

MO1000002538

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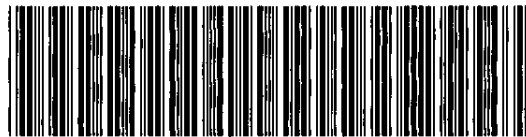
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TALLAHASSEE, FLORIDA

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C. LEWIS  
DEC 16 2013  
EXAMINER

FILED



CORPORATION SERVICE COMPANY

ACCOUNT NO. : I20000000195

REFERENCE : 921236 4808527

AUTHORIZATION :

*Lyndell*

COST LIMIT : \$ 50.00

ORDER DATE : December 13, 2013

ORDER TIME : 8:30 AM

ORDER NO. : 921236-005

CUSTOMER NO: 4808527

ARTICLES OF MERGER

MORGAN TIRE & AUTO, LLC

INTO

BRIDGESTONE RETAIL OPERATIONS,  
LLC

PLEASE RETURN THE FOLLOWING AS PROOF OF FILING:

\_\_\_\_\_ CERTIFIED COPY  
XX \_\_\_\_\_ PLAIN STAMPED COPY

CONTACT PERSON: Carina L. Dunlap

EXAMINER'S INITIALS: \_\_\_\_\_

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APPROVED  
AND  
FILED

13 DEC 13 AM 10:36

SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

**CERTIFICATE OF MERGER  
OF  
MORGAN TIRE & AUTO, LLC  
a Florida limited liability company**

**with and into**

**BRIDGESTONE RETAIL OPERATIONS, LLC  
a Delaware limited liability company**

The following Certificate of Merger, dated as of December 11, 2013, is submitted to merge the following Florida limited liability company in accordance with s. 608.4382, Florida Statutes:

1. The exact name, jurisdiction and form/entity of the merging party is:

<u>Name</u> <u>LC9000000491</u>	<u>Jurisdiction</u>	<u>Form/Entity Type</u>
Morgan Tire & Auto, LLC	Florida	limited liability company

2. The exact name, jurisdiction, and form/entity type of the surviving party is:

<u>Name</u> <u>MD1000002538</u>	<u>Jurisdiction</u>	<u>Form/Entity Type</u>
Bridgestone Retail Operations, LLC	Delaware	limited liability company

3. The attached Agreement and Plan of Merger was approved by Morgan Tire & Auto, LLC in accordance with the applicable provisions of Chapter 608, Florida Statutes.

4. The attached Agreement and Plan of Merger was approved by Bridgestone Retail Operations, LLC in accordance with the applicable laws of the state, country or jurisdiction under which such other business entity is formed, organized or incorporated.

5. The effective date of the merger shall be as of December 31, 2013.

6. The surviving party is not organized under the laws of Florida. The surviving party's principal office address is: 333 East Lake Street, Bloomingdale, Illinois 60108.

7. The surviving party is not organized under the laws of Florida. The surviving party agrees to pay to any members with appraisal rights the amount, to which such members are entitled under ss.608-4351-608.43595, Florida Statutes.

8. The surviving party is authorized to transact business in Florida, effective as of November 9, 2001.

APPROVED  
AND  
FILED

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SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

Signature(s) for Each Party:

Merging Party:

**MORGAN TIRE & AUTO, LLC,**  
a Florida limited liability company

By: Stuart Watterson  
Name: Stuart Watterson  
Its: Manager

Surviving Party:

**BRIDGESTONE RETAIL OPERATIONS,**  
LLC, a Delaware limited liability company

By: \_\_\_\_\_  
Name: Stuart Crum  
Its: President

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AND  
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SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

Signature(s) for Each Party:


Merging Party:

**MORGAN TIRE & AUTO, LLC,**  
a Florida limited liability company

By: \_\_\_\_\_  
Name: Stuart Watterson  
Its: Manager

Surviving Party:

**BRIDGESTONE RETAIL OPERATIONS,**  
LLC, a Delaware limited liability company

By:  \_\_\_\_\_  
Name: Stuart Crum  
Its: President

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**AGREEMENT AND PLAN OF MERGER**  
**BETWEEN**  
**BRIDGESTONE RETAIL OPERATIONS, LLC**  
**AND**  
**MORGAN TIRE & AUTO, LLC**

