

K83308

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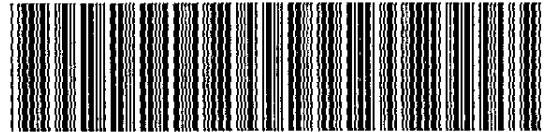
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SECRETARY OF STATE
TALLAHASSEE FLORIDA

JAN 05 2006

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COVER LETTER

TO: Registration Section
Division of Corporations

SUBJECT: Powell Electronics Washington, Inc.

Dear Sir or Madam:

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

Please return all correspondence concerning this matter to the following:

Paula T. Bradley, Paralegal

(Name of Person)

McCausland, Keen & Buckman

(Firm/Company)

Radnor Court, Suite 160, 259 N. Radnor Chester Rd.

(Address)

Radnor, PA 19087

(City/State and Zip Code)

For further information concerning this matter, please call:

Paula T. Bradley, Paralegal

(Name of Person)

at (610) 341-1052

(Area Code & Daytime Telephone Number)

STREET/COURIER ADDRESS:

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

MAILING ADDRESS:

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

CR2E080 (8/05)

ARTICLES OF MERGER

The following articles of merger are being submitted in accordance with section(s) 607.1109, 608.4382, and/or 620.203, Florida Statutes.

FIRST: The exact name, street address of its principal office, jurisdiction, and entity type for each merging party are as follows:

<u>Name and Street Address</u>	<u>Jurisdiction</u>	<u>Entity Type</u>
1. Powell Electronics Washington, Inc.	FL	Corporation

3540 W. Prospect Road

Fort Lauderdale, FL 33309

Florida Document/Registration Number: K83308

FEI Number: 52-02795

2.

Florida Document/Registration Number: _____

FEI Number: _____

3.

Florida Document/Registration Number: _____

FEI Number: _____

4.

Florida Document/Registration Number: _____

FEI Number: _____

(Attach additional sheet(s) if necessary)

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05 DEC 27 PM 12:25
TALLAHASSEE FLORIDA
SECRETARY OF STATE

SECOND: The exact name, street address of its principal office, jurisdiction, and entity type of the surviving party are as follows:

<u>Name and Street Address</u>	<u>Jurisdiction</u>	<u>Entity Type</u>
Powell Electronics, Inc.	PA	Corporation
4848 S. Island Avenue		
Philadelphia, PA 19153		

Florida Document/Registration Number: N/A FEI Number:

THIRD: The attached Plan of Merger meets the requirements of section(s) 607.1108, 608.438, 617.1103, and/or 620.201, Florida Statutes, and was approved by each domestic corporation, limited liability company, partnership and/or limited partnership that is a party to the merger in accordance with Chapter(s) 607, 617, 608, and/or 620, Florida Statutes.

FOURTH: If applicable, the attached Plan of Merger was approved by the other business entity(ies) that is/are party(ies) to the merger in accordance with the respective laws of all applicable jurisdictions.

FIFTH: If not incorporated, organized, or otherwise formed under the laws of the state of Florida, the surviving entity hereby appoints the Florida Secretary of State as its agent for substitute service of process pursuant to Chapter 48, Florida Statutes, in any proceeding to enforce any obligation or rights of any dissenting shareholders, partners, and/or members of each domestic corporation, partnership, limited partnership and/or limited liability company that is a party to the merger.

SIXTH: If not incorporated, organized, or otherwise formed under the laws of the state of Florida, the surviving entity agrees to pay the dissenting shareholders, partners, and/or members of each domestic corporation, partnership, limited partnership and/or limited liability company that is a party to the merger the amount, if any, to which they are entitled under section(s) 607.1302, 620.205, and/or 608.4384, Florida Statutes.

SEVENTH: If applicable, the surviving entity has obtained the written consent of each shareholder, member or person that as a result of the merger is now a general partner of the surviving entity pursuant to section(s) 607.1108(5), 608.4381(2), and/or 620.202(2), Florida Statutes.

EIGHTH: The merger is permitted under the respective laws of all applicable jurisdictions and is not prohibited by the agreement of any partnership or limited partnership or the regulations or articles of organization of any limited liability company that is a party to the merger.

