

September 22, 1999

### VIA FACSIMILE AND FEDERAL EXPRESS

Ms. Susan Payne  
Florida Department of State  
409 East Gaines Street  
Tallahassee, FL 32399

Re: Orbus Medical Technologies, Inc., a Florida  
corporation (the "Company")/New Filings

Dear Susan:

The reasons that we are filing the Amended and Restated Articles of Merger and the Amended and Restated Agreement of Plan of Merger are the following:

1. On August 4, 1999, the Company filed with the Florida Department of State an Articles of Merger and an Agreement and Plan of Merger, in order to effectuate a merger by and between Orbus Medical Technologies, a Delaware corporation ("Orbus Delaware") and the Company.

2. On July 30, 1999, a Certificate of Merger had also been filed with the Delaware Secretary of State to accomplish the merger.

3. The merger, however, was deemed ineffective by the Delaware Secretary of State because certain shareholder authorizations which are required under Delaware law were not met. Therefore, the Company was not merged with Orbus Delaware, even though in Florida it was deemed merged and no longer in existence.

4. Because the Company and Orbus Delaware had to redate and revise the Agreement and Plan of Merger, which had already been filed in Florida, and other documents in connection with the merger, the Company was advised by legal counsel that in order to accomplish a proper merger in Delaware and in Florida, that the Agreement and Plan of Merger, all Company and Orbus Delaware resolutions and the Articles of Merger had to be amended.

**WHITE & CASE**  
LIMITED LIABILITY PARTNERSHIP

Ms. Susan Payne  
Florida Department of State  
Page 2

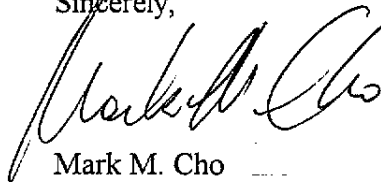
5. A Certificate of Correction was filed on September 16, 1999 and a Certificate of Ownership and Merger was filed on September 21, 1999, both with the Delaware Secretary of State, which declared the merger effective as of September 21, 1999.

6. An Amended and Restated Articles of Merger and an Amended and Restated Agreement and Plan of Merger was filed with the Florida Department of State on September 21, 1999, which declared the merger effective as of September 21, 1999.

For the reasons set forth above, the Company submitted the Amended and Restated Articles of Merger and the Amended and Restated Agreement of Plan of Merger to effectuate a proper and effective merger under both Delaware and Florida laws.

If you have any further questions or inquiries, please feel free to contact me at (305) 995-5268. Thank you for your kind assistance throughout this matter.

Sincerely,



Mark M. Cho

MMC:mmc

FILED

**AMENDED AND RESTATED ARTICLES OF MERGER**

99 SEP 21 PM 2:15

**OF**SECRETARY OF STATE  
TALLAHASSEE, FLORIDA**ORBUS MEDICAL TECHNOLOGIES, INC.**  
**(a Florida Corporation)****INTO****ORBUS MEDICAL TECHNOLOGIES, INC.**  
**(a Delaware Corporation)**

Orbus Medical Technologies, Inc., a Florida corporation ("OMT Florida" or the "Merging Corporation"), does hereby certify as follows:

WHEREAS, on August 4, 1999, OMT Florida filed with the Secretary of State of Florida a defective Articles of Merger (the "Articles of Merger") which set forth that OMT Florida was merged into Orbus Medical Technologies, Inc., a Delaware Corporation ("OMT Delaware" or the "Surviving Corporation");

WHEREAS, OMT Florida attached to the Articles of Merger and filed with the Florida Secretary of State an Agreement and Plan of Merger, dated as of July 25, 1999, by and between OMT Florida and OMT Delaware (the "Merger Agreement");

WHEREAS, the defective Articles of Merger and the Merger Agreement were filed erroneously and prevented the effective merger of OMT Florida with and into OMT Delaware; and

WHEREAS, the Board of Directors of OMT Florida determined that it is advisable and in the best interests of OMT Florida to correct, amend and restate in its entirety each of the Articles of Merger and the Merger Agreement, and in their place file this Amended and Restated Articles of Merger along with the Amended Merger Agreement (as defined below) with the Secretary of State of Florida to effectuate a proper and valid merger (the "Merger") under and pursuant to the provisions of Sections 607.1104 and 607.1105 of the Florida Business Corporation Act ("FBCA") and Section 253 of the Delaware General Corporation Law ("DGCL").