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**Dated as of December 11, 2013**

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- EXHIBIT A - Form Certificate of Merger to be filed in the State of Delaware.  
EXHIBIT B - Form Certificate of Merger to be filed in the State of Florida.  
EXHIBIT C - Operating Agreement of BSRO



APPROVED  
AND  
FILED

13 DEC 13 AM 10:37

SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

## AGREEMENT AND PLAN OF MERGER

This Agreement and Plan of Merger (this "*Agreement*"), dated as of December 11, 2013, is entered into between Bridgestone Retail Operations, LLC, a Delaware limited liability company ("*BSRO*"), and Morgan Tire & Auto, LLC, a Florida limited liability company ("*MTA*"), a wholly-owned subsidiary of BSRO.

### RECITALS

A. This Agreement constitutes an "agreement of merger", as such term is used in Section 18-209 of the Limited Liability Company Act of the State of Delaware (the "*Act*"), providing for the merger of MTA with and into BSRO (the "*Merger*") with BSRO continuing as the surviving company (the "*Surviving Company*"), in accordance with the terms and conditions of this Agreement and the Act.

B. The boards of managers of each of BSRO and MTA (each, a "*Board*") and each of their respective Members (each, a "*Member*") has unanimously adopted resolutions (i) approving this Agreement and declaring its advisability, (ii) approving the transactions contemplated hereby, including the Merger and (iii) determining that the terms of the Merger and the other transactions contemplated hereby are fair to, advisable and in the best interests of, BSRO, MTA and each of their respective Members, as the case may be.

D. The parties desire to make certain representations, warranties, covenants and agreements in connection with the transactions contemplated hereby as provided herein.

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

### **ARTICLE I DEFINITIONS**

1.1 For purposes of this Agreement the following terms shall have the meanings set forth in this **Article I, Section 1.1**:

- (a) "*Act*" has the meaning set forth in **Recital A**.
- (b) "*Action*" means any claim, action, arbitration, investigation, suit, legal proceeding, administrative, enforcement or arbitration proceeding, whether at law or in equity, before any Governmental Authority or arbitrator.
- (c) "*Affiliate*" means with respect to any Person, any other Person that directly or indirectly controls, is controlled by or is under common control with such Person.
- (d) "*Agreement*" has the meaning set forth in the **Preamble**.

(e) **“Board”** shall mean the board of managers of BSRO or MTA, as the case may be.

(f) **“BSRO”** means, prior to the Effective Time, Bridgestone Retail Operations, LLC, a Delaware limited liability company.

(g) **“Certificate of Merger”** has the meaning set forth in Section 0.

(h) **“Code”** means the Internal Revenue Code of 1986, as amended.

(i) **“Consent”** means any consent, approval, authorization, qualification, waiver or registration required to be obtained from, filed with or delivered to any Person in connection with the consummation of the transactions contemplated hereby.

(j) **“Contracts”** mean all legally binding notes, bonds, mortgages, guarantees, arrangements, commitments, contracts, leases, subleases, licenses and other agreements, in each case, whether written or oral (including any amendments and other modifications or assignments thereto).

(k) **“Effective Time”** has the meaning set forth in Section 0.

(l) **“Employee Plans”** has the meaning set forth in Section 4.7(a).

(m) **“Environment”** means soil, surface water, groundwater, sediments and ambient air.

(n) **“Environmental Law”** means any Law concerning pollution, protection of the Environment, flora, fauna or, as such relates to exposure to Hazardous Materials, public health, including such Laws relating to the release, transportation, storage, use, handling or treatment of Hazardous Materials.

(o) **“Governmental Authority”** means any government or political subdivision, whether federal, state, local or foreign, or any agency, commission, administrative authority, of any such government or political subdivision, any federal, state, local or foreign court, tribunal, judicial or arbitral body (in each case, of competent jurisdiction).

(p) **“Indebtedness”** means, without duplication, all of the following obligations of MTA, whether or not contingent: (i) indebtedness for borrowed money, (ii) obligations for the deferred purchase price of property or services (other than trade payables), (iii) obligations evidenced by notes, bonds, debentures, mortgages or other similar instruments, (iv) obligations as lessee under leases and (v) obligations under Employee Plans.

