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File No. 1466/47

May 2, 2000

Florida Department of State
Division of Corporations
ATTN: AMENDMENT SECTION
P. O. Box 6327
Tallahassee, FL 32314

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-05/05/00--01068--023
****113.75 ****113.75

Re: Request to File Articles of Merger

Dear Sirs or Madams:

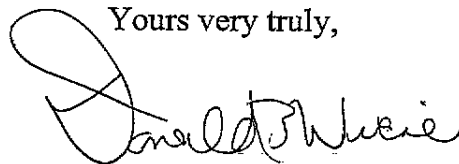
Enclosed please find an original and one copy of the **Articles of Merger** Merging Ultraortho, Inc. and Dolphin Medical Technologies, Inc. With and Into Orthoevolution, Inc. Please file the original instrument in your records, certify the photocopy, and return it to me in the envelope provided.

Also enclosed is our firm's check in the amount of \$113.75, representing payment of the filing fee (\$105) and cost to certify the photocopy provided (\$8.75).

Should you have any questions at all, please call me.

Merger
5-18-00
DW

Yours very truly,



Donald B. Wiener
For the Firm

Enclosures

FILED
00 MAY -5 AM 10:12
TALLAHASSEE, FLORIDA
DIVISION OF STATE

ARTICLES OF MERGER
Merger Sheet

MERGING:

DOLPHIN MEDICAL TECHNOLOGIES, INC., a Florida corporation,
P97000072914

ULTRAORTHO, INC., a non-qualified California corporation

INTO

ORTHOEVOLUTION, INC.. a Delaware corporation not qualified in Florida

File date: May 5, 2000

Corporate Specialist: Doug Spitler

**ARTICLES OF MERGER
MERGING
ULTRAORTHO, INC.
AND
DOLPHIN MEDICAL TECHNOLOGIES, INC.
WITH AND INTO
ORTHOEVOLUTION, INC.**

FILED
00 MAY -5 AM 10:12
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

[Pursuant to Section 607.1101, et seq., of the Florida Statutes (1999)]

OrthoEvolution, Inc., a Delaware corporation ("OrthoEvolution"), DOES
HEREBY CERTIFY AS FOLLOWS:

FIRST: That the constituent corporations are Ultraortho, Inc., a California corporation ("Ultraortho"), Dolphin Medical Technologies, Inc., a Florida Corporation, and OrthoEvolution.

SECOND: That the Agreement and Plan of Merger (the "Merger Agreement"), dated as of February 10, 2000 by and among OrthoEvolution, Ultraortho and Dolphin, setting forth the terms and conditions of the merger of Ultraortho and Dolphin with and into OrthoEvolution (the "Merger"), has been approved, adopted, certified, executed and acknowledged by each of the constituent corporations, their boards of directors and shareholders, in accordance with Section 251 of the Delaware Law, with California law, and with Sections 607.1101, et seq., of the Florida Statutes (1999), and such approvals, adoptions, certifications, executions and acknowledgments were made on February 11, 2000.

THIRD: That OrthoEvolution shall be the surviving corporation (the "Surviving Corporation") and the name of the Surviving Corporation shall be OrthoEvolution, Inc.

FOURTH: That pursuant to the Merger Agreement, the Certificate of Incorporation of OrthoEvolution as in effect immediately prior to the Merger shall be the Certificate of Incorporation of the Surviving Corporation.

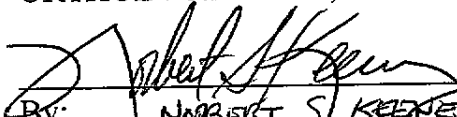
FIFTH: That an executed copy of the Merger Agreement is attached hereto and incorporated herein by reference.

SIXTH: That the Merger shall become effective upon the filing of this Certificate of Merger with the Florida Department of State.

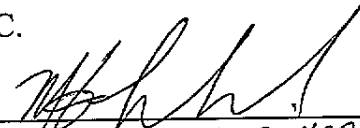
SEVENTH: That the principal office in the State of Delaware of the Surviving Corporation is: Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware 19801.

IN WITNESS WHEREOF, OrthoEvolution has caused these Articles of Merger to be executed in its corporate name as of this 11th day of February, 2000.

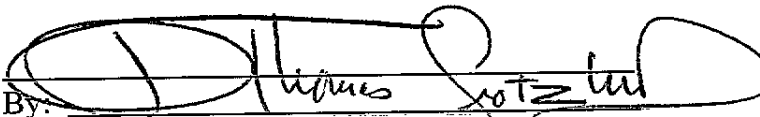
ORTHOEVOLUTION, INC.


By: ROBERT S. KEEVEY II
Its: President/CEO

DOLPHIN MEDICAL TECHNOLOGIES, INC.


By: MARK G. URBANSKI
Its: PRESIDENT/CEO

ULTRAORTHO, INC.


By: Thomas Sotzler
Its: President

COPY

AGREEMENT AND PLAN OF MERGER

by and among
ORTHOEVOLUTION, INC.,
ULTRAORTHO, INC. ,
and
DOLPHIN MEDICAL TECHNOLOGIES, INC.

Dated as of February 10, 2000

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AGREEMENT AND PLAN OF MERGER

This Agreement and Plan of Merger (this "Agreement") is entered into as of February 10, 2000 by and among (i) OrthoEvolution, a Delaware corporation (the "Company"), (ii) Ultraortho, Inc., a California corporation ("UO"), and (iii) Dolphin Medical Technologies, Inc., a Florida corporation ("Dolphin").

RECITALS

A. The respective boards of directors of the Company, UO and Dolphin have approved and declared advisable the merger of UO and Dolphin with and into the Company (the "*Merger*"), upon the terms and subject to the conditions set forth herein, and have determined that the Merger and the other transactions are fair to, and in the best interests of, their respective stockholders.

B. Pursuant to the Merger, among other things, the outstanding shares of Common Stock, \$.001 par value, of UO ("*UO Common Stock*"), the outstanding shares of Common Stock, \$.01 par value of Dolphin ("*Dolphin Common Stock*") will be converted into Common Shares, \$.01 par value, of the Company ("*Company's Common Stock*"), at the rate set forth herein.

C. For United States federal income tax purposes, it is intended that the Merger will qualify as a reorganization under the provisions of Section 368(a) of the Internal Revenue Code of 1986, as amended (the "*Code*").

D. Simultaneously with the closing of the Merger and as a condition to, the Company shall issue shares of Series A Preferred Stock to certain investors, all pursuant to that certain Preferred Stock Purchase Agreement dated January 25, 2000 by and among the Company and the Investors and the Note Holders named therein, and purchase certain assets of General Orthopedics, Inc., all pursuant to the certain Purchase and Sale Agreement dated February 11, 2000 by and among the Company and General Orthopedics, Inc.

