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10/09

2009 SEP 25 PM 12:21  
SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

FILED

*merger*  
*[Signature]*



ROBERT B. BENNETT  
WARREN K. SPONSLER  
GWEN G. JACOBS  
DAVID W. ADAMS

JOHN F. WENDEL  
OF COUNSEL

KERRY J. ANDERSON  
OF COUNSEL

September 24, 2009

**VIA FEDEX**  
**8619 0825 6420**

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

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JANELLE G. KOREN  
SAMANTHA P. LECLAIRE  
MORGAN P. LYNCH  
KIMBERLY ISNER MONTICELLO

RE: Florida Air Museum, Inc. (document #N05000012385) -merger with  
Florida Air Museum Foundation, Inc. (document #N00000007283)  
SBJA File No.: 2009-07286

Ladies and Gentlemen:

We enclose the following documents:

1. Articles of Merger, and
2. A check in the amount of \$105.00 for filing fees and a certified copy.

Please do the following:

1. File the original Articles of Merger, prepare a certified copy of same, and send the certified copy to the undersigned by regular mail, and
2. If you have any questions or further requirements with respect to these enclosures, please retain them pending your immediate telephonic contact with the undersigned.

Thank you for your assistance.

Sincerely,  
SPONSLER, BENNETT, JACOBS &  
ADAMS, P.A.

John F. Wendel

JFW:jad/AEB199C830991847

enclosures

cc: John C. Burton (w/enclosures)

**ARTICLES OF MERGER**

**EFFECTIVE DATE**

**10-1-09**

FLORIDA AIR MUSEUM FOUNDATION, INC., a Florida corporation not for profit, as the corporation surviving the merger, and which, pursuant to the Agreement and Plan of Merger, is changing its name to FLORIDA AIR MUSEUM, INC., files these Articles of Merger pursuant to Section 617.1105 of the *Florida Statutes*:

**ARTICLE I**

The Agreement and Plan of Merger is attached and marked as **EXHIBIT A**.

**ARTICLE II**

FLORIDA AIR MUSEUM, INC. has no members. The Agreement and Plan of Merger was adopted by the Board of Directors of FLORIDA AIR MUSEUM, INC. on September 9, 2009. On such date, there were five (5) directors then in office, and three (3) directors voted for the plan.

**ARTICLE III**

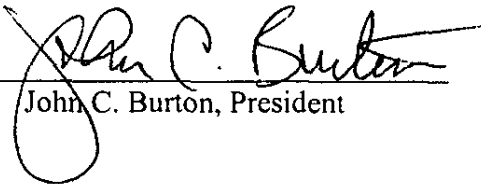
FLORIDA AIR MUSEUM FOUNDATION, INC., has no members. The Agreement and Plan of Merger was adopted by the Board of Directors of FLORIDA AIR MUSEUM FOUNDATION, INC. on August 27, 2009. On such date, there were five (5) directors then in office, and four (4) directors voted for the plan.

**ARTICLE IV**

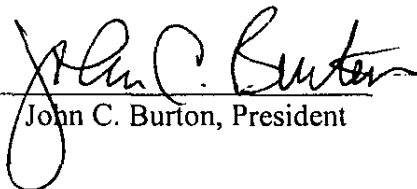
The effective date of the merger is October 1, 2009.

IN TESTIMONY WHEREOF, these Articles of Merger are executed by each corporation which is a party to the merger, this 24th day of September, 2009.

FLORIDA AIR MUSEUM, INC.,  
a Florida corporation not for profit

BY:   
John C. Burton, President

FLORIDA AIR MUSEUM  
FOUNDATION, INC., a Florida  
corporation not for profit

BY:   
John C. Burton, President

FILED  
2009 SEP 25 PM 12:21  
SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

## AGREEMENT AND PLAN OF MERGER

AGREEMENT AND PLAN OF MERGER dated as of the 27th day of August, 2009, by and between **FLORIDA AIR MUSEUM, INC.**, a Florida corporation not for profit ("MUSEUM"), and **FLORIDA AIR MUSEUM FOUNDATION, INC.**, a Florida corporation not for profit ("FOUNDATION"), said corporations herein sometimes referred to as the "Constituent Corporations."

