

# AGREEMENT AND PLAN OF MERGER

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**THIS AGREEMENT AND PLAN OF MERGER** (this “Agreement”) is made effective as of the \_\_\_\_ day of October, 2016 (the “Effective Date”) by and between **BALD HEAD ASSOCIATION**, a North Carolina non-profit corporation, with an address of P.O. Box 3030, Bald Head Island, North Carolina 28461 (“BHA”) and **BALD HEAD ISLAND STAGE TWO ASSOCIATION, INC.**, a North Carolina non-profit corporation, with an address of 1612 Military Cutoff Rd., Suite 108, Wilmington, NC 28403 (“Stage II”) (BHA and Stage II, as each currently exists prior to the Merger, are herein sometimes referred to individually as a “Party” or “Merging Corporation” and may be collectively referred to as the “Parties” or “Merging Corporations”).

## RECITALS:

BHA and Stage II are property owners associations serving member-property owners on Bald Head Island, North Carolina.

The respective Boards of Directors of BHA and Stage II have determined that their missions are compatible and that it is in their respective best interests and the best interests of their members to merge into a single surviving entity.

The Parties intend to structure this Merger in a manner that will allow the continuation of the services of each of the Parties under a single surviving corporation as provided herein, pursuant to the provisions of Article 11 of Chapter 55A of the North Carolina General Statutes (the “Merger”).

The Merger will allow BHA and Stage II to focus their efforts to better serve the Bald Head Island community.

**NOW, THEREFORE**, in consideration of the foregoing recitals and the mutual promises and covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

## ARTICLE I MERGER

1.1 Purposes for the Merger. The purpose of the Merger is to combine the organizations of BHA and Stage II and the services offered by each into a single, comprehensive and cost efficient organization.

1.2 The Merger; Surviving Corporation. On the terms and subject to the conditions set forth in this Agreement, and in accordance with North Carolina law, on the Merger Date (as defined in Section 2.1), (a) Stage II shall merge with and into BHA, (b) the separate corporate existence of Stage II will cease, and (c) BHA will continue its corporate existence under North

Carolina law as the surviving corporation in the Merger (sometimes referred to as the “Surviving Corporation”).

1.3 Legal Effect of Merger. On and after the Merger Date and by reason of the Merger, the effect of the Merger shall be as provided in N.C. Gen. Stat. § 55A-11-05, including but not limited to the following:

(a) Stage II shall merge with and into BHA and the separate existence of Stage II shall cease, with the corporate existence of BHA continuing as the Surviving Corporation;

(b) The Surviving Corporation shall possess all the rights, privileges, immunities, and powers of the Merging Corporations;

(c) Title to all property, real and personal, tangible and intangible, of the Merging Corporations (the “Property”) shall be vested in the Surviving Corporation, subject to any and all conditions to which the property was subject prior to the Merger; and

(d) The Surviving Corporation shall have all the liabilities and obligations of the Merging Corporations, except to the extent to which any liability or obligation is covered by any insurance maintained by a Merging Corporation, or as provided in this Agreement.

1.4 Completion and Documentation of Merger. BHA and Stage II agree to execute, secure, deliver, record and file such assignments, transfers of title, assumption agreements, consents, authorizations and other documents as shall be appropriate or necessary to implement and give full effect to the Merger or as otherwise required by this Agreement or applicable law.

## **ARTICLE II** **DATE OF MERGER; EFFECTIVE TIME OF MERGER**

2.1 Date of the Merger. Unless this Agreement shall have been terminated and the transactions herein contemplated shall have been abandoned pursuant to Article X herein, and provided all conditions have been satisfied or waived (where appropriate) by the appropriate Party, the Parties will cause the Merger to be consummated (the “Closing”) by executing and filing Articles of Merger substantially in the form attached hereto as Exhibit A (the “Articles of Merger”) with the North Carolina Secretary of State on or before December 31, 2017, or such earlier date as the Parties may agree, with the Closing being conducted in such manner as the Parties agree, including by the transmission of executed signature pages by facsimile or electronic mail with the originals of such signature pages to be delivered the following day by overnight courier.

2.2 Effective Time of Merger. The Merger shall be effective on the date and at the time specified in the Articles of Merger filed with the North Carolina Secretary of State (the “Merger Date”).