NINTH: The merger shall become effective as of:

The date the Articles of Merger are filed with Florida Department of State

OR

December 31, 2005 at 11:59 PM

(Enter specific date. NOTE: Date cannot be prior to the date of filing.)

TENTH: The Articles of Merger comply and were executed in accordance with the laws of each party's applicable jurisdiction.

ELEVENTH: SIGNATURE(S) FOR EACH PARTY:

(Note: Please see instructions for required signatures.)

[illegible]

AGREEMENT AND PLAN OF MERGER

THIS AGREEMENT AND PLAN OF MERGER (this "Agreement") is made and entered into as of the 21st day of December, 2005, by and among **POWELL ELECTRONICS, INC.**, a Pennsylvania corporation (herein called "PEI"), **POWELL ELECTRONICS WASHINGTON, INC.**, a Florida corporation (herein called "PWI"; and together with PEI herein sometimes referred to as the "Constituent Corporations"), and with respect to Section 7 only, the **DEED OF TRUST, DATED SEPTEMBER 14, 2001, HAROLD H. POWELL, GRANTOR** (the "Sole Shareholder").

WITNESSETH:

WHEREAS, upon the terms, and subject to the conditions of this Agreement, and in accordance with the applicable statutes of the Commonwealth of Pennsylvania and State of Florida, the parties hereto intend to effect the merger of PWI with and into PEI; and

WHEREAS, the Board of Directors of PWI has unanimously (i) determined that this Agreement, the Merger (as defined in Section 1.1 hereof) and the other related transactions contemplated by this Agreement are fair to, and in the best interest of, PWI and the Sole Shareholder; (ii) approved this Agreement, the Merger and the other related transactions contemplated by this Agreement; and (iii) determined to recommend that the Sole Shareholder approve this Agreement, the Merger and the other related transactions contemplated by this Agreement; and

WHEREAS, the Board of Directors of PWI has approved this Agreement, the Merger and the other related transactions contemplated by this Agreement.

NOW, THEREFORE, intending to be legally bound hereby, the parties agree as follows:

SECTION 1 - THE MERGER

1.1 The Merger. At the Effective Time (as defined in Section 4 hereof), PWI shall merge with and into PEI (the "Merger"), and PEI shall be the surviving corporation (sometimes referred to herein as the "Surviving Corporation"). Upon consummation of the Merger, the separate existence of PWI shall cease.

1.2 Certificate of Incorporation and By-Laws. At the Effective Time, the Articles of Incorporation and By-Laws of PEI, as in effect immediately prior to the Effective Time, shall be the Articles of Incorporation and By-Laws of the Surviving Corporation until thereafter amended.

1.3 Directors and Officers. The initial directors of the Surviving Corporation shall be the directors of PEI who are then serving immediately prior to the Effective Time, and said directors shall continue to serve until their respective successors are duly elected or appointed and qualified. The initial officers of the Surviving Corporation shall be the officers of PEI who are then serving immediately prior to the Effective Time.

1.4 Property and Liabilities. From and after the Effective Time, the Surviving Corporation shall possess all of the rights, privileges, powers and franchises of whatsoever nature and description, as well as of a public or of a private nature, and shall be subject to all the restrictions, disabilities and duties of each of the Constituent Corporations; and all rights, privileges, powers and franchises of each of the Constituent Corporations and all property, real, personal and mixed, and debts due to either of the Constituent Corporations on whatever account and all other things in action or belonging to each of the Constituent Corporations shall be vested in the Surviving Corporation; and all property, rights, privileges, powers and franchises, and all and every other interest shall be thereafter as effectually the property of the

Surviving Corporation as they were of the several and respective Constituent Corporations. All rights of creditors and all liens upon the property of each of the Constituent Corporations shall be preserved unimpaired, and all debts, liabilities and duties of the Constituent Corporations shall thenceforth attach to the Surviving Corporation, and may be enforced against it to the same extent as if said debts, liabilities and duties have been incurred or contracted by it. Any claim existing or action or proceeding, whether civil, criminal or administrative, pending by or against either of the Constituent Corporations may be prosecuted to judgment or decree as if such Merger had not taken place, or the Surviving Corporation may be substituted in such action or proceeding.

