

# S84797

FLORIDA FILING & SEARCH SERVICES, INC.

P.O. BOX 10662 TALLAHASSEE, FL 32302

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DIVISION OF CORPORATION

APRIL 3, 1998

*Merger*

ACCOUNT #: FCA000000015

AUTHORIZATION: PAUL HODGE

COST:

\$

*70.00*

FILED  
98 APR - 3 PM 2:35  
SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

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Acknowledgement	<i>ADH</i>
W.P. Verifier	<i>ADH</i>

TYPE OF FILING: CORPORATE MERGER

NAME: GULF STREAM MEDICAL, INC.

DEKA MEDICAL, INC.

**ARTICLES OF MERGER**  
**Merger Sheet**

**MERGING:** -----

**GULF STREAM MEDICAL, INC.,** a Texas corporation not authorized to transact  
business in Florida

**INTO**

**DEKA MEDICAL, INC.,** a Florida corporation, S84797.

File date: April 3, 1998

Corporate Specialist: Annette Hogan

Account number: FCA000000015

Account charged: 70.00

**ARTICLES OF MERGER  
PROVIDING FOR THE MERGER  
OF  
A TEXAS CORPORATION  
INTO  
A FLORIDA CORPORATION**

**FILED**  
**98 APR -3 PM 2:35**  
**SECRETARY OF STATE**  
**TALLAHASSEE, FLORIDA**

Pursuant to the provisions of the Florida Business Corporation Act (the "FBCA"), the foreign business corporation and the domestic business corporation herein named do hereby submit the following Articles of Merger:

- FIRST:** Annexed hereto and made a part hereof is the Plan of Merger for merging Gulf Stream Medical, Inc., a Texas corporation (the "Merged Corporation") with and into DEKA Medical, Inc., a Florida corporation (the "Surviving Corporation").
- SECOND:** The merger of the Merged Corporation with and into the Surviving Corporation is permitted by the laws of the jurisdiction of organization of the Merged Corporation and is in compliance with said laws. The date of adoption of the Plan of Merger by the shareholders of the Merged Corporation was March 31, 1998.
- THIRD:** The shareholders of the Surviving Corporation entitled to vote thereon approved and adopted the aforesaid Plan of Merger by written consent given on March 31, 1998, in accordance with the provisions of Section 607.0704 of the Florida Business Corporation Act.
- FOURTH:** The effective date ("Effective Time") of the Merger is the date of filing of these Articles as required under Section 607.1105 of the FBCA.

Executed on this 31<sup>st</sup> day of March, 1998.

GULF STREAM MEDICAL, INC.

By:   
Its: President

DEKA MEDICAL, INC.

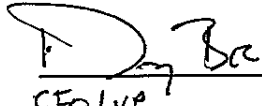
By: \_\_\_\_\_  
Its: Chief Financial Officer

Executed on this 31<sup>st</sup> day of March, 1998.

GULF STREAM MEDICAL, INC.

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

DEKA MEDICAL, INC.

By:   
Its: CFO/VP

## **AGREEMENT AND PLAN OF MERGER**

This Agreement and Plan of Merger (the "Agreement") is made as of the 31st day of March, 1998, by and among DEKA Medical, Inc., a Florida corporation ("DEKA"), Gulf Stream Medical, Inc., a Texas corporation (the "Company"), and Alexander S. Withers (the "Shareholder").

In consideration of the mutual covenants and agreements contained herein, the parties hereto covenant and agree as follows:

### **1. THE MERGER**

1.1. Merger. In accordance with the provisions of the business corporation laws of the States of Florida and Texas at the Effective Date (as hereinafter defined), the Company shall be merged (the "Merger") into DEKA, and DEKA shall be the surviving corporation (the "Surviving Corporation"), and as such shall continue to be governed by the laws of the State of Florida.

1.2. Continuing of Corporate Existence. Except as may otherwise be set forth herein, the corporate existence and identity of the Company, with all its purposes, powers, franchises, privileges, rights and immunities, shall continue unaffected and unimpaired by the Merger, and the corporate existence and identity of the Company, with all its purposes, powers, franchises, privileges, rights and immunities, at the Effective Date shall be merged with and into that of DEKA, and DEKA shall be vested fully therewith and the separate corporate existence and identity of the Company shall thereafter cease except to the extent continued by statute.

1.3. Effective Date. The Merger shall become effective upon the occurrence of the issuance of the certificate of merger (the "Effective Date") by the Secretary of State of Florida on the Closing Date (as defined herein) of the Certificate of Merger with the Secretary of State of Florida pursuant to the business corporation laws of the State of Florida.

### **1.4. Corporate Government**

(a) The Certificate of Incorporation of DEKA, as in effect on the Effective Date, shall continue in full force and effect and shall be the Certificate of Incorporation of the Surviving Corporation.

(b) The Bylaws of DEKA, as in effect as of the Effective Date, shall continue in full force and effect and shall be the Bylaws of the Surviving Corporation.

(c) The members of the Board of Directors and the officers of the Surviving Corporation shall be the persons holding such offices in DEKA as of the Effective Date.

1.5. Rights and Liabilities of the Surviving Corporation. The Surviving Corporation shall have the following rights and obligations:

(a) The Surviving Corporation shall have all the rights, privileges, immunities and powers and shall be subject to all the duties and liabilities of a corporation organized under the laws of the State of Florida.