**ARTICLE III**  
**SURVIVING ORGANIZATION**

3.1 Name of Surviving Corporation; Headquarters and Offices. Following the Merger Date, the name of the Surviving Corporation shall remain Bald Head Association. The Surviving Corporation shall have its principal office and headquarters at its current office in Bald Head Island, North Carolina. After the Merger, locations may be maintained, discontinued or opened as determined by the Surviving Corporation.

3.2 Articles of Incorporation. The Articles of Incorporation of BHA, as in effect on the Merger Date, shall be and continue in full force and effect (as amended to include the property currently subject to the Stage II Primary Covenants (defined herein)) as the Articles of Incorporation of the Surviving Corporation, until thereafter amended as provided therein or under the Act.

3.3 Bylaws. The Bylaws of BHA, as in effect on the Merger Date, shall be and continue in full force and effect as the Bylaws of the Surviving Corporation, until thereafter amended as provided therein, in the Articles of Incorporation of the Surviving Corporation, or under the Act.

3.4 Member Rights in Surviving Corporation. All BHA members as of the Merger Date shall remain members of the Surviving Corporation. Stage II members, on the Merger Date, shall become members of the Surviving Corporation and shall have all of the same rights and obligations as those enjoyed or suffered by current BHA members, subject to and as provided by the terms of the Unified Declaration (defined herein).

3.5 Continuation of Services. Following the Merger Date, the Surviving Corporation shall continue to provide the services currently offered by BHA to its members and by Stage II to its members (including, without limitation, common area maintenance in certain Stage II communities), in such manner as the Surviving Corporation elects.

3.6 Directors/Trustees. The Board of Directors of BHA on the Merger Date shall continue to constitute the Board of Directors of the Surviving Corporation (the “Initial Board”) for the terms elected and until their respective successors shall have been elected and qualified in accordance with the Bylaws of the Surviving Corporation.

3.7 Officers. The officers of BHA in office on the Merger Date shall continue to constitute the officers of the Surviving Corporation for the terms elected and until their respective successors shall have been elected and qualified in accordance with the Bylaws of the Surviving Corporation.

3.8 Directors’ and Officers’ Insurance. Effective as of the Merger Date, the Initial Board of the Surviving Corporation shall be covered under a Directors’ and Officers’ liability policy in an amount and terms to be agreed upon by the Board of Trustees of BHA. If requested by either Party, each Party shall purchase “tail” coverage or an extended reporting endorsement

for its current Directors' and Officers' liability insurance to cover the directors and officers of each respective corporation for acts and/or omissions occurring prior to the Merger Date.

**ARTICLE IV**  
**MEMBER RESPONSIBILITIES:**  
**COVENANTS, ARCHITECTURAL REVIEW GUIDELINES, AND ASSESSMENTS**

4.1 Stage II Covenants Superseded; Unified Declaration. Following the Merger Date, the Declaration of Restrictions recorded in Book 374, at Page 645 of the Brunswick County Registry, together with all amendments thereto and restatements thereof (the "BHA Covenants") and the Protective Covenants for Bald Head Island Stage Two recorded in Book 1045 at Page 676 of the Brunswick County Registry, together with all amendments thereto and restatements thereof (the "Stage II Primary Covenants"), shall be amended and superseded by the Amended and Restated Declaration of Covenants for Bald Head Association attached hereto as **Exhibit B** (the "Unified Declaration"). Except as provided in the Unified Declaration or in this Agreement, the Unified Declaration shall apply to all properties which are currently subject to the BHA Covenants and/or the Stage II Primary Covenants. The Unified Declaration shall include provisions which shall apply only to Stage II properties.

4.2 Status of Flora's Bluff / Killegray Ridge. Flora's Bluff / Killegray Ridge are currently subject to the BHA Covenants, the Stage II Primary Covenants, the BHA architectural review guidelines, and the Stage II architectural guidelines. After the Merger Date, Flora's Bluff / Killegray Ridge shall be subject only to the Unified Declaration, the BHA architectural review guidelines, and the covenants and guidelines specific to Flora's Bluff / Killegray Ridge.

