

12/11/03

12-16-2003

Form PTO-1594 (Rev. 10/02) OMB No. 0651-0027 (exp. 6/30/2005)



U.S. DEPARTMENT OF COMMERCE U.S. Patent and Trademark Office

Tab settings

102623900

To the Honorable Commissioner of Patents and Trademarks: Please record the attached original documents or copy thereof.

1. Name of conveying party(ies): MicroAire Surgical Instruments, Inc.

- Individual(s) Association General Partnership Limited Partnership Corporation-State Other

Additional name(s) of conveying party(ies) attached? Yes No

3. Nature of conveyance:

- Assignment Merger Security Agreement Change of Name Other

Execution Date: 11/25/02

2. Name and address of receiving party(ies)

Name: MicroAire Surgical Instruments LLC

Internal

Address:

Street Address: 1641 Edlich Drive

City: Charlottesville State: VA Zip: 22911

- Individual(s) citizenship Association General Partnership Limited Partnership Corporation-State Other Delaware Limited Liability Company

If assignee is not domiciled in the United States, a domestic representative designation is attached: Yes No

(Designations must be a separate document from assignment)

Additional name(s) & address(es) attached? Yes No

4. Application number(s) or registration number(s):

A. Trademark Application No.(s)

B. Trademark Registration No.(s) 2,609,178

(see attached Schedule)

Additional number(s) attached Yes No

5. Name and address of party to whom correspondence concerning document should be mailed:

Name: Loletta L. Darden

Internal Address: Sachnoff & Weaver, Ltd.

Street Address: 30 South Wacker Drive,

29th Floor

City: Chicago State: IL Zip: 60606

6. Total number of applications and registrations involved: 7

7. Total fee (37 CFR 3.41) \$ 190

Enclosed

Authorized to be charged to deposit account

8. Deposit account number:

190011

2003 DEC 11 AM 9:15 OP/FINANCE

DO NOT USE THIS SPACE

9. Signature.

Loletta L. Darden

Name of Person Signing

Signature

December 16 2003

Date

Total number of pages including cover sheet, attachments, and document: 15

12/15/2003 ECOOPER 00000244 2609178

Mail documents to be recorded with required cover sheet information to: Commissioner of Patent & Trademarks, Box Assignments Washington, D.C. 20231

01 FC:8521 02 FC:8522

40.00 OP 150.00 OP

TRADEMARK REEL: 002879 FRAME: 0550

Schedule of Trademarks

Transferred to MicroAire Surgical Instruments LLC

Mark	Registration No.
PAL	2,609,178
PRECISION EDGE	2,120,867
SMART DRIVE	2,178,943
POWERMASTER	1,937,930
MICROAIRE	1,717,856
MICROAIRE	1,121,370

208076/0000/623698/Version #..1

TRADEMARK
REEL: 002879 FRAME: 0551

AGREEMENT AND PLAN OF MERGER

This AGREEMENT AND PLAN OF MERGER (this "Agreement") is made and entered into as of the 25th day of November, 2002, by and among MicroAire Holding Company LLC, a Delaware limited liability company (the "Purchaser"), MicroAire Surgical Instruments Acquisition LLC, a Delaware limited liability company to be known after the Merger (as hereinafter defined) as MicroAire Surgical Instruments LLC (the "Surviving Company"), MicroAire Surgical Instruments, Inc., a Delaware corporation (the "Company"), and Marmon Holdings, Inc., a Delaware corporation (the "Seller").

RECITALS

A. The Seller is the record and beneficial owner of 1,000 shares (the "Shares") of common stock, no par value, of the Company, being 100% of the issued and outstanding capital stock of the Company.

B. Pursuant to that certain Medical Companies Call Option Agreement, dated as of December 17, 2001, among the Seller, Marmon Wire & Cable LLC (formerly, The Marmon Corporation, which distributed the stock of the Company to the Seller on June 30, 2002), and Robert A. Pritzker (the "Optionee"), as modified by that certain Election Notice, dated September 23, 2002, delivered by the Optionee and accepted by the Seller (the "Option Agreement"), the Optionee has exercised his Call Option (as defined in the Option Agreement) to acquire the Shares on the terms set forth herein.