The parties agree as follows:

ARTICLE I

THE MERGER

1.1 *The Merger.* At the Effective Time (as defined in Section 1.2) and subject to and upon the terms and conditions of this Agreement and the applicable provisions of the Delaware General Corporation Law (the "*Delaware Law*"), the applicable provisions of the California General Corporation Code (the "*California Law*") and the applicable

provisions of the Florida Business Corporation Act (the "**Florida Law**"), (i) UO and Dolphin shall be merged with and into the Company, (ii) the separate corporate existence of UO and Dolphin shall cease, and (iii) the Company shall be the surviving corporation. The Company as the surviving corporation after the Merger is hereinafter sometimes referred to as the "**Surviving Corporation**."

1.2 **Closing; Effective Time.** The closing of the Merger and the other transactions contemplated hereby (the "**Closing**") will take place at 10:00 a.m., local time, on a date to be specified by the parties (the "**Closing Date**"), which shall be no later than the first business day after satisfaction or waiver of the conditions set forth in Articles VII and VIII, unless another time or date is agreed to by the parties hereto. The Closing shall take place at the offices of Heller Ehrman White & McAuliffe, 525 University Avenue, Palo Alto, California, or at such other location as the parties hereto shall mutually agree. At the Closing, the parties hereto shall cause the Merger to be consummated by filing a certificate of merger substantially in the form of Exhibit A (the "**Certificate of Merger**") with the Secretary of State of the State of Delaware, in accordance with the relevant provisions of the Delaware Law together with any other filing required under the California Law and the Florida Law (the time of such filing, or such later time as may be agreed in writing by the parties and specified in the Certificate of Merger, being the "**Effective Time**").

1.3 **Effects of the Merger.** The effects of the Merger shall be as provided in this Agreement, the Certificate of Merger and the applicable provisions of the Delaware Law. Without limiting the foregoing, at the Effective Time all the property, rights, privileges, powers and franchises of the Company, UO and Dolphin shall vest in the Surviving Corporation, and all debts, liabilities and duties of the Company, UO and Dolphin shall become the debts, liabilities and duties of the Surviving Corporation.

1.4 **Certificate of Incorporation; Bylaws.**

(a) From and after the Effective Time, the certificate of incorporation of the Company, as in effect immediately prior to the Effective Time, shall be the certificate of incorporation of the Surviving Corporation.

(b) From and after the Effective Time, the bylaws of the Company, as in effect immediately prior to the Effective Time, shall be the bylaws of the Surviving Corporation.

1.5 **Directors and Officers of the Surviving Corporation.** The directors and officers of the Company immediately prior to the Effective Time shall serve as the initial directors and officers of the Surviving Corporation, until their respective successors are duly elected or appointed and qualified.

ARTICLE II

CONVERSION OF SHARES

2.1 **Conversion of Stock.** Pursuant to the Merger, and without any action on the part of the holders of any outstanding shares of capital stock or other securities of the Company, UO or Dolphin:

(a) As of the Effective Time:

(i) the shares of UO Common Stock issued and outstanding immediately prior to the Effective Time shall be canceled, extinguished and automatically converted into 1,000,000 validly issued, fully paid and nonassessable shares of Common Stock, \$.01 par value, of the Surviving Corporation, such that each holder of one (1) share of UO Common Stock issued and outstanding immediately prior to the Effective Time shall be converted into such number of shares of Common Stock, \$.01 par value, of the Surviving Corporation as determined by dividing 1,000,000 by the number of UO Common Stock issued and outstanding immediately prior to the Effective Time (the "**UO Exchange Ratio**").

(ii) the shares of Dolphin Common Stock issued and outstanding immediately prior to the Effective Time shall be canceled, extinguished and automatically converted into 1,000,000 validly issued, fully paid and nonassessable shares of Common Stock, \$.01 par value, of the Surviving Corporation, such that each holder of one (1) share of Dolphin Common Stock issued and outstanding immediately prior to the Effective Time shall be converted into such number of shares of Common Stock, \$.01 par value, of the Surviving Corporation as determined by dividing 1,000,000 by the number of Dolphin Common Stock issued and outstanding immediately prior to the Effective Time (the "**Dolphin Exchange Ratio**").

(b) As of the Effective Time, each holder of a certificate or certificates which immediately prior to the Effective Time represented outstanding shares of UO Common Stock or Dolphin Common Stock shall cease to have any rights with respect thereto, except the right to receive (i) a certificate (or direct registration) representing the number of whole shares of the Surviving Corporation Common Stock into which such shares have been converted (the "**Company Stock Certificates**"), and (ii) cash in lieu of fractional shares of the Company Common Stock in accordance with Section 2.1(d).

(c) The UO Exchange Ratio and/or the Dolphin Exchange Ratio shall be adjusted, or the Company shall make appropriate provision, to reflect appropriately the effect of any stock split, reverse stock split, stock dividend (including any dividend or distribution of securities convertible into Company Common Stock, UO Common Stock or Dolphin Common Stock), reorganization, recapitalization or other like change with respect to UO Common Stock, Dolphin Common Stock or (subject to Section 6.1) the

Company Common Stock occurring or having a record date or an effective date on or after the date hereof and prior to the Effective Time.

(d) No fraction of a share of the Surviving Corporation Common Stock will be issued by virtue of the Merger. Instead, each holder of shares of Surviving Corporation Common Stock who would otherwise be entitled to a fraction of a share of Surviving Corporation Common Stock (after aggregating all fractional shares to be received by such holder) shall receive from the Surviving Corporation an amount of cash (rounded down to the nearest whole cent) equal to the product of (i) such fraction, multiplied by (ii) \$1.50.

2.2 **Tax Consequences.** For United States federal income tax purposes, it is intended by the parties hereto that the Merger qualify as a reorganization within the meaning of Section 368(a) of the Code.

ARTICLE III

REPRESENTATIONS AND WARRANTIES OF UO

UO makes to the Company and Dolphin the representations and warranties contained in this Article III, in each case subject to the exceptions set forth in the disclosure statement, dated as of the date hereof (the "**UO Disclosure Statement**").

3.1 **Organization, Etc.**

(a) UO is a corporation duly organized, validly existing and in good standing under the laws of the State of California, and has all requisite power and authority to own, lease and operate its properties and to carry on its business as now being conducted. UO is duly qualified as a foreign Person to do business, and is in good standing, in each jurisdiction where the character of its owned or leased properties or the nature of its activities makes such qualification necessary, except where the failure to be so qualified or in good standing would not, individually or in the aggregate, have an UO Material Adverse Effect. For the purposes of this Agreement, "**UO Material Adverse Effect**" means any change, event or effect that is materially adverse to the general affairs, business, operations, assets, condition (financial or otherwise) or results of operations of UO.

(b) UO is not in violation of any provision of its articles of incorporation, bylaws or any other charter document.