MUSEUM is a corporation not for profit duly organized and existing under the laws of the State of Florida, the Articles of Incorporation of which were filed with the Florida Department of State on December 9, 2005, with an effective date of January 1, 2006. MUSEUM was organized under its present name, FLORIDA AIR MUSEUM, INC., and such name has never been changed. MUSEUM has never been known by any other name.

FOUNDATION is a corporation not for profit duly organized and existing under the laws of the State of Florida, having been incorporated thereunder on November 1, 2000. FOUNDATION was organized under the name of SUN 'n FUN FOUNDATION, INC. On January 30, 2009, Articles of Amendment to Articles of Incorporation were filed with the Florida Department of State changing the name of FOUNDATION to FLORIDA AIR MUSEUM FOUNDATION, INC. The effective date of the name change was February 1, 2009.

The principal office of MUSEUM is located at 4175 Medulla Road, Lakeland, Florida 33811, and its mailing address is 4175 Medulla Road, Lakeland, Florida 33811. The principal office of FOUNDATION is located at 4175 Medulla Road, Lakeland, Florida 33811, and its mailing address is 4175 Medulla Road, Lakeland, Florida 33811.

The Board of Directors of MUSEUM and the Board of Directors of FOUNDATION deem it to the benefit and advantage of each of said corporations that said corporations merge under and pursuant to the provisions of Sections 617.1101 *et seq.* of the *Florida Statutes*, and the Board of Directors of each of the Constituent Corporations, by resolution duly adopted, has approved this Agreement and Plan of Merger (sometimes herein called the "Agreement") and a majority of the directors in office of each of the Constituent Corporations has duly authorized the execution of the same as reflected in the Certificates of Adoption set forth on page 8, hereof. MUSEUM has no members, and FOUNDATION has no members.

In consideration of the foregoing and mutual agreements herein set forth, the parties hereto agree that in accordance with the provisions of Sections 617.1101 *et seq.* of the *Florida Statutes*, MUSEUM shall be merged with and into FOUNDATION and that the terms and conditions of such merger and the mode of carrying it into effect are, and shall be, as herein set forth.

### EXHIBIT A

## **SECTION 1.**

Except as herein specifically set forth, the corporate existence of FOUNDATION, and all its purposes, powers, and objects, shall continue in effect unimpaired by the merger, and the corporate identity and existence, and all the purposes, powers, and objects of MUSEUM shall be merged into FOUNDATION and FOUNDATION, as the corporation surviving the merger, shall be fully vested therewith and with all of the foregoing purposes, powers, and objects. The separate existence and corporate organization of MUSEUM shall cease as soon as the merger shall become effective as herein provided, and thereupon MUSEUM and FOUNDATION shall be a single corporation, to wit: FOUNDATION (the "Surviving Corporation"). Upon the execution of this Agreement and Plan of Merger, and the approval thereof by the Boards of Directors of each of the Constituent Corporations, then, in accordance with Section 617.1105 of the *Florida Statutes*, Articles of Merger shall be filed in the Office of the Florida Department of State.

The merger shall become effective on October 1, 2009. The date when the merger becomes effective is sometimes herein referred to as the "effective date of the merger."

## **SECTION 2.**

Upon the effective date of the merger, the Articles of Incorporation of FOUNDATION, as hereinafter amended and restated, shall be the Articles of Incorporation of the Surviving Corporation. Said Articles of Incorporation are made a part of this Agreement and Plan of Merger with the same force and effect as if set forth in full herein.

## **SECTION 3.**

Upon the effective date of the merger, the Bylaws of FOUNDATION are amended to the extent necessary to give effect to Section 5 and Section 6, below, but in all other respects, the Bylaws of FOUNDATION shall be the Bylaws of the Surviving Corporation until the same shall be altered, amended, or repealed in accordance with law, the Articles of Incorporation, and said bylaws.