(b) The Surviving Corporation shall possess all of the rights, privileges, immunities and franchises, of either a public or private nature, of the Company and DEKA and all property, real, personal and mixed, and all debts due on whatever account, including subscription to shares, and all other choses in action, and every other interest of or belonging or due to DEKA and the Company shall be taken and deemed to be transferred or invested in the Surviving Corporation without further act or deed.

(c) At the Effective Date, the Surviving Corporation shall thenceforth be responsible and liable for all liabilities and obligations of the Company and DEKA and any claim existing or action or proceeding pending by or against DEKA or the Company may be prosecuted as if the Merger had not occurred, or the Surviving Corporation may be substituted in its place. Neither the rights of creditors nor any liens upon the property of DEKA or the Company shall be impaired by the Merger.

1.6. Closing. Consummation of the transactions contemplated by this Agreement (the "Closing") shall take place at the offices of Crouch & Hallett, LLP, in Dallas, Texas, commencing at 10:00 a.m., local time, on March 31, 1998, or as soon as possible thereafter when each of the other conditions set forth in Articles 8 and 9 have been satisfied or waived, and shall proceed promptly to conclusion, or at such other place, time and date as shall be fixed by mutual agreement between DEKA and the Company. The day on which the Closing shall occur is referred to herein as the "Closing Date." Each party will cause to be prepared, executed and delivered Certificate of Merger to be filed with the Secretary of State of Florida and the Secretary of State of Texas, the documents set forth in Article 8 and all other appropriate and customary documents as any party or its counsel may reasonably request for the purpose of consummating the transactions contemplated by this Agreement. All actions taken at the Closing shall be deemed to have been taken simultaneously at the time the last of any such actions is taken or completed.

1.7. Tax Consequences. It is intended that the Merger shall constitute a reorganization within the meaning of Section 368 of the Internal Revenue Code of 1986, as amended (the "Code"), and that this Agreement shall constitute a "plan of reorganization" for the purposes of Section 368 of the Code.

## 2. CONVERSION OF SHARES IN THE MERGER

2.1. Conversion of Company Shares. The outstanding shares (the "Shares") of the common stock of the Company (the "Company Common Stock") shall in the aggregate and on a fully diluted basis shall at the Effective Date, by virtue of the Merger and without any action on the part of the holder thereof, be converted into (i) the sum of \$260,000 payable in cash at the Closing by wire transfer to the accounts specified by the Shareholder and (ii) such number of shares of common stock of DEKA ("DEKA Common Stock") as is equal to the quotient obtained by dividing (X) \$490,000 less "Closing Indebtedness" (as defined below) less "Retained Cash" (as defined below) by (Y) \$8.00. For purposes of this Agreement:

(i) "Closing Indebtedness" shall mean the amount of the Company's indebtedness for borrowed money as of the Effective Date; and

(ii) "Retained Cash" shall mean the amount of the Company's cash and cash equivalents distributed by the Company to the Shareholder or his affiliates at Closing by the assignment of the Company's money market account at Edward Jones.

2.2. Deka Capital Stock. Each share of capital stock of DEKA which shall be outstanding immediately prior to the Effective Date shall remain unchanged and continue to represent one share of capital stock of the Surviving Corporation.

## 3. REPRESENTATIONS AND WARRANTIES OF THE COMPANY AND THE SHAREHOLDER.

The Shareholder and the Company, jointly and severally, represent and warrant to DEKA that, except as qualified by the Sellers' Disclosure Schedule attached hereto (the "Sellers' Disclosure Schedule"):

3.1 Organization; Good Standing. The Company is a corporation, duly incorporated, validly existing and in good standing under the laws of Texas and has all requisite corporate power and authority to own and lease its properties and assets and to carry on its business as currently conducted. The Company has no subsidiaries and no equity, profit sharing, participation or other ownership interest (including any general partnership interest) in any corporation, partnership, limited partnership or other entity. The Company is duly qualified and licensed to do business and is in good standing in all jurisdictions where such qualification is required.

3.2 Due Authorization. The Shareholder has full power and authority to enter into and perform this Agreement and the documents contemplated herein and to carry out the transactions contemplated hereby and thereby. The Company has full corporate power and authority to enter into this Agreement and to carry out its



obligations hereunder. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized by all necessary corporate action on the part of the Company.

3.3 Execution and Delivery. This Agreement has been duly executed and delivered by the Company and the Shareholder and constitutes their legal, valid and binding obligation, enforceable against each of them in accordance with its terms, except as may be limited by the availability of equitable remedies or by applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally. The execution and delivery by the Company and the Shareholder of this Agreement and the consummation of the transactions contemplated hereby will not: (i) conflict with or result in a breach of the certificate of incorporation or bylaws of the Company, (ii) violate any law, statute, rule or regulation or any order, writ, injunction or decree of any court or governmental authority, or (iii) violate or conflict with or constitute a default under (or give rise to any right of termination, cancellation or acceleration under) any indenture, mortgage, lease, contract or other instrument to which the Company or any Shareholder is a party or by which they are bound or affected.

3.4 Governmental Consents. No approval, authorization, consent, order or other action of, or filing with, any governmental authority or administrative agency is required in connection with the execution and delivery by the Company and the Shareholder of this Agreement or the consummation of the transactions contemplated hereby. No approval, authorization or consent of any other third party is required in connection with the execution and delivery by the Company and the Shareholder of this Agreement and the consummation of the transactions contemplated hereby.