3.2 **Authority Relative to This Agreement.** UO has full corporate power and authority to (i) execute and deliver this Agreement, and (ii) assuming the approval of the Merger by a majority of the outstanding shares of UO Common Stock, consummate the Merger and the other transactions contemplated hereby. The execution and delivery of

this Agreement and transactions contemplated hereby, have been duly and validly authorized by the unanimous vote of the board of directors of UO, and no other corporate proceedings on the part of UO are necessary to authorize this Agreement, or to consummate the Merger and the other transactions contemplated hereby (other than the approval of the Merger by a majority of the outstanding shares of UO Common Stock). This Agreement has been duly and validly executed and delivered by UO and, assuming due authorization, execution and delivery by the Company and Dolphin, constitutes a valid and binding agreement of UO, enforceable against UO in accordance with its terms, except to the extent that its enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting the enforcement of creditors' rights generally or by general equitable principles.

3.3 *No Violations, Etc.* No filing with or notification to, and no permit, authorization, consent or approval of, any court, administrative agency, commission, or other governmental or regulatory body, authority or instrumentality ("**Government Entity**") is necessary on the part of UO for the consummation by UO of the Merger and the other transactions contemplated hereby, or for the exercise by the Surviving Corporation of full rights to own and operate the business of UO as presently being conducted, except for (i) the filing of the Certificate of Merger as required by Delaware Law and any other filing required under the California Law and the Florida Law, (ii) compliance with the applicable requirements of the Securities and Exchange Act of 1934, as amended (together with the Rules and Regulations promulgated thereunder, the "**Exchange Act**"), state securities or "blue sky" laws and state takeover laws, (iii) any filing required under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the "**HSR Act**") and (iv) the voluntary notice to be filed under Section 721 of the Defense Production Act of 1950, as amended by Section 5021 of the Omnibus Trade and Competitiveness Act of 1988 (the "**Exon-Florio Amendment**"). Neither the execution and delivery of this Agreement nor the consummation of the Merger and the other transactions contemplated hereby nor compliance by UO with all of the provisions hereof and thereof, nor the exercise by the Surviving Corporation of full rights to own and operate the business of UO as presently being conducted will, subject to obtaining the approval of the this Agreement by the holders of a majority of the outstanding shares of UO Common Stock, (i) conflict with or result in any breach of any provision of the articles of incorporation, bylaws or other charter document of UO, (ii) violate any material order, writ, injunction, decree, statute, rule or regulation applicable to UO, or by which any of its properties or assets may be bound, or (iii) result in a violation or breach of, or constitute (with or without due notice or lapse of time or both) a default under, or result in any material change in, or give rise to any right of termination, cancellation, acceleration, redemption or repurchase under, any of the terms, conditions or provisions of any material note, bond, mortgage, indenture, deed of trust, license, lease, contract, agreement or other instrument or obligation to which UO is a party or by which it or any of its properties or assets may be bound. Schedule 3.3 of the UO Disclosure Statement lists all consents, waivers and approvals required to be obtained in connection with the

consummation of the transactions contemplated hereby the failure to obtain which would have an UO Material Adverse Effect.

3.4 *Capitalization.*

(a) The authorized capital stock of UO consists of 3,100,000 shares of UO Common Stock. As of February 9, 2000, there were 2,050,000 shares of UO Common Stock outstanding.

(b) There are no equity securities of any class of UO, or any securities convertible into or exercisable for any such equity securities, issued, reserved for issuance or outstanding. There are no warrants, options, convertible securities, calls, rights, stock appreciation rights, preemptive rights, rights of first refusal, or agreements or commitments of any nature obligating UO to issue, deliver or sell, or cause to be issued, delivered or sold, additional shares of capital stock or other equity interests of UO, or obligating UO to grant, issue, extend, accelerate the vesting of, or enter into, any such warrant, option, convertible security, call, right, stock appreciation right, preemptive right, right of first refusal, agreement or commitment. To the knowledge of UO, there are no voting trusts, proxies or other agreements or understandings with respect to the capital stock of UO.

3.5 *Financial Statements.*

(a) The Company has delivered to the Investors UO's Financial Statements.

(b) UO's Financial Statements fairly and accurately present the financial position of UO, as of those dates and the results of operations and changes in its financial position for such periods then ended, and have been prepared in accordance with the United States generally accepted accounting principles ("*GAAP*") applied on a consistent basis, subject to normal year-end adjustments.

(c) There are no debts, liabilities or claims against UO that are not currently reflected in the UO's Financial Statements, contingent or otherwise, which are or would be of a nature required to be reflected in a balance sheet prepared in accordance with GAAP other than (a) liabilities incurred in the ordinary course of business which, individually or in the aggregate, do not have an UO Material Adverse Effect; and (b) liabilities set forth on the balance sheet included in the UO's Financial Statements. UO has no material liabilities other than those set forth in the UO's Financial Statements and the UO Disclosure Statement. UO's revenue recognition policies are in accordance with GAAP. UO maintains a standard system of accounting in accordance with GAAP.

(d) All of the accounts receivable and notes receivable owing to UO as of the date hereof constitute valid and enforceable claims arising from bona fide

transactions in the ordinary course of business, subject to the effect of applicable bankruptcy, insolvency, reorganization, moratorium or other laws of general application relating to or affecting enforcement of creditors' rights and laws concerning equitable remedies, and there are no known, contingent or asserted claims, refusals to pay, or other rights of set-off against any thereof known to UO.

For the purpose of this Agreement, UO's Financial Statements shall mean the unaudited consolidated balance sheet of UO as of December 15, 1999 and its unaudited consolidated statement of operations, shareholders' equity and cash flows for the 12 months then ended.

3.6 **Liabilities.** UO's liabilities (absolute, accrued, contingent or otherwise) of any kind whatsoever, whether reflected in UO's Financial Statements or not, do not exceed \$528,032.

3.7 **Subsidiaries.** UO does not presently own, have any investment in, or control, directly or indirectly, any Subsidiaries. The Company is not a participant in any joint venture or partnership.

3.8 **Contracts and Commitments.**

(a) Except as described in UO Disclosure Statement, UO is not a party to or bound by any oral or written contract, obligation or commitment of any type in any of the following categories:

(i) agreements or arrangements that contain severance pay, understandings with respect to tax arrangements, understandings with respect to expatriate benefits, or post-employment liabilities or obligations;

(ii) agreements or plans under which benefits will be increased or accelerated by the occurrence of any of the transactions contemplated by this Agreement or under which the value of the benefits will be calculated on the basis of any of the transactions contemplated by this Agreement;

(iii) agreements, contracts or commitments currently in force relating to the disposition or acquisition of assets other than in the ordinary course of business, or relating to an ownership interest in any corporation, partnership, joint venture or other business enterprise;

(iv) agreements, contracts or commitments (A) relating to the acquisition, transfer, development, sharing, license (to or by UO), or use of any UO IP Right (except for any contract pursuant to which any UO IP Right is licensed to UO under any third party software license generally available to the public), or (B) with respect to the manufacturing, distribution or marketing of any products of UO;

(v) agreements, contracts or commitments for the purchase of materials, supplies or equipment which provide for purchase prices substantially greater than those presently prevailing for such materials, supplies or equipment, or which are with sole or single source suppliers;

(vi) guarantees or other agreements, contracts or commitments under which UO is absolutely or contingently liable for (A) the performance of any other person, firm or corporation, or (B) the whole or any part of the indebtedness or liabilities of any other person, firm or corporation;

(vii) powers of attorney authorizing the incurrence of a material obligation on the part of UO;

(viii) agreements, contracts or commitments which limit or restrict (A) where UO may conduct business, (B) the type or lines of business (current or future) in which it may engage, or (C) any acquisition of assets or stock (tangible or intangible) by UO;

(ix) agreements, contracts or commitments containing any agreement with respect to a change of control of UO;

(x) agreements, contracts or commitments for the borrowing or lending of money, or the availability of credit (except credit extended by UO to customers in the ordinary course of business and consistent with past practice);

(xi) any hedging, option, derivative or other similar transaction and any foreign exchange position or contract for the exchange of currency;

(xii) any joint marketing or joint development agreement, or any license or distribution agreement relating to any UO product.