(q) **“Intellectual Property”** means copyrights, domain names, trademarks and trade secrets owned by or licensed to MTA, including the right to sue for past, present and future infringement, misappropriation or other violation thereof.

(r) **"IP Agreements"** means all Contracts concerning Intellectual Property to which MTA is a party and which are used in the business of MTA or by which MTA is otherwise bound.

(s) **"IRS"** means the United States Internal Revenue Service.

(t) **"Knowledge"** means the actual knowledge of any Manager of BSRO or MTA, as the case may be.

(u) **"Law"** means any law, statute, code, ordinance, regulation or rule of any Governmental Authority (including common law) in effect on the date hereof.

(v) **"Leased Real Property"** means any real property leased, subleased, licensed or otherwise occupied by MTA as tenant, licensee or occupier together with the rights of MTA under the applicable Leases with respect to all buildings and other structures, facilities or improvements located thereon, and all fixtures and building systems of MTA attached or appurtenant thereto.

(w) **"Licensed Intellectual Property"** means the Intellectual Property that MTA is licensed to use pursuant to any IP Agreement.

(x) **"Lien"** means any security interest, pledge, negative pledge, hypothecation, mortgage, lien (including environmental and Tax liens), charge, lease, license, restriction or encumbrance, including any restriction on the use, voting transfer, receipt of income or other exercise of any attributes of ownership.

(y) **"Manager"** means any member of the Board of BSRO or MTA, as the case may be.

(z) **"Material Adverse Effect"** means, with respect to MTA, taken as a whole, any change, occurrence, event or development that, individually or in the aggregate, has or would reasonably be expected to have a material adverse effect on the business, results of operations or financial condition of MTA, other than an event (i) resulting from general economic, political, financial, banking, credit or securities market conditions, (ii) affecting companies in the industry in which MTA conducts its business generally, (iii) resulting from the announcement or performance of, or compliance with the terms of, this Agreement or the transactions contemplated hereby, (iv) resulting from any changes in applicable Laws or accounting rules, or (v) resulting from natural disasters, acts of terrorism or war (whether or not declared), or epidemic or pandemic.

(aa) **"Material Contract"** means any contract to which MTA is a party or is otherwise bound that is material to the business of MTA.

(bb) **"Material Lien"** means, with respect to any asset which is material to the business of MTA, any mortgage, pledge, security interest, attachment, claim, charge, deed of trust, easement, conditional sale, other title retention agreement, encumbrance, lien (whether statutory or otherwise) or other restriction.

- (cc) "**Member**" has the meanings set forth in the Recital B.
- (dd) "**Merger**" has the meaning set forth in Recital A.
- (ee) "**MTA**" means, prior to the Effective Time, Morgan Tire & Auto, LLC, a Florida limited liability company, and a wholly-owned subsidiary of BSRO.
- (ff) "**Order**" means any order, judgment, ruling, injunction, assessment, award, decree or writ of any Governmental Authority.
- (gg) "**Owned Real Property**" means all Real Property owned by MTA, including all buildings and other structures, facilities or improvements located thereon, and all fixtures and building systems of MTA attached or appurtenant thereto.
- (hh) "**Permit**" means any license, permit, authorization, certificate of authority, or qualification that has been issued or granted by any Governmental Authority.
- (ii) "**Person**" means any individual, partnership, limited liability company, firm, corporation, association, joint venture, organization, business, trust, estate or other entity, including any Governmental Authority or any subdivision or agency thereof.
- (jj) "**Real Property**" means collectively, the Leased Real Property and Owned Real Property of MTA.
- (kk) "**Shares**" means any issued and outstanding shares of MTA.
- (ll) "**Surviving Company**" means, from and after the Effective Time, Bridgestone Retail Operations, LLC, a Delaware limited liability company.
- (mm) "**Tax**" means (i) any gross receipts, sales, use, ad valorem, value added, transfer, franchise, profits, license, withholding, payroll, employment, excise, severance, stamp, occupation, premium, property, environmental, escheat, unclaimed property or windfall profit tax, or other tax, together with any interest, penalties, additions to tax or additional amounts imposed by any Taxing Authority and (ii) any liability for or in respect of any amounts described in clause (i) as a transferee (within the meaning of Section 6901 of the Code or any similar applicable Law), as a successor by operation of applicable Law, by Contract (other than a commercial contract, such as a lease or loan, entered into in the ordinary course of business) or as a result of having filed any return on a combined, consolidated, unitary, affiliated or similar basis with any other Person.
- (nn) "**Taxing Authority**" means any Governmental Authority responsible for the administration or imposition of any Tax.

