

\* Division of Corporations

Page 1 of 2

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Division of Corporations

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Katherine Harris, Secretary of State

**Electronic Filing Cover Sheet****Note: Please print this page and use it as a cover sheet. Type the fax audit number (shown below) on the top and bottom of all pages of the document.**

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**Note: DO NOT hit the REFRESH/RELOAD button on your browser from this page. Doing so will generate another cover sheet.****To:**Division of Corporations  
Fax Number : (950) 205-0383**From:**Account Name : TODD WATSON, ATTORNEY AT LAW  
Account Number : I19990000260  
Phone : (904) 739-9747  
Fax Number : (904) 739-9748**MERGER OR SHARE EXCHANGE****NAPA AUTO PARTS, LLC**

Certificate of Status	1
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165.00

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ARTICLES OF MERGER  
Merger Sheet

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MERGING:

NAPA AUTO PARTS, INC., A FLORIDA ENTITY, J42518

INTO

**NAPA AUTO PARTS, LLC**, a Florida entity, L02000009241

File date: May 10, 2002

Corporate Specialist: Trevor Brumbley

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COUNTY OF ST. JAMES  
FLORIDA



FLORIDA DEPARTMENT OF STATE

Katherine Harris  
Secretary of State

May 2, 2002

NAPA AUTO PARTS, LLC  
1523 N. YOUNG BLVD.  
CHIEFLAND, FL 32626

SUBJECT: NAPA AUTO PARTS, LLC  
REF: L02000009241

We received your electronically transmitted document. However, the document has not been filed. Please make the following corrections and refax the complete document, including the electronic filing cover sheet.

The plan of merger must be attached/included.

The plan of merger must contain a statement that reflects the plan of merger was adopted and approved by each party to the merger in accordance with section(s) 607.1107, 617.1103, 608.4381, and/or 620.202, Florida Statutes.

The plan of merger must contain the exact name and jurisdiction for each party to the merger.

The plan of merger must contain the terms and conditions of the merger.

The plan of merger must contain the manner and basis of converting the interests, shares, obligations or other securities of each merged party into the interests, shares, obligations or other securities of the survivor, in whole or in part, into cash or other property.

The plan of merger must either provide the name(s) and address(es) of the manager(s) of the limited liability company or state the limited liability company is not managed by one or more managers.

Please return your document, along with a copy of this letter, within 60 days or your filing will be considered abandoned.

If you have any questions concerning the filing of your document, please call (850) 245-6025.

Trevor Brumblay  
Document Specialist

FAX Aud. #: H02000128734  
Letter Number: 202A00027336

Division of Corporations - P.O. BOX 6327 - Tallahassee, Florida 32314

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05/10/2002 11:23  
TODD-WATSON  
FAX 9047399748  
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**ARTICLES OF MERGER**

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THESE ARTICLES OF MERGER executed on this 22<sup>nd</sup> day of April 2002, by and between NAPA Auto Parts LLC (hereafter referred to as "NAPALLC") a Florida Limited Liability Company; and NAPA Auto Parts, Inc., (hereafter referred to as "NAPAINC") a Florida Corporation.

**WITNESSETH THAT:**

**WHEREAS**, NAPALLC has authorized capital interests consisting of 100,000 shares, of which four (4) shares have been duly issued and are now outstanding; and

**WHEREAS**, NAPAINC has an authorized capital stock consisting of 7,500 shares of voting Common Stock, par value \$1.00 per share, of which 500 shares are duly issued and outstanding; and

**WHEREAS**, the Managers of NAPALLC and the Board of Directors of NAPAINC, respectively, deem it advisable and generally to the advantage and welfare of their respective members and shareholders that the two Companies merge into NAPALLC under and pursuant to the provisions of the Florida Business Corporation Act and the Limited Liability Company Act of Florida; and

**WHEREAS**, the respective members and shareholders of NAPALLC and NAPAINC have approved the terms and conditions of the merger.

**NOW THEREFORE**, in consideration of the premises and of the mutual agreements herein contained and of the mutual benefits hereby provided, it is agreed by and between the parties hereto as follows:

1.0 Approval. On April 22<sup>nd</sup> 2002, the managers of NAPALLC and the directors of NAPAINC unanimously adopted and approved these Articles of Merger by Written Consents to Action, each dated April 22<sup>nd</sup> 2002. These Articles of Merger were unanimously approved in their entirety by the members of NAPALLC and the shareholders of all of NAPAINC by Written Consents to Action, each dated April 22<sup>nd</sup> 2002.

2.0 Merger. NAPA Auto Parts, Inc., shall be merged into NAPA Auto Parts, LLC.

3.0 Effective Date. These Articles of Merger are intended to become effective for income tax and accounting purposes on May 1<sup>st</sup>, 2002, such time and date

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being hereinafter called the Effective Date, and shall become effective for state law purposes immediately upon compliance with the laws of the State of Florida.

