

718554

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**MERGER OR SHARE EXCHANGE**

**Friends of the Everglades, Inc.**

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**ARTICLES OF MERGER**  
(Not for Profit Corporation)

The following Articles of Merger are submitted to merge the following Florida not for profit corporation into another Florida not for profit corporation in accordance with Section 617.1105, Florida Statutes.

**First:** The exact name, jurisdiction, and form/entity type of the surviving corporation:

<u>Name</u>	<u>Jurisdiction</u>	<u>Document Number</u>
FRIENDS OF THE EVERGLADES, INC.	Florida	718554

**Second:** The name and jurisdiction of the merging corporation:

<u>Name</u>	<u>Jurisdiction</u>	<u>Document Number</u>
BULLSUGAR ALLIANCE, INC.	Florida	N16000002803

**Third:** The Plan of Merger is attached.

**Fourth:** The merger shall become effective on the date the Articles of Merger are filed with Florida Department of State.

**Fifth:** The plan of merger was adopted by the members of the surviving corporation on May 23, 2019 by unanimous written consent executed in accordance with section 617.0701, Florida Statutes.

**Sixth:** The merging corporation has no members. The plan of merger was adopted by the board of directors of the merging corporation on May 28, 2019. The number of directors in office was eight (8). The vote for the plan was as follows: 5 FOR 0 AGAINST

IN WITNESS WHEREOF, the undersigned have signed their names and affirmed that the statements herein are true, under penalties of perjury, this 28<sup>th</sup> day of May, 2019.

**FRIENDS OF THE EVERGLADES, INC.,**  
a Florida not for profit corporation

**BULLSUGAR ALLIANCE, INC.,**  
a Florida not for profit corporation

By: \_\_\_\_\_

Name: Phillip P. Kushlan  
Title: President

By: \_\_\_\_\_

Name: Blair Wickstrom  
Title: President

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**Plan of Merger**

**AGREEMENT AND PLAN OF MERGER**

THIS AGREEMENT AND PLAN OF MERGER (this "Agreement") is entered into as of May 28, 2019, by and between FRIENDS OF THE EVERGLADES, INC., a Florida not for profit corporation ("Friends ") and BULLSUGAR ALLIANCE, INC., a Florida not for profit corporation ("Bullsugar").

**RECITAL**

WHEREAS, the parties hereto have agreed that Bullsugar will merge with and into Friends (the "Merger") upon the terms and conditions set forth herein and in accordance with the laws of the State of Florida.

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

**1. TERMS**

1.1 On the Effective Date (as hereinafter defined) of the Merger, Bullsugar shall be merged with and into Friends, with Friends continuing its existence as the surviving corporation (hereinafter called the "Surviving Corporation").

1.2 Upon and after the Effective Date, the Surviving Corporation shall possess all the rights, privileges and powers, and shall be subject to all the restrictions and duties of Bullsugar; all rights, privileges and powers of Bullsugar shall be vested in and be the property of the Surviving Corporation; and all debts, liabilities and duties of Bullsugar shall thenceforth attach to the Surviving Corporation and may be enforced against it to the same extent as if said debts, liabilities and duties had been incurred or contracted by it.

**2. EFFECTIVE DATE**

2.1 Subsequent to the approval and execution of this Agreement, Friends and Bullsugar (collectively, the "Constituent Entities") shall each submit this Agreement for approval pursuant to the applicable provisions of the Florida Not For Profit Corporation Act (the "Act") and the constituent documents for each of the Constituent Entities.

2.2 Following approval of the Merger in accordance with Section 2.1 above, and provided that: (i) the conditions specified in Section 6.1 hereof shall have been fulfilled or waived; and (ii) this Agreement has not been terminated and abandoned pursuant to Section 6.3 hereof, Friends will cause Articles of Merger to be prepared and filed with the Florida Secretary of State as provided in the Act, reflecting the terms of this Agreement.

2.3 The Merger shall become effective upon the date the Articles of Merger are filed or upon such later effective date as is specified in the Articles of Merger (the "Effective Date").

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### **3. COVENANTS AND AGREEMENTS**

3.1 Friends covenants and agrees that, as the Surviving Corporation, it shall be liable for all the obligations of Bullsugar outstanding as of the Effective Date and hereby expressly assumes all such obligations as of the Effective Date.