C. The Optionee has assigned his right to purchase the Shares to the Purchaser in accordance with the Option Agreement.

D. Because the Option Agreement originally contemplated the sale of four medical companies owned, directly or indirectly, by the Seller to a single purchaser and the parties to the Option Agreement now contemplate four separate transactions with separate purchasers, including the Purchaser (collectively, the "Medical Acquisitions"), each such purchaser has agreed to guarantee the performance of each other purchaser's obligations under certain secured promissory notes to be issued in connection with each Medical Acquisition, all pursuant to a guarantee agreement in substantially the form attached hereto as Exhibit A (the "Guarantee Agreement"). Each such purchaser has also agreed to cause certain equity interests to be pledged as security for its obligations under the secured promissory notes to be issued by such purchaser, as well as its obligations under the Guarantee Agreement.

E. In furtherance of the foregoing Recitals, the parties have determined that it is advisable and in each of their best interests that the Company be merged with and into the Surviving Company pursuant to Section 264 of the Delaware General Corporation Law ("DGCL") and Section 18-209 of the Delaware Limited Liability Company Act ("DLLCA"), and upon the terms and conditions set forth herein.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing Recitals and the mutual promises and covenants set forth below, the receipt and sufficiency of which are hereby acknowledged, the parties hereby mutually agree as follows:

1. **The Merger.**

(a) On and subject to the terms and conditions of this Agreement, as of the Effective Time (as defined below), the Company shall be merged with and into the Surviving Company, in accordance with Section 264 of the DGCL and Section 18-209 of the DLLCA. The merger of the Company into the Surviving Company is hereinafter referred to as the "Merger." Prior to or contemporaneously with the Closing, the parties hereto shall cause a certificate of merger and any other necessary or desirable documents to be filed with the Secretary of State of the State of Delaware. The Merger of the Company into the Surviving Company shall be effective at 5:00 p.m. (Eastern Standard Time) on the date of the Closing (the "Effective Time").

(b) The Merger shall have the effects set forth in Section 264 of the DGCL and Section 18-209 of the DLLCA. As of the Effective Time, the Certificate of Formation and the operating agreement of the Surviving Company shall remain unchanged. As of the Effective Time, the managers and officers of the Surviving Company shall retain their respective positions with the Surviving Company.

(c) At the Effective Time, by virtue of the Merger and without any action on the part of the parties hereto, each Share issued and outstanding immediately prior to the Effective Time shall be cancelled and the Seller shall be entitled to the consideration set forth in Section 2 in exchange therefor. All membership interests in the Surviving Company issued and outstanding immediately prior to the Effective Time shall be unaffected by the Merger and shall remain issued and outstanding. From and after the Effective Time, no Shares outstanding prior to the Effective Time shall be deemed to be outstanding, and holders of certificates formerly representing Shares shall cease to have any rights with respect thereto, except as provided herein or by law.

2. **Purchase Price.** The aggregate consideration paid for the Shares in connection with the Merger shall be Thirty Million Seven Hundred Thousand Dollars (\$30,700,000) (the "Purchase Price"). At the Closing (as defined in Section 6), the Purchaser shall pay to the Seller \$10,600,000 of the Purchase Price in cash and deliver to the Seller promissory notes for the balance of the Purchase Price as follows: (a) a secured promissory note of the Purchaser in substantially the form attached hereto as Exhibit B in the original principal amount of \$2,385,000 (the "Tranche A Note"), (b) a secured promissory note of the Purchaser in substantially the form attached hereto as Exhibit C in the original principal amount of \$2,365,000 (the "Tranche B Note") and (c) a secured promissory note of the Purchaser in substantially the form attached hereto as Exhibit D in the original principal amount of \$15,350,000 (the "Tranche C Note" and, together with the Tranche A Note and the Tranche B Note, the "Promissory Notes"). The