**THEREFORE, BE IT RESOLVED THAT:**

1. The names and States of incorporation of each of the constituent corporations of the Merger are as follows: Orbus Medical Technologies, Inc., a Florida corporation and Orbus Medical Technologies, Inc., a Delaware corporation.
2. An Amended Merger Agreement (as defined below) between the parties to the Merger has been approved, adopted, certified, executed and acknowledged by OMT Florida and OMT Delaware.
3. The Merger shall become effective upon the later of the filing of the Certificate of Ownership and Merger with the Delaware Secretary of State and the acceptance for

filing of these Amended and Restated Articles of Merger by the Florida Secretary of State (the "Effective Date").

4. The Certificate of Incorporation of OMT Delaware shall be the Certificate of Incorporation of the Surviving Corporation without amendments or changes.

5. The executed Amended and Restated Agreement and Plan of Merger (the "Amended Merger Agreement"), dated as of September 20, 1999, pursuant to which the Merger shall be accomplished and a copy of which is attached hereto, was adopted in accordance with the FBCA and the DGCL, and by the Board of Directors of OMT Florida (no shareholder approval was required), as of September 16, 1999, and by the Board of Directors of OMT Delaware (no shareholder approval was required), as of September 16, 1999.

6. The executed Amended Merger Agreement is on file at the office of the Surviving Corporation, located at 5363 N.W. 35<sup>th</sup> Avenue, Fort Lauderdale, Florida 33309, and a copy will be furnished by the Surviving Corporation, on request and without cost to any stockholder of either the Merging Corporation or the Surviving Corporation.

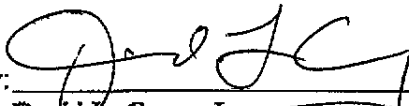
7. The authorized capital stock of the Merging Corporation is 100,000,000 shares of common stock, par value \$.01.

September 20, 1999


[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, each of the parties has executed and delivered this Amended and Restated Articles of Merger as of the date first hereinabove set forth.

ORBUS MEDICAL TECHNOLOGIES, INC., a  
Delaware corporation

By:  9/20/99  
David L. Camp, Jr.  
President

ORBUS MEDICAL TECHNOLOGIES, INC., a  
Florida corporation

By:  9/20/99  
David L. Camp, Jr.  
President

**AMENDED AND RESTATED AGREEMENT AND PLAN OF MERGER**

This AMENDED AND RESTATED AGREEMENT AND PLAN OF MERGER (the "Amended Merger Agreement"), dated as of September 20, 1999, by and between ORBUS MEDICAL TECHNOLOGIES, INC., a Florida corporation ("OMT Florida"), and ORBUS MEDICAL TECHNOLOGIES, INC., a Delaware corporation ("OMT Delaware").

**RECITALS**

WHEREAS, OMT Delaware is a wholly-owned subsidiary of OMT Florida;

WHEREAS, OMT Florida is a Florida corporation, having its principal place of business in Broward County, Florida;

WHEREAS, OMT Delaware is a Delaware corporation, having its principal place of business in New Castle County, Delaware;

WHEREAS, on August 4, 1999, OMT Florida filed with the Florida Secretary of State a defective Articles of Merger and attached thereto an Agreement and Plan of Merger, dated as of July 25, 1999, by and between OMT Florida and OMT Delaware (the "Merger Agreement");

WHEREAS, the defective Articles of Merger and the Merger Agreement were filed erroneously and prevented the effective merger of OMT Florida with and into OMT Delaware;

WHEREAS, the Board of Directors of OMT Florida determined that it is advisable and in the best interests of OMT Florida to correct, amend and restate in its entirety the Merger Agreement, and in its place approve, execute and deliver this Amended Merger Agreement, to effectuate a proper and valid merger of OMT Florida with and into OMT Delaware (the "Merger");

WHEREAS, the Board of Directors of OMT Delaware has determined that it is advisable and in the best interests of OMT Delaware to correct, amend and restate in its entirety the Merger Agreement and in its place approve, execute and deliver this Amended Merger Agreement to effectuate a proper Merger;

WHEREAS, the authorized capital stock of OMT Florida consists of 100,000,000 shares of common stock, par value \$.01 per share (the "OMT Florida Common Stock"), of which 8,322,932 shares are issued and outstanding; and

WHEREAS, the authorized capital stock of OMT Delaware consists of 100,000,000 shares of common stock, par value \$.01 per share (the "OMT Delaware Common Stock"), of which 100 shares are issued and outstanding.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants, representations, warranties and agreements contained in this Amended Merger Agreement, the parties hereby adopt the plan of merger encompassed by this Amended Merger Agreement and agree as follows:

1. Merger. Subject to the terms and conditions of this Amended Merger Agreement, at the Effective Time (as defined in Section 3). OMT Florida shall be merged with and into OMT Delaware (the "Merger"), the separate corporate existence of OMT Florida shall cease and OMT Delaware shall survive and continue to exist as a Delaware corporation (OMT Delaware, as a surviving corporation in the Merger, sometimes being referred to herein as the "Surviving Corporation"). It is the intention of the parties that the merger qualify as a "reorganization" under Section 368(a) of the Internal Revenue Code of 1986, as amended (the "Code"). The Merger shall have the effects specified in the General Corporation Law of the State of Delaware ("GCLD") and the Florida Business Corporation Act ("FBCA").