(b) Neither UO, nor to UO's knowledge any other party to a UO Contract (as defined below), has breached, violated or defaulted under, or received notice that it has breached, violated or defaulted under, (nor does there exist any condition under which, with the passage of time or the giving of notice or both, could reasonably be expected to cause such a breach, violation or default under), any material agreement, contract or commitment to which UO is a party or by which any of them or any of its properties or assets may be bound (any such agreement, contract or commitment, a "**UO Contract**"), other than any breaches, violations or defaults which individually or in the aggregate would not have an UO Material Adverse Effect.

(c) Each UO Contract is a valid, binding and enforceable obligation of UO and to UO's knowledge, of the other party or parties thereto, in accordance with its terms, and in full force and effect, except where the failure to be valid, binding, enforceable and in full force and effect would not have a UO Material Adverse Effect and

to the extent enforcement may be limited by applicable bankruptcy, insolvency, moratorium or other laws affecting the enforcement of creditors' rights governing or by general principles of equity.

3.9 *Intellectual Property Rights.*

(a) UO own or have the right to use all intellectual property used in or necessary to conduct its businesses (such intellectual property and the rights thereto are collectively referred to herein as the "*UO IP Rights*").

(b) Schedule 3.9 of UO Disclosure Statement identifies and provides a brief description of, and identifies any ongoing royalty or payment obligations with respect to, each UO IP Right that is licensed or otherwise made available to UO by any Person (except for any UO IP Right that is licensed to UO under any third party software license generally available to the public), and identifies the agreement under which such UO IP Right is being licensed or otherwise made available to UO. UO has good, valid and marketable title to all of UO IP Rights (except for licensed rights), free and clear of all encumbrances, except (i) as set forth in Schedule 3.9 of the UO Disclosure Statement, (ii) for any lien for current taxes not yet due and payable, and (iii) for minor liens that have arisen in the ordinary course of business and that do not (individually or in the aggregate) materially detract from the value of the rights subject thereto or materially impair the operations of UO. To UO's knowledge, UO has a valid right to use, license and otherwise exploit all UO IP Rights.

(c) To the knowledge of UO, UO is not misappropriating or making any unlawful use of, and UO has not at any time misappropriated or made any unlawful use of, or received any notice or other communication (in writing or otherwise) of any actual, alleged, possible or potential infringement, misappropriation or unlawful use of, any intellectual property rights owned or used by any other Person. UO is not aware that any Person is misappropriating, or making unlawful use of any of the UO IP Rights.

(d) Except as set forth in Schedule 3.9 of the UO Disclosure Statement, UO has not licensed any of the UO IP Rights to any Person on an exclusive basis.

(e) The execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby will not constitute a material breach of any instrument or agreement governing any UO IP Rights, will not (i) cause the modification of any terms of any licenses or agreements relating to any UO IP Rights, (ii) cause the forfeiture or termination of any UO IP Rights, (iii) give rise to a right of forfeiture or termination of any UO IP Rights or (iv) materially impair the right of UO or the Surviving Corporation to use, sell or license any UO IP Rights or portion thereof.

3.10 *Taxes.* All federal, state, local, and foreign tax returns required to be filed by UO have been filed and are true in all material respects, and all taxes, assessments,

fees, and other governmental charges upon UO, or upon any of its properties, income, or franchises, shown in such returns to be due and payable have been paid or if any of such tax returns have not been filed or if any such taxes have not been paid or so reserved for, the failure so to file or to pay would not in the aggregate constitute an UO Material Adverse Effect.

3.11 **Finders or Brokers.** UO has not retained any investment banker, broker, or finder in connection with the transactions contemplated by this Agreement.

3.12 **Title to Property.** UO has good and marketable title to all of its properties and assets, both real and personal, and has good title to all its leasehold interests, in each case subject to no mortgage, pledge, lien, security interest, conditional sale agreement, encumbrance, or charge, other than (a) the lien of current taxes not yet due and payable, and (b) liens and encumbrances which do not materially detract from the value of the property subject thereto or materially impair the operations of UO.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES OF DOLPHIN

Dolphin makes to the Company and UO the representations and warranties contained in this Article IV, in each case subject to the exceptions set forth in the disclosure statement, dated as of the date hereof (the "***Dolphin Disclosure Statement***").

4.1 **Organization, Etc.**

(a) Dolphin is a corporation duly organized, validly existing and in good standing under the laws of the State of Florida, and has all requisite power and authority to own, lease and operate its properties and to carry on its business as now being conducted. Dolphin is duly qualified as a foreign Person to do business, and is in good standing, in each jurisdiction where the character of its owned or leased properties or the nature of its activities makes such qualification necessary, except where the failure to be so qualified or in good standing would not, individually or in the aggregate, have an Dolphin Material Adverse Effect. For the purposes of this Agreement, "***Dolphin Material Adverse Effect***" means any change, event or effect that is materially adverse to the general affairs, business, operations, assets, condition (financial or otherwise) or results of operations of Dolphin.

(b) Dolphin is not in violation of any provision of its certificate of incorporation, bylaws or any other charter document.

4.2 **Authority Relative to This Agreement.** Dolphin has full corporate power and authority to (i) execute and deliver this Agreement, and (ii) assuming the approval of the Merger by a majority of the outstanding shares of Dolphin Common Stock,

consummate the Merger and the other transactions contemplated hereby. The execution and delivery of this Agreement and transactions contemplated hereby, have been duly and validly authorized by the unanimous vote of the board of directors of Dolphin, and no other corporate proceedings on the part of Dolphin are necessary to authorize this Agreement, or to consummate the Merger and the other transactions contemplated hereby (other than the approval of the Merger by a majority of the outstanding shares of Dolphin Common Stock). This Agreement has been duly and validly executed and delivered by Dolphin and, assuming due authorization, execution and delivery by the Company and UO, constitutes a valid and binding agreement of Dolphin, enforceable against Dolphin in accordance with its terms, except to the extent that its enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting the enforcement of creditors' rights generally or by general equitable principles.