Promissory Notes shall bear interest in accordance with the terms of the respective Promissory Notes. The obligations and liabilities of the Purchaser under the Promissory Notes shall be guaranteed by certain affiliates of the Purchaser pursuant to the Guarantee Agreement. The obligations and liabilities of the Purchaser under the Promissory Notes and the Guarantee Agreement shall be secured by a pledge of the membership interests in the Surviving Company pursuant to a pledge agreement in substantially the form attached hereto as Exhibit E (the "**Pledge Agreement**"). The Purchaser shall pay to the Seller the cash portion of the Purchase Price by wire transfer of immediately available funds on the date of Closing to the account designated in writing by the Seller.

3. **Repayment of Intercompany Indebtedness.** Immediately prior to the Closing, (a) if the amount of executive office clearing account ("EOCA") indebtedness owed by the Company to the Seller, including for purposes hereof the amount of any negative cash reflected in the Company's accounts as of Closing (collectively, the "**Closing Debt**"), is equal to or less than \$18,334,035.30 (being the amount of EOCA indebtedness as of December 31, 2001, and referred to herein as the "**Year End Debt**"), the Seller shall make a capital contribution to the Company in the amount of the Year End Debt, consisting of the Closing Debt and cash, and (b) if the amount of the Closing Debt is greater than the Year End Debt, the Seller shall contribute the Year End Debt to the capital of the Company and the Company shall repay the balance of the Closing Debt to the Seller. If as of the Closing, and following the capital contribution described in clause (b) above, the Company does not have sufficient funds to repay the balance of the Closing Debt, if any, the Purchaser shall pay the same on the Company's behalf at the Closing. If the amount of the Closing Debt has not been finally determined as of the Closing, the estimated amount thereof as of November 30, 2002, as determined in good faith by the Seller, shall be used to make the capital contributions and payments required hereunder and any final adjustments shall be made within thirty (30) days after the Closing.

4. **Conditions to Obligations of the Purchaser and the Surviving Company.** The obligations of the Purchaser and the Surviving Company to consummate the transactions contemplated herein are subject to the satisfaction, on or prior to Closing, of the following conditions, or written waiver thereof by the Purchaser:

(a) Each and all of the agreements and conditions to be performed or fulfilled by the Company and the Seller pursuant to this Agreement at or prior to the Closing shall have been duly performed and fulfilled and each and all of the representations and warranties of the Company and the Seller contained in this Agreement shall be true and correct in all material respects as of Closing.

(b) All of the documents required to be delivered by the Company and the Seller pursuant to this Agreement at or prior to the Closing shall have been delivered to the Purchaser.

(c) Any applicable waiting periods under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the "**HSR Act**"), shall have expired or been terminated.

(d) The closings of the other Medical Acquisitions shall have occurred prior to or contemporaneously with the Closing.

5. **Conditions to Obligations of the Company and the Seller.** The obligations of the Company and the Seller to consummate the transactions contemplated herein are subject to the satisfaction, on or prior to Closing, of the following conditions, or written waiver thereof by the Company and the Seller:

(a) Each and all of the agreements and conditions to be performed or fulfilled by the Purchaser and the Surviving Company pursuant to this Agreement at or prior to the Closing shall have been duly performed and fulfilled and each and all of the representations and warranties of the Purchaser and the Surviving Company contained in this Agreement shall be true and correct in all material respects as of Closing.

(b) All of the documents and other deliveries required to be delivered by the Purchaser or the Surviving Company pursuant to this Agreement at or prior to the Closing shall have been delivered to the Seller.

(c) Any applicable waiting periods under the HSR Act shall have expired or been terminated and any required consents or waivers under that certain Credit Agreement (Five-Year), dated as of October 15, 1999, among the Seller, Bank One, NA, as Agent and the financial institutions signatory thereto, and any amendments thereto or replacements thereof from time to time made or entered into (the "Credit Agreement"), shall have been obtained.

