

AGREEMENT OF MERGER

THIS AGREEMENT OF MERGER (this “**Agreement**”) is made as of this [] day of [], 2025 (the “**Execution Date**”), by and between Lake Erie Swimming, Inc., an Ohio non-profit corporation (“**Lake Erie Swimming**”), and Ohio Swimming, Inc., an Ohio non-profit corporation (“**Ohio Swimming**”). Lake Erie Swimming and Ohio Swimming are sometimes referred to in this Agreement collectively as the “**Parties**” or individually as a “**Party**”.

BACKGROUND

The Board of Directors of each of Lake Erie Swimming and Ohio Swimming has, pursuant to Section 1702.41 of the Ohio Revised Code (the “**ORC**”), approved and adopted this Agreement and has deemed it advisable that Lake Erie Swimming be merged with and into Ohio Swimming under and pursuant to the ORC, and upon the terms and conditions set forth in this Agreement, including conduct of due diligence in accordance with the terms of this Agreement.

NOW, THEREFORE, in consideration of the foregoing and the respective representations, warranties, covenants and agreements set forth herein, and subject to the terms and conditions set forth herein, the Parties, intending to be legally bound, hereby agree as follows:

ARTICLE 1: THE MERGER

1.1 **Merger; The Surviving Corporation.** At and as of the Effective Time (as defined below) and in accordance with the terms and conditions set forth in this Agreement and the ORC, Lake Erie Swimming will be merged with and into Ohio Swimming (the “**Merger**”), and the separate corporate existence of Lake Erie Swimming will thereupon cease in accordance with the provisions of the ORC. Ohio Swimming will be the surviving corporation in the Merger and will continue to exist as the surviving corporation under its present name pursuant to the provisions of the ORC. The separate corporate existence of Ohio Swimming with all its rights, privileges, powers and franchises will continue unaffected by the Merger. The Merger will have the effects provided in this Agreement and in the applicable provisions of the ORC. From and after the Effective Time, Ohio Swimming will be referred to herein as the “**Surviving Corporation**”.

1.2 **Certificate of Merger; Effective Time.**

(a) Subject to the provisions of this Agreement and the satisfaction of the conditions set forth in Section 1.2(b), Ohio Swimming will file, or cause to be filed, a certificate of merger complying with the requirements of Section 1702.43 of the ORC (the “**Ohio Certificate**”) with the Secretary of State of the State of Ohio, and will make all other filings or recordings required by the ORC in connection with the Merger. The Merger will become effective on September 1, 2025 (the “**Effective Time**”).

(b) The respective obligations of each Party to consummate the Merger pursuant to this Agreement are subject to, and upon:

(i) each Party having received any and all consents necessary for the Merger, including the House of Delegate Approvals (as defined in **Section 1.7**);

(ii) the representations and warranties of each of the Parties contained in this Agreement or in any document delivered under the Agreement being true, correct and complete in all material respects immediately prior to the Effective Time; and

(iii) each of the Parties having performed and complied with, in all material respects, all agreements, and obligations required by this Agreement to be performed or completed by it prior to, as of, or at the Effective Time.

(iv) each Party having delivered to the other Party a certificate of good standing from the Secretary of State of the State of Ohio;

(v) each 2024 Audit (as defined below) reflecting financial performance for fiscal year 2024 that does not deviate materially from that reflected in the Ohio Swimming Financial Statements or the Lake Erie Financial Statements, as applicable (each as defined below); and

(vi) neither Party's House of Delegates having withdrawn its House of Delegates Approval prior to expiration of the Due Diligence Period in accordance **Section 1.3.**

1.3 **Due Diligence.** Commencing on the Execution Date and ending on June 1, 2025 (the "***Due Diligence Period***"), each Party may conduct due diligence, at its sole expense, on the other Party limited to confirming there are no current pending liens, lawsuits and judgments against the other Party. Each Party shall reasonably cooperate with the other Party's due diligence requests. In the event a Party performing such due diligence becomes aware of a pending lien, lawsuit or judgment of the other Party during the Due Diligence Period, and the Parties are unable to resolve such finding to the reasonable satisfaction of the Parties, then either Party's House of Delegates Approval may be withdrawn and notice of such withdrawal shall be provided to the other party.

1.4 **Articles of incorporation and Regulations.**

(a) **Articles of incorporation.** At and as of the Effective Time and without any further action on the part of Ohio Swimming or Lake Erie Swimming, the articles of incorporation of Ohio Swimming, as in effect immediately prior to the Effective Time, will be the articles of incorporation of the Surviving Corporation until altered, amended or repealed in accordance with the provisions thereof and the ORC.

