

6/23/2020

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MERGER OR SHARE EXCHANGE
United Service Organizations, Incorporated

Certificate of Status	0
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ARTICLES OF MERGER

Merging

**GREATER JACKSONVILLE AREA USO COUNCIL, INC.,
a Florida not-for-profit corporation**

With and Into

**UNITED SERVICE ORGANIZATIONS, INCORPORATED,
a District of Columbia non-profit corporation**

The following Articles of Merger are submitted in accordance with the Florida Not For Profit Corporation Act, pursuant to 617.1105, Florida Statutes.

FIRST: The name and jurisdiction of the surviving corporation is as follows:

<u>Name</u>	<u>Jurisdiction</u>	<u>Document Number</u>
United Service Organizations, Incorporated	District of Columbia	N/A

SECOND: The name and jurisdiction of the merging corporation is as follows:

<u>Name</u>	<u>Jurisdiction</u>	<u>Document Number</u>
Greater Jacksonville Area USO Council, Inc.	Florida	748973

THIRD: The Plan of Merger is attached as Exhibit A.

FOURTH: The merger shall become effective at 12:01 a.m. on July 1, 2020.

FIFTH: (ADOPTION OF MERGER BY SURVIVING CORPORATION). The Plan of Merger was adopted and approved by the voting members of United Service Organizations, Incorporated on May 15, 2019. The number of votes cast for the Plan of Merger was sufficient for approval and the vote for the plan was as follows: 14 FOR; 0 AGAINST.

SIXTH: (ADOPTION OF MERGER BY MERGING CORPORATION). There are no members of Greater Jacksonville Area USO Council, Inc. The Plan of Merger was adopted by the board of directors of Greater Jacksonville Area USO Council, Inc. on April 16, 2020. The number of directors in office was fourteen. The number of votes cast for the plan of merger was sufficient for approval and the vote for the plan was as follows: 14 FOR; 0 AGAINST.

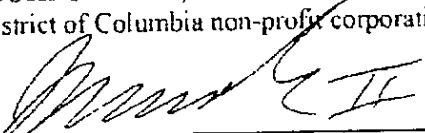
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The foregoing Articles of Merger were executed by the undersigned parties effective July 1, 2020.

UNITED SERVICE ORGANIZATIONS
INCORPORATED,
a District of Columbia non-profit corporation

By: 
Name: Jack D. Crouchi, II
Title: President & CEO

GREATER JACKSONVILLE AREA USO
COUNCIL, INC.,
a Florida not-for-profit corporation

By: 
Name: Mike O'Brien
Title: President & CEO

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TALLAHASSEE, FL

EXHIBIT A

Plan of Merger

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**SECRETARY OF STATE
MONTGOMERY, AL**

**AGREEMENT AND PLAN OF MERGER
 BETWEEN
 UNITED SERVICE ORGANIZATIONS, INCORPORATED
 AND
 GREATER JACKSONVILLE AREA USO COUNCIL, INC.**

This **AGREEMENT AND PLAN OF MERGER** (this "Agreement") is made as of June 30, 2020, by and between **GREATER JACKSONVILLE AREA USO COUNCIL, INC.**, a Florida nonprofit corporation (the "Disappearing Corporation") with its principal place of business located at 6801 Roosevelt Boulevard, Yorktown Avenue, Main Gate, Building 1050, Naval Air Station, Jacksonville, Florida, 32212, and **United Service Organizations, Incorporated**, a federally chartered, District of Columbia nonprofit corporation (the "Surviving Corporation" and, together with the Disappearing Corporation, the "Parties"), with its principal place of business located at 2111 Wilson Boulevard, Suite 1200, Arlington, Virginia.