4.0 Surviving Entity. NAPALLC shall survive the merger herein contemplated and shall continue to be governed by the laws of the State of Florida and the separate corporate existence of NAPAINC shall cease forthwith upon the Effective Date.

5.0 Capital Interest. The authorized capital interests of NAPALLC following the Effective Date shall be 1,000 interests of no par value, unless and until the same shall be changed in accordance with the laws of the State of Florida. For federal income tax purposes, NAPALLC, constitutes an S-Corporation and shall possess without limitation all of the tax attributes of NAPAINC, and shall be identified by the EIN assigned to NAPAINC, which is 59-2794846.

6.0 Articles of Organization. The Articles of Organization of NAPALLC following the Effective Date unless and until the same shall be amended or repealed in accordance with the provisions thereof, which power to amend or repeal is hereby expressly reserved, and all rights or powers of whatsoever nature conferred in such Articles of Organization of NAPALLC upon any other person whomsoever are subject to this reserve power, shall continue as the Articles of Organization of NAPALLC as the Surviving Entity. Such Articles of Organization shall constitute the Articles of Organization of NAPALLC separate and apart from these Articles of Merger and may be separately certified as the Articles of Organization of NAPALLC.

7.0 Operating Agreement. The Operating Agreement of NAPALLC shall be the Operating Agreement of the surviving entity following the Effective Date unless and until the same shall be amended or repealed in accordance with the provisions thereof.

8.0 Further Assurance of Title. If at any time NAPALLC shall consider or be advised that any acknowledgments or assurances in law or other similar actions are necessary or desirable in order to acknowledge or confirm in and to NAPALLC any right, title, or interest of NAPAINC held immediately prior to the Effective Date, NAPAINC and its proper officers and directors shall and will execute and deliver all such acknowledgments or assurances in law and do all things necessary or proper to acknowledge or confirm such right, title, or interest in NAPALLC as shall be necessary to carry out the purposes of these Articles of Merger, and NAPALLC and the managers thereof are fully authorized to take any and all such action in the name of NAPALLC or otherwise.

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9.0 Retirement of Existing Interests. Upon the Effective Date, all of the interests of NAPAINC presently issued and outstanding shall be retired, and interests in NAPALLC shall be issued in respect thereof.

10.0 Conversion of Outstanding Shares. Forthwith upon the Effective Date, each of the issued and outstanding shares of Common Stock of NAPAINC and all rights in respect thereof shall be converted into a 1.99 fully paid and nonassessable shares in NAPALLC, with all rights and interests provided under the NAPALLC Operating Agreement. Each certificate nominally representing shares of Common Stock of NAPAINC shall for all purposes be deemed to evidence the ownership of the applicable number of shares of NAPALLC. The holders of such certificates shall not be required immediately to surrender the same in exchange for interests of NAPALLC but, as certificates nominally representing shares of Common Stock of NAPAINC, NAPALLC will cause to be issued therefor certificates for the appropriate percent of membership interests of NAPALLC. The four shares of NAPALLC previously issued and outstanding shall remain outstanding and shall not be retired or converted in any manner as a result of the merger.

11.0 Book Entries. The merger contemplated hereby shall be treated as a pooling of interests and as of the Effective Date entries shall be made upon the books of NAPALLC in accordance with the following:

11.1 The assets and liabilities of NAPAINC shall be recorded on the books of NAPALLC at the amounts at which they were carried on the books of NAPAINC, immediately prior to the Effective Date.

11.2 All accounting and tax attributes of NAPAINC, without limitation, shall become the accounting and tax attributes of NAPALLC.

12.0 Managers. The names of the managers of NAPALLC following the Effective Date, who shall be three (3) in number and who shall hold office from the Effective Date hereof until the earlier of their death or until their successors shall be elected and shall qualify, are as follows:

Thomas J. Crittenden, III  
Brandy Horne  
Thomas J. Crittenden, IV

14.0 Amendment. These Articles of Merger cannot be altered or amended, except pursuant to an instrument in writing signed by all of the parties hereto.

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SECRETARY OF STATE  
JAMES H. HARRIS

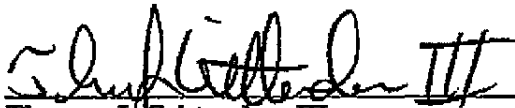
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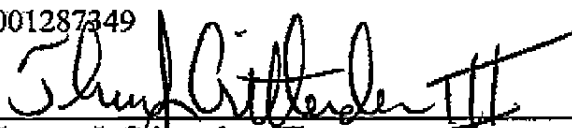
IN WITNESS WHEREOF, the parties hereto have caused these Articles of Merger to be executed by the President of NAPAINC and a Manger of NAPALLC, pursuant to authority given by their respective Boards of Directors and Managers.