3.2 Friends covenants and agrees that, as the Surviving Corporation, it shall pay all expenses of carrying out the transactions contemplated by this Agreement and of accomplishing the Merger, provided that if the Merger does not occur, each of Friends and Bullsugar shall bear its own costs and expenses, including attorney fees.

3.3 Each of Friends and Bullsugar has provided, prior to the date hereof, to the other party: (a) all financial statements, tax returns and other requested financial information for the three (3) fiscal years prior to this Agreement (and any part of the current fiscal year through the date of this Agreement); and (b) any other information (i) which has been requested by the other party, (ii) which would, in whole or in part, make any of the above information not misleading, or (iii) which would have a material effect on the transaction contemplated herein.

3.4 Each of Friends and Bullsugar agrees to provide to the other party any updates, additions, changes or corrections to the above information necessary to make such information substantially complete, accurate and current through the Effective Date.

3.5 Each of Friends and Bullsugar covenants and agrees that, during the period from the date of this Agreement to the Effective Date (except as otherwise specifically contemplated by the terms of this Agreement), it shall carry on its business in the usual, regular and ordinary course in substantially the same manner as previously conducted and shall not enter into any material contracts or incur material financial obligations without notifying the other party in advance thereof.

### **4. REPRESENTATIONS AND WARRANTIES**

4.1 Each of the Constituent Entities, respectively, represents and warrants that:

(a) it is a not for profit corporation duly organized, validly existing and in good standing under the laws of the State of Florida and has the requisite corporate power and authority to carry on its business as now being conducted;

(b) it has the requisite corporate power and authority to enter into this Agreement and, subject to the approval of the Merger by the voting membership of Friends and the board of directors of Bullsugar, to consummate the transactions contemplated hereby;

(c) it is a not for profit corporation exempt from federal income tax pursuant to Section 4.2; and

(d) all records, books and other information provided pursuant to Section 3.3 above are complete, accurate and current through the date of this Agreement, or the Effective Date as the case may be, and that neither party has omitted to provide information required under Section 3.3 above.

**5. ARTICLES OF INCORPORATION; BYLAWS; BOARD OF DIRECTORS; OFFICERS; MEMBERSHIPS**

5.1 As of the Effective Date, the Articles of Incorporation of Friends shall be amended and restated pursuant to Amended and Restated Articles of Incorporation substantially in the form of Exhibit 1 attached to this Agreement, to be filed with the Florida Secretary of State.

5.2 As of the Effective Date, the Bylaws of Friends shall be amended substantially in the form of Amended and Restated Bylaws, substantially in the form of Exhibit 2 attached to this Agreement, and shall thereafter be the Bylaws of the Surviving Corporation, subject to alteration or amendment from time to time by the Board of Directors of the Surviving Corporation in accordance with the terms thereof.

5.3 From and after the Effective Date, the Board of Directors of the Surviving Corporation (the "Board") shall consist of such directors as are appointed or elected in accordance with the following procedures:

(a) The Board shall initially consist of fifteen (15) members.

(b) Concurrent with the approval of this Agreement by the board of directors of each of the Constituent Entities and consummation of the Merger, Friends shall have the right to appoint eight (8) members to the Board of the Surviving Corporation, and Bullsugar shall have the right to appoint seven (7) members to the Board of the Surviving Corporation.

(c) As of the date of this Agreement, all eight (8) members of the existing board of directors of Friends desire and shall be appointed to serve on the Board of the Surviving Corporation if the merger is consummated, as follows:

Philip Kushlan	Dr. Paul Martin
Alan Farago	Camila Quaresma-Sharp
Connie Washburn	Milda Vaivada
Robert Stein, Esq.	Elizabeth Wheaton

(d) As of the date of this Agreement, the following seven (7) members of the existing board of directors of Bullsugar (who are not already members of the board of directors of Friends) desire and shall be appointed to serve on the Board of the Surviving Corporation if the merger is consummated:

Nathaniel Linville	Richard Trotta
Christopher E. Maroney	Peter Upton
David Preston	Blair Wickstrom
Julian Robertson	

(e) Those directors appointed to serve initially on the Surviving Corporation's Board shall serve staggered terms. The length of the initial terms will be based on a random drawing from the fifteen (15) persons named above (collectively, the "Director Appointees"). The first eight (8) names of Director Appointees drawn by the President of Friends will serve a two-year term, and the remaining seven names will serve a one one-year term, thereby creating a staggered Board of Directors. After the end of the initial terms of the Director Appointees, each successor will be appointed to serve for a two-year term or until their successor is appointed, in accordance with the Bylaws of the Surviving Corporation.