3.5 Transactions with Affiliates. At the time of the Closing, neither the Shareholder nor any of his Affiliates (as defined herein) will have any interest in or will own any property or right used principally in the conduct of the Company's business, except as contemplated by this Agreement. The term "Affiliate" shall mean any Shareholder or any of the Company's officers, employees and directors, any partner of any such person, or any member of the immediate family (including brother, sister, descendant, ancestor or in-law) of any such person, or any corporation, partnership, trust or other entity in which any such person or any such family member has a substantial interest or is a director, officer, partner or trustee.

3.6 Title to Assets. The Company is the sole and exclusive legal owner of all right, title and interest in, and has good and marketable title to, all of the assets of the Company's business that it purports to own, free and clear of liens, claims and encumbrances except (i) liens, claims and encumbrances to be released at Closing, (ii) liens for taxes not yet payable and (iii) lease obligations to Toyota Leasing Company for the Company's forklift.

3.7 Condition of Assets. All of the material fixed assets of the Company are in good condition and working order, ordinary wear and tear excepted, and are suitable for the uses for which they are intended, free from any known defects except such minor defects as do not substantially interfere with the continued use thereof.

3.8 Governmental Licenses. The Sellers' Disclosure Schedule lists and accurately describes any licenses, permits, orders, approvals, authorizations and filings issued to the Company by a governmental or regulatory authority in connection with the lawful ownership and operation of the Company's business (the "Governmental Licenses"), except where the failure to hold such Governmental Licenses would not have a material adverse effect on the Company. The Company has furnished to DEKA true and accurate copies of all such Governmental Licenses, and each Governmental License is in full force and effect and is valid under applicable federal, state and local laws.

3.9 Taxes. All tax reports and returns relating to the Company's assets and operations (including sales, use, income, property, franchise and employment taxes) that are due have been filed with the appropriate federal, state and local governmental agencies, and the Company has paid all taxes, penalties, interest, deficiencies, assessments or other charges due as reflected on the filed returns or claimed to be due by such federal, state or local taxing authorities (other than taxes, deficiencies, assessments or claims which are being contested in good faith and which in the aggregate are not material). There are no examinations or audits pending or unresolved examinations or audit issues with respect to the Company's federal, state or local tax returns. All additional taxes, if any, assessed as a result of such examinations or audits have been paid. There are no pending claims or proceedings relating to, or asserted for, taxes, penalties, interest, deficiencies or assessments against the Company.

3.10 Litigation. There is no order of any court, governmental agency or authority and no action, suit, proceeding or investigation, judicial, administrative or otherwise, of which the Company or the Shareholder have actual knowledge that is pending or threatened against or affecting the Company which, if adversely determined, might materially and adversely affect the business, operations, properties, assets or conditions (financial or otherwise) of the Company or which challenges the validity or propriety of any of the transactions contemplated by this Agreement.

3.11 Employee Benefit Plans; Labor Matters. The Company has no liabilities under The Employee Retirement Income Security Act of 1974, as amended ("ERISA"), or similar laws with respect to employee benefit plans. No liability under Title IV of ERISA has been incurred by the Company or an affiliate thereof that has not been satisfied in full, and no condition exists that presents a material risk to the Company or its affiliates of incurring liability under such Title. There are no labor disputes of a material nature pending between the Company, on the one hand, and any of its

employees, on the other hand, and there are no known organizational efforts presently being made involving any of such employees. The Company has complied in all material respects with all laws relating to the employment of labor, including any provisions thereof relating to wages, hours, collective bargaining and the payment of social security and other taxes, and is not liable for any material arrearages of wages or any taxes or penalties for failure to comply with any of the foregoing. As of the Closing Date, all employees of the Company will either be U.S. citizens or have valid work permits meeting applicable immigration laws and regulations.

**3.12 Capitalization.** All of the issued and outstanding Shares have been duly authorized and validly issued and are fully paid and nonassessable, and are owned of record and beneficially by the Shareholder. The Sellers' Disclosure Schedule sets forth the capitalization of the Company as of the Closing Date including the description of the Shares owned by the Shareholder. There are shares of capital stock of the Company held in treasury. There is no outstanding subscription, contract, option, warrant, call or other right obligating the Company to issue, sell, exchange or otherwise dispose of, or to purchase, redeem or otherwise acquire, shares of, or securities convertible into or exchangeable for, capital stock of the Company. The Shareholder is the lawful, sole and beneficial owner of the Shares, free and clear of all liens, claims and encumbrances of every kind.

**3.13 Financial Statements and Records of the Company.**

(a) The Company has delivered to DEKA true, correct and complete copies of the balance sheet of the Company as of December 31, 1996 and 1997 and the related statement of operations for the years then ended (the "Company Financial Statements").

(b) Except as disclosed in the Disclosure Schedule, the Company Financial Statements present fairly the assets, liabilities and financial position of the Company as of the dates thereof and the results of operations thereof for the periods then ended and have been prepared in conformity with generally accepted accounting principles applied on a consistent basis with prior periods. The books and records of the Company have been and are being maintained in accordance with good business practice, reflect only valid transactions, are complete and correct in all material respects and present fairly in all material respects the basis for the financial position and results of operations of the Company set forth in the Company Financial Statements.