2. The Closing. Subject to the terms and conditions of this Agreement, the closing of the Merger (the "Closing") shall take place (a) at the offices of White & Case LLP, 200 S. Biscayne Boulevard, Suite 4900, Miami, Florida 33131, contemporaneously as the date hereof.

3. Effective Time. If all the conditions to the Merger set forth in Section 10 shall have been satisfied or waived in accordance herewith and this Amended Merger Agreement shall not have been terminated as provided in Section 11, immediately following the Closing, the parties hereto shall, at such time as they deem advisable, cause (i) the Certificate of Ownership and Merger to be filed with the Secretary of State of Delaware and (ii) the Amended and Restated Articles of Merger to be filed with the Florida Secretary of State. The Merger shall become effective upon the later of the filing of the Certificate of Ownership and Merger with the Secretary of State of Delaware and the acceptance for filing of the Amended and Restated Articles of Merger by the Florida Secretary of State, or such other time as specified in the Certificate of Ownership and Merger and Amended and Restated Articles of Merger (the "Effective Time").

4. Certificate of Incorporation and Bylaws of Surviving Corporation. The Certificate of Incorporation and Bylaws of OMT Delaware in effect immediately prior to the Effective Time shall be the Certificate of Incorporation and Bylaws of the Surviving Corporation.

5. Directors and Officers of the Surviving Corporation. The directors and officers of OMT Delaware immediately prior to the Effective Time shall be the directors and officers of the Surviving Corporation as of and following the Effective Time until their successors have been duly elected or appointed and qualified or until their earlier death, resignation or removal in accordance with the Certificate of Incorporation and Bylaws of the Surviving Corporation.

6. Capital Stock and Voting Rights. The parties hereby acknowledge that: the outstanding capital stock of OMT Florida consists of 8,322,932 shares of OMT Florida Common Stock, and the outstanding capital stock of OMT Delaware consists of 100 shares of OMT Delaware Common Stock.



7. Effect on Capital Stock. At the Effective Time, by virtue of the Merger and without any further action on the part of any holder of any capital stock of OMT Florida:

a. Each share of OMT Florida Common Stock issued and outstanding immediately prior to the Effective Time shall be converted into one validly issued, fully paid and nonassessable share of OMT Delaware Common Stock.

b. All shares of OMT Florida Common Stock shall no longer be outstanding and shall be canceled and retired and shall cease to exist. At the Effective Time, each certificate representing shares of OMT Florida Common Stock will be deemed for all purposes to evidence the same number of shares of OMT Delaware Common Stock until such certificate is exchanged for a certificate representing shares of OMT Delaware Common Stock.

c. Any shares of OMT Florida Common Stock held in OMT Florida's treasury (i.e., issued but not outstanding shares of OMT Florida Common Stock) at the Effective Time shall, by virtue of the Merger and without any action on the part of the holder thereof, cease to be outstanding, shall be canceled and retired without payment of any consideration therefor and shall cease to exist.

d. Each share of OMT Delaware Common Stock issued and outstanding immediately prior to the Effective Time shall, by virtue of the Merger and without any action on the part of OMT Delaware or the holder of such shares, be canceled and retired without payment of any consideration therefor.

e. OMT Florida's obligations with respect to any dividends or other distributions to the shareholders of OMT Florida that have been declared by OMT Florida but not paid prior to the Effective Time will be assumed by OMT Delaware in accordance with the terms thereof.

8. Rights of Shareholder of Surviving Corporation. OMT Florida, as the sole shareholder of OMT Delaware, and pursuant to Sections 607.1104(1)(b)(4) and 607.1104(2) of the FBCA, waives any dissenter's rights, if any, or any notice or mailing requirements in connection therewith.