4.3 *No Violations, Etc.* No filing with or notification to, and no permit, authorization, consent or approval of, any Government Entity is necessary on the part of Dolphin for the consummation by Dolphin of the Merger and the other transactions contemplated hereby, or for the exercise by the Surviving Corporation of full rights to own and operate the business of Dolphin as presently being conducted, except for (i) the filing of the Certificate of Merger as required by Delaware Law and any other filing required under the California Law and the Florida Law, (ii) the applicable requirements of the Exchange Act, state securities or "blue sky" laws, state takeover laws, (iii) any filings required under and in compliance with the HSR Act, and (iv) any filings under the Exon-Florio Amendment. Neither the execution and delivery of this Agreement nor the consummation of the Merger and the other transactions contemplated hereby nor compliance by Dolphin with all of the provisions hereof, nor the exercise by the Surviving Corporation of full rights to own and operate the business of Dolphin as presently being conducted will, subject to obtaining the approval of the this Agreement by the holders of a majority of the outstanding shares of Dolphin Common Stock, (i) conflict with or result in any breach of any provision of the certificate of incorporation, bylaws or other charter document of Dolphin, (ii) violate any material order, writ, injunction, decree, statute, rule or regulation applicable to Dolphin, or by which any of its properties or assets may be bound, or (iii) result in a violation or breach of, or constitute (with or without due notice or lapse of time or both) a default under, or result in any material change in, or give rise to any right of termination, cancellation, acceleration, redemption or repurchase under, any of the terms, conditions or provisions of any material note, bond, mortgage, indenture, deed of trust, license, lease, contract, agreement or other instrument or obligation to which Dolphin is a party or by which any of them or any of its properties or assets may be bound. Schedule 4.3 of the Dolphin Disclosure Statement lists all consents, waivers and approvals required to be obtained in connection with the consummation of the transactions contemplated hereby the failure to obtain which would have an Dolphin Material Adverse Effect.

4.4 *Capitalization.*

(a) The authorized capital stock of Dolphin consists of 10,000,000 shares of Dolphin Common Stock, divided into 8,650,000 shares of Class A Common Stock and 1,350,000 shares of Class B Common Stock, all of which have been committed for issuance.

(b) There are no equity securities of any class of Dolphin, or any securities convertible into or exercisable for any such equity securities, issued, reserved for issuance or outstanding. There are no warrants, options, convertible securities, calls, rights, stock appreciation rights, preemptive rights, rights of first refusal, or agreements or commitments of any nature obligating Dolphin to issue, deliver or sell, or cause to be issued, delivered or sold, additional shares of capital stock or other equity interests of Dolphin, or obligating Dolphin to grant, issue, extend, accelerate the vesting of, or enter into, any such warrant, option, convertible security, call, right, stock appreciation right, preemptive right, right of first refusal, agreement or commitment. To the knowledge of Dolphin, there are no voting trusts, proxies or other agreements or understandings with respect to the capital stock of Dolphin.

4.5 *Financial Statements.*

(a) The Company has delivered to the Investors Dolphin's Financial Statements.

(b) Dolphin's Financial Statements fairly and accurately present the financial position of Dolphin, as of those dates and the results of operations and changes in its financial position for such periods then ended, and have been prepared in accordance with GAAP applied on a consistent basis, subject to normal year-end adjustments.

(c) There are no debts, liabilities or claims against Dolphin that are not currently reflected in the Dolphin's Financial Statements, contingent or otherwise, which are or would be of a nature required to be reflected in a balance sheet prepared in accordance with GAAP other than (a) liabilities incurred in the ordinary course of business which, individually or in the aggregate, do not have an Dolphin Material Adverse Effect; and (b) liabilities set forth on the balance sheet included in the Dolphin's Financial Statements. Dolphin has no material liabilities other than those set forth in the Dolphin's Financial Statements and the Dolphin Disclosure Statement. Dolphin's revenue recognition policies are in accordance with GAAP. Dolphin maintains a standard system of accounting in accordance with GAAP. Dolphin's financial reserves are adequate to cover claims incurred.

(d) All of the accounts receivable and notes receivable owing to Dolphin as of the date hereof constitute valid and enforceable claims arising from bona fide

transactions in the ordinary course of business, subject to the effect of applicable bankruptcy, insolvency, reorganization, moratorium or other laws of general application relating to or affecting enforcement of creditors' rights and laws concerning equitable remedies, and there are no known, contingent or asserted claims, refusals to pay, or other rights of set-off against any thereof known to the Company.

For the purpose of this Agreement, Dolphin's Financial Statements shall mean the unaudited consolidated balance sheet of Dolphin as of December 31, 1999 and its unaudited consolidated statement of operations, shareholders' equity and cash flows for the 12 months then ended.

4.6 **Liabilities.** Dolphin's liabilities (absolute, accrued, contingent or otherwise) of any kind what so ever, whether reflected in the Dolphin's Financial Statements or not, do not exceed \$2,065,523.

4.7 **Subsidiaries.** Dolphin does not presently own, have any investment in, or control, directly or indirectly, any Subsidiaries. The Company is not a participant in any joint venture or partnership.

4.8 **Contracts and Commitments.**

(a) Except as described in Dolphin Disclosure Statement, Dolphin is not a party to or bound by any oral or written contract, obligation or commitment of any type in any of the following categories:

(i) agreements or arrangements that contain severance pay, understandings with respect to tax arrangements, understandings with respect to expatriate benefits, or post-employment liabilities or obligations;

(ii) agreements or plans under which benefits will be increased or accelerated by the occurrence of any of the transactions contemplated by this Agreement or under which the value of the benefits will be calculated on the basis of any of the transactions contemplated by this Agreement;

(iii) agreements, contracts or commitments currently in force relating to the disposition or acquisition of assets other than in the ordinary course of business, or relating to an ownership interest in any corporation, partnership, joint venture or other business enterprise;

(iv) agreements, contracts or commitments (A) relating to the acquisition, transfer, development, sharing, license (to or by Dolphin), or use of any Dolphin IP Right (except for any contract pursuant to which any Dolphin IP Right is licensed to Dolphin under any third party software license generally available to the public), or (B) with respect to the manufacturing, distribution or marketing of any products of Dolphin;

(v) agreements, contracts or commitments for the purchase of materials, supplies or equipment which provide for purchase prices substantially greater than those presently prevailing for such materials, supplies or equipment, or which are with sole or single source suppliers;

(vi) guarantees or other agreements, contracts or commitments under which Dolphin is absolutely or contingently liable for (A) the performance of any other person, firm or corporation, or (B) the whole or any part of the indebtedness or liabilities of any other person, firm or corporation;

(vii) powers of attorney authorizing the incurrence of a material obligation on the part of Dolphin;

(viii) agreements, contracts or commitments which limit or restrict (A) where Dolphin may conduct business, (B) the type or lines of business (current or future) in which it may engage, or (C) any acquisition of assets or stock (tangible or intangible) by Dolphin;

(ix) agreements, contracts or commitments containing any agreement with respect to a change of control of Dolphin;

(x) agreements, contracts or commitments for the borrowing or lending of money, or the availability of credit (except credit extended by Dolphin to customers in the ordinary course of business and consistent with past practice);

(xi) any hedging, option, derivative or other similar transaction and any foreign exchange position or contract for the exchange of currency;

(xii) any joint marketing or joint development agreement, or any license or distribution agreement relating to any Dolphin product.