4.3 Stage II Secondary Covenants. Currently, particular neighborhoods comprising Stage II have declarations of covenants in place which apply only to those neighborhoods (the "Stage II Secondary Covenants"). The Stage II Secondary Covenants are listed in Article \_\_\_ of the Amended and Restated Declaration of Covenants for Bald Head Association attached hereto as **Exhibit B**. The terms and restrictions of the Stage II Secondary Covenants, including specific architectural regulations and guidelines, shall continue to apply to and encumber the particular neighborhoods in Stage II after the Merger Date. After the Merger Date, BHA shall be vested with exclusive authority to enforce the Stage II Secondary Covenants, except to the extent each of the Sumner's Crescent, Keeper's Landing, and Surfman's Walk communities and any other Stage II community so authorized by the Stage II Secondary Covenants may, if they so desire, form a sub-association; provided that these communities may not be forced or otherwise compelled by BHA to form a sub-association.

4.4 Architectural Review Guidelines. All residential properties which are subject to the Unified Declaration shall also be subject to a set of unified architectural design guidelines ("Unified ARC Guidelines"), which the Parties shall enact prior to the merger date in accordance with the following procedure: No later than November 1, 2016, the Parties shall form a committee ("Unified ARC Guidelines Committee") of one member designated by BHA, one member designated by Stage II and one member designated by Bald Head Island, LLC, successor-in-interest to the developer. The Unified ARC Guidelines Committee shall be charged with developing by July 1, 2017, a draft set of Unified ARC Guidelines. These Unified ARC

Guidelines shall be presented to the Boards of BHA and Stage II for adoption, subject to public hearings and subsequent ratification by August 1, 2017. Thereafter, BHA shall publish the Unified ARC Guidelines and schedule public hearings for input no later than September 15, 2017. Following public hearings final guidelines shall be presented to the BHA Board and the Stage II Board for ratification and publication by October 31, 2017. The Unified ARC Guidelines shall be the Unified ARC Guidelines of the Surviving Corporation and take effect on January 1, 2018. Notwithstanding the foregoing, the Surviving Corporation will have sole authority to amend the Unified ARC Guidelines post-Merger as permitted by the Surviving Corporation's governing documents.

4.5 Enforcement of Covenants and Architectural Design Guidelines. Following the Merger Date, the Surviving Corporation shall have the sole authority and responsibility to enforce the Unified Declaration, the Stage II Secondary Covenants, and the Unified ARC Guidelines.

4.6 Assessments. Stage II shall take such action as may be reasonably necessary to collect annual assessments from all of its members prior to Closing. The Surviving Corporation shall be entitled to commence collection proceedings against any Stage II owners who remain delinquent in the payment of these assessments after Closing.

4.7 Current Stage II Reserves. BHA shall continue to dedicate reserves collected by Stage II prior to Closing (including reserves collected for the maintenance of areas within Stage II commonly known as "Service Areas") for the purpose or purposes for which Stage II has allocated them until such purposes are fulfilled or cease to exist. BHA shall open and maintain a separate account(s) for the Service Areas.

4.8 Management Fees for Stage Two Areas. Additional management fees will be assessed to Stage Two owners via Supplemental dues because of their unique requirements. These assessments will be based upon a "fee for service" model, i.e., property owners will only pay for services required for their neighborhood.

There will be two groups of Stage Two owners required to pay "fee for service":

1. Those to be managed by CAMS, or any other third party HOA management company retained by BHA.
2. Those managed by a new BHA employee to be hired, initially part time.

Fees for properties managed by CAMS, or any other third party HOA management company, will be based upon two factors:

1. Costs based on the CAMS contract will be passed directly to property owners as specified by Service Area. The cost may be the same or vary by Service Area.
2. The compensation and benefits cost related to the BHA employee responsible for management of the CAMS contract will be charged to these properties, based on a 1:3

ratio, Lot:House. Of the total compensation & benefits for this employee, 6% will be charged to property owners managed by CAMS. Based on data gathered over time, this percentage may go either up or down.

Management fees for properties within Stage Two that are **not** managed via a contract with CAMS, or other third party HOA management company, will be managed by a BHA employee responsible for management and customer service. Costs will be charged to these properties, based on a 1:3 ratio, Lot:House. Of the total compensation & benefits for this employee, 34% will be charged to Stage Two property owners **not** managed by CAMS. Based on data gathered over time, this percentage may increase or decrease.

It is expected that there will be expenses as a result of adding all the Stage Two properties into the BHA such as legal, insurance for common areas, maintenance and reserves for common areas, office supplies, printing, postage and other items that are normally covered in BHA dues for all members. Any portion of these expenses that is not covered by Stage Two payment of BHA dues will be distributed across the entire BHA membership.