9. Benefit Matters.

a. Assumption of Options to Purchase Shares of OMT Florida Common Stock. At the Effective Time, by virtue of the Merger, and without any further action on the part of any holder of options hereafter referred to, each option granted by OMT Florida to purchase shares of OMT Florida Common Stock which is outstanding and unexercised immediately prior thereto, whether or not vested, shall be converted automatically into an option to purchase the same number of shares of OMT Delaware Common Stock at an exercise price equal to the exercise price per share of OMT Florida Common Stock under the option immediately before the Effective Time. The duration, vesting schedule, exercisability and other terms of the option immediately after the Effective Time shall be the same as the corresponding terms in effect immediately before the Effective Time. Vesting of stock options shall not be

accelerated as a result of the Merger. Continuous employment with OMT Florida or its subsidiaries shall be credited to the optionee for purposes of determining the vesting of all assumed OMT Florida options after the Effective Time. It is intended that OMT Florida options assumed by OMT Delaware shall qualify following the Effective Time as incentive stock options as defined in Section 422 of the Code, to the extent such options qualified as such prior to the Effective Time and the provisions of this Section 9 shall be applied consistently with such intent. As soon as reasonably practicable after the Effective Time, OMT Delaware will issue to each holder of an assumed option notice of the foregoing assumption by OMT Delaware of such OMT Florida option.

b. Other Benefit Plans. OMT Delaware shall assume any other benefit plans of OMT Florida.

10. Conditions to the Merger. The respective obligations of OMT Florida and OMT Delaware to consummate the Merger are subject to satisfaction or waiver of the following condition:

a. OMT Florida and OMT Delaware shall have received all governmental and third party consents, approvals and authorizations necessary or advisable from OMT Florida to effect the Merger in accordance with the terms and conditions of this Agreement.

11. Termination. This Amended Merger Agreement may be terminated and the Merger may be abandoned at any time prior to the Effective Time, before or after approval of this Amended Merger Agreement (i) by the Board of Directors of OMT Florida in its sole discretion or (ii) by the Board of Directors of OMT Delaware in its sole discretion. In the event of termination of this Amended Merger Agreement or abandonment of the Merger pursuant to this Section 11, no party hereto (or any of its directors or officers) shall have any liability or further obligation to any other party to this Agreement.

12. Additional Representations, Warranties and Covenants of OMT Florida: Further Assurance. OMT Florida hereby represents and warrants to OMT Delaware and to the security holders and creditors of OMT Florida that the execution, delivery and performance of this Amended Merger Agreement and the consummation of the Merger contemplated hereby by OMT Florida in accordance with the terms of this Amended Merger Agreement will not (i) violate, conflict with, or result in a breach of or the acceleration of any obligation under, or constitute a default (or an event which with notice or the lapse of time or both would become a default) under, or give to others any right of, or result in any, termination, amendment, acceleration or cancellation of, or loss of any benefit or creation of a right of first refusal, or require any payment under, or result in the creation of a lien or other encumbrance on, any of the properties or assets of OMT Florida pursuant to or under any provision of any indenture, mortgage, note, bond, lien, lease, license, agreement, franchise, contract, order, judgment, ordinance, permit or other instrument or obligation to which OMT Florida is a party or by which OMT Florida or any of its properties is bound or subject to, or (ii) violate or conflict with the Articles of Incorporation or bylaws of OMT Florida. OMT Florida hereby covenants that it will obtain all governmental and third party consents, approvals or authorizations that are necessary or advisable for OMT Florida to effect the Merger in accordance with the terms of this Agreement.

13. Entire Agreement. This Amended Merger Agreement and any documents delivered by the parties in connection herewith constitute the entire agreement among the parties with respect to the subject matter hereof and supersede all prior agreements and understandings among the parties with respect hereto. No addition to or modification of any provision of this Amended Merger Agreement shall be binding upon any party hereto unless made in writing and signed by all parties hereto.

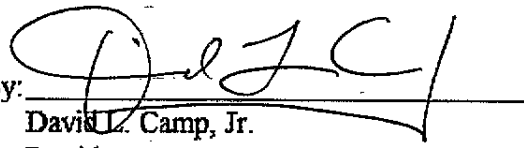
14. Amendment. This Amended Merger Agreement may be further amended by the parties hereto, by action taken by their respective boards of directors and without the approval of the shareholders of either party.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the parties have caused this Amended and Restated Agreement and Plan of Merger to be executed and delivered in counterparts by their duly authorized officers, all as of the date first-above written.

ORBUS MEDICAL TECHNOLOGIES, INC., a  
Florida corporation

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

  
David L. Camp, Jr.  
President

ORBUS MEDICAL TECHNOLOGIES, INC., a  
Delaware corporation

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

  
David L. Camp, Jr.  
President