

# F92984

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EFFECTIVE DATE

4.30.2011

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## MERGER OR SHARE EXCHANGE

### McASwain Manufacturing Corporation

|                       |         |
|-----------------------|---------|
| Certificate of Status | 0       |
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Merger  
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TALLAHASSEE, FLORIDA

**COVER LETTER**

**TO:** Amendment Section  
Division of Corporations

**SUBJECT:** McSwain Manufacturing Corporation  
Name of Surviving Corporation

The enclosed Articles of Merger and fee are submitted for filing.

Please return all correspondence concerning this matter to following:

Eric C. Okerson, Esq.

Contact Person

Graydon Head & Ritchey LLP

Firm/Company

511 Walnut Street, Suite 1800

Address

Cincinnati, OH 45202

City/State and Zip Code

eokerson@graydon.com

E-mail address: (to be used for future annual report notification)

For further information concerning this matter, please call:

Eric C. Okerson, Esq.

Name of Contact Person

At ( 513 )

629-2814

Area Code & Daytime Telephone Number

☐ Certified copy (optional) \$8.75 (Please send an additional copy of your document if a certified copy is requested)

**STREET ADDRESS:**

Amendment Section  
Division of Corporations  
Clifton Building  
2661 Executive Center Circle  
Tallahassee, Florida 32301

**MAILING ADDRESS:**

Amendment Section  
Division of Corporations  
P.O. Box 6327  
Tallahassee, Florida 32314

6.30.2011

**(Profit Corporations)**

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

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

FIELD STAFF  
SECRETARY OF STATE  
DIVISION OF CORPORATIONS  
11 JUN 20 PM 2:33

*(Attach additional sheets if necessary)*

Seventh: SIGNATURES FOR EACH CORPORATION

Name of Corporation

Signature of an Officer or  
Director

Typed or Printed Name of Individual & Title

McSwain Manufacturing  
Corporation

Michael Meshay

Michael Meshay, President and  
General Manager

A.B.A. Industries, Inc.

Michael Meshay

Michael Meshay, President and  
General Manager

## PLAN AND AGREEMENT OF MERGER

THIS PLAN AND AGREEMENT OF MERGER (the "Plan"), dated as of June 15, 2011, and made pursuant to Section 607.1104 of the Florida Business Corporation Act and Section 1701.78 of the Ohio Revised Code, by and between McSwain Manufacturing Corporation, an Ohio corporation ("McSwain" or "Surviving Corporation"), and A.B.A. Industries, Inc., a Florida corporation ("ABA" or "Merging Corporation"), such corporations being hereinafter sometimes referred to separately as a "Constituent Corporation" and collectively as the "Constituent Corporations."

### WITNESSETH:

WHEREAS, McSwain is a corporation duly organized and existing under the laws of the State of Ohio, having been incorporated on October 26, 1987 and having an authorized capital stock of 750 shares of common stock with no par value, of which 500 shares of common stock are issued and outstanding; and

WHEREAS, ABA is a corporation duly organized and existing under the laws of the State of Florida, having been incorporated on August 2, 1982, and having an authorized capital stock of 475,000 shares of common stock, par value \$.01 per share, of which 435,100 are issued and outstanding, and 10,000 shares of preferred stock, par value \$1,000.00 per share, none of which is issued and outstanding; and

WHEREAS, the respective Boards of Directors and sole shareholder of McSwain and ABA deem it advisable and in the best interest of the Constituent Corporations that they be merged and to enter into this Plan; and

WHEREAS, ABA will be merged with and into McSwain with McSwain being the surviving corporation (the "Merger") as authorized by the Ohio Revised Code and the Florida Business Corporation Act under and pursuant to the terms and conditions hereinafter set forth, and, in furtherance of said Merger, the Board of Directors and sole shareholder of each Constituent Corporation has duly adopted a resolution approving this Plan;

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements herein contained, the parties do hereby agree as follows:

### ARTICLE I

#### MERGER AND NAME OF SURVIVING CORPORATION

Upon the Effective Time of the Merger, as defined in Article V hereof, ABA, the disappearing corporation, shall be merged with and into McSwain; and McSwain shall be the surviving corporation, which shall continue its corporate existence as an Ohio corporation to be governed by the laws of the State of Ohio, which shall be named

McSwain Manufacturing Corporation, and which shall maintain its principal place of business in Cincinnati, Ohio.