## **ARTICLE V** **COVENANTS AND AGREEMENTS ASSOCIATED WITH MERGER**

5.1 Pre-Merger Covenants. BHA hereby covenants and agrees (as to BHA), and Stage II hereby covenants and agrees (as to Stage II), as follows:

(a) Conduct of Activities. During the period from the Effective Date hereof until the Closing, except as otherwise expressly provided in this Agreement, each Party will conduct its activities only in the ordinary course of business.

(b) Cooperation; Consents. Between the Effective Date and the Merger Date, each Party shall use commercially reasonable best efforts to (i) cause the conditions to the other party's obligation to effect the Merger set forth in Article VIII to be satisfied and (ii) obtain all consents, waivers and approvals required to effect the Merger and vest in the Surviving Corporation all rights and benefits of each Party.

(c) Access. During the period beginning on the date of this Agreement and ending at 5:00 p.m., Bald Head Island, North Carolina time on November 1, 2016 (the "Due Diligence Period"), each Party will give the other Party hereto, its accountants, attorneys and other representatives reasonable access during normal business hours (upon reasonable prior notice) to all of the producing Party's books and records (including, without limitation, the corporate minutes book, balance sheets, financial statements, proposed budgets, bank account statements, reserves ledgers, current and delinquent dues/assessments rolls, schedule of member construction deposits, current contracts/agreements with any other party, insurance policies and declaration pages, and patent and trademark applications and filings), real property, facilities, and other assets. Review and inspection shall be conducted in a manner that does not interfere with the normal operations of the producing Party or contravene any agreement or confidentiality obligation of such Party. Stage II hereby acknowledges that, as of the date of this Agreement,

BHA has not yet had an opportunity to fully review and evaluate the assets and liabilities of Stage II.

(d) Other Consolidation Efforts. Neither Party shall enter into any agreement to consolidate or merge with any entity which is not a party to this Agreement prior to the earlier of the Closing Date or the termination of this Agreement.

(e) Notification of Certain Matters. Each Party shall promptly notify the other party to this Agreement of (i) the occurrence or non-occurrence of any event likely to cause any representation or warranty of such Party contained in this Agreement to be untrue or inaccurate at or prior to the Merger Date and (ii) any failure of such Party to comply with or satisfy any covenant, condition or agreement to be complied with or satisfied by it hereunder.

5.2 Employment of Existing Employees and Agents. Current BHA employees shall continue to work for the Surviving Corporation in accordance with the terms of their current employment arrangements and/or agreements. Stage II has no employees. The Surviving Corporation shall have no obligation to continue to employ Stage II's agents.

5.3 Insurance. Prior to the Merger Date, Stage II will work with its existing liability and property insurers to insure, to the extent reasonably possible, coverage of any claims relating to the pre-Merger activities of Stage II so they will not become the responsibility of the Surviving Corporation or its insurers. To the extent Stage II's insurers cannot provide continued coverage for the pre-Merger activities of said Party, the Surviving Corporation shall have the option to secure coverage for such activities.

## **ARTICLE VI** **REPRESENTATIONS AND WARRANTIES OF STAGE II**

Stage II hereby represents and warrants the following with respect to Stage II:

6.1 Corporation and Qualification. Stage II is duly organized, validly existing and in good standing under the laws of the State of North Carolina as a non-profit corporation and has all requisite power and authority to own its properties and to carry on its activities as now being conducted.

6.2 Authorization; Enforceability. Stage II has full power and authority to execute, deliver and perform this Agreement and all agreements and transactions contemplated hereby. The execution, delivery and performance of this Agreement and all transactions contemplated hereby have been duly authorized by the Board of Stage II, such authorization has not been modified or amended, and such authorization is in full force and effect. The execution, delivery and performance of this Agreement is not in violation of any provision of Stage II's Articles of Incorporation, Bylaws, or any amendments or modifications thereto, or any other organizational documents of Stage II. This Agreement has been duly and validly executed and delivered by Stage II and constitutes a legal, valid and binding obligation of Stage II, enforceable against Stage II in accordance with its terms.