## **SECTION 4.**

Upon the effective date of the merger, MUSEUM merges completely, entirely, and totally into FOUNDATION, the Surviving Corporation, and the separate existence of MUSEUM ceases. The title to all real estate and other property, or any interest therein, owned by each corporation party to the merger is vested in the Surviving Corporation without reversion or impairment. The Surviving Corporation shall thenceforth be responsible and liable for all liabilities and obligations of each corporation party to the merger. Any claim existing or action or proceeding pending by or against either

corporation party to the merger may be continued as if the merger did not occur or the Surviving Corporation may be substituted in the proceeding for MUSEUM, the corporation which ceased existence. Neither the rights of creditors nor any liens upon the property of either corporation party to the merger shall be impaired by the merger. The Articles of Incorporation of the Surviving Corporation shall be as set forth in Section 5 below.

If at any time the Surviving Corporation shall consider or be advised that any further assignments, conveyances, or assurances in law are necessary or desirable to vest, perfect, or confirm of record in the Surviving Corporation the title to any property or rights of the Constituent Corporations, or otherwise to carry out the provisions hereof, the proper officers and directors of the Constituent Corporations, as of the effective date of the merger, shall execute and deliver any and all proper deeds, assignments, and assurances in law, and do all things necessary or proper to vest, perfect, or confirm title to such property or rights of and in the Surviving Corporation, and otherwise to carry out the provisions hereof.

#### **SECTION 5.**

In order to perfect the merger, the Articles of Incorporation of FOUNDATION are hereby amended and restated in their entirety to read as follows:

#### **ARTICLE I.**

##### **NAME**

The name of the corporation is FLORIDA AIR MUSEUM, INC.

#### **ARTICLE II.**

##### **PRINCIPAL OFFICE**

The street address of the principal office of the corporation, and the mailing address of the corporation, is 4175 Medulla Road, Lakeland, Florida 33811.

#### **ARTICLE III.**

##### **PURPOSES**

The corporation is organized and shall operate exclusively for charitable and educational purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986 or the corresponding Section of any prior or future Internal Revenue Code. Consistent with such limitations, the purposes of the corporation shall be the furtherance of aviation education, history, safety, and tradition. The primary means by which the corporation shall achieve these purposes shall be to develop, establish, and maintain a

permanent aviation museum, including a building or buildings in which to create, store, maintain, and display the collections and exhibits of the museum, to provide facilities to further aviation education, history, safety, and tradition, and to conduct and produce activities, programs, services, and events as are beneficial, necessary, incident, or related to the purposes of the corporation. It is intended that the museum shall include an aviation education center. The aviation education center of the museum may consist of, but is not limited to, classrooms, conference rooms, a science center, a theater, a library, and workshops. The museum and its aviation education center shall be operated in such a manner as to foster the free exchange of educational information, with respect to the construction, maintenance, repair, and operations of aircraft, including, but not limited to, experimental, antique, historically significant, replica, aerobatic, and sports aircraft. Training courses, seminars, forums, meetings, panel discussions, lectures, and other activities designed to develop aviation education and safety and to promote aviation history and tradition shall be offered at the museum. The museum may also establish a facility to restore and preserve aviation-related artifacts and aircraft of historical or national significance.

#### **ARTICLE IV.**

##### **MEMBERS**

A. The sole member of the corporation is Sun 'n Fun Fly-In, Inc., a Florida corporation not for profit ("Sun 'n Fun"). Sun 'n Fun, as the sole member of the corporation, is entitled to vote on (1) a proposed amendment to the Articles of Incorporation, (2) a plan of merger, (3) the sale, lease, exchange, or other disposition of corporation property in all cases other than those not requiring member approval as specified in Fla. Stat. § 617.1201, and (4) a resolution to dissolve the corporation.

B. The bylaws may provide for one or more classes of non-voting members.

C. The power to alter, amend, or repeal the bylaws or adopt new bylaws shall be vested in Sun 'n Fun as the sole member of the corporation.