(d) Unless the Company has previously assigned its rights under that certain Agreement and Plan of Merger, dated as of the date hereof, among Precision Edge Holding Company LLC, a Delaware limited liability company, Precision Edge Surgical Products Acquisition Company LLC, a Delaware limited liability company ("PESPCLLC"), Precision Edge Surgical Products Company, a Delaware corporation and subsidiary of the Company ("Precision"), and the Company, to the Seller, the merger of Precision into PESPCLLC shall have become effective prior to the Closing and the Company shall have distributed and assigned the proceeds thereof (including without limitation all cash, promissory notes and contract rights) to the Seller prior to the Closing.

(e) Except as contemplated by Section 5(e) hereof, the closings of the other Medical Acquisitions shall have occurred prior to or contemporaneously with the Closing.

6. **Closing.**

(a) The closing of the transactions contemplated hereby (the "Closing") shall take place on, and shall be deemed effective as of, December 9, 2002, at 9:00 a.m., at the offices of Sachnoff & Weaver, Ltd., 30 South Wacker Drive, Suite 2900, Chicago, Illinois, 60606, or on such other date or at such other time and/or place as may be mutually agreed by the parties in accordance with Section 2.4(b) of the Option Agreement.

(b) At the Closing, the Purchaser shall deliver to the Seller the following, which shall be effective as of the Closing: (i) the cash portion of the

Purchase Price in accordance with Section 3 hereof, (ii) the original, executed Promissory Notes in accordance with Section 3 hereof, (iii) an original Guarantee Agreement in accordance with Section 3 hereof, executed by all of the guarantors thereunder, (iv) an original Pledge Agreement in accordance with Section 3 hereof, executed by the Purchaser, and all other documents required to be delivered by the Purchaser thereunder, and (v) such other documents as the Seller and its counsel may reasonably request in connection with the Merger.

(c) At the Closing, the Seller shall deliver to the Purchaser the following, which shall be effective as of the Closing: (i) the certificate(s) representing all of the Shares together with duly executed stock transfer powers or other appropriate instruments of assignment, (ii) an original Guarantee Agreement in accordance with Section 3 hereof, executed by the Seller, (iii) an original Pledge Agreement in accordance with Section 3 hereof, executed by the Seller, and (iv) such other documents as the Purchaser or its counsel may reasonably request to effect the Merger.

(d) All Shares shall be transferred free and clear of any and all liens, pledges, options, security interests, claims, restrictions or encumbrances of any kind ("**Liens**").

7. **Representations and Warranties of the Seller.** The Seller hereby makes the following representations and warranties to the Purchaser and the Surviving Company, each of which shall be true and correct on the date hereof and at the Closing:

(a) The Seller is a corporation duly incorporated, validly existing and in good standing under the laws of the State of Delaware.

(b) The Seller is the record and beneficial owner of the Shares, free and clear of all Liens.

(c) The Shares constitute all of the issued and outstanding capital stock of the Company.

(d) The Seller has full legal right and power to transfer and deliver, in the manner provided in this Agreement, the Shares to be transferred by it to the Surviving Company hereunder, and upon delivery of the Shares pursuant to the terms of this Agreement, the Surviving Company will receive the Shares free and clear of any and all Liens.

(e) This Agreement constitutes, and the documents and instruments required pursuant to this Agreement to be executed and delivered by the Company and the Seller will, when executed and delivered, constitute the duly authorized, validly and legally binding obligations of the Company and the Seller and will be enforceable against the Company and the Seller in accordance with their respective terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium and other laws affecting creditors' rights and general principles of equity.

