

**AGREEMENT AND PLAN OF MERGER  
FOR  
THE VILLAGES OF CARMEL HOMEOWNERS' ASSOCIATION, INC.  
AND  
2017 VILLAGES OF CARMEL HOMEOWNERS ASSOCIATION, INC.**

This **AGREEMENT AND PLAN OF MERGER FOR THE VILLAGES OF CARMEL HOMEOWNERS' ASSOCIATION, INC. AND 2017 VILLAGES OF CARMEL HOMEOWNERS ASSOCIATION, INC.**, is made as of \_\_\_\_\_, 2019 (the "**Plan of Merger**"), by and between **THE VILLAGES OF CARMEL HOMEOWNERS' ASSOCIATION, INC.**, a Texas nonprofit corporation (the "**Phase 4 Association**"), and **2017 VILLAGES OF CARMEL HOMEOWNERS ASSOCIATION, INC.**, a Texas nonprofit corporation (the "**Phase 5 Association**").

**RECITALS:**

**WHEREAS**, the Phase 4 Association is a Texas nonprofit corporation formed to serve as the homeowners association for the planned unit development known as The Villages of Carmel (the "**Villages of Carmel Subdivision**") as established by the Master Declaration of Covenants, Conditions, and Restrictions for The Villages of Carmel on or about August 17, 2006, as Instrument No. 2006-101525 of the Real Property Records of Denton County, Texas, as amended and supplemented from time to time (the "**Phase 4 Declaration**"); and

**WHEREAS**, the Phase 5 Association is a Texas nonprofit corporation formed to serve as the homeowners association for the planned unit development known as Villages of Carmel Phase 5 (the "**Phase 5 Subdivision**") as established by the Declaration of Covenants, Conditions & Restrictions for Villages of Carmel Phase 5 on or about November 1, 2017, as Instrument No. 20171101000439 of the Real Property Records of Denton County, Texas (the "**Phase 5 Declaration**"); and

**WHEREAS**, Section 10.001(a) of the Texas Business Organizations Code authorizes a domestic entity to effect a merger by complying with the applicable provisions of the Texas Business Organizations Code; and

**WHEREAS**, the respective members of the Phase 4 Association and the Phase 5 Association have each determined that it is in the best interest of their respective nonprofit corporations to combine their respective corporations and membership and merge with each other, with only the Phase 4 Association emerging as the surviving entity from the merger; and

**WHEREAS**, the respective members of the Phase 4 Association and the Phase 5 Association have each determined that it is in the best interest of their respective subdivisions to keep their respective deed restrictions separate and modify them as needed to reconcile any material differences between the restrictions; and

**WHEREAS**, in furtherance of such combination, the members of the Phase 4 Association and the Phase 5 Association have each adopted this Plan of Merger and approved the merger (the "**Merger**") of the two associations in accordance with the terms and conditions set forth herein and in accordance with the Texas Business Organizations Code.

**NOW, THEREFORE**, in consideration of the mutual representations, warranties, covenants and agreements contained herein, the parties hereto, intending to be legally bound, hereby agree as follows:

1. **Merger of Corporations.**

- a. Upon the terms and subject to the conditions set forth in this Plan of Merger, at the Effective Date (as defined below), the Phase 5 Association shall be merged with and into the Phase 4 Association whereupon the separate existence of the Phase 5 Association will cease and the Phase 4 Association shall be the surviving corporation in the merger (the "**Surviving Corporation**").
- b. As soon as practicable after satisfaction or waiver of the conditions to obligations of the parties to consummate the Merger, the Phase 4 Association and the Phase 5 Association will file a certificate of merger (the "**Certificate of Merger**") with the Secretary of State for the State of Texas and make all other filings or recordings required by applicable law in connection with the Merger.
- c. The Merger shall be effective upon the filing of the Certificate of Merger with the Secretary of State (the "**Effective Date**"). It is contemplated that the Effective Date will be on or about March 30, 2019.
- d. From and after the Effective Date, title to all real estate and other property owned by, and all rights, powers and interests of the Phase 5 Association, including the Common Area, shall be vested in the Surviving Corporation and the Surviving Corporation shall have all rights, obligations and liabilities of the Phase 5 Association, including, without limitation, all rights, obligations and liabilities of the former Phase 5 Association under the Phase 5 Declaration and under service, management, utility, maintenance and operating contracts to which the Phase 5 Association is a party, until and unless such vendor contracts are terminated.
- e. From and after the Effective Date, Owners subject to the Phase 5 Declaration shall continue to be subject to and bound by the covenants, conditions and restrictions of the Phase 5 Declaration, including the obligation to pay assessments to the Surviving Corporation in accordance with the Phase 5 Declaration.