6.3 Subsidiaries and Affiliates. Stage II has no subsidiaries or affiliates.

6.4 Taxation. To its knowledge, Stage II has timely filed all federal, state, local and other tax returns and tax reports, if any, required to be filed with respect to the activities of Stage II with the appropriate governmental authority. All such returns and reports are true, correct and complete, and all amounts shown as owing on them have been paid, including all interest, penalties, deficiencies and assessments, if any. No examination or audit of any tax return or report of Stage II by any applicable governmental or tax authority is currently in progress.

6.5 Litigation. There is no litigation, action, suit, proceeding, administrative proceeding, inquiries, audit or governmental investigation pending or, to the knowledge of Stage II, threatened against Stage II, its activities or any of its assets, at law or in equity or before any federal, state, municipal, local or other governmental authority, or before any arbitrator. Stage II is not subject to any judgment, order, writ or decree of any court or other governmental authority.

6.6 Compliance with Laws and Regulations. To its knowledge, Stage II has conducted its operations and activities in compliance in all material respects with (a) all applicable laws, rules, regulations and codes, (b) all applicable orders, rules, writs, judgments, injunctions, decrees and ordinances. Stage II has not received any notification of any asserted present or past failure by it to comply in any material respect with such laws, rules or regulations, or such orders, writs, judgments, injunctions, decrees or ordinances.

6.7 Contracts. Stage II has disclosed to BHA all agreements, contracts, leases or subleases (whether of real or personal property), commitments or arrangements of Stage II in effect on the Effective Date (other than those terminable without monetary or other obligation, penalty or premium upon notice of thirty (30) days or less) (the “Contracts”), and such Contracts are valid and in full force and effect with no material default by Stage II thereunder.

6.8 Employment Matters. Stage II has no full-time or part-time employees.

6.9 No Undisclosed Liabilities. To its knowledge, Stage II has, and at the Merger Date will have, no material debts, liabilities, commitments, or obligations of any nature, absolute, accrued, contingent or otherwise, relating to its activities, other than those previously disclosed or which are fully reflected or reserved against on the financial statements referenced below.

6.10 Financial Statements. Stage II has provided to BHA copies of its balance sheets and financial statements (the “Stage II Financial Statements”). To the best of its knowledge, the Stage II Financial Statements (a) are in accord with the books and records of Stage II, which books and records are true, correct and complete, and (b) fully and fairly present the financial condition of Stage II as of the date indicated and the results of operations of Stage II for the period indicated.

## **ARTICLE VII**



## **REPRESENTATIONS AND WARRANTIES OF BHA**

BHA hereby represents and warrants the following with respect to BHA:

7.1 Corporation and Qualification. BHA is duly organized, validly existing and in good standing under the laws of the State of North Carolina as a non-profit corporation and has all requisite power and authority to own its properties and to carry on its activities as now being conducted.

7.2 Authorization; Enforceability. BHA has full power and authority to execute, deliver and perform this Agreement and all agreements and transactions contemplated hereby. The execution, delivery and performance of this Agreement and all transactions contemplated hereby have been duly authorized by the Board of BHA, such authorization has not been modified or amended, and such authorization is in full force and effect. The execution, delivery and performance of this Agreement is not in violation of any provision of BHA's Articles of Incorporation, Bylaws, or any amendments or modifications thereto, or any other organizational documents of BHA. This Agreement has been duly and validly executed and delivered by BHA and constitutes a legal, valid and binding obligation of BHA, enforceable against BHA in accordance with its terms.

7.3 Subsidiaries and Affiliates. BHA has no subsidiaries or affiliates.

7.4 Taxation. To its knowledge, BHA has timely filed all federal, state, local and other tax returns and tax reports, if any, required to be filed with respect to the activities of BHA with the appropriate governmental authority. All such returns and reports are true, correct and complete, and all amounts shown as owing on them have been paid, including all interest, penalties, deficiencies and assessments, if any. No examination or audit of any tax return or report of BHA by any applicable governmental or tax authority is currently in progress.

7.5 Litigation. There is no litigation, action, suit, proceeding, administrative proceeding, inquiries, audit or governmental investigation pending or, to the knowledge of BHA, threatened against BHA, its activities or any of its assets, at law or in equity or before any federal, state, municipal, local or other governmental authority, or before any arbitrator. BHA is not subject to any judgment, order, writ or decree of any court or other governmental authority.