(c) As of the Closing Date, (i) the working capital of the Company (after the settlement of all intercompany items and the distribution of the Retained Cash to the Shareholder) will be no less than \$208,760 and (ii) all intercompany payables, receivables and advances shall have been settled.

(d) As of the Closing Date, the Company will be deemed to have distributed cash to the Shareholder for the purpose of Shareholder's reducing his indebtedness to the Company. The balance of such indebtedness shall be evidenced by that certain Promissory Note, made by the Shareholder in favor of DEKA, dated as of even date herewith and attached to the Employment Agreement, in the amount of \$37,323 (which amount will bear interest at the annual rate of 5.39%).

**3.14 Absence of Certain Changes.** Since December 31, 1997, the Company has not, except as set forth on the Sellers' Disclosure Schedule, (i) suffered any change in its financial condition or results of operations other than changes in the ordinary course of business that, individually or in the aggregate, have had a material adverse effect on the Company, (ii) acquired or disposed of any asset, or incurred, assumed, guaranteed or endorsed any liability or obligation, or subjected or permitted to be subjected any material amount of assets to any lien, claim or encumbrance of any kind, except in the ordinary course of business, (iii) entered into or terminated any Material Contract (as hereinafter defined), or agreed or made any material changes in any Material Contract, other than renewals and extensions thereof in the ordinary course of business, (iv) except for the distribution of Retained Cash, declared, paid or set aside for payment any dividend or distribution with respect to its capital stock, entered into any collective bargaining, employment, consulting, compensation or similar agreement with any person or group, (v) entered into, adopted or amended any employee benefit plan or (viii) taken any action that would be prohibited under Section 5.4.

**3.15 Undisclosed Liabilities.** Other than as set forth on the Company Financial Statements, there are no liabilities or obligations of the Company of a nature required to be disclosed on financial statements prepared in accordance with generally accepted accounting principles.

**3.16 Contracts and Agreements.** The Sellers' Disclosure Schedule contains a list, complete and accurate in all material respects, of all of the following categories of contracts and agreements to which the Company is bound at the date hereof: (i) employee benefit plans, employment, consulting or similar contracts, (ii) contracts relating to leasehold interests, (iii) contracts that involve remaining aggregate payments by the Company in excess of \$10,000 or which have a remaining term in excess of one year, (iv) insurance policies and (v) other contracts not made in the ordinary course of business (collectively the "Material Contracts"). The Company is not in default with respect to any of the Material Contracts.

**3.17 Intellectual Property.** The Sellers' Disclosure Schedule contains a list, complete and accurate in all material respects, of patents, patent applications, trademarks, tradenames and license rights (collectively the "Intellectual Property") which are material to the business of the Company. The Company's use of the Intellectual Property does not infringe upon the rights of third parties.

3.18. FDA Matters. No product of the Company requires any approval, which has not previously been obtained, of the U.S. Food and Drug Administration ("FDA") for the purpose for which it is being manufactured, assembled or sold. The Sellers' Disclosure Schedule sets forth each of the permits and approvals issued or granted by the FDA and in effect. The Company has not received any notice of any action or proceeding in the FDA including, but not limited to, recall procedures, pending or, to the knowledge of Shareholder, threatened against the Company relating to the safety or efficacy of any of its products. To the knowledge of the Shareholder, the manufacture of the Company's products substantially conforms in all respects to current FDA "good manufacturing practices."

3.19. Environmental Matters. The Company is in compliance in all material respects with all applicable federal, state, local and foreign laws relating to emissions, discharges and releases of hazardous materials into the environment and the generation, treatment, storage, transportation and disposal of hazardous waste, including without limitation, any applicable provisions of the Resource Conservation and Recovery Act of 1976 or the Comprehensive Environmental Response, Compensation and Liability Act of 1980. There are no conditions at, on, under or related to any real property owned or operated by the Company which presently or potentially poses a significant hazard to human health or the environment which are caused by the Company Operations on such real property, and there has been no production, use, treatment, storage, transportation or disposal by the Company of any "Hazardous Substance" (as defined below) nor any release by the Company of any Hazardous Substance. As used herein, the term "Hazardous Substance" means any hazardous or toxic substance, material or waste which is regulated by any applicable federal, state or local authority.

3.20. Warranty Claims. There are no existing or, to the Company's knowledge, threatened claims against the Company for products which are defective or for failure to meet products warranties.

3.21 Receipt of DEKA Common Stock. In connection with the receipt of DEKA Common Stock pursuant to the Merger, the Shareholder understands and acknowledges the following:

(a) The Shareholder understands the merits and risks involved in an investment in DEKA. DEKA has afforded the Shareholder the opportunity to ask questions and receive answers concerning the terms and conditions of the issuance of the shares of DEKA Common Stock to be issued in the Merger (the "DEKA Shares") and to obtain any additional information regarding DEKA that the Shareholder deems necessary;

(b) The Shareholder understands that the DEKA Shares have not been registered under the Securities Act of 1933, as amended, or under the securities laws

of any state and, therefore, cannot be sold unless they are subsequently so registered or an exemption from such registration is available.

(c) The Shareholder is acquiring the DEKA Shares for his own account and without any intention of reselling or distributing them. The Shareholder has not offered for sale or agreed to sell any portion of the DEKA Shares.

3.22 Finders and Brokers. All negotiations relative to this Agreement and the transactions contemplated hereby have been carried on by the Shareholder directly with DEKA. No person has as a result of any agreement or action of the Company or the Shareholder any valid claim against any of the parties hereto for a brokerage commission, finder's fee or other like payment.

