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T. CLINE

MAR 16 2011

EXAMINER

**COVER LETTER**

**TO:** Registration Section  
Division of Corporations

**SUBJECT:** BFASHC, LLC  
Name of Surviving Party

The enclosed Certificate of Merger and fee(s) are submitted for filing.

Please return all correspondence concerning this matter to:

Timothy B. Gavigan, Esq.

Contact Person

Timothy B. Gavigan, PLLC

Firm/Company

10700 Sikes Place, Suite 375

Address

Charlotte, NC 28277

City, State and Zip Code

ekehoe@mioffice.com

E-mail address: (to be used for future annual report notification)

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For further information concerning this matter, please call:

Timothy B. Gavigan

Name of Contact Person

at ( 704 )

814-4460

Area Code and Daytime Telephone Number



Certified copy (optional) \$30.00

**STREET ADDRESS:**

Registration Section  
Division of Corporations  
Clifton Building  
2661 Executive Center Circle  
Tallahassee, FL 32301

**MAILING ADDRESS:**

Registration Section  
Division of Corporations  
P. O. Box 6327  
Tallahassee, FL 32314

**Certificate of Merger  
For  
Florida Limited Liability Company**

The following Certificate of Merger is submitted to merge the following Florida Limited Liability Company(ies) in accordance with s. 608.4382, Florida Statutes.

**FIRST:** The exact name, form/entity type, and jurisdiction for each merging party are as follows:

<u>Name</u>	<u>Jurisdiction</u>	<u>Form/Entity Type</u>
BFASHC, LLC	Florida	LLC
<u>LO9-72391</u>		

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**SECOND:** The exact name, form/entity type, and jurisdiction of the surviving party are as follows:

<u>Name</u>	<u>Jurisdiction</u>	<u>Form/Entity Type</u>
BFASHC, LLC	Delaware	LLC

**THIRD:** The attached plan of merger was approved by each domestic corporation, limited liability company, partnership and/or limited partnership that is a party to the merger in accordance with the applicable provisions of Chapters 607, 608, 617, and/or 620, Florida Statutes.

**FOURTH:** The attached plan of merger was approved by each other business entity that is a party to the merger in accordance with the applicable laws of the state, country or jurisdiction under which such other business entity is formed, organized or incorporated.

**FIFTH:** If other than the date of filing, the effective date of the merger, which cannot be prior to nor more than 90 days after the date this document is filed by the Florida Department of State:

**SIXTH:** If the surviving party is not formed, organized or incorporated under the laws of Florida, the survivor's principal office address in its home state, country or jurisdiction is as follows:

1209 Orange Street

Wilmington, DE 19801

**SEVENTH:** If the survivor is not formed, organized or incorporated under the laws of Florida, the survivor agrees to pay to any members with appraisal rights the amount to which such members are entitled under ss.608.4351-608.43595, F.S.

**EIGHTH:** If the surviving party is an out-of-state entity not qualified to transact business in this state, the surviving entity:

a.) Lists the following street and mailing address of an office, which the Florida Department of State may use for the purposes of s. 48.181, F.S., are as follows:

Street address: 1209 Orange Street

Wilmington, DE 19801

Mailing address: 1209 Orange Street



Wilmington, DE 19801

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b.) Appoints the Florida Secretary of State as its agent for service of process in a proceeding to enforce obligations of each limited liability company that merged into such entity, including any appraisal rights of its members under ss.608.4351-608.43595, Florida Statutes.

**NINTH:** Signature(s) for Each Party:

Name of Entity/Organization:	Signature(s):	Typed or Printed Name of Individual:
BFASHC, LLC	X 	Patrick C. Harkleroad, Mgr.
BFASHC, LLC	X 	Patrick C. Harkleroad, Mgr.

Corporations:	Chairman, Vice Chairman, President or Officer <i>(If no directors selected, signature of incorporator)</i>
General partnerships:	Signature of a general partner or authorized person
Florida Limited Partnerships:	Signatures of all general partners
Non-Florida Limited Partnerships:	Signature of a general partner
Limited Liability Companies:	Signature of a member or authorized representative

**Fees:**

For each Limited Liability Company:	\$25.00
For each Corporation:	\$35.00
For each Limited Partnership:	\$52.50
For each General Partnership:	\$25.00
For each Other Business Entity:	\$25.00

**Certified Copy (optional):** \$30.00

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## PLAN OF MERGER

**FIRST:** The exact name, form/entity type, and jurisdiction for each **merging** party are as follows:

<u>Name</u>	<u>Jurisdiction</u>	<u>Form/Entity Type</u>
BFASHC, LLC	Florida	LLC

**SECOND:** The exact name, form/entity type, and jurisdiction of the **surviving** party are as follows:

<u>Name</u>	<u>Jurisdiction</u>	<u>Form/Entity Type</u>
BFASHC, LLC	Delaware	LLC

**THIRD:** The terms and conditions of the merger are as follows:

See attached copy of Agreement and Plan of Merger.