7.6 Compliance with Laws and Regulations. To its knowledge, BHA has conducted its operations and activities in compliance in all material respects with (a) all applicable laws, rules, regulations and codes, (b) all applicable orders, rules, writs, judgments, injunctions, decrees and ordinances. BHA has not received any notification of any asserted present or past failure by it to comply in any material respect with such laws, rules or regulations, or such orders, writs, judgments, injunctions, decrees or ordinances.

7.7 Contracts. BHA has disclosed to Stage II all agreements, contracts, leases or subleases (whether of real or personal property), commitments or arrangements of BHA in effect on the Effective Date (the "Contracts"), and such Contracts are valid and in full force and effect with no material default by Stage II thereunder

7.8 No Undisclosed Liabilities. To its knowledge, as of the date of the financial statements referenced below BHA had no material debts, liabilities, commitments, or obligations of any nature, absolute, accrued, contingent or otherwise, relating to its activities, other than those previously disclosed or which are fully reflected or reserved against on the financial statements referenced below.

7.9 Financial Statements. BHA has provided to Stage II copies of its balance sheets and financial statements (the “BHA Financial Statements”). To the best of its knowledge, the BHA Financial Statements (a) are in accord with the books and records of BHA, which books and records are true, correct and complete, and (b) fully and fairly present the financial condition of BHA as of the date indicated and the results of operations of BHA for the period indicated.

## **ARTICLE VIII** **CONDITIONS TO MERGER**

8.1 BHA Merger Conditions. The obligation of BHA to effect the Merger is subject to the satisfaction, or waiver in writing by BHA, of each of the following conditions prior to the Merger (or such other time as specified below):

(a) Approval of Plan of Merger by BHA Membership. At the 2017 BHA annual meeting, the BHA membership, as signified by an affirmative vote by two-thirds of those present and voting in person or by proxy at a meeting of its members, shall approve this Agreement.

(b) Approval of Plan of Merger by Stage II Membership. At or prior to the 2017 Stage II annual meeting, the Stage II membership, as signified by an affirmative vote of two-thirds of the votes cast or a majority of the votes entitled to be cast in person or by proxy at a meeting of its members, whichever is less, shall approve this Agreement.

(c) Approval of Unified Declaration by BHA Membership. At the 2017 BHA annual meeting, the BHA membership, as signified by an affirmative vote by two thirds of those present and voting in person or by proxy at a meeting of the BHA membership, shall approve the Unified Declaration.

(d) Approval of Unified Declaration by Stage II Membership. At or prior to the 2017 Stage II annual meeting, the Stage II membership, as signified by an affirmative vote of at least sixty percent (60%) of those membership votes in attendance either in person or by proxy at a meeting duly called for such purpose, shall approve the Unified Declaration.

(e) Termination of Contract with CAMS. Stage II shall terminate any management contracts Stage II currently has in place with CAMS.

(f) Accuracy of Representations and Warranties. All of the representations and warranties of Stage II contained in this Agreement shall be true and correct in all material respects as of the Effective Date and as of the Merger Date.

(g) Performance of Obligations. Stage II shall have performed and complied with all of the obligations, covenants and conditions required to be performed or complied with by it at or prior to the Merger Date.

(h) Delivery of Certified Copy of Resolutions. Upon execution of this Agreement, Stage II shall have provided BHA with a certified copy of resolutions duly adopted by its Board of Directors approving the execution and delivery of this Agreement and all other necessary or proper action to enable Stage II to consummate the Merger.

(i) Adverse Change. Except for termination of the CAMS contract and possible termination fee, there shall have been no material adverse change in the activities, operations or condition, financial or otherwise, of Stage II from the date hereof to the Merger Date, and no event shall have occurred or circumstance exist that may, or could reasonably be expected to, result in such a material adverse change, without prior permission from BHA.

(j) Other Conditions Satisfied. All conditions and requirements set out in this Agreement shall have been satisfied or waived.

8.2 Stage II Merger Conditions. The obligation of Stage II to effect the Merger is subject to the satisfaction, or waiver in writing by Stage II, of each of the following conditions prior to the Merger (or such other time as specified below):

(a) Approval of Plan of Merger by BHA Membership. At the 2017 BHA annual meeting, the BHA membership, as signified by an affirmative vote by two-thirds of those present and voting in person or by proxy at a meeting of its members, shall approve this Agreement.

(b) Approval of Plan of Merger by Stage II Membership. At or prior to the 2017 Stage II annual meeting, the Stage II membership, as signified by an affirmative vote of two-thirds of the votes cast or a majority of the votes entitled to be cast in person or by proxy at a meeting of its members, whichever is less, shall approve this Agreement.