## ARTICLE II THE MERGER

2.1 **Merger.** As of December 31, 2013 (the "**Effective Time**"), MTA shall be merged with and into BSRO by the execution and filing a certificate of merger, with the Secretary of

State of the State of Delaware in accordance with Title 6, Section 18-209 of the Act, in substantially the form attached hereto as **Exhibit A**, a certificate of merger (each, a "**Certificate of Merger**"), with the Secretary of State of the State of Florida in accordance with Chapter 608 Section 4382 of the Florida Statutes, in substantially the form attached hereto as **Exhibit B**, and such other filings or recordings as are required under the Act or in connection with the Florida Statutes. The Surviving Company may, at any time after the Effective Time, take any action, including the execution and delivery of any documents in the name and on behalf of either MTA or BSRO, for the purpose of effectuating the Merger.

2.2 **Deliveries by MTA.** Prior to the Effective Time, MTA shall deliver to BSRO the following items:

- (a) The articles of organization of MTA, certified by the Secretary of State of the State of Florida;
- (b) A certificate issued by the Secretary of State of the State of Florida as to the good standing of MTA in Florida;
- (c) Written resignations of the Managers and officers of MTA, in each case effective as of the Effective Time; and
- (d) The original company minute books of MTA.

2.3 **Certificate of Formation of the Surviving Company.** At the Effective Time, the Operating Agreement of BSRO, in the form set forth on **Exhibit C**, shall be the Operating Agreement of the Surviving Company until thereafter amended in accordance with its terms and as provided by Law.

### ARTICLE III EFFECT OF THE MERGER

3.1 **Effects of the Merger Generally.** As a result of the Merger:

- (a) The separate corporate existence of MTA shall cease and BSRO shall continue as the Surviving Company;
- (b) The name of the Surviving Company shall be "Bridgestone Retail Operations, LLC";
- (c) Without limiting the generality of **Section 3.1 (a)** and subject thereto, at the Effective Time, all the Real Property, property, rights, Intellectual Property, licenses, registrations, privileges, immunities, powers, franchises and other assets of any kind and description of BSRO and MTA shall vest in the Surviving Company and all debts, liabilities and duties of BSRO and MTA shall become the debts, liabilities and duties of the Surviving Company;

(d) All Managers and officers of MTA shall cease to be Managers or officers, as the case may be, of MTA and such Managers and officers, as the case may be, shall not become Managers or officers, as the case may be, of the Surviving Company; and

(e) The Merger shall have all other effects as set forth in this Agreement and the applicable provisions of the Act.

3.2 **Effect on the Shares of MTA.** At the Effective Time, by virtue of the Merger any and all issued and outstanding Shares of MTA, shall be cancelled.

#### **ARTICLE IV REPRESENTATIONS AND WARRANTIES OF MTA**

MTA hereby represents and warrants to BSRO as follows:

##### **4.1 Organization; Authority.**

(a) MTA is a limited liability company duly organized, validly existing and in good standing under the Laws of its jurisdiction of formation. MTA is duly qualified to do business, and is in good standing, in each jurisdiction in which the character of the properties owned or leased by it or in which the conduct of its business by it requires it to be so qualified, except where the failure to be so qualified or to be in good standing would not have a Material Adverse Effect on MTA.

(b) This Agreement has been duly and validly executed and delivered by MTA and constitutes the legal, valid and binding obligation of MTA, as applicable, enforceable against it in accordance with its terms.

##### **4.2 Capitalization.**

(a) Any and all Shares which have been issued and are outstanding have been issued to BSRO and/or its predecessor. No shares are held in the treasury of MTA. Each outstanding Share, if any, of MTA is duly authorized, validly issued, fully paid and non-assessable.

(b) MTA does not own any equity interests in, and is not a partner, in any joint venture with, any Person nor does MTA own, or have any Contract to acquire, any securities of any Person or any direct or indirect equity or ownership interest in any other business.