#### 4. REPRESENTATIONS AND WARRANTIES OF DEKA

DEKA hereby represents and warrants to the Shareholder as follows:

4.1 Organization and Good Standing. DEKA is a corporation, duly incorporated, validly existing and in good standing under the laws of the State of Florida and has all requisite corporate power and authority to own and lease its properties and carry on its business as currently conducted.

4.2 Due Authorization. DEKA has full corporate power and authority to enter into this Agreement and to carry out its obligations hereunder. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized by all necessary corporate action on the part of DEKA.

4.3 Execution and Delivery. This Agreement has been duly executed and delivered by DEKA and constitutes its legal, valid and binding obligation, enforceable against it in accordance with its terms, except as may be limited by the availability of equitable remedies or by applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally. The execution and delivery by DEKA of this Agreement and the consummation of the transactions contemplated hereby will not: (i) conflict with or result in a breach of the certificate of incorporation or bylaws of DEKA, (ii) violate any law, statute, rule or regulation or any order, writ, injunction or decree of any court or governmental authority, or (iii) violate or conflict with or constitute a default under (or give rise to any right of termination, cancellation or acceleration under) any indenture, mortgage, lease, contract or other instrument to which DEKA is a party or by which it is bound or affected.

4.4 DEKA Shares. The DEKA Shares will, upon issuance, be duly and validly issued, fully paid and nonassessable.

4.5 Finders and Brokers. All negotiations relative to this Agreement and the transactions contemplated hereby have been carried on by DEKA directly with the Shareholder and the Company. No person has as a result of any agreement or action of DEKA any valid claim against any of the parties hereto for a brokerage commission, finder's fee or other like payment.

## 5. CERTAIN COVENANTS AND AGREEMENTS

The Company and the Shareholder, jointly and severally (subject to the provisions of Section 15.10 hereof), covenant and agree that, from and after the execution and delivery of this Agreement to and including the Closing Date (and thereafter as reflected below), they shall cause the Company to comply with the covenants set forth below, and DEKA covenants and agrees that it shall similarly comply with said covenants to the extent applicable to it.

5.1 Access. Upon reasonable notice, the Company and the Shareholder will give to DEKA and its counsel, accountants and other authorized representatives, full access during reasonable business hours to all of the Company's properties, books, contracts, documents and records and shall furnish DEKA with all such information concerning their affairs, including financial statements, as the other may reasonably request in order that DEKA may have full opportunity to make such reasonable investigations as it shall desire for the purpose of verifying the performance of and compliance with the representations, warranties, covenants and the conditions contained herein or for other purposes reasonably related to the transactions contemplated hereby. The Company and the Shareholder will take all action necessary to enable DEKA, its counsel, accountants and other representatives to discuss the affairs, properties, business, operations and records of the Company at such times and as often as DEKA may reasonably request with executives, independent accountants and counsel of the Company and the Shareholder. In the event that the Closing does not occur and this Agreement is terminated, the Company and the Shareholder, on the one hand, and DEKA, on the other, shall (i) maintain the confidentiality of all information obtained from the other party in connection herewith, except for such information as is in the public domain, (ii) not use any such information so obtained to the detriment or competitive disadvantage of the other party, and (iii) promptly return copies of all books, records, contracts and any other documentation of the other delivered to such party pursuant to the transactions contemplated hereby.

5.2 Best Efforts. The Company, the Shareholder and DEKA shall take all reasonable actions necessary to consummate the transactions contemplated by this Agreement and will use all necessary and reasonable means at their disposal to obtain all necessary consents and approvals of other persons and governmental authorities required to enable it to consummate the transactions contemplated by this Agreement. Each party shall make all filings, applications, statements and reports to all governmental agencies or entities which are required to be made prior to the Closing

Date by or on its behalf pursuant to any statute, rule or regulation in order to consummate the transactions contemplated by this Agreement, and copies of all such filings, applications, statements and reports shall be provided to the other.

5.3 Public Announcements. Prior to the Closing Date, all notices to third parties and other publicity relating to the transaction contemplated by this Agreement shall be jointly planned and agreed to by the Shareholder and DEKA.

5.4 Ordinary Course of Business. Except as contemplated by this Agreement, during the period from the execution and delivery of this Agreement through the Closing Date, the Company shall (i) conduct its operations in the ordinary course of business consistent with past and current practices, (ii) use reasonable best efforts to maintain and preserve intact its goodwill and business relationships, (iii) not enter into any agreement which involves the payment by the Company of an aggregate amount exceeding \$10,000, or which has a term exceeding 30 days, (iv) not increase, or agree to increase, the level of compensation (other than scheduled anniversary raises consistent with prior practice) payable to any of its employees or the Shareholder, or pay any bonuses to Shareholder, except for the distribution of the Retained Cash, or (v) take any action which would cause any representation contained in Article 3 to be untrue as of the Closing Date.