RECITALS

WHEREAS, the Surviving Corporation (a) is a voluntary civilian not-for-profit corporation through which the people of the United States may, in peace or war, serve the religious, spiritual, social, welfare, educational, entertainment and morale needs of the men and women in the U.S. Armed Forces, within or without the territorial limits of the United States, solicits funds for the maintenance of its organization and the accomplishment of its responsibilities, and (c) accepts the cooperation and services of individual citizens and other agencies in accomplishing these purposes;

WHEREAS, the Disappearing Corporation serves the recreational, social, cultural, educational, and spiritual needs of members of the military services and their families off and base in the Jacksonville, Florida service area pursuant to a chartered center agreement with the Surviving Corporation;

WHEREAS, the Parties have determined that a merger of the Parties would result in a stronger organization that would more effectively and efficiently carry out the missions of the Parties;

WHEREAS, the Board of Directors of the Disappearing Corporation and the Board of Governors of the Surviving Corporation (each, a "Board") have each determined that the merger of the Disappearing Corporation with and into the Surviving Corporation on the terms set forth herein is in their respective best interests and have each approved the Merger (as defined below) and adopted this Agreement;

WHEREAS, the Surviving Corporation has two classes of members, only one of which is entitled to vote on the Merger, and the members of the Board of Governors of the Surviving Corporation, in their capacity as the sole voting members of the Surviving Corporation, have approved the Merger and adopted this Agreement; and

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WHEREAS, the Disappearing Corporation does not have members.

NOW, THEREFORE, in consideration of the mutual covenants, promises, terms, and agreements contained in this Agreement, the Parties agree as follows:

1. **Merger; Surviving Corporation.**

(a) The Disappearing Corporation will be merged with and into the Surviving Corporation (the "Merger") effective as of 12:01 AM on July 1, 2020, after filing of the Articles of Merger attached hereto as Exhibit A (the "Articles of Merger") with the office of the Mayor of the District of Columbia (the "Effective Date") in accordance with Section 29-409.06 of the Business Organizations Code of the District of Columbia (the "Code").

(b) Prior to the filing of the Articles of Merger in the District of Columbia in accordance with Section 1(a), the Parties shall promptly file with the Secretary of the State of Florida, or other public officer required by law, Articles of Merger, and such other documents as may be required by Florida law.

2. **Effect of Merger.** In accordance with Section 29-409.07 of the Code, on the Effective Date, the separate corporate existence of the Disappearing Corporation shall cease, and the Merger will have all of the effects provided by applicable law. The corporate identity, existence, purposes, powers, rights, obligations, demands, commitments, liabilities, indebtedness, privileges, immunities, assets, properties and interests of the Disappearing Corporation (in each case of any nature whatsoever, and to the extent applicable, whether accrued or unaccrued absolute or contingent, direct or indirect, asserted or unasserted, fixed or unfixed, known or unknown, choate or inchoate, perfected or unperfected, liquidated or unliquidated, secured or unsecured, or otherwise, whether due or to become due, whether arising out of any contract or any tort) shall be merged with and vested in the Surviving Corporation and, except as otherwise expressly provided by this Agreement, the corporate identity, existence, purposes, powers, rights, obligations, demands, commitments, liabilities, indebtedness, privileges, immunities, assets, properties and interests of the Surviving Corporation shall continue unaffected and unimpaired by the Merger. Memberships in the Surviving Corporation outstanding immediately prior to the Effective Date shall not be changed as a result of the Merger but shall remain outstanding as memberships of the Surviving Corporation.

3. **Articles of Incorporation.** The Articles of Incorporation of the Surviving Corporation as in effect immediately prior to the Effective Date shall remain the Articles of Incorporation of the Surviving Corporation on and after the Effective Date.

4. **Bylaws.** The Bylaws of the Surviving Corporation as in effect immediately prior to the Effective Date shall remain the Bylaws of the Surviving Corporation on and after the Effective Date.

5. **Representations and Warranties of the Disappearing Corporation.** The Disappearing Corporation represents and warrants that the statements contained in this Section 5 are correct and complete as of the date hereof and as of the Effective Date:

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(a) **Organization, Qualification and Corporate Power.** The Disappearing Corporation is a nonprofit corporation duly organized, validly existing, and in good standing under the laws of the State of Florida. The Disappearing Corporation is qualified to conduct business and is in good standing under the laws of each jurisdiction where qualification is required. The Disappearing Corporation has full corporate power and authority to carry on the businesses in which it is engaged.