1.5 Further Assurances. PWI agrees that at any time, or from time to time, as and when requested by the Surviving Corporation, or by its successors and assigns, it will execute and deliver, or cause to be executed and delivered by its last acting officers, or by the corresponding officers of the Surviving Corporation, all such conveyances, assignments, transfers, deeds or other instruments, and will take or cause to be taken such further or other action as the Surviving Corporation, its successors or assigns may deem necessary or desirable in order to evidence the transfer, vesting or devolution of any property, right, privilege, or franchise or to vest or perfect in or confirm to the Surviving Corporation, its successors and assigns, title to and possession of all the property, rights, privileges, powers, immunities, franchises and interests referred to in this Section 1.5 and otherwise to carry out the intent and purposes hereof.

1.6 Merger Consideration. The aggregate cash consideration payable by PEI for all the capital stock of PWI issued and outstanding immediately prior to the Effective Time (the "Merger Consideration") shall be an amount equal to \$2,281,700.00, less the balance of

PWI's Accumulated Adjustment Account (as defined at Section 1368 of the Internal Revenue Code of 1986, as amended) at December 31, 2005, as finally determined by the independent accountant of PWI, but ignoring for purposes of computing this balance the Initial Capital Distribution (as defined in Section 7.6 hereof) (said balance, without taking into account the Initial Capital Distribution, is hereinafter referred to as the "Adjusted AAA").

1.6.1 At the Closing, PEI shall pay by wire transfer to the Sole Shareholder, as part of the Merger Consideration, the sum of \$1,861,064. This initial payment is computed on the basis of estimating the Adjusted AAA being equal to the sum of \$420,636.00.

1.6.2 On or before February 15, 2006, the independent accountant of PWI shall determine the Adjusted AAA of PWI, which determination shall be binding upon all parties hereto and nonappealable. If the Adjusted AAA, as finally determined, exceeds the Initial Capital Distribution, the Merger Consideration shall be reduced by such excess amount, and the Sole Shareholder shall, within five (5) business days of said final determination, repay to PEI that portion of the Merger Consideration equal to such excess. If the Adjusted AAA, as finally determined, is less than \$420,636.00, the Merger Consideration shall be increased by such shortfall amount, and PEI shall, within five (5) business days of said final determination, pay the Sole Shareholder additional Merger Consideration equal to such shortfall.

SECTION 2 - CONVERSION OF SHARES

2.1 Stock of PWI. Each share of capital stock of PWI issued and outstanding immediately prior to the Effective Time shall be cancelled and extinguished and automatically converted into and represent solely the right to receive the Merger Consideration.

2.2 Stock of PEI. All shares of capital stock of PEI held by its shareholders immediately prior to the Merger shall be, and remain, as the issued and outstanding shares of

capital stock of the Surviving Corporation. No additional shares of capital stock of PEI shall be issued on account of the Merger.

2.3 Exchange and Surrender of Stock Certificates. As promptly as practicable after the Effective Time, the Sole Shareholder shall surrender its certificate(s) of capital stock of PWI to an agent designated by the Surviving Corporation for cancellation.

SECTION 3 - CONDITIONS FOR MERGER

This Agreement shall be submitted for approval or disapproval to the Sole Shareholder as provided by the applicable laws of the State of Florida. The affirmative vote of the Sole Shareholder in favor of this Agreement, the Merger and the other related transactions contemplated by this Agreement shall be required as a pre-condition to the adoption of this Agreement by PWI.

SECTION 4 – CLOSING; EFFECTIVE TIME OF MERGER

4.1 Closing. The execution and delivery of this Agreement and the other documents contemplated by this Agreement by the parties hereto shall take place remotely by exchange of counterpart signature pages of each such document (the “Closing”) on the later of (i) the date that the condition precedent to the Merger set forth in Section 3 is satisfied and (ii) December 29, 2005, or at such other time, date and location as the parties shall mutually agree, provided that neither Constituent Party has terminated this Agreement and the Merger contemplated hereunder in accordance with Section 6 hereof.

4.2 **Effective Time.** Provided that the Closing has occurred, the parties shall cause the Merger to be consummated by filing Articles of Merger with the Secretary of State of the State of Florida and the Secretary of State of the Commonwealth of Pennsylvania, respectively. The Merger shall become effective at 11:59 P.M. on December 31, 2005, which is the time and date set forth in each of the Articles of Merger (the "Effective Time").