(b) Neither Dolphin, nor to Dolphin's knowledge any other party to a Dolphin Contract (as defined below), has breached, violated or defaulted under, or received notice that it has breached, violated or defaulted under, (nor does there exist any condition under which, with the passage of time or the giving of notice or both, could reasonably be expected to cause such a breach, violation or default under), any material agreement, contract or commitment to which Dolphin is a party or by which any of them or any of its properties or assets may be bound (any such agreement, contract or commitment, a "**Dolphin Contract**"), other than any breaches, violations or defaults which individually or in the aggregate would not have an Dolphin Material Adverse Effect.

(c) Each Dolphin Contract is a valid, binding and enforceable obligation of Dolphin and to Dolphin's knowledge, of the other party or parties thereto, in accordance with its terms, and in full force and effect, except where the failure to be

valid, binding, enforceable and in full force and effect would not have a Dolphin Material Adverse Effect and to the extent enforcement may be limited by applicable bankruptcy, insolvency, moratorium or other laws affecting the enforcement of creditors' rights governing or by general principles of equity.

4.9 *Intellectual Property Rights.*

(a) Dolphin own or have the right to use all intellectual property used in or necessary to conduct its businesses (such intellectual property and the rights thereto are collectively referred to herein as the "*Dolphin IP Rights*").

(b) Schedule 4.9 of Dolphin Disclosure Statement identifies and provides a brief description of, and identifies any ongoing royalty or payment obligations with respect to, each Dolphin IP Right that is licensed or otherwise made available to Dolphin by any Person (except for any Dolphin IP Right that is licensed to Dolphin under any third party software license generally available to the public), and identifies the agreement under which such Dolphin IP Right is being licensed or otherwise made available to Dolphin. Dolphin has good, valid and marketable title to all of Dolphin IP Rights (except for licensed rights), free and clear of all encumbrances, except (i) as set forth in Schedule 4.9 of the Dolphin Disclosure Statement, (ii) for any lien for current taxes not yet due and payable, and (iii) for minor liens that have arisen in the ordinary course of business and that do not (individually or in the aggregate) materially detract from the value of the rights subject thereto or materially impair the operations of Dolphin. To Dolphin's knowledge, Dolphin has a valid right to use, license and otherwise exploit all Dolphin IP Rights.

(c) To the knowledge of Dolphin, Dolphin is not misappropriating or making any unlawful use of, and Dolphin has not at any time misappropriated or made any unlawful use of, or received any notice or other communication (in writing or otherwise) of any actual, alleged, possible or potential infringement, misappropriation or unlawful use of, any intellectual property rights owned or used by any other Person. Dolphin is not aware that any Person is misappropriating, or making unlawful use of any of the Dolphin IP Rights.

(d) Except as set forth in Schedule 4.9 of the Dolphin Disclosure Statement, Dolphin has not licensed any of the Dolphin IP Rights to any Person on an exclusive basis.

(e) The execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby will not constitute a material breach of any instrument or agreement governing any Dolphin IP Rights, will not (i) cause the modification of any terms of any licenses or agreements relating to any Dolphin IP Rights, (ii) cause the forfeiture or termination of any Dolphin IP Rights, (iii) give rise to a right of forfeiture or termination of any Dolphin IP Rights or

(iv) materially impair the right of Dolphin or the Surviving Corporation to use, sell or license any Dolphin IP Rights or portion thereof.

4.10 **Taxes.** All federal, state, local, and foreign tax returns required to be filed by Dolphin have been filed and are true in all material respects, and all taxes, assessments, fees, and other governmental charges upon Dolphin, or upon any of its properties, income, or franchises, shown in such returns to be due and payable have been paid or if any of such tax returns have not been filed or if any such taxes have not been paid or so reserved for, the failure so to file or to pay would not in the aggregate constitute a Dolphin Material Adverse Effect.

4.11 **Finders or Brokers.** Dolphin has not retained any investment banker, broker, or finder in connection with the transactions contemplated by this Agreement.

4.12 **Title to Property.** Dolphin has good and marketable title to all of its properties and assets, both real and personal, and has good title to all its leasehold interests, in each case subject to no mortgage, pledge, lien, security interest, conditional sale agreement, encumbrance, or charge, other than (a) the lien of current taxes not yet due and payable, and (b) liens and encumbrances which do not materially detract from the value of the property subject thereto or materially impair the operations of Dolphin.

ARTICLE V

REPRESENTATIONS AND WARRANTIES OF THE COMPANY

The Company makes to UO and Dolphin the representations and warranties contained in this Article V, in each case subject to the exceptions set forth in the disclosure statement, dated as of the date hereof (the "*Company Disclosure Statement*").

5.1 **Organization, Etc.** The Company is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware and has all requisite power and authority to own, lease and operate its properties and to carry on its business as now being conducted. The Company is not in violation of any provision of its certificate of incorporation, bylaws or any other charter document. For the purposes of this Agreement, "*Company Material Adverse Effect*" means any change, event or effect that is materially adverse to the general affairs, business, operations, assets, condition (financial or otherwise) or results of operations of the Company.

5.2 **Authority Relative to This Agreement.** The Company has full corporate power and authority to execute and deliver this Agreement and to consummate the Merger and the other transactions contemplated hereby. The execution and delivery of this Agreement and the consummation of the Merger and the other transactions contemplated hereby have been duly and validly authorized by the board of directors of the Company and no other corporate proceedings on the part of the Company are

necessary to authorize this Agreement or to consummate the Merger and the other transactions contemplated hereby. This Agreement has been duly and validly executed and delivered by the Company and, assuming due authorization, execution and delivery by UO and Dolphin, constitutes a valid and binding agreement of the Company, enforceable against it in accordance with its terms, except to the extent that its enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting the enforcement of creditors' rights generally or by general equitable principles.

5.3 **No Violations, Etc.** No filing with or notification to, and no permit, authorization, consent or approval of, any Government Entity is necessary on the part of the Company for the consummation by the Company of the Merger or the other transactions contemplated hereby except for (i) the filing of the Certificate of Merger as required by Delaware Law and any other filing required under the California Law and the Florida Law, (ii) the applicable requirements of the Exchange Act, state securities or "blue sky" laws, state takeover laws, (iii) any filings required under and in compliance with the HSR Act, and (iv) any filings under the Exon-Florio Amendment. Neither the execution and delivery of this Agreement nor the consummation of the Merger or the other transactions contemplated hereby, nor compliance by the Company with all of the provisions hereof and thereof will (i) conflict with or result in any breach of any provision of the certificate of incorporation, bylaws or other charter documents of the Company, (ii) violate any material order, writ, injunction, decree, statute, rule or regulation applicable to the Company or by which any of its properties or assets may be bound, or (iii) result in a violation or breach of, or constitute (with or without due notice or lapse of time or both) a default, or give rise to any right of termination, cancellation, acceleration, redemption or repurchase under, any of the terms, conditions or provisions of any material note, bond, mortgage, indenture, deed of trust, license, lease, agreement or other instrument or obligation to which the Company is a party or by which it or any of its properties or assets may be bound.