2. Surviving Corporation.

- a. The Certificate of Formation of the Phase 4 Association in effect at the Effective Date shall be the Certificate of Formation of the Surviving Corporation unless and until amended in accordance with the provisions thereof and applicable law. The Certificate of Formation of the Phase 5 Association in effect at the Effective Date shall be null and void by operation of law.
- b. The Bylaws of the Phase 4 Association in effect at the Effective Date shall be the Bylaws of the Surviving Corporation unless and until amended in accordance with the provisions thereof. The Bylaws, if any, of the Phase 5 Association in effect at the Effective Date shall be null and void by operation of law.
- c. Prior to the Effective Date, the officers and directors of the respective parties shall continue to serve in their respective capacities. From and after the Effective Date, the directors and officers of the Phase 4 Association shall serve as the directors and officers of the Surviving Corporation for the remainder of their terms. At each annual meeting following the Effective Date, the Members of the Surviving Corporation shall elect directors to replace those directors whose terms have expired.
- d. As of the Effective Date, all the Members of the Phase 4 Association and all the Members of the Phase 5 Association shall become Members of the Surviving Corporation by virtue of the Merger without any further action being required of such Member.

3. Representations and Warranties.

- a. The Phase 4 Association represents and warrants to the Phase 5 Association that:
  - i. The Phase 4 Association is duly organized, validly existing and in good standing under the laws of the State of Texas.
  - ii. The Phase 4 Association has the authority to enter into this Agreement and has the power necessary and appropriate to effect the Merger, and to complete the Phase 4 Association's obligations herein, subject to the conditions and limitations expressly set forth herein.
  - iii. The Phase 4 Association has made available to the Phase 5 Association complete and correct copies of its Certificate of Formation, Bylaws and the Phase 4 Declaration, and any other recorded dedicatory instruments of the Phase 4 Association.
  - iv. The Phase 4 Association has made available to 2107 Association copies of its financial statements for the years 2015-date (the "**Phase 4 Association Financial Statements**").

- v. Since the date of the last financial statement provided to the Phase 5 Association, the Phase 4 Association has conducted its operations in the ordinary course of business and there has not been any material change in the financial condition, properties, or results of operations of the Phase 4 Association except those changes that, individually or in the aggregate, have not had and are not reasonably likely to have a material adverse effect on it.
  - vi. Except as disclosed in the Phase 4 Association Financial Statements, there are no (A) criminal, civil or administrative actions, suits, claims, hearings, investigations or proceedings pending, or, to the knowledge of the Phase 4 Association's officers and directors (the "**Phase 4 Association's Officers and Directors**"), threatened against it, or (B) obligations or liabilities, whether or not accrued, contingent or otherwise, or any other facts or circumstances known to the Phase 4 Association's Officers and Directors that would reasonably be expected to result in any adverse claims against the Phase 4 Association.
- b. The Phase 5 Association represents and warrants to the Phase 4 Association that:
- i. The Phase 5 Association is duly organized, validly existing and in good standing under the laws of the State of Texas.
  - ii. The Phase 5 Association has the authority to enter into this Agreement and has the power necessary and appropriate to effect the Merger, and to complete the Phase 5 Association's obligations herein, subject to the conditions and limitations expressly set forth herein.
  - iii. The Phase 5 Association has made available to the Phase 4 Association complete and correct copies of its Certificate of Formation, Bylaws, if any, and the Phase 5 Declaration, and any other recorded dedicatory instruments of the Phase 5 Association.
  - iv. The Phase 5 Association has made available to the Phase 4 Association copies of its financial statements for the years 2015-date (the "**Phase 5 Association Financial Statements**").
  - v. The Phase 5 Association has made available to the Phase 4 Association copies of all surveys, plans, specifications, reports, approvals, permits, licenses, guarantees, warranties, and other architectural, engineering, soil, property condition, property appraisals, mechanical, structural, inspection, and environmental information relating to the Common Area of the Phase 5 Property ("**Phase 5 Plans**").
  - vi. Since the date of the last financial statement provided to the Phase 4 Association, the Phase 5 Association has conducted its operations in the ordinary course of business and there has not been any material change in the financial condition, properties, or results of operations of the Phase 5 Association except those changes

that, individually or in the aggregate, have not had and are not reasonably likely to have a material adverse effect on it.