SECTION 5 - SERVICE OF PROCESS

The Surviving Corporation hereby agrees that it may be served with process in the State of Florida in any proceeding for enforcement of any obligation of PWI as well as for enforcement of any obligation resulting from the Merger, and hereby irrevocably appoints the Secretary of State of the State of Florida as its agent to accept service of process in any such suit or other proceeding. The address to which a copy of such process shall be mailed by the Secretary of State of the State of Florida shall be c/o Powell Electronics, Inc., 4848 South Island Avenue, Philadelphia, PA 19153 Attn: Ernest A. Schilling, Sr., President.

SECTION 6 - TERMINATION

This Agreement and the Merger may be terminated and abandoned by resolutions of the Boards of Directors of PEI and PWI at any time prior to the Effective Time, notwithstanding approval of this Agreement by the Sole Shareholder and the occurrence of the Closing under Section 4.1 hereof. In the event of the termination and the abandonment of this Agreement and the Merger pursuant to the foregoing provisions of this Section 6, this Agreement shall become null and void and of no further force and effect without any liability on the part of either of the Constituent Corporations or its shareholders or the directors or officers in respect thereof, except that if any Merger Consideration was paid to the Sole Shareholder at the Closing, it shall be repaid to PEI immediately.

**SECTION 7 – REPRESENTATIONS, WARRANTIES AND COVENANTS
OF PWI AND THE SOLE SHAREHOLDER**

As an inducement to cause PEI to join in the Merger and pay the Merger Consideration, PWI and the Sole Shareholder hereby represent, warrant and covenant to PEI that the statements contained in this Section 7 are correct and complete as of the date of this Agreement, the Closing and as of the Effective Time.

7.1 Corporate Existence and Status. PWI is a corporation duly incorporated, validly existing, and in good standing under the laws of the State of Florida.

7.2 Stock Ownership. The Sole Shareholder is the sole legal and beneficial owner of all issued and outstanding capital stock of PWI, free and clear of all liens, encumbrances, claims and demands. No individual, corporation, partnership, limited liability company, trust, association or other person or entity holds any option, warrant, call or other right to acquire any shares of capital stock of PWI.

7.3 Authorization; Enforceability. PWI and the Sole Shareholder each have the right, power and authority to enter into this Agreement and each of the other agreements relating to the Merger (the "Related Agreements") to which it is a party, and subject to and in accordance with the terms hereof and the Related Agreements, to consummate the Merger and related transactions contemplated hereby and thereby and to perform its obligations hereunder and thereunder. This Agreement has been, and the Related Agreements to which PWI and/or the Sole Shareholder is a party will be, duly executed and delivered by PWI and the Sole Shareholder, as applicable, and this Agreement is, and each Related Agreement will be, a legal, valid and binding obligation of PWI and the Sole Shareholder, as applicable, enforceable against it in accordance with its terms, except as may be limited by the effect of bankruptcy,

insolvency, reorganization, moratorium and similar laws relating to or affecting creditors' rights generally, court decisions with respect thereto and general principles of equity.

7.4 Absence of Violations or Conflicts. Neither the execution of this Agreement nor any of the Related Agreements, nor the consummation of the Merger and other transactions contemplated hereby or thereby will (i) conflict with or violate any provision of the By-Laws or Articles of Incorporation of PWI, (ii) conflict with or violate any provision of law, domestic or foreign, applicable to or binding upon PWI or the Sole Shareholder; or (iii) violate any provision of any regulation, order, writ, injunction or decree of any court or other governmental entity applicable to or binding upon PWI or the Sole Shareholder.

7.5 Third Party Consents. Neither PWI nor the Sole Shareholder is required to give any notice to, make any filing with, or obtain any authorization, consent, or approval of any governmental authority or other third party in order for the parties to consummate the Merger.