Executed this 22<sup>nd</sup> day of April, 2002.

  
Thomas J. Crittenden, III  
on behalf of NAPA Auto Parts, Inc.  
as its President

Executed this 22<sup>nd</sup> day of April, 2002.

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Thomas J. Crittenden, III  
on behalf of NAPA Auto Parts, LLC,  
as its Manager

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## **PLAN AND AGREEMENT OF MERGER**

PLAN AND AGREEMENT OF MERGER (Agreement) dated as of April 22<sup>nd</sup>, 2002, between NAPA Auto Parts, LLC, a Florida Limited Liability Company, (hereafter referred to as "NAPALLC") and NAPA Auto Parts, Inc., a Florida Corporation, (hereafter referred to as "NAPAINC").

The Parties to this Plan and Agreement of Merger agree as follows:

### **ARTICLE 1.0 MERGER OF NAPAINC and NAPALLC INTO NAPALLC**

Upon the effective date (as defined in Article 4.0) NAPAINC shall be merged with and into NAPALLC and the separate existence of NAPAINC shall cease. NAPALLC (the Surviving Entity) shall continue its legal existence under, and shall be governed by, the laws of the State of Florida and the managers of NAPALLC shall continue as the managers of the Surviving Entity. The address of the registered or principal office of the Surviving Entity in Florida is 1523 N. Young Blvd., Chiefland, Florida 32626.

### **ARTICLE 2.0 CERTIFICATE OF OPERATING AGREEMENT**

The Certificate of Organization of NAPALLC shall be the Certificate of Organization of the Surviving Entity following the effective date, until the same shall be altered, amended or repealed in the manner prescribed by law, and the terms and provisions thereof are hereby incorporated in this Agreement with the same force and effect as though herein set forth in full. The Operating Agreement of NAPALLC as in effect on the effective date shall be the Operating Agreement of the Surviving Entity until altered, amended or repealed, as provided therein.

### **ARTICLE 3.0 STATUS AND CONVERSION OF INTERESTS**

3.1 Conversion of Shares and Interests. Upon the effective date each issued and outstanding share of NAPAINC common stock, each having a par value of \$1.00 per share shall be converted into 1.9994 fully paid and nonassessable shares of NAPALLC having all rights and interests provided in the NAPALLC Operating Agreement, as amended. Upon the effective date, each members' interest in NAPALLC held by the current members of NAPALLC, shall be retained as one fully paid and nonassessable shares of NAPALLC, having all rights and interests provided in the NAPALLC Operating Agreement, as amended.

3.2 Members' and Managers' Interests of NAPALLC. Upon the effective date, the interests in NAPA AUTO PARTS, LLC shall be reorganized to effectuate the provisions of Section 3.1 above and the members and managers of the Company, their



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addresses and interest of each shall be held as follows:

<u>Member/Manager</u>	<u>% Interest</u>	<u># of Shares</u>
Thomas J. Crittenden and Brandy Horne, as Trustees of the Thomas J. Crittenden, III, Trust dated October 1, 1998, <u>as Member</u> 1523 North Young, Chiefland, Florida 32626	99.70%	997
Thomas J. Crittenden, III, individually, <u>as a Manager</u> 1523 North Young, Chiefland, Florida 32626	.1%	1
Brandy Horne, <u>as a Manager</u> 1523 North Young, Chiefland, Florida 32626	.1%	1
Thomas J. Crittenden, IV, <u>as a Manager</u> 9521 Northeast 92 <sup>nd</sup> Court, Bronson, Florida 32621	.1%	1

3.3 Issuance of Interest Certificates. After the effective date, each holder of an outstanding certificate or certificates theretofore representing issued and outstanding shares of common stock of NAPAINC may surrender the same to NAPALLC and shall be entitled to receive in exchange therefor a certificate representing the number of shares and percent interest of NAPALLC the individual is entitled to receive in accordance with the provisions of Sections 3.1 and 3.2 hereof. Until so surrendered, each outstanding certificate which prior to the effective date represented shares of NAPAINC shall be deemed for all purposes to evidence ownership of the shares of NAPALLC into which the shares shall have been converted as provided in Sections 3.1 and 3.2.