5.4 **Capitalization.** The authorized capital stock of the Company consists of 10,000,000 shares of Common Stock, \$0.01 par value, none of which will be outstanding issued and outstanding prior to the Closing, and 5,000,000 shares of Preferred Stock, \$0.01 par value, of which 1,250,000 are designated as Series A Preferred Stock, none of which will be outstanding prior to the Closing.

5.5 **Financial Statements; Liabilities.** The Company was recently incorporated and has not yet prepared any financial statements. The Company will institute and maintain a standard system of accounting established and administered in accordance with generally accepted accounting principles. As of the date hereof, the Company has no material liabilities, debts or obligations, whether accrued, absolute, contingent or otherwise, and whether due or to become due, including, but not limited to, liabilities on account of taxes, other governmental charges or lawsuits other than

liabilities incurred since the incorporation of the Company in the ordinary course of business and properly reflected on the books of the Company.

ARTICLE VI

COVENANTS

6.1 ***Conduct of Business During Interim Period.*** Except as contemplated or required by this Agreement or as expressly consented to in writing by each of UO and Dolphin, during the period from the date of this Agreement to the earlier of the termination of this Agreement or the Effective Time, the Company will (i) conduct its operations according to its ordinary and usual course of business consistent with past practice, (ii) use all commercially reasonable efforts to preserve intact its business organization, to keep available the services of its officers and employees in each business function and to maintain satisfactory relationships with suppliers, distributors, customers and others having business relationships with it, and (iii) not take any action which would adversely affect its ability to consummate the Merger or the other transactions contemplated by this Agreement.

6.2 ***Access to Information.*** From the date of this Agreement until the Effective Time, UO and Dolphin will afford the Company and its authorized representatives full access during normal business hours and upon reasonable notice to all of its facilities, personnel and operations and to all books and records of them, will permit the Company and its authorized representatives to conduct inspections as they may reasonably request and will instruct its officers to furnish such persons with such financial and operating data and other information with respect to its business and properties as they may from time to time request.

6.3 ***Commercially Reasonable Efforts.***

(a) Subject to the terms and conditions herein provided, the Company, UO and Dolphin shall use all commercially reasonable efforts to take, or cause to be taken, all other actions and do, or cause to be done, all other things necessary, proper or appropriate under applicable laws and regulations to consummate and make effective the transactions contemplated by this Agreement.

6.4 ***Notification of Certain Matters.*** Each of the Company, UO and Dolphin shall promptly notify the other parties of the occurrence or non-occurrence of any event the respective occurrence or non-occurrence of which would be likely to cause any condition to the obligations of the notifying party to effect the Merger not to be fulfilled. Each of the Company, UO and Dolphin shall also give prompt notice to the other of any communication from any Person alleging that the consent of such Person is or may be required in connection with the Merger or other transactions contemplated hereby.

ARTICLE VII

CONDITIONS TO THE OBLIGATIONS OF EACH PARTY

The respective obligations of each party to this Agreement to effect the Merger shall be subject to the fulfillment on or before the Effective Time of each of the following conditions, any one or more of which may be waived in writing by all the parties hereto:

7.1 *Stockholder Approval.* The approval of a majority of the outstanding shares of each of UO and Dolphin for adoption of the Merger Agreement and approval of the Merger shall have been obtained.

7.2 *Stock Purchase Agreement.* The closing under that certain Series A Preferred Stock Purchase Agreement dated January 25, 2000 by and among the Company and the Investors and the Note Holders named therein is effected simultaneously with the Closing (the "*Stock Purchase Agreement*").

7.3 *Purchase and Sale Agreement.* The closing under that certain Purchase and Sale Agreement dated February __, 2000 by and among the Company and General Orthopedics, Inc. is effected simultaneously with the Closing.

7.4 *Statute or Decree.* No writ, order, temporary restraining order, preliminary injunction or injunction shall have been enacted, entered, promulgated or enforced by any court or other tribunal or governmental body or authority, which remains in effect, and prohibits the consummation of the Merger or otherwise makes it illegal, nor shall any governmental agency have instituted any action, suit or proceeding which remains pending and which seeks, and which is reasonably likely, to enjoin, restrain or prohibit the consummation of the Merger in accordance with the terms of this Agreement.

ARTICLE VIII

CONDITIONS TO THE OBLIGATIONS OF UO,

DOLPHIN AND THE COMPANY

8.1 *Additional Conditions To The Obligations Of UO.* The obligations of UO to effect the Merger shall be subject to the fulfillment of each of the following additional conditions, any one or more of which may be waived in writing by UO:

(a) The representations and warranties of the Company and Dolphin contained in this Agreement shall be true and correct, in all material respects, as of the Effective Time, with the same force and effect as if made at the Effective Time, except (i) for changes specifically permitted by the terms of this Agreement, (ii) that the

accuracy of the representations and warranties that by their terms speak as of the date of this Agreement or some other date will be determined as of such date.

(b) The Company and Dolphin shall have performed and complied in all material respects with all agreements, obligations and conditions required by this Agreement to be performed or complied with by them on or prior to the Closing Date.

8.2 *Additional Conditions To The Obligations Of Dolphin.* The obligations of Dolphin to effect the Merger shall be subject to the fulfillment of each of the following additional conditions, any one or more of which may be waived in writing by Dolphin:

(a) The representations and warranties of the Company and UO contained in this Agreement shall be true and correct, in all material respects, as of the Effective Time, with the same force and effect as if made at the Effective Time, except (i) for changes specifically permitted by the terms of this Agreement, (ii) that the accuracy of the representations and warranties that by their terms speak as of the date of this Agreement or some other date will be determined as of such date.

(b) The Company and UO shall have performed and complied in all material respects with all agreements, obligations and conditions required by this Agreement to be performed or complied with by them on or prior to the Closing Date.

8.3 *Additional Conditions To The Obligations Of the Company.* The obligations of the Company to effect the Merger shall be subject to the fulfillment of each of the following additional conditions, any one or more of which may be waived in writing by the Company:

(a) The representations and warranties of the UO and Dolphin contained in this Agreement shall be true and correct, in all material respects, as of the Effective Time, with the same force and effect as if made at the Effective Time, except (i) for changes specifically permitted by the terms of this Agreement, (ii) that the accuracy of the representations and warranties that by their terms speak as of the date of this Agreement or some other date will be determined as of such date.