5.5 Repurchase of Certain DEKA Shares.

(a) The Shareholder hereby grants to DEKA the right and option (the "Call Option") to repurchase up to all of the DEKA Shares in excess of 5,000 shares (the DEKA Shares so eligible for repurchase being referred to herein as the "Callable Shares") as is determined in accordance with the terms and conditions set forth in this Section 5.5. DEKA may exercise the Call Option only if, during any consecutive 12 month period (the "Option Period") within the 24 months after the Closing, the "Argon Revenues" (as defined below) are less than \$975,000. The percentage reduction in the Argon Revenues from \$975,000 shall be equal to the portion of the Callable Shares that may be repurchased upon exercise of the Call Option. As used herein, "Argon Revenues" shall mean the sale of equipment drape and tubing products by the Surviving Corporation to the Argon division of Maxim Healthcare (or any successor or other entity operating in the same Athens, Texas Argon facility).

(b) DEKA may exercise the Call Option by giving written notice to the Shareholder of its exercise of the Call Option at any time prior to the 27th month anniversary of the Closing. Upon DEKA's exercise of the Call Option, the Shareholder shall be required to sell the number of Callable Shares computed above to DEKA, and DEKA shall be required to repurchase such number of Callable Shares. A closing for the repurchase of such Callable Shares shall be held on the date specified by DEKA, which shall be no later than the 30th day after the exercise of the Call Option. At such closing, the Shareholder shall deliver to DEKA stock certificates representing such



computed number of Callable Shares, duly endorsed to DEKA, against payment by DEKA to the Shareholder of the exercise price of \$.01 per share in cash.

(c) The Shareholder hereby acknowledges that DEKA will place restrictive legends on the Callable Shares referencing DEKA's Call Option and the existence of this Agreement.

(d) If at any time during the 18 months following DEKA's exercise of the Call Option, the Argon Revenues increase such that the Call Option (if still in effect) were no longer exercisable, the Shareholder shall be entitled to rescind the repurchase of Callable Shares by DEKA pursuant to the Call Option. Upon the election of such rescission, DEKA shall deliver to the Shareholder stock certificates representing the Callable Shares previously purchased, duly endorsed to the Shareholder, against payment by the Shareholder to DEKA of the exercise price of \$.01 per share in cash.

## 6. CONDITIONS TO DEKA'S CLOSING

All obligations of DEKA under this Agreement shall be subject to the fulfillment at or prior to the Closing of the following conditions, it being understood that DEKA may, in its sole discretion, waive any or all of such conditions in whole or in part:

6.1 Representations, Etc. The Company and the Shareholder shall have performed in all material respects the covenants and agreements contained in this Agreement that are to be performed by each of them at or prior to the Closing, and the representations and warranties of the Company and the Shareholder contained in this Agreement shall be true and correct as of the Closing Date with the same effect as though made at such time (except as contemplated or permitted by this Agreement).

6.2 Company Consents. All consents and approvals of governmental agencies and from any other third parties required for the Company to consummate the transactions contemplated by this Agreement shall have been obtained without material cost or other materially adverse consequence to DEKA.

6.3 No Adverse Litigation. No order or preliminary or permanent injunction shall have been entered and no action, suit or other legal or administrative proceeding by any court or governmental authority, agency or other person shall be pending or threatened on the Closing Date which may have the effect of (i) making any of the transactions contemplated hereby illegal, (ii) materially adversely affecting the value of the assets or business of the Company or (iii) making DEKA or the Company liable for the payment of a material amount of damages to any person.

6.4 Completion of Due Diligence. DEKA's due diligence review of the Company's intellectual property and marketing prospects shall not have revealed items which are material and adverse to the Company.

6.5 Ancillary Agreements. The Company and the Shareholder shall have executed and delivered the Employment Agreement, in the form of Exhibit A hereto ("Employment Agreement"), and Lease Agreement, in the form of Exhibit B hereto (the "Lease").

6.6 DEKA Consents. DEKA's shareholders and bank lender shall have approved the Merger.

6.7 Closing Deliveries. DEKA shall have received each of the documents or items required to be delivered to it pursuant to Section 8.1 hereof.

## 7. CONDITIONS TO SHAREHOLDER' AND COMPANY'S CLOSING

All obligations of the Company and the Shareholder under this Agreement shall be subject to the fulfillment at or prior to the Closing of the following conditions, it being understood that the Company and the Shareholder may, in their sole discretion, waive any or all of such conditions in whole or in part:

7.1 Representations, Etc. DEKA shall have performed in all material respects the covenants and agreements contained in this Agreement that are to be performed by it at or prior to the Closing, and the representations and warranties of DEKA contained in this Agreement shall be true and correct as of the Closing Date with the same effect as though made at such time (except as contemplated or permitted by this Agreement).

7.2 No Adverse Litigation. No order or preliminary or permanent injunction shall have been entered and no action, suit or other legal or administrative proceeding by any court or governmental authority, agency or other person shall be pending or threatened on the Closing Date which may have the effect of (i) making any of the transactions contemplated hereby illegal, (ii) materially adversely affecting the value of the assets or business of the Company or (iii) making the Company and the Shareholder liable for the payment of a material amount of damages to any person.

7.3 Closing Deliveries. The Company and the Shareholder shall have received each of the documents or items required to be delivered to them pursuant to Section 8.2 hereof.

## 8. DOCUMENTS TO BE DELIVERED AT CLOSING

8.1 To DEKA. At the Closing, there shall be delivered to DEKA:

(a) the Shares, together with duly executed stock powers, in form satisfactory to DEKA and its counsel;

- (b) the Employment Agreement;
- (c) the Lease;
- (d) resignations of all the officers and directors of the Company from such positions and from their employment with the Company, except as to the Employment Agreement;
- (e) the corporate minute books and stock books of the Company; and
- (f) all other items reasonably requested by DEKA.