## ARTICLE II

### ARTICLES OF INCORPORATION AND BYLAWS OF THE SURVIVING CORPORATION

The Articles of Incorporation and Bylaws of the Surviving Corporation shall be those of McSwain as in effect at the Effective Time of the Merger.

## ARTICLE III

### DIRECTORS OF SURVIVING CORPORATION

The Officers and Directors of the Surviving Corporation shall be the same as the present Officers and Directors of McSwain, their authority continuing until their successors have been elected and qualified as provided for in the Code of Regulations of the Surviving Corporation.

## ARTICLE IV

### CAPITALIZATION OF SURVIVING CORPORATION AND MANNER AND BASIS OF CONVERTING SHARES

The total authorized capital stock of the Surviving Corporation shall be as set forth in the Articles of Incorporation of McSwain. At the Effective Time of the Merger, all shares of ABA shall be cancelled and retired.

## ARTICLE V

### APPROVAL AND EFFECTIVE TIME OF THE MERGER

The Merger shall become effective on June 30, 2011 (the "Effective Time of the Merger") when all the following actions shall have been taken:

(a) This Plan shall be adopted and approved on behalf of each Constituent Corporation in accordance with the Ohio Revised Code and the Florida Business Corporation Act; and

(b) A Certificate of Merger and Articles of Merger (with a copy of this Plan attached as part thereof, if necessary), setting forth (a) the information required by and executed in accordance with Section 1701.81 of the Ohio Revised Code, shall be filed in the Office of the Secretary of the State of Ohio, and (b) the information required by and

executed in accordance with Section 607.1109 of the Florida Business Corporation Act, shall be filed with Florida Secretary of State.

#### ARTICLE VI

##### OTHER PROVISIONS WITH RESPECT TO THE MERGER

(a) By operation of law, the loan from Heroux Corp. to ABA in the principal amount of Nine Million Dollars (\$9,000,000) shall become the obligation of McSwain.

(b) Heroux Corp. is the sole shareholder of both ABA and McSwain.

(c) The Merger may be abandoned and this Plan may be terminated at any time prior to the Effective Time of the Merger by either Constituent Corporation, expressed by action of such Constituent Corporation's Board of Directors. In the event of such abandonment or termination, the Board of Directors of such Constituent Corporation shall direct its officers not to file this Plan or Articles of Merger or Certificate of Merger as provided in Article V, notwithstanding favorable action on this Plan by the shareholder of the representative Constituent Corporations.

(d) Each Constituent Corporation shall bear and pay all costs and expenses incurred by it or on its behalf (including without limitation fees and expenses of financial consultants, accountants and counsel) in connection with the consummation of the Merger.

(e) If at any time the Surviving Corporation shall be advised that any further assignment or assurance in law or other action is necessary or desirable to vest, perfect or confirm, of record or otherwise, in the Surviving Corporation any property or rights of each such Constituent Corporation acquired or to be acquired by or as a result of the Merger, then the proper officers and directors of such Constituent Corporation and the Surviving Corporation, respectively, shall be and they hereby are severally and fully authorized to execute, certify, acknowledge, deliver and/or accomplish such assignments, assurances and action in law and to take such other action as may be necessary or proper in the name of such Constituent Corporation or the Surviving Corporation to vest, perfect or confirm title to such property or rights in the Surviving Corporation and otherwise carry out the purposes of this Plan.

(f) For the convenience of the parties and to facilitate the filing and recording of this Plan, any number of counterparts hereof may be executed, and each such counterpart shall be deemed to be an original instrument.

(g) Unless otherwise provided herein, the Plan cannot be altered or amended, except pursuant to an instrument in writing signed on behalf of the parties hereto.

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[Signatures on following page:]



IN WITNESS WHEREOF, the Constituent Corporations have caused this Plan to be signed by their duly authorized officers, as of the date first above written.

**MCSWAIN MANUFACTURING  
CORPORATION**

By: Michael Meshay  
Michael Meshay, President and  
General Manager

**ABA INDUSTRIES, INC.**

By: Michael Meshay  
Michael Meshay, President and  
General Manager