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*(Attach additional sheet if necessary)*

**FOURTH:**

A. The manner and basis of converting the interests, shares, obligations or other securities of each merged party into the interests, shares, obligations or others securities of the survivor, in whole or in part, into cash or other property is as follows:

See attached copy of Agreement and Plan of Merger.

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*(Attach additional sheet if necessary)*

B. The manner and basis of converting rights to acquire the interests, shares, obligations or other securities of each merged party into rights to acquire the interests, shares, obligations or others securities of the survivor, in whole or in part, into cash or other property is as follows:

See attached copy of Agreement and Plan of Merger.

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*(Attach additional sheet if necessary)*

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**FIFTH:** Any statements that are required by the laws under which each other business entity is formed, organized, or incorporated are as follows:

See attached copy of Agreement and Plan of Merger.

*(Attach additional sheet if necessary)*

**SIXTH:** Other provisions, if any, relating to the merger are as follows:

See attached copy of Agreement and Plan of Merger.

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*(Attach additional sheet if necessary)*



## AGREEMENT AND PLAN OF MERGER

**THIS AGREEMENT AND PLAN OF MERGER** (this "Agreement") is by and between BFASHC, LLC, a Delaware limited liability company ("Surviving Entity") and BFASHC, LLC, a Florida limited liability company ("Merging Entity").

### RECITALS

1. The equity owners and authorized officers of Merging Entity and Surviving Entity believe it is in their respective best interests that Merging Entity and Surviving Entity combine into a single company through the statutory merger of Merging Entity with and into the Surviving Entity (the "**Merger**") and, in furtherance thereof, have approved the Merger.
2. Upon the Merger, among other things, the outstanding equity interests of Merging Entity will be exchanged for the right to receive membership interests of Surviving Entity as set forth herein.
3. Merging Entity and Surviving Entity desire to make certain representations and warranties and other agreements in connection with the Merger.

### AGREEMENTS

NOW, THEREFORE, in consideration of the recitals and mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

#### Article 1 The Merger

**Section 1.1 Merger.** Upon the terms and subject to the conditions hereinafter set forth and in accordance with the laws applicable to each of Merging Entity and Surviving Entity (collectively, the "**Applicable Laws**"), on the Closing Date (as defined below) Merging Entity will be merged with and into Surviving Entity and thereupon the separate existence of Merging Entity will cease and the Surviving Entity will continue to exist under and be governed by the Surviving Entity's Applicable Laws.

**Section 1.2 Closing.** The closing of the Merger (the "**Closing**") will take place upon the filing of the Articles of Merger (the "**Closing Date**").

**Section 1.3 Articles of Merger.** The parties hereto will cause Articles of Merger meeting the requirements of the Applicable Laws (the "**Articles of Merger**"), to be properly executed and filed in accordance with the Applicable Laws. The parties intend that the Articles of Merger (and thereby the Merger) will be effective upon filing (the "**Effective Time**"); hence all references to the Closing or the Closing Date herein will mean the effective time of the Merger under the Applicable Laws.

**Section 1.4 Effect of the Merger.** Upon the terms and subject to the conditions of this Agreement, upon the Merger:

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1.4.1 the separate existence of Merging Entity will cease and Merging Entity will be merged with and into Surviving Entity,

1.4.2 the articles of organization of Surviving Entity will control,

1.4.3 the operating agreement of Surviving Entity will control,

1.4.4 the current managers, or member managers, of the Surviving Entity will continue to be the managers of the Surviving Entity,

1.4.5 all the property, rights, privileges, powers and franchises of Merging Entity will vest in the Surviving Entity and all debts, liabilities and duties of Merging Entity will become the debts, liabilities and duties of the Surviving Entity,

1.4.6 the name of the Surviving Entity shall remain the same, and

1.4.7 the Merger will have all the effects provided by the Applicable Laws.

**Section 1.5 Further Assurances.** If, at any time after the Closing Date, any further action is necessary or desirable to carry out the purposes of this Agreement and to vest the Surviving Entity with full right, title and possession to all assets, property, rights, privileges, powers and franchises of Merging Entity, the proper officers of Merging Entity are fully authorized to take, and will take, all such lawful and necessary action, so long as such action is not inconsistent with this Agreement.