#### ARTICLE 4.0 SHAREHOLDERS' AND MEMBERS' APPROVAL: EFFECTIVE DATE

This Agreement has been approved by the shareholders of NAPAINC and the members of NAPALLC, respectively, at meetings thereof held on or prior to the effective date, called and held separately in accordance with Florida law and approved by such shareholders and members by the votes required by law. Articles of Merger, reflecting this Agreement in the form required under Sections 607.1101, 607.1105, 607.1108 and 608.438, of the Florida Business Corporation Act and Sections 608.4381 and 608.4382 of the Florida Limited Liability Company Act, shall be delivered to the Florida Department of State. The delivery of the Articles of Merger to the Florida Department of State shall not be made until the fulfillment of the conditions set forth in Articles 10.0 and 11.0 of this Agreement. Evidence of compliance with such conditions shall be submitted to each company not later than the closing date which in turn shall be on or before April 22, 2002,

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or such later date as the boards of directors and managers of the Companies shall mutually decide. NAPAINC and NAPALLC shall use their best efforts to ensure that the filing with the Florida Department of State of the Articles of Merger shall take place on the same date. If such entry and filing take place on the same date, the merger of NAPAINC and NAPALLC shall become effective on such date; if such entry and filing take place on different dates, the merger shall become effective on the later of said dates.

#### **ARTICLE 5.0 FURTHER ASSURANCE**

Before the effective date, NAPAINC and NAPALLC shall, subject to the terms and conditions of this Agreement, take all actions as shall be necessary or appropriate in order to effectuate the merger as provided in this Agreement. In case, at any time after the effective date, NAPALLC shall determine that any further action or instruments of conveyance are necessary or desirable in order to vest in and confirm to NAPALLC full title to and possession of all the properties, assets, rights, privileges and obligations of NAPAINC, then the persons who were officers and directors of NAPAINC as of the effective date, shall as such officers and directors, take all such action and execute and deliver all such instruments as NAPALLC may so determine to be necessary or desirable.

#### **ARTICLE 6.0 REPRESENTATIONS AND WARRANTIES BY NAPAINC**

6.1 Representation and Warranties. NAPAINC represents and warrants as follows:

6.1.1 Corporate Organization. NAPAINC is a corporation duly organized, validly existing and in good standing under the laws of Florida and has corporate power to carry on its business as it is now being conducted, and is duly qualified to do business and is in good standing in the state of Florida and is not registered to conduct business in any other state.

6.1.2 Corporate Capitalization. NAPAINC's authorized capital stock consists 7,500 shares of common voting stock of a single class, having a par value of 1.00 par share, which 500 shares are outstanding, all of which are owned by Thomas J. Crittenden, III, and Brandy Horne as Trustees of The Thomas J. Crittenden, III, Trust Agreement dated October 1, 1998. At the meeting of NAPAINC's shareholders called to vote upon this Agreement, the shareholders referenced above will be the only persons entitled to vote. There are no existing options, calls or commitments of any kind or character relating to NAPAINC's authorized and unissued stock.

6.1.3 Ability to Contract. The copies of NAPAINC's Articles of Incorporation and Bylaws which have been delivered to NAPALLC are complete and correct. The consummation of the transactions contemplated by this Agreement will not

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result in any breach or violation of, or default under, any judgment, decree, mortgage, agreement, indenture or other instrument applicable to NAPAINC or any of its subsidiaries.

6.1.4 Subsidiaries. NAPAINC has no subsidiaries or affiliates.

6.1.5 Approval of Agreement. The execution, delivery and performance of this Agreement by NAPAINC has been duly approved by NAPAINC's board of directors, subject to approval by NAPAINC's Shareholders in the manner required by Florida law.

6.1.6 Financial Records. NAPAINC has delivered to NAPALLC a copy of its most recent financial statement, which is true and correct in all material respects, has been prepared in accordance with generally accepted accounting principles consistently followed (except as stated in the explanatory notes attached to such statements and, in the case of interim statements, except for year-end adjustments) throughout the periods covered by the statement, and presents fairly the financial position of NAPAINC. In addition, NAPAINC has made available to NAPALLC complete and correct copies of the Federal Income Tax returns relative to the operations of NAPAINC for each of the two most recent tax years, together with complete and correct copies of all reports of federal tax authorities relating to examinations of such returns.

6.1.7 Existing Liabilities. Except as and to the extent reflected in NAPAINC's financial statement referred to in Paragraph 6.1.6 above, NAPAINC has no material liabilities or obligations (whether accrued, absolute, contingent or otherwise), including, without limitation thereto, any uninsured liabilities resulting from failure to comply with any law applicable to NAPAINC or to the conduct of the business, and any tax liabilities due or to become due and whether (i) incurred in respect of NAPAINC's income for any period prior to the close of business on the closing date, or (ii) arising out of transactions entered into, or any state of facts existing, prior thereto.

