

L 99000004243



ACCOUNT NO. : 072100000032
REFERENCE : 707924 4301763
AUTHORIZATION : Patricia Pappas
COST LIMIT : \$ 60.00

ORDER DATE : May 23, 2000
ORDER TIME : 11:49 AM
ORDER NO. : 707924-005
CUSTOMER NO: 4301763

100003265231--4

CUSTOMER: Barbara Toffler, Legal Asst
Parker Chapin LLP
The Chrysler Building
405 Lexington Avenue
New York, NY 10174

ARTICLES OF MERGER

TRUSTY GROUP, L.C.

INTO

AUTOPARTNER, INC.

RECEIVED
00 MAY 24 PM 12:53
DEPARTMENT OF STATE
DIVISION OF CORPORATIONS
TALLAHASSEE, FLORIDA

PLEASE RETURN THE FOLLOWING AS PROOF OF FILING:

XX CERTIFIED COPY
XX PLAIN STAMPED COPY

CONTACT PERSON: Pollye Janisse
EXAMINER'S INITIALS:

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SECRETARY OF STATE
TALLAHASSEE, FLORIDA
WLS/24

601

ARTICLES OF MERGER
Merger Sheet

MERGING:

TRUSTY GROUP, L.C. a Florida LLC #L99000004243

INTO

AUTOPARTNER, INC., corporation not qualified in Florida.

File date: May 24, 2000

Corporate Specialist: Lee Rivers

Account number: 072100000032

Account charged: 60.00

ARTICLES OF MERGER

OF

TRUSTY GROUP, L.C.

INTO

AUTOPARTNER, INC.

L99-4243

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TALLAHASSEE FLORIDA

The following Articles of Merger are being submitted in accordance with section 608.4382 of the Florida Limited Liability Company Act ("FLLCA").

It is hereby certified upon behalf of each of the constituent entities as follows:

FIRST: The name of the constituent entity that is being merged into the surviving corporation, and which is hereinafter sometimes referred to as the "merged constituent entity," is Trusty Group, L.C., a Florida limited liability company having its principal office at 1080 E. Indiantown Road, Suite 200, Jupiter, Florida 33477.

SECOND: The name of the constituent entity that is to be the surviving corporation, and which is hereinafter sometimes referred to as the "surviving corporation," is AutoPartner, Inc., a Delaware corporation having its principal office at 1080 E. Indiantown Road, Suite 200, Jupiter, Florida 33477.

THIRD: The attached Agreement and Plan of Merger meets the requirements of section 608.438 of the FLLCA, and has been duly approved and executed by each constituent entity in accordance with Chapter 608 of the Florida Statutes.

FOURTH: The surviving corporation hereby appoints the Florida Secretary of State as its agent for substitute service of process pursuant to Chapter 48 of the Florida Statutes in any proceeding to enforce any obligation or rights of any dissenting shareholders, partners, and/or members of each of the constituent parties to the merger.

FIFTH: The surviving corporation agrees to pay the dissenting shareholders, partners, and/or members of each of the constituent parties to the merger the amount, if any, to which they are entitled under section(s) 607.1302 and/or 608.4384 of the Florida Statutes.

SIXTH: The merger is permitted under the respective laws of all applicable jurisdictions and is not prohibited by the regulations or articles of organization of the merged constituent entity.

SEVENTH: The merger shall become effective as of the date the Articles of Merger are filed with the Florida Department of State.

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

Signed on May 15, 2000.

TRUSTY GROUP, L.C.

By: 

Name: Jeffrey A. Lichterman

Title: Manager

AUTOPARTNER, INC.

By: 

Name: Jeffrey A. Lichterman

Title: President

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TALLAHASSEE FLORIDA

AGREEMENT AND PLAN OF MERGER

May 15, 2000

This Agreement and Plan of Merger (this "Agreement") is between Trusty Group, L.C., a Florida limited liability company (the "LLC"), and AutoPartner, Inc., a Delaware corporation (the "Company").

Recital

The Board of Directors and sole stockholder of the Company and the members of the LLC have approved and adopted this Agreement and approved the Merger (as defined below) upon the terms and subject to the conditions set forth herein;

Agreement

The parties agree as follows:

1. The Merger.1.1 The Merger.

(a) In accordance with the provisions of this Agreement and the provisions of the Delaware General Corporation Law (the "DGCL") and the Florida Limited Liability Company Act (the "FLLCA"), the parties hereto shall cause the LLC to be merged with and into the Company (the "Company"). The Company shall be the surviving corporation (hereinafter sometimes called the "Surviving Corporation") and shall continue its corporate existence under the laws of the State of Delaware. At the Effective Time (as hereinafter defined), the separate existence of the LLC shall cease.