##### **4.3 No Conflict; Consents.**

(a) Neither the execution and delivery of this Agreement by MTA nor the consummation by MTA of the transactions contemplated hereby, will (i) violate or conflict with or result in a breach of any provisions of its Operating Agreement or other constituent documents, (ii) constitute or result in the breach of any term, condition or provision of, or constitute a default under, or give rise to any right of termination, cancellation or acceleration with respect to, any Material Contract to which MTA is a

party, (iii) result in the creation or imposition of a Lien upon any material property or assets of MTA or (iv) violate any Order or Law applicable to MTA, except in the cases of clauses (ii) and (iii), as would not have a Material Adverse Effect either the business of MTA or the ability of MTA to consummate the transactions contemplated by this Agreement.

(b) No Consent is required to be obtained by MTA for the consummation by them of the transactions contemplated by this Agreement that, if not obtained, would have a Material Adverse Effect either on the business of MTA or the ability of MTA to consummate the transactions contemplated by this Agreement.

#### 4.4 **Financial Information.**

(a) MTA has previously provided a list of each bank account of MTA and the authorized signatories thereon to BSRO.

(b) MTA's accounts receivable all originated from bona fide transactions in the ordinary course of business consistent with past practices.

(c) MTA has previously provided a list of all of the outstanding obligations of MTA with respect to Indebtedness as of the date hereof to BSRO.

#### 4.5 **Taxes.** Except as previously disclosed by MTA:

(a) No currently applicable extensions or waivers of statutes of limitations have been given or requested with respect to any Taxes of MTA.

(b) MTA has withheld and paid all material Taxes required to have been withheld and paid in connection with any amounts paid or owing to any employee, independent contractor, creditor or other third party.

(c) There is no Action pending or, to the Knowledge of MTA, threatened in writing against MTA in respect of any Tax, there are no pending requests for waivers of the time to assess any Taxes, and no adjustment relating to Taxes has been proposed by any Governmental Authority.

#### 4.6 **Real Property.**

(a) MTA has previously provided to BSRO a list of the address of all real property owned by MTA (the "**Owned Real Property**"). With respect to each parcel of Owned Real Property:

(i) MTA has good and marketable fee simple title, free and clear of all Liens, and except where the failure to have such title has not had and would not reasonably be expected to have a Material Adverse Effect on the business of MTA; and

(ii) except as previously disclosed by MTA to BSRO, MTA has not leased or otherwise granted to any Person the right to use or occupy such Owned Real Property or any portion thereof.

(b) MTA has previously provided to BSRO a list of the addresses of all real property leased by MTA (the "Leased Real Property") and a true and complete list of material leases for each such Leased Real Property. MTA has made available to BSRO a true and complete copy of each such lease. Except as previously disclosed by MTA to BSRO, with respect to each of the leases:

(i) To the Knowledge of MTA, each such lease is legal, valid, binding, enforceable and in full force and effect;

(ii) The transactions contemplated by this Agreement will not result in a breach of or default under any lease, and will not otherwise cause such lease to cease to be legal, valid, binding, enforceable and in full force and effect on identical terms following the Merger;

(iii) To the Knowledge of MTA, no party to a lease is in breach of or default under such lease and, no event has occurred or circumstance exists that, with the delivery of notice, the passage of time or both, would constitute such a breach or default, or permit the termination, modification or acceleration of rent under such lease; and

(iv) MTA has not subleased, licensed or otherwise granted any Person the right to use or occupy the Leased Real Property or any portion thereof.

#### 4.7 Employee Plans.

(a) MTA has previously provided to BSRO a list of all employment, severance pay, salary continuation, bonus, incentive, change of control, retention, retirement, pension, profit sharing, stock purchase, restricted stock, equity, stock appreciation rights, phantom stock rights, equity-like, long-term compensation, retiree medical, supplemental retirement, disability, life insurance, vacation or sick leave plan or program or deferred compensation plans, contracts, plans, programs, funds or arrangements of any kind (the "Employee Plans").

(b) Each Employee Plan is maintained, operated and administered in material compliance with its terms and any related documents or agreements and, to the Knowledge of MTA, no party is in material default under any Employee Plan. As of the date of this Agreement, all contributions, premiums or payments required to be made by MTA with respect to the Employee Plans have been made in all material respects.