6.1.8 Adverse Changes. Since the date of the financial statement referenced in Paragraph 6.1.6 there has not been:

6.1.8.1 Any material and adverse change in NAPAINC's financial condition, assets, liabilities or business (other than changes in the ordinary course of business);

6.1.8.2 Any declaration, setting aside or payment of any dividend or other distribution in respect of NAPAINC's common stock;

6.1.8.3 Any pension, retirement or similar benefit arrangement made or agreed to by NAPAINC;

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6.1.8.4 Any event or condition of any kind or character (whether or not covered by insurance) which has materially and adversely affected or will so affect the property or value of NAPAINC.

6.1.9 Compensation. Since the effective date of the financial statement referred to in Paragraph 6.1.6, there has not been any material increase in the regular rate of compensation payable by NAPAINC to any of its officers or employees, or any bonus, incentive compensation, service award or like benefit (hereinafter encompassed in the term "bonus") authorized, granted or accrued to any such officers or employees. The names and current annual salary rates of all of NAPAINC's present officers and employees are as stated on the financial statement or as otherwise provided to NAPALLC.

6.1.10 Taxes. The provisions made for taxes, if any, on NAPAINC's financial statement as referred to in Paragraph 6.1.6, are sufficient for the payment of all then accrued unpaid federal, state, county and local taxes of NAPAINC, whether or not disputed.

6.1.11 Accounts Receivable. The accounts and notes receivable of NAPAINC shown on NAPAINC's financial statement as referred to in Paragraph 6.1.6, or thereafter acquired by them, have been collected or are current and collectible at the aggregate recorded amounts thereof less applicable reserves (which reserves are adequate).

6.1.12 Title. NAPAINC has good, valid and defensible title to all its properties and assets, real and personal (including those reflected in NAPAINC's financial statement, as referenced in Paragraph 6.1.6, except as since sold or otherwise disposed of in the ordinary course of business or as consented to by NAPALLC in writing), free and clear of all liens and encumbrances except the lien of current taxes not yet due and payable and except such defects of title, easements and encumbrances as are not of a character, amount or extent as to materially detract from the value, or interfere with the prospective use, of the property subject thereto or affected thereby, or otherwise materially impair business operations. All leases pursuant to which NAPAINC leases real or personal property are in good standing, valid and effective in accordance with their respective terms, and there is not under any of such leases any existing default, or any event which with notice or lapse of time or both would constitute a default in respect of which NAPAINC has not taken adequate steps to prevent a default from occurring. NAPAINC has not received notice of violation of any applicable zoning regulation, ordinance or other law, order, regulation or requirement relating to its operations or its owned or leased properties except such as have been or are being complied with or are being contested in good faith.

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6.1.13 Assets of NAPAINC. NAPAINC has delivered to NAPALLC accurate lists as of the date of the financial statement referred to in Paragraph 6.1.6 of the following:

6.1.13.1 All real property owned or leased by NAPAINC;

6.1.13.2 All items of office equipment and machinery and equipment owned or leased by NAPAINC;

6.1.13.3 All automobiles or trucks owned by NAPAINC;

6.1.13.4 All policies of insurance (including fidelity bonds covering officers and employees) in force with respect to NAPAINC and, without restricting the generality of the foregoing, those covering their respective properties, buildings, machinery, equipment, furniture, fixtures and operations;

6.1.13.5 All agreements which involve any future payment by or to NAPAINC (i) of more than \$500.00, or (ii) of more than \$500.00 over a period which extends beyond one year and all employment contracts and consultant agreements, incentive compensation, profit sharing, retirement pension or other employee benefit plans or arrangements, with respect to all of which NAPAINC represents and warrants that NAPAINC is not in default or does not know of any reasons giving rise to a default. (Complete and correct copies of the agreements, plans and arrangements referred to in this subparagraph have been delivered or made available to NAPALLC);

6.1.13.6 The names and current annual salary rates of all of NAPAINC's present officers and employees are as stated on the financial statement.

6.1.13.7 The name of each bank in which NAPAINC has an account (exclusive of direct sales depository accounts) or safe deposit box and the names of all persons authorized to draw thereon or to have access thereto; and

6.1.13.8 The names of all persons to whom NAPAINC has granted any letters of credit or powers of attorney.

6.1.14 Litigation. There is no litigation, proceeding or government investigation pending, or so far as known to the executive officers of NAPAINC, in prospect or threatened, against or relating to NAPAINC or its respective properties or businesses, or the transactions contemplated by this Agreement.

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OF THE JUDICIAL CIRCUIT IN  
AND FOR THE DISTRICT OF  
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**ARTICLE 7.0 REPRESENTATIONS AND WARRANTIES BY NAPALLC**

**7.1 Representations and Warranties.** NAPALLC hereby represents and warrants as follows:

**7.1.1 Organization.** NAPALLC is a limited liability company duly organized, validly existing and in good standing under the laws of Florida. The consummation of the transactions contemplated in this Agreement will not result in any breach or violation of or default under any judgment, decree, mortgage, agreement, indenture or other instrument applicable to NAPALLC.