(f) Subject to compliance with any applicable requirements of the HSR Act (any required filings under which the Company and the Seller shall promptly make) and to obtaining any required consents or waivers under the Credit Agreement, the execution and delivery of this Agreement and all other documents and instruments required pursuant to this Agreement to be executed and delivered by the Company and the Seller, and the consummation of the transactions contemplated hereby, do not conflict with, or result in a breach of, or constitute a default under, any agreement or instrument to which the Company or the Seller is a party or by which the Company or the Seller is bound, nor does such action violate any statute, law, rule or regulation applicable to the Company or the Seller or any order, writ, injunction or decree of any court or governmental authority binding on the Company or the Seller.

8. **Representations and Warranties of the Purchaser and the Surviving Company.** The Purchaser and the Surviving Company hereby make the following representations and warranties to the Seller, each of which shall be true and correct on the date hereof and at the Closing:

(a) Each of the Purchaser and the Surviving Company is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware.

(b) Each of the Purchaser and the Surviving Company has full legal right and power and authority to execute and deliver this Agreement and all other documents and instruments required pursuant to this Agreement to be executed and delivered by the Purchaser or the Surviving Company, and to perform its obligations hereunder and thereunder.

(c) This Agreement constitutes, and the documents and instruments required pursuant to this Agreement to be executed and delivered by the Purchaser or the Surviving Company will, when executed and delivered, constitute, the duly authorized, validly and legally binding obligations of the Purchaser or the Surviving Company, as applicable, and will be enforceable against the Purchaser or the Surviving Company, as applicable, in accordance with their respective terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium and other laws affecting creditors' rights and general principles of equity.

(d) Subject to compliance with any applicable requirements of the HSR Act (any required filings under which the Purchaser will promptly make), the execution and delivery of this Agreement and all other documents and instruments required hereunder to be executed and delivered by the Purchaser or the Surviving Company, and the consummation of the transactions contemplated hereby do not conflict with, or result in a breach of, or constitute a default under, any agreement or instrument to which the Purchaser or the Surviving Company is a party or by which the Purchaser or the Surviving Company is bound, nor does such action violate any statute, law, rule or regulation applicable to the Purchaser

or the Surviving Company or any order, writ, injunction or decree of any court or governmental authority binding on the Purchaser or the Surviving Company.

(e) Not less than 80% of the outstanding equity or equity-like interests (including participating debt instruments) of the Purchaser are beneficially owned, directly or indirectly, by the lineal descendants of Nicholas J. Pritzker, deceased, or trusts for their benefit. The Purchaser owns 100% of the outstanding equity or equity-like interests of the Surviving Company.

(f) Immediately following the Closing, the Purchaser will not be in default under the Promissory Notes.

9. **Notices.** All notices or other communications hereunder shall be given in writing and shall be delivered personally or by messenger, transmitted via facsimile, mailed, U.S. certified mail return receipt requested, or delivered by overnight courier service to the following addresses, or such other address as any party hereto designates by written notice to the other parties hereto, and shall be deemed to have been given upon delivery, if delivered personally or by messenger, upon receipt if transmitted by facsimile, three (3) days after mailing, if sent by certified mail, or one (1) business day after delivery to the courier, if delivered by overnight courier service:

To the Purchaser or the
Surviving Company:

MicroAire Holding Company LLC
One North Franklin Street
Suite 2420
Chicago, Illinois 60606
Attention: Robert A. Pritzker
Facsimile: (312) 980-1111

With a copy to:

Sachnoff & Weaver, Ltd.
30 South Wacker Drive
29th Floor
Chicago, Illinois 60606
Attention: Lowell Sachnoff, Esq.
Facsimile: (312) 207-6400

To the Company or the Seller:

Marmon Holdings, Inc.
225 West Washington Street
19th Floor
Chicago, Illinois 60606
Attention: Thomas J. Pritzker
Facsimile: (312) 920-2395

With a copy to :

Neal, Gerber & Eisenberg
2 North LaSalle Street
Suite 2200
Chicago, Illinois 60602
Attention: Miranda K. Mandel, Esq.
Facsimile: (312) 269-1747

10. **Construction.** The parties have jointly participated in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties and no presumptions or burdens of proof shall arise favoring any party by virtue of the authorship of any of the provisions of this Agreement. Any reference to any Federal, state, local, or foreign statute or law shall be deemed also to refer to all rules and regulations promulgated thereunder, unless the context requires otherwise. Each gender-specific term used herein has a comparable meaning whether used in a masculine, feminine or gender-neutral form. The term "include" and its derivatives shall have the same construction as the phrase "include, without limitation," and its derivatives. The section headings contained in this Agreement are inserted for convenience or reference only and shall not affect in any way the meaning or interpretation of this Agreement.