(b) UO and Dolphin shall have performed and complied in all material respects with all agreements, obligations and conditions required by this Agreement to be performed or complied with by them on or prior to the Closing Date.

ARTICLE IX

TERMINATION

9.1 *Termination.* This Agreement may be terminated at any time prior to the Effective Time:

(a) by mutual written consent duly authorized by the boards of directors of the Company, UO and Dolphin;

(b) by either the Company, UO or Dolphin if the Merger shall not have been consummated by March 31, 2000 (the "**End Date**"), which date may be extended by mutual consent of the parties hereto; provided, however, that the right to terminate this Agreement under this Section 9.1(b) shall not be available to any party whose action or failure to act has proximately contributed to the failure of the Merger to occur on or before such date and such action or failure to act constitutes a material breach of this Agreement;

(c) by either the Company, UO or Dolphin if (i) a statute, rule, regulation or executive order shall have been enacted, entered or promulgated prohibiting the consummation of the Merger substantially on the terms contemplated hereby or (ii) a court of competent jurisdiction or other Government Entity shall have issued an order, decree, ruling or injunction, or taken any other action, having the effect of permanently restraining, enjoining or otherwise prohibiting the Merger substantially on the terms contemplated hereby, and such order, decree, ruling, injunction or other action shall have become final and non-appealable; provided, that a party shall not be permitted to terminate this Agreement pursuant to this Section 9.1(c) unless such party shall have used its reasonable efforts to remove such order, decree, ruling or injunction;

9.2 ***Notice of Termination; Effect of Termination.*** Any termination of this Agreement under Section 9.1 will be effective immediately upon the delivery of a valid written notice of the terminating party to the other parties hereto. In the event of the termination of this Agreement as provided in Section 9.1, this Agreement shall be of no further force or effect, except (i) as set forth in this Section 9.2 and Article X, each of which shall survive the termination of this Agreement, and (ii) nothing herein shall relieve any party from liability for any willful breach of this Agreement.

9.3 ***Fees and Expenses.*** Except as set forth in the Stock Purchase Agreement, all fees and expenses incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the party incurring such expenses whether or not the Merger is consummated.

ARTICLE X

MISCELLANEOUS

10.1 ***Amendment and Modification.*** Subject to applicable law, this Agreement may be amended, modified or supplemented only by written agreement of the Company, UO and Dolphin at any time prior to the Effective Time; provided, however, that after approval of this Agreement by the stockholders of UO and Dolphin, no such amendment

or modification shall change the amount or form of the consideration to be received by UO's and Dolphin's stockholders in the Merger.

10.2 *Waiver of Compliance; Consents.* Any failure of the Company, UO or Dolphin to comply with any obligation, covenant, agreement or condition herein may be waived by the other parties to this Agreement, only by a written instrument signed by the party granting such waiver, but such waiver or failure to insist upon strict compliance with such obligation, covenant, agreement or condition shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure. Whenever this Agreement requires or permits consent by or on behalf of any party hereto, such consent shall be given in writing in a manner consistent with the requirements for a waiver of compliance as set forth in this Section 10.2.

10.3 *Notices.* All notices and other communications hereunder shall be in writing and shall be delivered personally by overnight courier or similar means or sent by facsimile with written confirmation of receipt, to the parties at the addresses specified below (or at such other address for a party as shall be specified by like notice. Any such notice shall be effective upon receipt, if personally delivered or on the next business day following transmittal if sent by confirmed facsimile. Notices, including oral notices, shall be delivered as follows:

(a) if to the Company, to: OrthoEvolution, Inc.

1431 Dalzell Street
Shreveport, Louisiana 71103
Telephone: (318) 226-7379
Facsimile: (318) 226-7389
Attention: Norbert Keeney II

With a copy to:

Roos & Frazier
910 Pierremont, Suite 108
Telephone: (318) 868-1616
Facsimile: (318) 226-7389
Attention: John Frazier

(b) if to UO, to:

Ultraortho, Inc.
530 Bush Street, 10th Floor
San Francisco, California 94108
Telephone: (415) 398-2332
Facsimile: (415) 398-2614
Attention: R. Thomas Grotz, M.D.

With a copy to:

Heller Ehrman White & McAuliffe
525 University Avenue
Palo Alto, California 94301-1900
Telephone: (650) 324-7000
Facsimile: (650) 324-0638
Attention: Richard A. Peers

(c) if to Dolphin, to:

Dolphin Medical Technologies, Inc.
1431 Dalzell Street
Shreveport, Louisiana 71103
Telephone: (318) 226-7379
Facsimile: (318) 226-7389
Attention: Norbert Keeney II

With a copy to:

Roos & Frazier
910 Pierremont, Suite 108
Telephone: (318) 868-1616
Facsimile: (318) 868-1784
Attention: John Frazier

10.4 **Assignment; Third Party Beneficiaries.** Neither this Agreement nor any right, interest or obligation hereunder shall be assigned by any of the parties hereto without the prior written consent of the other parties. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns. This Agreement is not intended to confer any rights or remedies upon any Person other than the parties hereto.

10.5 **Governing Law.** This Agreement shall be governed by the laws of the State of Delaware without reference to principles of conflicts of laws.

10.6 **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

10.7 **Severability.** In case any one or more of the provisions contained in this Agreement should be finally determined to be invalid, illegal or unenforceable in any respect against a party hereto, it shall be adjusted if possible to effect the intent of the parties. In any event, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby, and such

invalidity, illegality or unenforceability shall only apply as to such party in the specific jurisdiction where such final determination shall have been made.

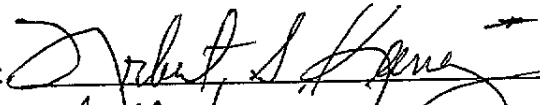
10.8 **Interpretation.** The Article and Section headings contained in this Agreement are solely for the purpose of reference and shall not in any way affect the meaning or interpretation of this Agreement.

10.9 **Entire Agreement.** This Agreement, including the exhibits hereto and the documents and instruments referred to herein, embody the entire agreement and understanding of the parties hereto in respect of the subject matter contained herein. There are no representations, promises, warranties, covenants, or undertakings, other than those expressly set forth or referred to herein and therein.

10.10 **Definition of "law".** When used in this Agreement "law" refers to any applicable law (whether civil, criminal or administrative) including, without limitation, common law, statute, statutory instrument, treaty, regulation, directive, decision, code, order, decree, injunction, resolution or judgment of any government, quasi-government, supranational, federal, state or local government, statutory or regulatory body, court, or agency.

IN WITNESS WHEREOF, the Company, UO and Dolphin have caused this Agreement to be signed by their respective duly authorized officers as of the date first above written.

ORTHOEVOLUTION, INC.

By: 
Title: President

DOLPHIN MEDICAL TECHNOLOGIES, INC.

By: 
Title: PRESIDENT

ULTRAORTHO, INC.

By: Thomas Setzler
Title: President