(b) **Tax Exempt Status.** The Disappearing Corporation is exempt from the payment of federal income taxes under Section 501 of the Internal Revenue Code of 1986, as amended (the "Tax Code"), as an organization described in Section 501(c)(3) of the Code.

(c) **Subsidiaries.** The Disappearing Corporation does not own any interest in any subsidiary.

(d) **Authorization.** This Agreement and the Merger have been duly authorized by the Disappearing Corporation's Board, and no other approval is required pursuant to the Disappearing Corporation's Articles of Incorporation, Bylaws or any other governing documents. The Disappearing Corporation does not have members. The Disappearing Corporation has full corporate power and authority to execute and deliver this Agreement and to perform its obligations hereunder. Assuming the due authorization, execution and delivery of this Agreement and the transactions contemplated hereby by the Surviving Corporation, this Agreement constitutes the valid and legally binding obligation of the Disappearing Corporation enforceable in accordance with its terms and conditions, except that such enforcement may be subject to (a) bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors' rights generally, and (b) general principles of equity (regardless of whether enforcement is considered in a proceeding in equity or at law).

(e) **Litigation.** Except as disclosed to the Surviving Corporation, as of the date of this Agreement, to the knowledge of the senior management of the Disappearing Corporation, there is no litigation or arbitration pending against the Disappearing Corporation.

(f) **Employee Benefit Plans.** Except as disclosed to the Surviving Corporation, as of the date of this Agreement, (i) the Disappearing Corporation maintains no, and has no current or on-going potential liability with respect to, any employee benefit plan for its current or former employees or service providers, including, without limitation, any (A) group medical, dental, vision, life, disability, or accident insurance plan, (B) retirement, profit-sharing, or equity plan, (C) severance or change in control plan, or (D) other fringe benefit plan, whether or not funded, and whether or not subject to the Employee Retirement Income Security Act of 1974, as amended ("ERISA") (any such plan, a "Disappearing Corporation Plan"), and (ii) no employee has an employment agreement with the Disappearing Corporation. When disclosing the Disappearing Corporation Plan(s), the Disappearing Corporation shall specifically note any Disappearing Corporation Plan that is a "multiemployer plan" (within the meaning of Section 3(37) of ERISA), or that is or has at any time been covered by Title IV of ERISA or subject to Section 412 of the Tax Code or Section 302 of ERISA.

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6. **Representations and Warranties of the Surviving Corporation.** The Surviving Corporation represents and warrants that the statements contained in this Section 6 are correct and complete as of the date hereof and as of the Effective Date:

(a) **Organization, Qualification and Corporate Power.** The Surviving Corporation is a nonprofit corporation organized under the laws of the District of Columbia and a federally chartered corporation under 36 U.S.C. Sections 220101–220114. The Surviving Corporation is duly organized, validly existing, and in good standing under the laws of the District of Columbia and federal law. The Surviving Corporation is qualified to conduct business and is in good standing under the laws of each jurisdiction where qualification is required. The Surviving Corporation has full corporate power and authority to carry on the businesses in which it is engaged.

(b) **Tax Exempt Status.** The Surviving Corporation is exempt from the payment of federal income taxes under Section 501 of the Tax Code, as an organization described in Section 501(c)(3) of the Tax Code. The Surviving Corporation is organized and operated exclusively for charitable purposes. The Articles of Incorporation of the Surviving Corporation provide that the assets of the Surviving Corporation are irrevocably dedicated to charitable purposes.

(c) **Subsidiaries.** The Surviving Corporation does not own any interest in subsidiary.

(d) **Authorization.** This Agreement and the Merger have been duly approved by the Surviving Corporation’s Board as the sole members of the Surviving Corporation entitled to vote thereon, and no other approval is required pursuant to applicable law or the Surviving Corporation’s Articles of Incorporation, federal charter, bylaws or any other governing documents. The Surviving Corporation has full corporate power and authority to execute and deliver this Agreement and to perform its obligations hereunder. Assuming the due authorization, execution and delivery of this Agreement and the transactions contemplated hereby by the Disappearing Corporation, this Agreement constitutes the valid and legally binding obligation of the Surviving Corporation, enforceable in accordance with its terms and conditions, except that such enforcement may be subject to (a) bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors’ rights generally, and (b) general principles of equity (regardless of whether enforcement is considered in a proceeding in equity or at law).