(c) Approval of Unified Declaration by BHA Membership. At the 2017 BHA annual meeting, the BHA membership, as signified by an affirmative vote of two-thirds of the votes cast or a majority of the votes entitled to be cast in person or by proxy at a meeting of its members, whichever is less, shall approve the Unified Declaration.

(d) Approval of Unified Declaration by Stage II Membership. At or prior to the 2017 Stage II annual meeting, the Stage II membership, as signified by an affirmative vote of at least sixty percent (60%) of those membership votes in attendance either in person or by proxy at a meeting duly called for such purpose, shall approve the Unified Declaration.

(e) Accuracy of Representations and Warranties. All of the representations and warranties of BHA contained in this Agreement shall be true and correct in all material respects as of the Effective Date and as of the Merger Date as if made as of the Merger Date.

(f) Performance of Obligations. BHA shall have performed and complied with all of the obligations, covenants and conditions required to be performed or complied with by it at or prior to the Merger Date.

(g) Delivery of Certified Copy of Resolutions. Upon execution of this Agreement, BHA shall have provided Stage II with a certified copy of resolutions duly adopted by its Board of Directors approving the execution and delivery of this Agreement and all other necessary or proper corporate action to enable BHA to consummate the Merger.

(h) Adverse Change. There shall have been no material adverse change in the activities, operations or condition, financial or otherwise, of BHA from the date hereof to the Merger Date, and no event shall have occurred or circumstance exist that may, or could reasonably be expected to, result in such a material adverse change, without prior permission from Stage II.

(i) Other Conditions Satisfied. All conditions and requirements set out in this Agreement shall have been satisfied or waived.

**ARTICLE IX**  
**SURVIVAL OF REPRESENTATIONS, WARRANTIES, COVENANTS, ETC.**

All representations and warranties of BHA and Stage II contained in this Agreement, the Schedules and any other documents or writings furnished by it to the other party pursuant to this Agreement shall survive the Merger for the benefit of the Surviving Corporation.

**ARTICLE X**  
**TERMINATION**

10.1 Termination and Abandonment. This Agreement may be terminated and the Merger abandoned at any time prior to the Merger Date:

(a) By mutual written consent of the Parties' Boards of Directors;

(b) By either Parties' Boards of Directors, prior to November 1, 2016, for any reason or no reason whatsoever;

(c) By BHA, at any time, if either (i) any condition to the BHA obligations herein is not timely satisfied or the Closing shall not have occurred on or before December 31, 2017; or (ii) Stage II is in breach of any of its representations, warranties or obligations hereunder; or

(d) By Stage II, at any time, if either (i) any conditions to the Stage II obligations hereunder is not timely satisfied or the Closing shall not have occurred on or before December 31, 2017; or (ii) BHA is in breach of any of its representations, warranties or obligations hereunder.

10.2 Effect of Termination. In the event of termination and abandonment of the Merger by BHA or Stage II pursuant to the terms hereof, written notice thereof shall forthwith be given to the non-terminating Party and the agreements and transactions contemplated hereby shall be terminated, nullified, and abandoned upon the delivery of such written notice. After any termination and abandonment of the Merger pursuant to Section 10.1 above, each Party shall keep confidential all information provided by the other Party pursuant to this Agreement which is not in the public domain. This obligation of confidentiality will commence upon the Effective Date and continue indefinitely.

**ARTICLE XI**  
**MISCELLANEOUS**

11.1 Severability. If any provision of this Agreement or the application of any such provision to any Party or circumstances shall be determined by any court of competent jurisdiction to be invalid and unenforceable to any extent, the remainder of this Agreement or the application of such provision to such person or circumstances other than those to which it is so determined to be invalid and unenforceable shall not be affected thereby, and each provision hereof shall be validated and shall be enforced to the fullest extent permitted by law.

11.2 Waivers. Any failure by any Party to this Agreement to comply with any of its obligations, agreements or covenants hereunder may be waived by the other Party. No Party will be deemed as a consequence of any act, delay, failure, omission, forbearance or other indulgences granted from time to time by such party to have waived, or to be estopped from exercising, any of its rights or remedies under this Agreement.