5.4 From and after the Effective Date, the officers of the Surviving Corporation shall consist of such officers as are appointed by the Board of the Surviving Corporation. Selection and the term of such

officers shall be in accordance with the Bylaws of the Surviving Corporation.

5.5 From and after the Effective Date, the Surviving Corporation shall have one membership class. All memberships held by members of Friends immediately prior to the Effective Date shall, by virtue of the Merger and without any action by the holder thereof, be converted into memberships in the Surviving Corporation as follows: Each Friends membership shall be converted into a nonvoting membership in the Surviving Corporation. The rights and privileges of the membership class shall be as set forth in the Bylaws of the Surviving Corporation.

## 6. CONDITIONS, AMENDMENT AND TERMINATION

6.1 The respective obligations of the Constituent Entities to consummate the Merger pursuant to this Agreement are subject to, and conditioned upon:

(a) each of the Constituent Entities having obtained any and all consents necessary for the Merger, including the approval of this Agreement and the Merger by the board of directors of each of the Constituent Entities;

(b) each of the Constituent Entities having conducted its due diligence and investigated the business and operations of the other party to its reasonable satisfaction;

(c) the representations and warranties of each of the Constituent Entities contained in this Agreement or in any document delivered under this Agreement being true, correct and complete in all material respects immediately prior to the Effective Date with the same force and effect as if made immediately prior to the Effective Date; and

(d) each Constituent Entity having performed and complied with, in all material respects, all covenants, agreements and obligations required by this Agreement to be performed or complied with by it prior to or on the Effective Date.

6.2 The Constituent Entities, by mutual consent of their respective boards of directors, may amend, modify or supplement this Agreement in such manner as may be agreed upon by them in writing at any time prior to the Effective Date as reasonably necessary to carry out the transaction contemplated by this Agreement.

6.3 This Agreement may be terminated and the Merger abandoned for cause related to the material breach of any representations, warranties or covenants contained in this Agreement, or for other good cause, by a resolution adopted by the board of directors of either of the Constituent Entities at any time prior to the Effective Date.

## 7. GENERAL PROVISIONS

7.1 Nonsurvival of Representations, Warranties and Covenants. None of the representations, warranties, covenants or agreements in this Agreement shall survive the Effective Date of the Merger, except any covenant or agreement of the parties which by its terms contemplates performance after the Effective Date of the Merger.

7.2 Counterparts; Facsimile Signatures. This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each of the parties and delivered to the other party. Facsimile signatures shall be considered binding.

7.3 Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Florida, regardless of the laws that might otherwise govern under applicable principles of conflicts of laws thereof.

7.4 Severability. In the event any one or more of the provisions contained in this Agreement should be held invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby. The parties shall endeavor in good faith negotiations to replace the invalid, illegal or unenforceable provisions with valid provisions, the effect of which comes as close as possible to that of the invalid, illegal or unenforceable provisions.

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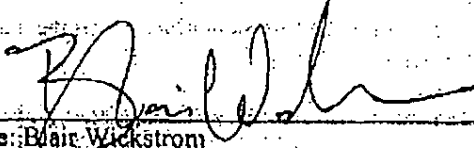
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IN WITNESS WHEREOF, the parties hereto have caused this Agreement and Plan of Merger to be signed by their respective officers duly authorized as of the date written above.

**FRIENDS OF THE EVERGLADES, INC.,**  
a Florida not for profit corporation

By:   
Name: Philip E. Kushlan  
Title: President

**BULLSUGAR ALLIANCE, INC.,**  
a Florida not for profit corporation

By:   
Name: Blair Wickstrom  
Title: President