7. **Employee Matters.**

(a) Effective as of immediately prior to the Effective Date, the Disappearing Corporation shall terminate any and all Disappearing Corporation Plans, and shall provide the Surviving Corporation with evidence that such Disappearing Corporation Plans have been terminated pursuant to resolution of the Board of the Disappearing Corporation.

(b) No later than 15 days prior to the Effective Date, the Surviving Corporation shall offer, in writing on terms and conditions consistent with this Section 7, to employ as of the Effective Date each individual employed by the Disappearing Corporation as of

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the date of such offer (each employee who accepts such offer, a "Continuing Employee"). On and following the Effective Date, the Continuing Employees shall be eligible to participate in the employee benefit plans, policies, and programs of the Surviving Corporation or its affiliates (each, a "Surviving Corporation Benefit Plan") on the same terms and conditions as applicable to similarly situated employees of the Surviving Corporation.

(c) The Surviving Corporation shall provide each Continuing Employee with a level of base salary or hourly rate, as applicable, at no less than their current base salary or hourly rate. Continuing Employees may be eligible to participate in the Surviving Corporation's existing bonus plans depending upon their position in the Surviving Corporation.

(d) The Surviving Corporation shall make commercially reasonable efforts for each Continuing Employee to receive credit under the Surviving Corporation Benefit Plans for all service with the Disappearing Corporation and its predecessors prior to the Effective Date for all purposes, including, but not limited to, eligibility to participate, vesting and benefit accruals.

(e) In addition, and without limiting the generality of the foregoing, the Surviving Corporation shall make commercially reasonable efforts to ensure that the Surviving Corporation Benefit Plans (i) waive all limitations as to pre-existing conditions exclusions, evidence of insurability requirements, waiting periods and actively-at-work or similar requirements with respect to participation and coverage requirements applicable to each Continuing Employee and (ii) provide Continuing Employees and their eligible dependents with credit under the Surviving Corporation Benefit Plans for any co-payments, deductibles, out-of-pocket requirements and offsets (or similar payments) made under the Disappearing Corporation Plans for the plan year in which the Effective Date occurs for the purposes of satisfying any applicable deductible, out-of-pocket, or similar requirements under the Surviving Corporation Benefit Plans as if such amounts had been paid in accordance with such Surviving Corporation Benefit Plans.

(f) Any vacation or paid time off accrued but unused by a Continuing Employee as of immediately prior to the Effective Date that is not cashed out by the Disappearing Corporation on the Effective Date shall be credited to such Continuing Employee by the Surviving Corporation as of the Effective Date ("Carryover Vacation"). All future vacation or paid time off accruals shall be subject to the terms of the Surviving Corporation's vacation and paid time off policies, taking into account the balance of any Carryover Vacation; *provided, however*, that no Carryover Vacation or paid time off shall be subject to forfeiture where prohibited by law.

(g) The parties acknowledge and agree that all provisions contained in this Section 7 are included for the sole benefit of the respective parties to this Agreement and no provision of this Section 7 shall (i) create any third-party beneficiary rights in any employee or service provider (including any beneficiary or dependent thereof); (ii) amend or alter any Surviving Corporation Benefit Plan; (iii) prevent the Surviving Corporation from amending or terminating any Surviving Corporation Benefit Plan from and after the Effective Date; or (iv) prevent the Surviving Corporation after the Effective Date from terminating the employment of any Continuing Employee.

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8. Director and Officer Indemnification.