11.3 Notices. All notices and other communications hereunder shall be in writing and shall be deemed given on the date delivered if delivered personally, on the business day after the date sent if sent by overnight commercial delivery or local courier, on the third business day after the date of dispatch if mailed by local registered mail (return receipt requested) or on the date transmitted if sent via facsimile (with confirmation of receipt generated by the transmitting machine) to the parties to this Agreement at the following address (or at such other address for a party as shall be specified by like notice):

- (a) If to BHA: **BALD HEAD ASSOCIATION**  
Attention: Carrie Moffett  
P.O. Box 3030  
Bald Head Island, North Carolina 28461
  
- With a copy to: Murchison, Taylor and Gibson, PLLC  
Attn: Andrew K. McVey  
16 North Fifth Ave.  
Wilmington, NC 28401
  
- (b) If to STAGE II: **BALD HEAD ISLAND**  
**STAGE TWO ASSOCIATION, INC.**

Attention: Michael Stonestreet  
1612 Military Cutoff Rd., Suite 108  
Wilmington, NC 28403

With a copy to: Ward and Smith, P.A.  
Attn: Justin M. Lewis  
Post Office Box 7068  
Wilmington, NC 28406-7068

11.4 Applicable Law. This Agreement shall be governed by and construed and interpreted in accordance with the laws of the State of North Carolina.

11.5 Counterparts. This Agreement may be executed in one or more counterparts, each of which will be deemed an original, and all of which together constitute one and the same instrument. Any facsimile or emailed signature attached hereto will be deemed to be an original and will have the same force and effect as an original signature.

11.6 Assignment. This Agreement may not be assigned, in whole or in part, by any Party without the prior written consent of the other party.

11.7 Binding Effect; Benefits. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective permitted successors and assigns; provided, however, that nothing in this Agreement shall be construed to confer any rights, remedies, obligations or liabilities on any person other than the parties hereto or their respective successors and permitted assigns.

11.8 Entire Agreement. This Agreement, together with the exhibits and schedules hereto which are incorporated herein by this reference, embodies the entire agreement and understanding of the parties hereto and supersedes any prior agreement or understanding between the parties with respect to the subject matter of this Agreement.

11.9 Amendment. This Agreement cannot be amended orally, but only by a writing duly executed by the parties hereto.

11.10 Headings. Headings of the articles and sections in this Agreement are for reference purposes only and shall not be deemed to have any substantive effect.

**[SIGNATURES FOLLOW ON NEXT PAGE]**

**IN WITNESS WHEREOF**, the Parties have caused this Agreement to be duly executed by their respective representatives thereunto duly authorized, to be effective as of the Effective Date.

**BALD HEAD ASSOCIATION**

By: \_\_\_\_\_  
Name: Judith Porter  
Title: President

**BALD HEAD ISLAND STAGE  
TWO ASSOCIATION, INC.**

By: \_\_\_\_\_  
Name: Alan Briggs  
Title: President

**EXHIBIT A**

**Form of Articles of Merger**

**ARTICLES OF MERGER  
FOR MERGER OF  
BALD HEAD ISLAND STAGE TWO ASSOCIATION, INC.  
WITH AND INTO  
BALD HEAD ASSOCIATION**

Pursuant to N.C. Gen. Stat. § 55A-11-04, BALD HEAD ASSOCIATION, a North Carolina non-profit corporation (the “Surviving Corporation”), hereby submits these Articles of Merger for the purpose of merging BALD HEAD ISLAND STAGE TWO ASSOCIATION, INC., a North Carolina non-profit corporation (the “Merging Corporation”), with and into the Surviving Company:

1. The Plan of Merger has been duly approved by each of the Merging Corporation and the Surviving Corporation in the manner prescribed by law and the Articles of Incorporation and the Bylaws of each of the Merging Company and the Surviving Company.

2. The mailing address of the Merging Corporation is:

BALD HEAD ISLAND STAGE TWO ASSOCIATION, INC.  
Military Cutoff Rd., Suite 108  
Wilmington, NC 28403

3. The Surviving Corporation is the surviving entity under the Plan of Merger and its address is as follows:

BALD HEAD ASSOCIATION  
P.O. Box 3030  
Bald Head Island, North Carolina 28461

4. These Articles of Merger shall be effective as of the filing date.

This the \_\_\_\_\_ day of \_\_\_\_\_, 2017.

BALD HEAD ASSOCIATION

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_