4.8 Material Contracts. Each Material Contract is in full force and effect and is a legal, valid and binding agreement of MTA as applicable, and, there is no material default or breach by any party to such Material Contract of any obligation to be performed or paid thereunder or any other material provision thereof, except where such default or breach would not have a Material Adverse Effect on the business of MTA.



#### 4.9 **Intellectual Property.**

(a) MTA has previously provided to BSRO a complete list of all Intellectual Property owned by MTA. To the Knowledge of MTA, all registered Intellectual Property is valid and enforceable in accordance with applicable Law, and no rights in any Intellectual Property that is material to the business of MTA have been allowed to elapse or have otherwise been forfeited.

(b) MTA is the exclusive owner of, and has good and valid title to its Intellectual Property, free and clear of all Material Liens. Except as previously disclosed by MTA to BSRO, no Person is licensed under any of the Intellectual Property owned by MTA. To the Knowledge of MTA, none of the Intellectual Property owned by MTA is being infringed, misappropriated or otherwise violated by any Person.

(c) MTA has a valid license to use the Licensed Intellectual Property in connection with the operation of its business, except where the lack thereof would not result in any material liability on the part of MTA.

(d) The Intellectual Property owned by MTA is not the subject of any material Action and, to the Knowledge of MTA, no Action is threatened against it involving the Intellectual Property that it owns.

(e) To the Knowledge of MTA, its use of Intellectual Property as currently used does not infringe, misappropriate or otherwise violate the intellectual property rights of any other Person.

4.10 **Customer and Suppliers.** Except as previously disclosed by MTA to BSRO, no material customer or supplier has indicated in writing to MTA that it intends to terminate its business relationship with MTA as a result of the Merger.

4.11 **Personnel.** MTA is not a party or otherwise subject to any collective bargaining agreements.

4.12 **Compliance with Laws.** To the Knowledge of MTA, MTA (i) is in material compliance with all Laws and Orders applicable to its business and (ii) has no material Actions pending or, to the Knowledge of MTA, threatened, against it that, if adversely decided, would have a Material Adverse Effect on either the business of MTA or the ability of MTA to consummate the transactions contemplated by this Agreement.

4.13 **Permits.** MTA holds and is in material compliance with all material Permits that are necessary for the conduct of MTA's business. MTA has not received any written or, to the Knowledge of MTA, oral notice threatening to revoke any material Permit necessary for the conduct of its business.

4.14 **Litigation.** There are no claims, actions, suits, proceedings (in arbitration or otherwise) or, to the Knowledge of MTA, investigations involving or affecting MTA, before or by any Governmental Authority or before an arbitrator of any kind that, if determined adversely,

would either individually or in the aggregate have a Material Adverse Effect on the business of MTA.

4.15 **Insurance.** All insurance policies held by MTA or, to the Knowledge of MTA, to which MTA is a beneficiary are in full force and effect. All outstanding premiums with respect to such insurance policies have been paid in full. No material pending claims under such insurance policies have been questioned, disputed or denied coverage.

4.16 **Compliance with Laws.** To the Knowledge of MTA, MTA (i) is in material compliance with all Laws and Orders applicable to its business and (ii) has no material Actions pending or, to the Knowledge of MTA, threatened, against it that, if adversely decided, would have a Material Adverse Effect on either the business of MTA or the ability of MTA to consummate the transactions contemplated by this Agreement.

4.17 **Permits.** MTA holds (and is in material compliance with) all material Permits that are necessary for the conduct of MTA's business. MTA has not received any written or, to the Knowledge of MTA, oral notice threatening to revoke any material Permit necessary for the conduct of its business.

4.18 **No Other Representations or Warranties.** Except for the representations and warranties contained in this **ARTICLE IV**, MTA is not making any representations or warranties of any sort to or for the benefit of BSRO, whether oral or written, express or implied, including any implied warranty of merchantability or of fitness for a particular purpose, and MTA expressly disclaims any other representations and warranties and all liability and responsibility for any representation, warranty, projection, forecast, statement or information made, communicated or furnished (orally or in writing) to BSRO or its Affiliates or representatives (including any opinion, information, projection or advice that may have been or may be provided to BSRO by any director, officer, employee, agent, consultant, or representative of BSRO, its Member or any Affiliate).