## Article 2 Consideration; Effect of Merger; Exchange of Equity Interests

**Section 2.1 Consideration.** At the Closing, in consideration for the Merger and subject to the terms and conditions of this Agreement, Surviving Entity will issue to the equity owners of Merging Entity one hundred percent (100%) of its membership interests (the "Equity Consideration"). The Equity Consideration will be divided among the equity owners of Merging Entity based on their respective ownership interests and their respective shares in the Merging Entity at Closing.

**Section 2.2 Surrender of Merging Entity's Equity Interests.** At the Closing, the equity owners of Merging Entity will surrender all certificate(s) which, on the Closing Date, will represent all of the authorized, issued and outstanding equity interests of Merging Entity, duly endorsed / assigned with appropriate powers.

## Article 3 Additional Covenants

**Section 3.1 Employment.** Surviving Entity will offer full-time employment to Merging Entity's hourly employees, effective upon the Closing, at salaries comparable to their current salaries, subject to Surviving Entity's normal pre-hiring requirements. If hired, such employees will be eligible for Surviving Entity's benefits normally available to its hourly employees, subject to individual plan eligibility and participation requirements.

**Section 3.2 Release and Acknowledgement by the equity owners of Merging Entity.**

Effective as of the Closing, each equity owner of Merging Entity releases Merging Entity from any claims which such equity owner may have by virtue of:

- 3.2.1** his equity ownership in Merging Entity prior to the Closing (other than such equity owner's rights explicitly set forth in this Agreement),
- 3.2.2** his serving as and officer, director or manager, as applicable, of Merging Entity,
- 3.2.3** his being a creditor of Merging Entity, or
- 3.2.4** any other acts or omissions affecting such equity owner which are, or could be, the basis of any claim by such equity owner against Merging Entity.

Each equity owner of Merging Entity acknowledges that to the extent he otherwise has any such claims, such claims will at the Closing inure to Surviving Entity as the owner of all of the equity interests of Merging Entity.

**Article 4 General Provisions**

**Section 4.1 Further Assurances.** At any time, and from time to time, after the Closing Date, each party will execute such additional instruments and take such action as may be reasonably requested by any other party to confirm or perfect title to any property transferred hereunder or otherwise to carry out the intent and purposes of this Agreement.

**Section 4.2 Waiver.** Any failure on the part of any party hereto to comply with any of its obligations, agreements, or conditions hereunder may be waived in writing by the party to whom such compliance is owed.

**Section 4.3 Costs.** Each party will bear its own costs and expenses in connection with the transactions contemplated hereby, regardless of whether the Merger is effected or not.

**Section 4.4 Notices.** All notices, claims, certificates, requests, demands and other communications hereunder shall be given in writing and shall be delivered personally or sent by facsimile or by a nationally recognized overnight courier, postage prepaid, and shall be deemed to have been duly given when so delivered personally or sent by facsimile, with receipt confirmed, or one (1) business day after the date of deposit with such nationally recognized overnight courier. All such notices, claims, certificates, requests, demands and other communications shall be addressed to the respective parties at the addresses set forth below or to such other address as the person to whom notice is to be given may have furnished to the others in writing in accordance herewith.

If to Surviving Entity: BFASHC, LLC  
1209 Orange Street  
Wilmington, DE 19801

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If to Merging Entity: BFASHC, LLC  
1209 Orange Street  
Wilmington, DE 19801

**Section 4.5 Entire Agreement.** This Agreement constitutes the entire agreement among the parties and supersedes and cancels any other agreement, representation, or communication, whether oral or written, among the parties hereto relating to the transactions contemplated herein or the subject matter hereof.

**Section 4.6 Headings.** The section and subsection headings in this Agreement are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Agreement.

**Section 4.7 Governing Law.** This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Delaware.

**Section 4.8 Assignment.** This Agreement shall inure to the benefit of, and be binding upon, the parties hereto and their successors and assigns; provided, however, that any assignment by any party of its rights under this Agreement without the written consent of the other parties shall be void.

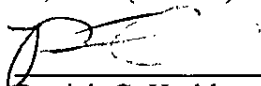
**Section 4.9 Counterparts.** This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

[The next page is the signature page.]

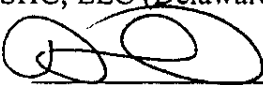
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IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates set forth below.

BFASHC, LLC (Florida)


By:   
Name: Patrick C. Harkleroad  
Title: Manager  
Date: March 11, 2011

BFASHC, LLC (Delaware)

By:   
Name: Patrick C. Harkleroad  
Title: Manager  
Date: March 11, 2011

Each of the undersigned equity owners hereby joins in the execution of this Agreement to signify its joinder in the merger as provided for herein.

HFC2, LLC

By:   
Name: Patrick C. Harkleroad  
Title: Manager  
Date: March 11, 2011

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