(b) The Merger shall have the effects specified in Section 251 of the DGCL and Section 4383 of the FLLCA. From and after the Effective Time, the Surviving Corporation shall possess all the rights, privileges, immunities, powers and purposes of the LLC and the Company and shall assume and become liable for all the liabilities, obligations and penalties of the Company and the LLC.

1.2 Certificate of Incorporation. The certificate of incorporation of the Company, as amended and in effect immediately prior to the Effective Time, shall be the certificate of incorporation of the Surviving Corporation until thereafter amended in accordance with the provisions thereof and the DGCL.

1.3 Bylaws. The bylaws of the Company in effect immediately prior to the Effective Time shall be the bylaws of the Surviving Corporation until thereafter amended, altered or repealed as provided therein and in the DGCL.

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JANESVILLE FLORIDA

1.4 Directors and Officers. The officers of the Company immediately prior to the Effective Time shall be the officers of the Surviving Corporation, each to hold office in accordance with the certificate of incorporation and the bylaws of the Surviving Corporation. Immediately following the Effective Time, the directors of the Surviving Corporation shall be Jeffrey A. Lichterman, Michael D. Newton, Charles J. Hazlett, Jim Wright, Gordon A. Ulsh and David L. Goret, each to hold office in accordance with the certificate of incorporation and the bylaws of the Surviving Corporation.

1.5 Effective Time. As soon as practicable following the execution and delivery hereof, the Company and the LLC will cause certificates of merger (the "Certificates of Merger"), together with any other documents required by law to effectuate the Merger, to be executed, acknowledged and delivered for filing with the Secretary of State of the State of Delaware as provided in Section 264 of the DGCL and the Secretary of State of Florida as provided in Section 4382 of the FLLCA, to the extent required. The Merger shall become effective on the date on which a Certificate of Merger is filed with the Secretary of State of Delaware, or such other date as shall be specified in such Certificate of Merger. The date and time when the Merger shall become effective is herein referred to as the "Effective Time."

2. Conversion of Shares.

2.1 Company Capital Stock. Each share of the capital stock of the Company outstanding immediately prior to the Effective Time of the Merger shall be cancelled, retired and cease to exist, and no payment shall be made with respect thereto.

2.2 LLC Membership Interests.

(a) The membership interests consisting of an aggregate of 6,800,000 Units in the LLC (the "Units") issued and outstanding immediately prior to the Effective Time shall, by virtue of the Merger and without any action on the part of the holder thereof, be converted into an aggregate of 6,800,000 shares of the Surviving Corporation's common stock, par value \$.001 per share ("Common Stock"), such that each Unit shall be converted into one (1) share of Common Stock. The Common Stock issued pursuant to this Section 2.2(a) shall, immediately after the Effective Time, constitute the only issued or outstanding shares of capital stock of the Surviving Corporation.

(b) The options to purchase an aggregate of 500,000 Units pursuant to the LLC's 2000 Membership Interest Option Plan (the "LLC Options") issued and outstanding immediately prior to the Effective Time shall, by virtue of the Merger and without any action on the part of the holder thereof, be converted into options to purchase an aggregate of 500,000 shares of Common Stock (the "Corporation Options") pursuant to the Surviving Corporation's 2000 Equity Incentive Plan, the form of which is attached as Exhibit A hereto (the "Company Plan"), such that each LLC Option shall be converted into a Corporation Option to purchase one (1) share of Common Stock. Each Corporation Option shall have the same exercise price, term and vesting schedule as the LLC Option from which it is converted, and otherwise shall be

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TALLAHASSEE FLORIDA

subject to the terms and conditions of the Company Plan. The Corporation Options granted pursuant to this Section 2.2(b) shall, immediately after the Effective Time, constitute the only issued or outstanding securities or rights exercisable or exchangeable for, or convertible into, shares of capital stock of the Surviving Corporation.

The parties have executed and delivered this Agreement and Plan of Merger as of the date first written above.

TRUSTY GROUP, L.C.

By: 

Name: Jeffrey A. Lichterman
Title: Manager

AUTOPARTNER, INC.

By: 

Name: Jeffrey A. Lichterman
Title: President

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TALLAHASSEE FLORIDA

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