(a) From and after the Effective Date, the Surviving Corporation shall, in each case to the fullest extent permissible by applicable law, (i) indemnify and hold harmless each individual who at the Effective Date is, or at any time prior to the Effective Date was, a director, officer, employee or agent of the Disappearing Corporation (each, an "Indemnitee" and, collectively, the "Indemnitees") with respect to all claims, liabilities, losses, damages, judgments, fines, penalties, costs (including amounts paid in settlement or compromise) and expenses (including reasonable fees and expenses of legal counsel) in connection with any claim or proceeding (whether civil, criminal, administrative or investigative), whenever asserted, based on or arising out of, in whole or in part, (A) the fact that an Indemnitee is or was a director, officer, employee or agent of the Disappearing Corporation or (B) acts or omissions by an Indemnitee in the Indemnitee's capacity as a director, officer, employee or agent of the Disappearing Corporation or taken at the request of the Disappearing Corporation, in each case under clause (A) or (B), at, or at any time prior to, the Effective Date (including, but not limited to, any claim or proceeding relating in whole or in part to the transactions contemplated by this Agreement or relating to the enforcement of this provision or any other indemnification or advancement right of any Indemnitee) and (ii) assume, without any further action, all obligations of the Disappearing Corporation to the Indemnitees in respect of indemnification, advancement of expenses and exculpation from liabilities for acts or omissions occurring at or prior to the Effective Date as provided in the organizational documents of the Disappearing Corporation as in effect on the date of this Agreement or in any agreement in existence as of the date of this Agreement providing for indemnification between the Disappearing Corporation and any Indemnitee. Without limiting the foregoing, the Surviving Corporation, from and after the Effective Date, shall cause, unless otherwise required by applicable law, the Articles of Incorporation and Bylaws of the Surviving Corporation to contain provisions no less favorable to the Indemnitees with respect to limitation of liabilities of directors and officers and indemnification, advancement of expenses and exculpation than are set forth as of the date of this Agreement in the Articles of Incorporation and Bylaws of the Surviving Corporation, which provisions shall not be amended, repealed or otherwise modified in a manner that would adversely affect the rights thereunder of the Indemnitees in any material respect. In addition, from and after the Effective Date, the Surviving Corporation shall, without requiring a preliminary determination of entitlement to indemnification, advance any expenses (including reasonable fees and expenses of legal counsel) of any Indemnitee under this Section 8(a) (including in connection with enforcing the indemnity and other obligations referred to in this Section 8) as incurred to the fullest extent permitted under applicable law; provided, that the individual to whom expenses are advanced provides an undertaking to repay such advances if it shall be determined that such person is not entitled to be indemnified pursuant to this Section 8(a) or applicable law.

(b) The provisions of this Section 8 are (i) intended to be for the benefit of, and shall be enforceable by, each Indemnitee, his or her heirs and his or her representatives and (ii) in addition to, and not in substitution for, any other rights to indemnification or contribution that any such individual may have by contract, applicable law or otherwise. The obligations of the Surviving Corporation under this Section 8 shall not be terminated or modified in such a manner as to adversely affect the rights of any Indemnitee to whom this Section 8 applies unless the affected Indemnitee shall have consented in writing to such termination or modification (it

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being expressly agreed that, notwithstanding anything to the contrary in this Agreement, the Indemnitees to whom this Section 8 applies shall be third-party beneficiaries of this Section 8).

(c) Nothing in this Agreement is intended to, shall be construed to or shall release, waive or impair any rights to directors' and officers' insurance claims under the D&O Tail Policy (as defined below) or under any policy that is, has been or will be in existence with respect to the Surviving Corporation for any of their respective directors, officers or other employees, it being understood and agreed that the indemnification provided for in this Section 8 is not in substitution for any such claims under such policies.

(d) The Surviving Corporation shall not settle, compromise or consent to the entry of any order in any threatened or actual claim or proceeding relating to any acts or omissions covered under this Section 8 for which indemnification has been sought by an Indemnitee hereunder, unless such settlement, compromise or consent includes an unconditional release of such Indemnitee from all liability arising out of such claim or proceeding or such Indemnitee otherwise consents in writing to such settlement, compromise or consent. Each of the Surviving Corporation and the Indemnitees shall cooperate in the defense of any claim or proceeding and shall provide access to properties and individuals as reasonably requested and furnish or cause to be furnished records, information and testimony, and attend such conferences, discovery proceedings, hearings, trials or appeals, as may be reasonably requested in connection therewith.