8.2 To the Shareholder. At the Closing, there shall be delivered to the Shareholder:

- (a) the sum of \$260,000 in cash and the shares of DEKA Common Stock as contemplated by Section 2.1 hereof;
- (b) the Lease;
- (c) the Retained Cash;
- (d) the Employment Agreement; and
- (e) all other items reasonably requested by the Shareholder.

## 9. SURVIVAL

All representations, warranties and covenants made herein by any party to this Agreement shall survive the Closing for a period of 12 months; provided, however, that the representations contained in Section 3.9 shall survive until the statute of limitations with respect to tax matters expires; and provided further, that the representations contained in Section 3.12 shall survive indefinitely. In addition, the covenant contained in Section 5.5 shall continue for the period set forth therein. The representations and warranties hereunder shall not be affected or diminished by any investigation at any time by or on behalf of the party for whose benefit such representations and warranties were made. All statements contained herein or in any certificate or exhibit shall be deemed to be representations and warranties.

## 10. INDEMNIFICATION OF THE SHAREHOLDER

DEKA shall indemnify and hold the Shareholder harmless from, against, for and in respect of:

(a) any and all damages, losses, settlement payments, obligations, liabilities, claims, actions or causes of action and encumbrances suffered, sustained, incurred or required to be paid by the Shareholder because of the breach of any written representation, warranty, agreement or covenant of DEKA contained in this Agreement.

(b) any and all liabilities, obligations, claims and demands arising out of the ownership and operation of the Company on and after the Closing Date, except to the extent the same arises from a breach of any written representation, warranty, agreement or covenant of any Company or the Shareholder contained in or made in connection with this Agreement; and

(c) all reasonable costs and expenses (including, without limitation, attorneys' fees, interest and penalties) incurred by the Shareholder in connection with any action, suit, proceeding, demand, assessment or judgment incident to any of the matters indemnified against in this Section 10.

#### 11. INDEMNIFICATION OF DEKA

The Shareholder shall indemnify and hold DEKA harmless from, against, for and in respect of:

(a) any and all damages, losses, settlement payments, obligations, liabilities, claims, actions or causes of action and encumbrances suffered, sustained, incurred or required to be paid by DEKA because of (i) the breach of any written representation, warranty, agreement or covenant of the Company or the Shareholder contained herein or (ii) workers' compensation claims arising during the period prior to the Closing and after which the Company's general accident insurance policy had lapsed; and

(b) all reasonable costs and expenses (including, without limitation, attorneys' fees, interest and penalties) incurred by DEKA in connection with any action, suit, proceeding, demand, assessment or judgment incident to any of the matters indemnified against in this Section 11.

#### 12. GENERAL RULES REGARDING INDEMNIFICATION

The obligations and liabilities of each indemnifying party hereunder with respect to claims resulting from the assertion of liability by the other party or indemnified third parties shall be subject to the following terms and conditions:

(a) The indemnified party shall give prompt written notice (which in no event shall exceed 20 days from the date on which the indemnified party first became aware of such claim or assertion) to the indemnifying party of any claim which might give rise to a claim by the indemnified party against the indemnifying party based on the

indemnity agreements contained in Section 10 or 11 hereof, stating the nature and basis of said claims and the amounts thereof, to the extent known;

(b) If any action, suit or proceeding is brought against the indemnified party with respect to which the indemnifying party may have liability under the indemnity agreements contained in Section 10 or 11 hereof, the action, suit or proceeding shall, upon the written acknowledgment by the indemnifying party that is obligated to indemnify under such indemnity agreement, be defended (including all proceedings on appeal or for review which counsel for the indemnified party shall deem appropriate) by the indemnifying party. The indemnified party shall have the right to employ its own counsel in any such case, but the fees and expenses of such counsel shall be at the indemnified party's own expense unless the employment of such counsel and the payment of such fees and expenses both shall have been specifically authorized in writing by the indemnifying party in connection with the defense of such action, suit or proceeding, in which event the indemnifying party shall not have the right to direct the defense of such action, suit or proceeding on behalf of the indemnified party. The indemnified party shall be kept fully informed of such action, suit or proceeding at all stages thereof whether or not it is represented by separate counsel.

(c) The indemnified party shall make available to the indemnifying party and its attorneys and accountants all books and records of the indemnified party relating to such proceedings or litigation and the parties hereto agree to render to each other such assistance as they may reasonably require of each other in order to ensure the proper and adequate defense of any such action, suit or proceeding.

(d) The indemnified party shall not make any settlement of any claims without the written consent of the indemnifying party, which consent shall not be unreasonably withheld or delayed.

(e) If any claims are made by third parties against an indemnified party for which an indemnifying party would be liable, and it appears likely that such claims might also be covered by the indemnified party's insurance policies, the indemnified party shall make a timely claim under such policies and to the extent that such party obtains any recovery from such insurance, such recovery shall be offset against any sums due from an indemnifying party (or shall be repaid by the indemnified party to the extent that an indemnifying party has already paid any such amounts). The parties acknowledge, however, that if an indemnified party is self-insured as to any matters, either directly or through an insurer which assesses retroactive premiums based on loss experience, then to the extent that the indemnified party bears the economic burden of any claims through self-insurance or retroactive premiums or insurance ratings, the indemnifying party's obligation shall only be reduced by any insurance recovery in excess of the amount paid or to be paid by the indemnified party in insurance premiums.