7.6 Distribution. Irrespective of whether the Merger is completed, PWI intends to make total capital distributions to the Sole Shareholder in an amount equal to the Adjusted AAA. On or before the Effective Time, PWI shall make an initial capital distribution to the Sole Shareholder in the amount of \$420,636.00 (the "Initial Capital Distribution"). If the Adjusted AAA, as finally determined, exceeds the amount of the Initial Capital Distribution, PWI (or the Surviving Corporation in the event that the Merger is consummated) shall become obligated to pay the Sole Shareholder such excess amount as though it were a capital distribution of PWI, which payment shall be made within five (5) business days of said final determination. If the Adjusted AAA, as finally determined, is less than the Initial Capital Distribution, the Sole Shareholder shall become obligated to repay PWI (or the Surviving

Corporation in the event that the Merger is consummated) an amount equal to such shortfall, which repayment shall be made within five (5) business days of said final determination.

SECTION 8 – REPRESENTATIONS, WARRANTIES AND COVENANTS OF PEI

As an inducement to cause PWI to join in the Merger, PEI hereby represents, warrants and covenants to PWI and the Sole Shareholder that the statements contained in this Section 8 are correct and complete as of the date of this Agreement, the Closing and as of the Effective Time.

8.1 Corporate Existence and Status. PEI is a corporation duly incorporated, validly existing, and in good standing under the laws of the Commonwealth of Pennsylvania.

8.2 Authorization; Enforceability. PEI has the right, power and authority to enter into this Agreement and each of the other Related Agreements to which it is a party, and subject to and in accordance with the terms hereof and the Related Agreements, to consummate the Merger and related transactions contemplated hereby and thereby and to perform its obligations hereunder and thereunder. This Agreement has been, and the Related Agreements to which PEI is a party will be, duly executed and delivered by PEI, and this Agreement is, and each Related Agreement will be, a legal, valid and binding obligation of PEI enforceable against it in accordance with its terms, except as may be limited by the effect of bankruptcy, insolvency, reorganization, moratorium and similar laws relating to or affecting creditors' rights generally, court decisions with respect thereto and general principles of equity.

8.3 Absence of Violations or Conflicts. Neither the execution of this Agreement nor any of the Related Agreements, nor the consummation of the Merger and other transactions contemplated hereby or thereby will (i) conflict with or violate any provision of the By-Laws or Articles of Incorporation of PEI, (ii) conflict with or violate any provision of law, domestic or

foreign, applicable to or binding upon PEI; or (iii) violate any provision of any regulation, order, writ, injunction or decree of any court or other governmental entity applicable to or binding upon PWI.

8.4 Third Party Consents. PEI is not required to give any notice to, make any filing with, or obtain any authorization, consent, or approval of any governmental authority or other third party in order for the parties to consummate the Merger.

8.5 Contingent Obligation to Pay Additional Capital Distribution. If the Merger is consummated, PEI covenants that it shall satisfy the contingent obligation, if any, of PWI under Section 7.6 hereof to make an additional capital distribution to the Sole Shareholder if, and to the extent, the Adjusted AAA exceeds the Initial Capital Distribution made by PWI to the Sole Shareholder.

SECTION 9 – COUNTERPARTS; FACSIMILE SIGNATURES

This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one instrument. Signatures of the parties transmitted by facsimile or electronically shall be deemed to be original signatures for all purposes.

(Remainder of page intentionally left blank)

IN WITNESS WHEREOF, each Constituent Party to this Agreement and Plan of Merger, pursuant to authority duly given by its respective Boards of Directors, has caused these presents to be executed on its behalf by its appropriate officer and its corporate seal to be hereunto affixed and attested to by its appropriate officer as of the day and year first above written.

POWELL ELECTRONICS, INC.
a Pennsylvania corporation

Attest: _____
Name: Marc S. Maser
Title: Assistant Secretary

By: _____
Name: Ernest A. Schilling, Sr.
Title: President

**POWELL ELECTRONICS
WASHINGTON, INC.**
a Florida corporation

Attest: _____
Name: Marc S. Maser
Title: Assistant Secretary

By: _____
Name: Ernest A. Schilling, Sr.
Title: President

The undersigned hereby joins in this Agreement solely for purposes of making the representations, warranties and covenants set forth in Section 7 of this Agreement.

**DEED OF TRUST, DATED
SEPTEMBER 14, 2001, HAROLD H.
POWELL, GRANTOR**

By: _____
Name: Ernest A. Schilling, Sr.,
Title: Trustee

By: _____
Name: Merle A. Wolfson.
Title: Trustee

By: _____
Name: Stuart T. Newman
Title: Trustee