#### **ARTICLE V.**

##### **BOARD OF DIRECTORS**

The business and property of this corporation shall be managed by a board of directors which shall have full control over the affairs of the corporation and shall be authorized to exercise all of its corporate powers. The board of directors shall carry out the purposes of the corporation in compliance with the Articles of Incorporation and the bylaws of the corporation. The number of directors may be increased or decreased from time to time in accordance with the bylaws, but shall never be less than three (3) nor more than fifteen (15), and shall always be a number that is divisible by three (3). The board of directors shall be comprised of three (3) classes of equal number which three (3) classes

shall be designated Class I, Class II, and Class III, respectively, whose respective terms shall expire at the first, second, and third next following annual meetings of the board of directors of the corporation. No director shall serve for more than two (2) complete, consecutive three (3)-year terms. All of such directors shall be elected by the sole member, Sun 'n Fun. Upon the expiration of the term of each member of the board of directors, Sun 'n Fun shall elect a successor director. Each successor director and all subsequent directors shall serve for a term of three (3) years and shall hold office until his or her successor shall have been elected and qualified. Sun 'n Fun shall elect directors whose terms have expired and shall fill any vacancies caused by a director's death, resignation, or removal from office. Each director elected to fill any vacancies caused by a director's death, resignation, or removal shall serve for the balance of the term of the director replaced. Directors shall not be compensated for the performance of their duties as directors, but may be reimbursed for expenses incurred in the performance of their duties as directors in accordance with the bylaws of the corporation. Sun 'n Fun shall have the right to remove, with or without cause, any director and to replace any director so removed.

## **ARTICLE VI**

### **LIMITATIONS AND PROHIBITED ACTIVITIES**

A. No part of the net earnings of the corporation shall inure to the benefit of any member, director, or officer of the corporation, nor to the benefit of any private individual.

B. The corporation shall have no power to engage in any act or activity prohibited to corporations which are exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code of 1986 or corresponding Section of any prior or future Internal Revenue Code.

C. In the event of the dissolution of the corporation, the residual assets of the corporation will be turned over to one or more organizations which themselves are exempt as organizations described in Sections 501(c)(3) and 170(c)(2) of the Internal Revenue Code of 1986 or corresponding Sections of any prior or future Internal Revenue Code, or to the federal or to a state or local government for public purposes exclusively.

### **SECTION 6.**

Each person who, at the effective date of the merger, is serving as a director of MUSEUM or FOUNDATION shall serve as a director of the Surviving Corporation, until his or her successor shall have been elected and shall qualify or until his or her death, resignation, or removal from office.



The officers of FOUNDATION at the effective date of the merger shall serve as the officers of the Surviving Corporation, until their respective successors shall have been elected and shall qualify or until his or her death, resignation, or removal from office.

If, on or after the effective date of the merger, a vacancy shall exist on the Board of Directors of the Surviving Corporation, or in any of the offices specified above, such vacancy may be filled in the manner provided in the Articles of Incorporation or in the bylaws of the Surviving Corporation.

#### **SECTION 7.**

All corporate acts, plans, policies, approvals, and authorizations of MUSEUM, its Board of Directors, committees, elected or appointed by the Board of Directors, officers, and agents, which were valid and effective immediately prior to the effective date of the merger, shall be taken for all purposes as the acts, plans, policies, approvals, and authorizations of the Surviving Corporation and shall be as effective and binding thereon as they were on MUSEUM. Without limiting the generality of the foregoing, any and all retirement plans and programs of MUSEUM, all as amended and in effect immediately prior to the merger becoming effective, and any and all options and rights thereunder, shall be continued by the Surviving Corporation, which shall be substituted for MUSEUM. Such merger shall not, in itself, effect any other change in such plans, programs, options, or rights. The employees of MUSEUM, if any, shall become the employees of the Surviving Corporation and continue to be entitled to the same rights and benefits they enjoyed as employees of MUSEUM immediately prior to the merger.

FOUNDATION is a corporation not for profit that has been determined to be exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended. It is the intention of the parties to this Agreement that the Surviving Corporation shall be a corporation not for profit that is exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended.