- vii. Except as disclosed in the Phase 5 Association Financial Statements, there are no (A) criminal, civil or administrative actions, suits, claims, hearings, investigations or proceedings pending, or, to the knowledge of the Phase 5 Association's officers and directors (the "**Phase 5 Association Officers and Directors**"), threatened against it, or (B) obligations or liabilities, whether or not accrued, contingent or otherwise, or any other facts or circumstances known to the Phase 5 Association Officers and Directors that would reasonably be expected to result in any adverse claims against the Phase 5 Association.

4. Covenants.

- a. The Phase 4 Association covenants and agrees after the date hereof and until the Effective Date:
  - i. The business of the Phase 4 Association shall be conducted in the ordinary and usual course.
  - ii. The Phase 4 Association shall not enter into any new contracts or commitments that will extend beyond the Effective Date without the consent of the Phase 5 Association.
  - iii. The Phase 4 Association and its directors and officers shall use their best efforts to take any and all other actions necessary to consummate the Merger contemplated herein.
  - iv. All costs and expenses incurred by a party in connection with this Plan of Merger shall be reimbursed by History Maker Homes.
- b. The Phase 5 Association covenants and agrees after the date hereof and until the Effective Date:
  - i. The business of the Phase 5 Association shall be conducted in the ordinary and usual course.
  - ii. The Phase 5 Association shall not enter into any new contracts or commitments that will extend beyond the Effective Date without the consent of the Phase 4 Association.
  - iii. The Phase 5 Association and its directors and officers shall use their best efforts to take any and all other actions necessary to consummate the Merger contemplated herein.

- iv. All costs and expenses incurred by a party in connection with this Plan of Merger shall be reimbursed by History Maker Homes.

5. Conversion of Membership Interests.

Each Owner of a Lot subject to the Phase 4 Declaration or the Phase 5 Declaration shall become a Member of the Surviving Corporation upon the Effective Date. Each Member shall be entitled to one vote or membership interest for each Lot owned by such Member and subject to the jurisdiction of the Surviving Corporation. In total, there shall be \_\_\_\_ [total number of lots in Surviving Corporation] membership interests in the Surviving Corporation.

6. Assessments.

The obligation to pay Assessments provided for in the Phase 4 Declaration and in the Phase 5 Declaration shall continue unabated by the Merger. Any amounts owed to the Phase 4 Association or the Phase 5 Association shall transfer as a result of the Merger to the Surviving Corporation, with the Surviving Corporation having all of the duties and powers of collection set forth in the Phase 4 Declaration and the Phase 5 Declaration. All Assessments levied against a particular Lot by the Surviving Corporation following the Effective Date will be levied and collected in accordance with the declaration to which the Lot is subject.

7. Bank Accounts.

Upon the Effective Date, the Phase 5 Association shall transfer to the Surviving Corporation all cash and bank accounts, including checking accounts, savings accounts, reserve accounts and CDs.

8. Management Certificate.

Upon the Effective Date, the Surviving Corporation shall record a new Management Certificate with Denton County, Texas, referencing both the Phase 4 Declaration and the Phase 5 Declaration.

9. Enforcement.

From and after the Effective Date, the Surviving Corporation shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges imposed by the provisions of the Phase 4 Declaration and the Phase 5 Declaration, as well as the Bylaws and Certificate of Formation of the Surviving Corporation.

10. Termination.

This Plan of Merger may be terminated and the Merger abandoned any time before the approval of the Plan of Merger by the respective members of both the Phase 4 Association and the Phase 5 Association.

11. Amendments to Plan of Merger.

This Plan of Merger may be amended with the approval of the membership of the Phase 4 Association and of the membership of the Phase 5 Association at any time.

12. Extension; Waiver.

At any time prior to the Effective Date, the board of directors of either the Phase 4 Association or the Phase 5 Association may (a) extend the time for the performance of any of the obligations or other acts of the other party hereto, (b) waive any inaccuracies in the representations and warranties of the other party contained herein or in any document or instrument delivered pursuant hereto, and (c) waive compliance by the other party with any of the agreements or conditions contained herein. Any such extension or waiver by a party shall be valid only if set forth in writing and delivered on behalf of such party.

**IN WITNESS WHEREOF**, the parties hereto, pursuant to the authority given them by their respective members, have caused this Plan of Merger to be signed by their respective authorized officers as of the day and year first above written.

**THE VILLAGES OF CARMEL HOMEOWNERS' ASSOCIATION, INC.,**  
a Texas nonprofit corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**2017 VILLAGES OF CARMEL HOMEOWNERS ASSOCIATION, INC.**  
a Texas nonprofit corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

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