**7.1.2 Capitalization.** NAPALLC's authorized capital interests consists of 100,000 shares having no par value of which three (3) interests were validly issued and outstanding, fully paid and nonassessable, prior to the execution of this Agreement with one interest being held by Thomas J. Crittenden III, and Brandy Horne, each as a manager, and one share held by Thomas J. Crittenden III, as a member. At the meeting of NAPALLC members called to vote on this Agreement, the members entitled to vote thereon will be Thomas J. Crittenden III, and Brandy Horne. Upon the completion of the Merger the members or managers interest held by each member and manager shall be as follows:

Thomas J. Crittenden and Brandy Horne, as Trustees of the Thomas J. Crittenden, III, Trust Agreement dated October 1, 1998, 997 shares, as Members	97%
Thomas J. Crittenden, III, individually, as Manager	1%
Brandy Horne, as Manager	1%
Thomas J. Crittenden, IV, as Manager	1%

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**7.2 Financial Statement.** NAPALLC is a newly organized LLC and has no assets, earnings or liability of any material value.

**7.3 Execution of Agreement.** The execution, delivery and performance of this Agreement by NAPALLC has been duly and effectively authorized and consented to by NAPALLC's Managers and Members as required by law.

**7.4 Issuance of Interests.** The interests of NAPALLC to be issued pursuant to this Agreement will, when so issued, be validly issued and outstanding, fully paid and nonassessable with all rights as provided in the NAPALLC Operating Agreement, as amended.

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**ARTICLE 8.0 ACCESS AND INFORMATION  
CONCERNING PROPERTIES AND RECORDS, ETC.**

NAPAINC and NAPALLC will cooperate in furnishing each other with all information necessary or appropriate for use in connection with the meetings of shareholders and members referred to in Article 4.0 or as otherwise necessary to complete the transactions contemplated by this Agreement. NAPAINC and NAPALLC will hold in strict confidence all data and information obtained in confidence from one or more of the other parties to this Agreement. Pending the effective date, the officers of NAPALLC shall keep the managers of NAPALLC informed as to the affairs of NAPALLC and shall consult with the managers of NAPALLC on all matters pertaining to the business of NAPAINC.

**ARTICLE 9.0 CONDUCT OF BUSINESS PENDING THE EFFECTIVE DATE**

NAPALLC hereby agrees that, from the date of this Agreement pending the effective date and except as otherwise permitted by this Agreement or as consented to by NAPAINC and NAPALLC in writing:

9.1 NAPALLC's business shall be conducted only as necessary to complete the transactions contemplated by this Agreement.

9.2 No change shall be made in the Articles of Organization or Operating Agreement of NAPALLC.

**ARTICLE 10.0 CONDITIONS PRECEDENT TO  
OBLIGATIONS OF NAPAINC AND NAPALLC**

All obligations of NAPAINC under this Agreement are subject to the fulfillment (or waiver in writing by NAPALLC), prior to or at the effective date, of each of the following conditions:

10.1 NAPAINC shall not have discovered any error, misstatement or omission in the representation and warranties made in Article 7.0 by NAPALLC (i) which alone is, or in the aggregate are, materially adverse to either NAPAINC or NAPALLC, (ii) of which NAPAINC promptly gave notice to NAPALLC upon discovery of the same and (iii) which has not been adequately remedied to the reasonable satisfaction of NAPAINC so that it incurs no detriment therefrom.

10.2 NAPALLC's representations and warranties contained in this Agreement shall be deemed to have been made again at and as of the time of the effective date and, except as otherwise contemplated by this Agreement, shall then be true in all material respects; NAPALLC shall have performed and complied with all agreements and

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conditions by this Agreement to be performed or complied with by it prior to or at the effective date.

10.3 The merger of NAPAINC and NAPALLC with and into NAPALLC in accordance with the provisions of this Agreement shall have been authorized and approved by the Members and Managers of NAPALLC's in the manner required by applicable law.

10.4 NAPAINC and NAPALLC shall have been furnished with an opinion, dated prior to the effective date, of counsel for NAPALLC to the effect that:

10.4.1 NAPALLC is a limited liability company duly organized and existing and in good standing under the laws of Florida and has the power to carry on its business as it is then being conducted;

10.4.2 The Members' interests in NAPALLC are or shall be upon completion of the merger as listed under Section 7.1;

10.4.3 The execution, delivery and performance of this Agreement by NAPALLC has been duly authorized and approved by all requisite actions of NAPALLC's Members and Managers and this Agreement has been duly executed and delivered by NAPALLC and constitutes a valid and binding obligation of NAPALLC in accordance with its terms;

10.4.4 All other actions and proceedings required by law or this Agreement to be taken by NAPAINC at or prior to the effective date, in connection with this Agreement and the transactions provided for herein, have been duly and validly taken; and

10.4.5 That the title the property of NAPALLC is as represented by NAPALLC under Section 7.2.

10.5 No court of competent jurisdiction has issued an injunction or restraining order in an action or proceeding against the merger, brought at the instance of any federal, state or other governmental department, commission, board, bureau, agency or similar instrumentality, which will be binding on NAPALLC pending final disposition of such action or proceeding.