11. **Governing Law.** This Agreement shall be construed and enforced in accordance with and interpreted under the internal laws of the State of Delaware, without giving effect to the conflicts of law principles thereof.

12. **Dispute Resolution.**

(a) In the event of any dispute with respect to the construction or interpretation of this Agreement, the Purchaser, on behalf of itself and the Surviving Company, and the Seller, on behalf of itself and, prior to the Merger, the Company, shall first use their best efforts to resolve such dispute between themselves. If the parties are unable to resolve the dispute within 30 calendar days after the commencement of efforts to resolve the dispute, the dispute will be submitted to binding arbitration in accordance with this Section 12; provided, however, that the Promissory Notes shall be subject to arbitration only to the extent provided therein.

(b) The Purchaser or the Seller may submit a matter referred to in Section 12(a) above to binding arbitration by serving a written demand for arbitration on the other parties. The demand shall set forth a statement of the nature of the dispute, the amount involved and the remedies sought. In the arbitration proceeding, each party shall have the right to be represented by counsel and the right to such pre-hearing discovery as the arbitrator shall determine. Except as specifically provided herein, the arbitration shall be conducted by and in accordance with the commercial rules of the American Arbitration Association, and the arbitrator's ruling shall be in accordance with law and the terms of this Agreement.

(c) No later than twenty (20) calendar days after a demand for arbitration is served, the parties to the arbitration shall jointly select and appoint a disinterested person to act as the arbitrator. In the event that the parties do not agree on the selection of an arbitrator by such date, each of the Purchaser and the Seller shall select an arbitrator within ten (10) calendar days after such date and the two arbitrators so selected shall select a third arbitrator within ten (10) calendar days after the parties select their arbitrators. The provisions set forth herein regarding the single arbitrator shall apply to the three arbitrators so

selected. No person shall be eligible to serve as an arbitrator hereunder if such person or any affiliate of such person shall, in the three years preceding such arbitration, have been an agent, employee, officer, director or shareholder of any party or any affiliate of such party or shall have had in the three years preceding such arbitration any business relationship with any party or any affiliate of such party.

(d) No later than ten (10) calendar days after the arbitrator is appointed, the arbitrator shall schedule the arbitration for a hearing to commence on a mutually convenient date. The hearing shall commence no later than thirty (30) calendar days after the arbitrator is appointed and shall continue from day to day until completed.

(e) The parties shall direct the arbitrator to use his best efforts to rule on each disputed issue within 30 days after the completion of the hearings described in paragraph (d) above. The determination of the arbitrator as to the resolution of any dispute shall be binding and conclusive upon all parties; provided, that the arbitrator may not award any punitive damages. All rulings of the arbitrator shall be in writing, shall set forth the basis for the decision and shall be delivered to the parties, but shall not be subject to appeal.

(f) The parties shall bear the costs of the arbitration as determined by the arbitrator in his discretion. In addition, the prevailing party shall be entitled to an award of fees and expenses as determined by the arbitrator in his discretion. Any arbitration under this Agreement shall be conducted in the County of Cook, State of Illinois. Any arbitration award may be entered in and enforced by any court having jurisdiction thereof and the parties hereby consent and commit themselves to the jurisdiction of the courts of the State of Illinois and the United States District Court for the Northern District of Illinois for purposes of the enforcement of any arbitration award.