9. **Additional Covenants.**

(a) **D&O Tail Insurance.** The Disappearing Corporation has purchased a six-year prepaid "tail policy" for directors' and officers' liability insurance with a policy limit of at least one million dollars (\$1,000,000.00) with respect to matters arising on or before the Effective Date (the "D&O Tail Policy"). The Surviving Corporation shall maintain such policy in full force and effect for the full term of such policy.

(b) **Funding; Restricted Gifts.**

(i) Following the Effective Date, the Surviving Corporation shall fund the operations and programs of the Disappearing Corporation for the remainder of 2020 at levels no less than those set forth in the Disappearing Corporation's annual budget provided to the Surviving Corporation.

(ii) Any gifts, grants or other donations received by the Disappearing Corporation prior to the Effective Date or by the Surviving Corporation following the Effective Date that the donor or grantor has indicated are intended for a particular use or for use by a particular location operated by the Disappearing Corporation prior to the Effective Date shall be used by the Surviving Corporation only for such purpose or location.

(c) **Publicity.** Prior to the Effective Date, no Party shall make any public announcement relating to this Agreement or the Merger without the prior written consent of the other Party, except as such Party believes in good faith and based on reasonable advice of counsel is required by applicable law (in which case the disclosing Party will, unless prohibited

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by law from doing so, advise the other Party before making such disclosure). For the avoidance of doubt, disclosure by a Party of the existence of this Agreement or the proposed Merger to a third party as required under the terms of a contract between such Party and such third party or for purposes of obtaining such third party's consent to the proposed Merger shall not constitute a public announcement that is prohibited by the immediately preceding sentence.

10. **Termination.** This Agreement may be terminated and the Merger abandoned at any time before the Effective Date by mutual consent of the respective Boards of the Parties.

11. **Amendment; Waiver.** This Agreement may be amended in writing (signed by the authorized representatives of each Party) by mutual consent of the Parties' respective Boards and, if required by applicable law or the governing documents of the Surviving Corporation, the members of the Surviving Corporation. No waiver by either Party of any provision hereof shall be deemed a waiver of any other provision hereof or of any subsequent breach by the other Party of the same or any other provision. Either Party's consent to, or approval of, any act shall not be deemed to render unnecessary the obtaining of such Party's consent to or approval of any subsequent act.

12. **Entire Agreement.** This Agreement, including all exhibits hereto, embodies the entire agreement and understanding of the Parties in respect of the transactions contemplated by this Agreement and supersedes all prior agreements, communications and understandings between the Parties with respect to such transactions.

13. **Further Actions.** From and after the date hereof, the officers and directors of the Disappearing Corporation (or, in the case of any action following the Effective Date, the officers and directors of the Disappearing Corporation immediately prior to the Effective Date) and the officers and directors of the Surviving Corporation shall take all action as shall be required in connection with the Merger, including, without limitation, all actions with respect to making any filing or obtaining third-party or governmental consents and approvals, and the execution and delivery of any deeds, conveyances, assignments, instruments and documents of every nature which are necessary or desirable to evidence and carry out the intents and purposes of this Agreement and the Merger.

14. **Governing Law.** This Agreement shall be construed in accordance with, and governed by, the laws of the District of Columbia, without regard to conflicts of law principles.

15. **Severability.** Any term or provision of this Agreement which is invalid or unenforceable will be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining rights of the party intended to be benefited by such provision or any other provisions of this Agreement.

16. **Counterparts.** This Agreement may be executed in counterparts (including by facsimile or portable document format), each of which will be deemed an original but all of which together constitute one and the same instrument.

[Signature page follows]

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IN WITNESS WHEREOF, the Parties have duly executed and delivered this Agreement and Plan of Merger as of the date first above written.

GREATER JACKSONVILLE AREA USO COUNCIL, INC.

UNITED SERVICE ORGANIZATIONS, INCORPORATED

By: *Matthew W. Tuohy*
Matthew W. Tuohy
Its: Chairman

By: *George W. Casey*
George W. Casey
Its: Chairman, USO Board of Governors

By: *Michael P. O'Brien*
Michael O'Brien
Its: President

By: *Jack D. Crouch II*
Jack D. Crouch II
Its: President & CEO

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