#### **ARTICLE 11.0 CONDITIONS PRECEDENT TO THE OBLIGATIONS OF NAPALLC**

All obligations of NAPALLC under this Agreement are subject to the fulfillment (or waiver in writing by NAPALLC), prior to or at the effective date, of each of the following conditions:

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11.1 NAPALLC shall not have discovered any error, misstatement or omission in the representations and warranties made in Article 6.1 or 6.2 by NAPAINC (i) which alone is, or in the aggregate are, materially adverse to NAPALLC, (ii) of which NAPALLC promptly gave notice to NAPAINC upon discovery of the same and (iii) which has not been adequately remedied to the reasonable satisfaction of NAPALLC so that NAPALLC incurs no detriment therefrom.

11.2 NAPAINC's representations and warranties contained in this Agreement shall be deemed to have been made at and as of the time of the effective date and, except as otherwise contemplated by this Agreement, shall then be true in all material respects; NAPAINC shall have performed and complied with all agreements and conditions required by this Agreement to be performed or complied with by it prior to or at the effective date.

11.3 NAPAINC shall have delivered to NAPALLC an opinion, dated prior to the effective date from their respective counsel to the effect that:

11.3.1 That it is a corporation duly organized and existing and in good standing under the laws of Florida;

11.3.2 The execution, delivery and performance of this Agreement by NAPAINC has been duly authorized and approved by all requisite action of it's board of directors and shareholders, and this Agreement has been duly executed and delivered by NAPAINC and constitutes a valid and binding obligation of the corporation in accordance with its terms;

11.3.3 The shares of NAPAINC's common stock issuable upon conversion of the shares of NAPALLC in accordance with this Agreement (i) have been duly authorized, and (ii) will be fully paid and nonassessable when so issued upon such conversions.

11.4 The merger of NAPAINC and NAPALLC with and into NAPALLC as contemplated by this Agreement shall have been unanimously authorized and approved by the holders of outstanding common stock of NAPAINC.

11.6 No court of competent jurisdiction has issued an injunction or restraining order in an action or proceeding against the merger, brought at the instance of any federal, state or other governmental department, commission, board, bureau, agency or similar instrumentality, which will be binding on NAPAINC or NAPALLC pending final disposition of such action or proceeding.

11.7 As of the effective date NAPALLC shall have specifically assumed in writing all of the obligations of NAPAINC.

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**12.0 TERMINATION OF REPRESENTATIONS AND WARRANTIES**

The respective representations and warranties of NAPAINC and NAPALLC contained in Articles 6.0 and 7.0 (other than those of NAPALLC set forth in Section 7.4 and those provided for in the first clauses of 10.2 and 11.2 shall expire with, and be terminated and extinguished by, the merger of NAPAINC and NAPALLC with and into NAPALLC and neither NAPAINC nor NAPALLC shall be under any liability whatsoever with respect to any such representation or warranty, it being intended that the sole remedy of either party for a breach of such representation or warranty shall be to elect not to proceed with the merger if such breach has resulted in a condition of such party's obligations hereunder not being satisfied. This Article shall have no effect upon any other obligation of NAPAINC or NAPALLC, in this Agreement, whether to be performed before or after the effective date.

**ARTICLE 13.0 CERTAIN EFFECTS OF MERGER**

On the effective date, all the rights, privileges, powers and franchises, of a public as well as of a private nature, of NAPAINC shall be possessed by NAPALLC subject to the obligations and duties of NAPAINC and all property, real, personal and mixed owned by and all debts due to NAPAINC on whatever account, as well for stock subscriptions as all other things in action or belonging to NAPAINC, shall be vested in NAPALLC and shall thereafter be as effectually the property of NAPALLC as they were of NAPAINC and the title to any real estate vested in NAPAINC, shall thereafter be as effectually the property of NAPALLC as they were of NAPAINC; however, in accordance with Florida Statutes Section 608.4383(2) title to real property shall be conveyed by the recordation of a deed with applicable taxes thereon and all liens upon any property of NAPAINC shall be preserved unimpaired, and all debts, liabilities and duties of NAPAINC shall upon the effective date attach to NAPALLC and may be enforced against NAPALLC to the same extent as if such debts, liabilities and duties had been incurred or contracted by it.