(f) Except as herein expressly provided, the remedies provided in Sections 10 through 12 hereof shall be cumulative and shall not preclude assertion by any party of any other rights or the seeking of any other rights or remedies against any other party hereto.

### 13. FAILURE TO CLOSE BECAUSE OF DEFAULT

In the event that the Closing is not consummated by virtue of a material default made by a party in the observance or in the due and timely performance of any of its covenants or agreements herein contained ("Default"), the parties shall have and retain all of the rights afforded them at law or in equity by reason of that Default. In addition, the Company and the Shareholder, on the one hand, and DEKA, on the other, acknowledge that the Shares and the transactions contemplated hereby are unique, that a failure by any of them to complete such transactions will cause irreparable injury to the other, and that actual damages for any such failure may be difficult to ascertain and may be inadequate. Consequently, DEKA, the Company and the Shareholder agree that each shall be entitled, in the event of a Default by the other, to specific performance of any of the provisions of this Agreement in addition to any other legal or equitable remedies to which the non-defaulting party may otherwise be entitled. In the event any action is brought, the prevailing party shall be entitled to recover court costs, arbitration expenses and reasonable attorneys' fees.

### 14. TERMINATION RIGHTS

This Agreement may be terminated by either DEKA or the Shareholder, if either such party is not then in Default, upon written notice to the other upon the occurrence of any of the following:

- (a) If the Closing has not occurred on or before April 15, 1998;
- (b) If either party Defaults and such Default has not been cured within 30 days of written notice of such Default by the other party;
- (c) Subject to the provisions of Sections 6 and 7 hereof, by the Shareholder or DEKA, if on the Closing Date any of the conditions precedent to the obligations of Shareholder or DEKA, respectively, set forth in this Agreement have not been satisfied or waived by such party; or
- (d) By mutual consent of the Shareholder and DEKA.

### 15. MISCELLANEOUS PROVISIONS

15.1 Expenses. DEKA shall pay the fees and expenses incurred by it in connection with the transactions contemplated by this Agreement and the Shareholder

shall pay the fees and expenses incurred by him and the Company in connection with the transactions contemplated by this Agreement, except for accounting fees to be paid in connection with the transactions contemplated hereby. If any action is brought for breach of this Agreement or to enforce any provision of this Agreement, the prevailing party shall be entitled to recover court costs, arbitration expenses and reasonable attorneys' fees.

15.2 Amendment. This Agreement may be amended at any time but only by an instrument in writing signed by the parties hereto.

15.3 Notices. All notices and other communications delivered hereunder shall be in writing and shall be deemed given if delivered personally or upon actual receipt if mailed by certified mail, return receipt requested or delivered by nationally recognized "next-day" delivery service, to the parties at the addresses set forth below:

If to the Shareholder:

1550 Rocky Ridge  
Athens, Texas 75751  
Telephone: (903) 675-2926  
Telecopy: (903) 677-2586

If to DEKA:

P.O. Box 2426  
Columbus, Mississippi 39704-2426  
Telephone: (601) 327-9950  
Telecopy: (601) 327-7398

or such other address or addresses as any party shall have designated by notice to each other party in accordance with this Section 15.3.

15.4 Assignment. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, heirs and permitted assigns. Neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by any of the parties hereto without the prior written consent of the others.

15.5 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

15.6 Headings. The headings of the Sections of this Agreement are inserted for convenience only and shall not constitute a part hereof.

15.7 Entire Agreement. This Agreement and the documents referred to herein contain the entire understanding of the parties hereto in respect of the subject matter contained herein. There are no restrictions, promises, warranties, conveyances or undertaking other than those expressly set forth herein. This Agreement supersedes any prior agreements and understandings between the parties with respect to the subject matter.

15.8 Waiver. No attempted waiver of compliance with any provision or condition hereof, or consent pursuant to this Agreement, will be effective unless evidenced by an instrument in writing by the party against whom the enforcement of any such waiver or consent is sought.

15.9 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida.

15.10 Assertion of Claims against the Company. In any proceeding by DEKA to assert or prosecute any claims under, or to otherwise enforce, the Agreement, the Shareholder agrees that he shall not assert as a defense or bar to recovery, and hereby waives any right to so assert such defense or bar such recovery, that (a) prior to Closing the Company shall have had knowledge of the circumstances giving rise to the claim being pursued by it; (b) prior to Closing, the Company engaged in conduct or took action that caused or brought about the circumstances giving rise to its claim, or otherwise contributed thereto; or (c) the Shareholder has a right of contribution from the Company to the extent that there is any recovery against the Shareholder.

15.11 Severability. The event that any of the provisions contained in this Agreement is held to be invalid, illegal or unenforceable shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provisions had not been contained herein.

15.12 Intended Beneficiaries. The rights and obligations contained in this Agreement are hereby declared by the parties hereto to have been provided expressly for the exclusive benefit of such entities as set forth herein and shall not benefit, and do not benefit, any unrelated third parties.



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

DEKA MEDICAL, INC.

By: \_\_\_\_\_  
Dudley Bell  
Chief Financial Officer

GULF STREAM MEDICAL, INC.

By: \_\_\_\_\_  
Alexander S. Withers  
Title:

SHAREHOLDER:

\_\_\_\_\_  
Alexander S. Withers