## **ARTICLE V REPRESENTATIONS AND WARRANTIES OF BSRO**

BSRO hereby represent and warrant to MTA as follows:

5.1 **Organization and Standing.** BSRO is a limited liability company duly organized, validly existing and in good standing under the Laws of its jurisdiction of formation. BSRO is duly qualified to do business, and is in good standing, in each jurisdiction in which the character of the properties owned or leased by it or in which the conduct of its business requires it to be so qualified, except where the failure to be so qualified or to be in good standing would not have a Material Adverse Effect on BSRO.

5.2 **Authority, Validity and Binding Effect.** BSRO has the requisite power and authority to execute and deliver this Agreement and to consummate the transactions contemplated hereby. The execution and delivery of this Agreement, the performance of its obligations hereunder and thereunder and the consummation of the transactions contemplated hereby have been duly and validly authorized by all necessary corporate or other action on the

part BSRO. This Agreement has been duly and validly executed and delivered by BSRO and constitutes the legal, valid and binding obligation BSRO, enforceable against it in accordance with its terms.

5.3 **No Conflict.** Neither the execution and delivery of this Agreement by BSRO, nor the consummation by BSRO of the transactions contemplated hereby, nor compliance by BSRO with any of the provision hereof, will (i) violate or conflict with or result in a breach of any provisions of its Operating Agreement or other organizational documents, (ii) constitute or result in the breach of any term, condition or provision of, or constitute a default under, or give rise to any right of termination, cancellation or acceleration with respect to, or result in the creation or imposition of any Lien upon any property or assets of BSRO pursuant to, any Contract to which BSRO is a party or by which BSRO or its properties or assets may be subject, or (iii) violate any Order or Law applicable to BSRO or any of their respective properties or assets, that would have a Material Adverse Effect on the ability of BSRO to consummate the transactions contemplated by this Agreement.

5.4 **Litigation.** There are no Actions pending or, to Buyer's knowledge, threatened against BSRO that, if adversely decided, would materially and adversely affect the ability of BSRO to consummate the transactions contemplated by this Agreement.

5.5 **Consents.** No Consent of any Person or Governmental Authority that has not been obtained is necessary or required in order for BSRO to perform its obligations under this Agreement and consummate the transactions contemplated hereby.

## ARTICLE VI COVENANTS OF MTA

MTA hereby covenants and agrees as follow:

6.1 **Further Assurances.** If at any time prior to or after, the Effective Time, BSRO or the Surviving Company, as the case may be, shall determine that further assignment, assurances or other acts are necessary or desirable to vest in the Surviving Company, according to the terms hereof, the title of any property or rights of MTA, the last acting Board of MTA shall execute and make all such assignments and assurances and do all things necessary or desirable to vest title in such property or rights in the Surviving Company, and otherwise to carry out the purposes of this Agreement. MTA hereby agrees, from time to time, as and when requested by BSRO or the Surviving Company, as the case may be, to execute and deliver or cause to be executed and delivered all deeds and instruments and to take or cause to be taken such further or other actions as BSRO or the Surviving Company, as the case may be, may deem necessary or desirable in order to vest in the Surviving Company title to and possession of any and all property of MTA acquired or to be acquired by reason or as a result of the merger and otherwise to carry out all of the intents and purposes hereof.

6.2 **Public Announcements.** MTA shall not issue any press release or other public statement with respect to the Merger and shall not issue any such press release or make any such public statement without the prior written consent of BSRO; *provided, however,* MTA may,

without the prior written consent of BSRO, issue such notice or notices as may be required by applicable Law.

## **ARTICLE VII TERMINATION**

7.1 **Termination of Agreement.** This Agreement may be terminated by BSRO at any time, for any reason or for no reason, by written notice to MTA.

7.2 **Effect of Termination; Limitation on Liability.** If this Agreement is terminated by BSRO pursuant to **Section 7.1**, then, each party to this Agreement shall be relieved of all of its duties and obligations arising under this Agreement and such termination shall be without liability to any party hereto. In no event shall BSRO, MTA or any of their respective Affiliates, Managers, officers, agents, lenders or representatives have any liability to MTA or any other Person on the basis of any termination of this Agreement by BSRO at any time, for any reason or for no reason.