**ARTICLE 14.0 REGISTRATION SUBSEQUENT TO MERGER**

The parties unanimously agree that the merger of NAPAINC into NAPALLC qualifies for exemption from registration with the Securities and Exchange Commission.

**ARTICLE 15.0 EXPENSES**

All expenses incident to this merger shall be paid by NAPALLC.

**ARTICLE 16.0 COMPLIANCE WITH CERTAIN TAX REQUIREMENTS**

The parties agree, for the mutual benefit of NAPAINC and NAPALLC, their officers, directors, stockholders, members and managers as applicable, that if it shall in

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connection with the merger contemplated herein, whether on or subsequent to the effective date, transfer part or all of the assets which are acquired by it in the merger to another corporation, such other corporation shall be controlled by it as that term is defined in Section 368(c) of the Internal Revenue Code of 1986. NAPALLC further agrees that it shall take no action with regard to its organization or capitalization without the counsel of a qualified CPA or Attorney in order to prevent this merger from qualifying for non-recognition of gain under Section 368 of the Internal Revenue Code.

#### **ARTICLE 17.0 MISCELLANEOUS**

**17.1 Specific Performance.** The parties agree that it is impossible to measure in money the damages, which will accrue to a party hereto by reason of a failure to perform any of the obligations under this Agreement. Therefore, if any party hereto shall institute any action or proceeding to enforce the provisions hereof, any person against whom such action or proceeding is brought hereby waives the claim or defense that such party has an adequate remedy in money damages.

**17.2 Attorney Fees.** In the event any party fails to perform any of its obligations under this Agreement or in the event a dispute arises concerning the meaning or interpretation of any provision of this Agreement, the defaulting party or parties or the party or parties not prevailing in such dispute, as the case may be, shall pay any and all costs and expenses incurred by the other party or parties in enforcing or establishing its or their rights under this Agreement, including, without limitation, reasonable attorneys' fees, whether suit be brought or not, and whether incurred in arbitration, mediation, trial or appellate proceedings.

**17.3 Remedies.** All rights and remedies granted in this Agreement shall be cumulative and not exclusive of all other rights and remedies which the parties may have at law or in equity, and the parties may exercise all or any of such rights and remedies at any one or more times without being deemed to have waived any or all other rights and remedies which they may have in the matter.

**17.4 Notices.** Any and all notices, designations, consents, offers, acceptances or any other communication provided for herein shall be given in writing by certified mail which shall be addressed to each party at his address of record, or to such other address as may be designated by the party. Notice may be by facsimile if followed by certified mail and the date of the facsimile shall control.

**17.5 Invalid Provision.** The invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provisions of this Agreement, and the Agreement shall be construed in all respects as if such invalid or unenforceable provision(s) were omitted. If one or more phrases, sentences or provisions of this Agreement is susceptible of two or more legal interpretations, at least one of which would

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make the same legally enforceable, then the legal interpretation which would render it legally enforceable shall be used in construing this Agreement.

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

17.7 Modification. No alteration, change or modification of this Agreement shall be valid or binding upon any of the parties unless and until the same shall be reduced to writing and signed by the parties hereto.

17.8 Headings. Headings contained herein are for convenience of reference only and are not intended to define, limit or describe the scope or intent of any provisions of this Agreement.

17.9 Governing Law. The validity, construction and effect of this Agreement shall be construed and governed by the laws of the State of Florida. The parties agree that the proper jurisdiction and venue for the resolution or litigation of any disputes shall be in Levy County, Florida.

17.10 Entire Agreement. This Agreement supersedes all Agreements previously made between the parties hereto relating to its subject matter. There are no other Agreements or understandings between them and this Agreement is the entire Agreement among the parties.

17.11 Benefit. This Agreement shall not be assignable by either party.

17.12 Gender and Number. Whenever the context of this Agreement requires, the masculine gender includes the feminine and neuter and the singular number includes the plural and vice versa.

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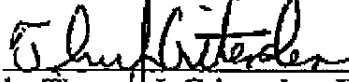
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**ARTICLE 18.0 EXECUTION**

This Plan and Agreement of Merger have been approved by the Directors and Shareholders of NAPA Auto Parts, Inc. and the Managers and Members of NAPA Auto Parts, LLC as required under Section 607.1107 of the Florida Business Corporation Act and Section 608.4381 of the Florida Limited Liability Company Act.

NAPA Auto Parts, Inc.



by Thomas J. Crittenden, III

on behalf of

NAPA Auto Parts, Inc. as its President

NAPA Auto Parts, LLC



by Thomas J. Crittenden, III

on behalf of

NAPA Auto Parts, LLC, as a Manager

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