13. **Certain Tax Matters.**

(a) After the Closing, the Seller shall indemnify and hold harmless the Surviving Company from and against any and all losses, costs and expenses incurred by the Surviving Company by reason of the assertion of any claim by the Internal Revenue Service that the Surviving Company, as a result of the Company having been a member of the Seller's consolidated group for Federal income tax purposes prior to the Closing, is severally liable for all or any part of the consolidated tax liability of the Seller, except to the extent such claim relates to the tax liability of the Company resulting from its own operations.

(b) It is understood that the Seller (or an affiliate thereof) will include the income of the Company in its Federal and state unitary income tax returns for the period prior to the Closing. The Purchaser shall, or shall cause the Surviving Company to, pay or reimburse the Seller, in a manner consistent with past practice, for any and all Federal or state unitary income taxes paid by the Seller

(or an affiliate thereof) based upon pre-Closing taxable income of the Company (to the extent not paid to the Seller prior to the Closing).

(c) Each party shall make available to the other any information reasonably required by the other to permit it to prepare and file tax returns for any period ending on or prior to, or including, the Closing.

14. **Waiver.** No restriction, condition, obligation or provision contained in this Agreement shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches thereof which may occur.

15. **Severability.** The provisions hereof shall be deemed independent and severable, and the invalidity or partial invalidity or enforceability of any one provision shall not affect the validity or enforceability of any other provision hereof.

16. **Binding Effect; Assignability.** This Agreement shall be binding upon and shall inure to the benefit of the parties and their respective successors and permitted assigns. No party may assign this Agreement without the prior written consent of the other parties hereto.

17. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be considered an original, but all of which shall constitute a single agreement.

18. **Fees and Expenses.** Each of the parties shall pay their respective fees, costs and expenses incurred in regard to the transaction contemplated herein.

19. **Entire Agreement; Amendment.** This Agreement and the Exhibits attached hereto, all of which are made a part hereof, together with the Option Agreement, contain the entire agreement between the parties with respect to the transactions contemplated herein, and supersede all prior agreements and understandings between the parties relating to the subject matter hereof. All representations, warranties, agreements or indemnities made by the Seller, the Purchaser or the Surviving Company in this Agreement shall survive the Closing. This Agreement may be altered or amended only by an instrument in writing signed by each of the parties.

20. **Currency.** All references in this Agreement to currencies are to United States Dollars.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the date first above written.

THE PURCHASER:

MICROAIRE HOLDING COMPANY LLC

By: RAP Holding LLC, its manager

By: Colson Associates, Inc., its manager

By: [Signature]
Name: Robert A. Pritzker
Title: President

THE SURVIVING COMPANY:

MICROAIRE SURGICAL INSTRUMENTS ACQUISITION LLC

By: MicroAire Holding Company LLC, its manager

By: RAP Holding LLC, its manager

By: Colson Associates, Inc., its manager

By: [Signature]
Name: Robert A. Pritzker
Title: President

THE COMPANY:

MICROAIRE SURGICAL INSTRUMENTS, INC.

By: [Signature]
Name: ROBERT A. PRITZKER
Title: Chief Executive Officer

THE SELLER:

MARMON HOLDINGS, INC.

By: _____
Name: _____
Title: _____

CERTIFICATE OF MAILING (37 C.F.R. 1.8)

I hereby certify that the attached:

1. Recordation Form Cover Sheet (Trademark) with attached Schedule and Agreement and Plan of Merger between MicroAire Surgical Instruments, Inc. and MicroAire Surgical Instruments LLC – 15 pages;
2. Check for \$190.00 (Check # 6281);
3. Post Card; and

this Certificate of Mailing are being deposited with the United States Postal Service on the date shown with sufficient postage as USPS Express Mail, EL434655581US, in an envelope addressed to: BOX ASSIGNMENTS, Commissioner for Patents and Trademarks, Washington, D.C. 20231.

Respectfully submitted,

Date: 12/10/03

By: 

James E. Beifuss
Sachnoff & Weaver, Ltd.
30 S. Wacker Dr.
Chicago, IL 60606
(312) 207-1000