#### **SECTION 8.**

Consummation of the merger shall be subject to obtaining any consents or approvals determined by the respective Boards of Directors of the Constituent Corporations to be necessary to effect such merger.

#### **SECTION 9.**

This Agreement and Plan of Merger and the merger may be terminated and abandoned by resolutions of the Boards of Directors of MUSEUM and FOUNDATION prior to the merger becoming effective. In the event of the termination and the abandonment of this Agreement and Plan of Merger and the merger pursuant to the foregoing provisions of this Section 9, this Agreement and Plan of Merger shall become

void and of no further effect without any liability on the part of either of the Constituent Corporations or its directors or officers in respect thereof.

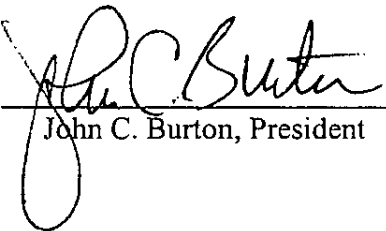
**SECTION 10.**

This Agreement and Plan of Merger may be executed in counterparts, each of which when so executed shall be deemed to be an original, and such counterparts shall together constitute but one and the same instrument.

IN WITNESS WHEREOF, each party to this Agreement and Plan of Merger, pursuant to authority duly given by its respective Board of Directors, has executed this Agreement and Plan of Merger as of the day and year first above written.

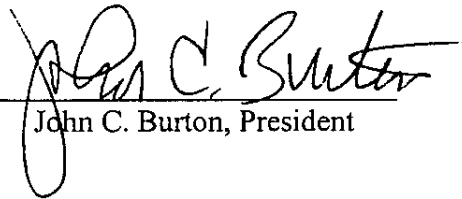
MUSEUM:

**FLORIDA AIR MUSEUM, INC.,**  
a Florida corporation not for profit

BY:   
\_\_\_\_\_  
John C. Burton, President

FOUNDATION:

**FLORIDA AIR MUSEUM  
FOUNDATION, INC.,** a Florida  
corporation not for profit

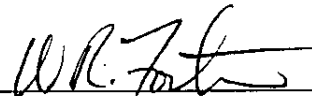
BY:   
\_\_\_\_\_  
John C. Burton, President

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**CERTIFICATE OF ADOPTION**

I, W.R. "Sandy" Fortin, the duly elected and qualified secretary of FLORIDA AIR MUSEUM FOUNDATION, INC., a Florida corporation not for profit, the Surviving Corporation, do hereby certify that the Agreement and Plan of Merger with FLORIDA AIR MUSEUM, INC., a Florida corporation not for profit, the Merging Corporation, was adopted by the Board of Directors of FLORIDA AIR MUSEUM FOUNDATION, INC., a Florida corporation not for profit, the Surviving Corporation, on August 27, 2009.

WITNESS my hand and seal of the corporation on this 24th day of September, 2009.

  
\_\_\_\_\_  
W.R. "Sandy" Fortin as Secretary of  
FLORIDA AIR MUSEUM  
FOUNDATION, INC.,  
a Florida corporation not for profit,  
the Surviving Corporation


(Corporate Seal)

\*\*\*\*\*

**CERTIFICATE OF ADOPTION**

I, John F. Wendel, the duly elected and qualified secretary of FLORIDA AIR MUSEUM, INC., a Florida corporation not for profit, the Merging Corporation, do hereby certify that the Agreement and Plan of Merger with FLORIDA AIR MUSEUM FOUNDATION, INC., a Florida corporation not for profit, the Surviving Corporation, was adopted by the Board of Directors of FLORIDA AIR MUSEUM, INC., a Florida corporation not for profit, the Merging Corporation, on September 9, 2009.

WITNESS my hand and seal of the corporation on this 24th day of September, 2009.

  
\_\_\_\_\_  
John F. Wendel as Secretary of  
FLORIDA AIR MUSEUM,  
INC., a Florida corporation  
not for profit, the Merging  
Corporation

(Corporate Seal)