## **ARTICLE VIII MISCELLANEOUS AND GENERAL**

### 8.1 **Survival.**

(a) None of the representations or warranties in this Agreement or in any instrument delivered pursuant to this Agreement, including any rights arising out of any breach of such representations and warranties, shall survive the Effective Time.

(b) The Covenants of MTA set forth in **Article VI** shall survive for a period of six (6) months after the Effective Date.

8.2 **Commercially Reasonable Efforts; Cooperation.** Upon the terms and subject to the conditions set forth in this Agreement, each of the parties hereto shall use commercially reasonable efforts to take, or cause to be taken, all actions, and to do, or cause to be done, and to assist and cooperate with the other party in doing, all things necessary, proper or advisable to consummate and make effective, in an expeditious manner, the transactions contemplated by this Agreement, including the execution and delivery of any additional instruments necessary to consummate the transactions contemplated by, and to fully carry out the purposes of, this Agreement.

8.3 **Successors and Assigns.** This Agreement is binding upon and inures to the benefit of the parties hereto and their respective successors and permitted assigns, but is not assignable by any party without the prior written consent of the other parties hereto; *provided, however*, that no such consent shall be required for any assignment by BSRO, of any or all of its rights or obligations under this Agreement to any Affiliate of BSRO or to any Person that acquires BSRO.

8.4 **Third Party Beneficiaries.** This Agreement is not intended to benefit or create any right or cause of action in or on behalf of any Person other than the parties hereto.

8.5 **Complete Agreement.** This Agreement, the Exhibits and the other documents delivered by the parties in connection herewith contain the complete agreement between the parties hereto with respect to the transactions contemplated hereby and thereby and supersede all prior agreements and understandings between the parties hereto with respect thereto.

8.6 **Amendment.** This Agreement may be amended or modified only by an instrument in writing duly executed by each of the parties hereto.

8.7 **Waiver.** The parties may (i) extend the time for the performance of any of the obligations or other acts of the parties hereto, (ii) waive any inaccuracies in the representations and warranties contained herein or in any document delivered pursuant hereto or (iii) waive compliance with any of the covenants, agreements or conditions contained herein, to the extent permitted by applicable Law. Any agreement to any such extension or waiver will be valid only if set forth in a writing signed by the parties hereto.

8.8 **Governing Law; Consent to Jurisdiction.** This Agreement and the transactions contemplated hereby, and all disputes between the parties under or relating to this Agreement or the transactions contemplated hereby, whether in contract, tort or otherwise, shall be governed by, and construed and enforced in accordance with, the laws of the State of Delaware, without regard to its rules of conflict of laws.

8.9 **Severability.** Any term or provision of this Agreement that is invalid or unenforceable in any jurisdiction will, as to that jurisdiction, be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining terms and provisions of this Agreement or affecting the validity or enforceability of any of the terms or provisions of this Agreement in any other jurisdiction. If any provision of this Agreement is so broad as to be unenforceable, the provision will be interpreted to be only so broad as is enforceable.

8.10 **Counterparts; Electronic Transmission.** This Agreement may be executed in two or more counterparts (any of which may be delivered by facsimile or electronic mail transmission), each of which will be deemed an original, but all of which together will constitute one and the same instrument.

[Signatures on Following Page]

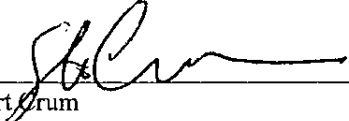
APPROVED  
AND  
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SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

IN WITNESS WHEREOF, the undersigned have caused this Agreement and Plan of Merger to be executed as of the day and year first above written.

**BRIDGESTONE RETAIL OPERATIONS, LLC**

By:   
Name: Stuart Drum  
Its: President

**MORGAN TIRE & AUTO, LLC**

By: \_\_\_\_\_  
Name: Stuart Watterson  
Title: President

APPROVED  
AND  
FILED

13 DEC 13 AM 10:37

SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

IN WITNESS WHEREOF, the undersigned have caused this Agreement and Plan of Merger to be executed as of the day and year first above written.

**BRIDGESTONE RETAIL OPERATIONS, LLC**

By: \_\_\_\_\_  
Name: Stuart Crum  
Its: President

**MORGAN TIRE & AUTO, LLC**

By: Stuart Watterson  
Name: Stuart Watterson  
Title: President