(b) **Regulations.** At and as of the Effective Time and without any further action on the part of Ohio Swimming or Lake Erie Swimming, the regulations set forth on **Exhibit A**, will be the regulations of the Surviving Corporation, until altered, amended or repealed in accordance with the provisions of the articles of incorporation of the Surviving Corporation, such regulations, and the ORC.

1.5 **Directors and Officers.**

(a) **Directors.** The persons set forth on **Exhibit B** will be the directors of the Surviving Corporation at and as of the Effective Time and will serve until their respective successors are duly elected or appointed and will qualify in the manner provided in the articles of incorporation and the regulations of the Surviving Corporation or as otherwise provided by law, or until their respective earlier death, resignation or removal.

(b) **Officers.** The persons set forth on **Exhibit C** will be the officers of the Surviving Corporation at and as of the Effective Time and will hold office until their respective successors are duly elected or appointed and will qualify in the manner provided in the articles of

incorporation and the regulations of the Surviving Corporation or as otherwise provided by law, or until their respective earlier death, resignation or removal.

(c) Statutory Agent. The statutory agent of the Surviving Corporation is Erin L. Schwab located at 5020 B College Corner Pike, Oxford, Ohio 45056.

1.6 Membership. At and as of the Effective Time, by virtue of the Merger and without any action on the part of any Party, the members of each of Lake Erie Swimming and Ohio Swimming will be the cumulative members of the Surviving Corporation of the same type and status as immediately prior to the Effective Time.

1.7 House of Delegates Approval. Each of the Parties will use their commercially reasonable efforts to receive approval of the Merger by their respective House of Delegates pursuant to Section 604.4 of the 2025 USA Swimming Rules and Regulations (collectively, the “**House of Delegate Approvals**”) and deliver evidence of the House of Delegate Approvals to the Chair of the USA Swimming Rules and Regulation Committee no later than sixty (60) days prior to the Effective Date.

1.8 Deliveries by Ohio and Lake Erie Swimming. At the Effective Time, each of Lake Erie Swimming and Ohio Swimming will deliver, or cause to be delivered, to the persons and entities entitled thereto, their respective House of Delegate Approval and such other documents and instruments as Ohio Swimming or Lake Erie Swimming, as applicable, may reasonably request to consummate the transactions contemplated hereby.

ARTICLE 2: REPRESENTATIONS AND WARRANTIES

2.1 Representations and Warranties of Ohio Swimming. Ohio Swimming represents and warrants to Lake Erie Swimming as follows:

(a) Authority. Ohio Swimming is a non-profit corporation exempt from federal income tax and duly organized, validly existing and in good standing under the laws of the State of Ohio and has the requisite power and authority to execute and deliver this Agreement and all agreements and documents contemplated hereby to be executed and delivered by Ohio Swimming, and to consummate the transactions contemplated hereby and thereby, without obtaining any additional approvals (whether internal or third party) (other than approval by the House of Delegates). The execution and delivery of this Agreement and such other agreements and documents and the consummation of the transactions contemplated hereby and thereby, have been duly and validly authorized by all necessary action on the part of Ohio Swimming. This Agreement has been duly and validly executed and delivered by Ohio Swimming and constitutes the legal, valid and binding obligation of Ohio Swimming, enforceable against Ohio Swimming in accordance with this Agreement’s terms, except as limited by: (i) applicable bankruptcy, reorganization, insolvency, moratorium or other similar laws affecting the enforcement of creditors’ rights generally from time to time in effect; and (ii) the availability of equitable remedies (regardless of whether enforceability is considered in a proceeding at law or in equity) (the immediately preceding clauses (i) and (ii), together, the “**General Enforceability Exceptions**”).

(b) No Conflicts. Except for the applicable House of Delegate Approval, neither the execution and delivery of this Agreement by Ohio Swimming, nor the consummation by Ohio Swimming of the transactions contemplated hereby, nor compliance by Ohio Swimming with any of the provisions hereof, will: (i) conflict with or result in a breach of any provisions of the articles of incorporation or regulations of Ohio Swimming; (ii) constitute or result in a breach, in

any material respect, of any material contract that Ohio Swimming is a party to; or (iii) violate any law applicable to Ohio Swimming.

(c) Compliance with Laws. Ohio Swimming is in material compliance with all laws and orders applicable to its business; and has not received written notification or communication from any governmental authority or USA Swimming that has not yet been resolved (i) asserting that Ohio Swimming is not in compliance, in any material respect, with any law or (ii) threatening to revoke any material permit owned or held by Ohio Swimming.

(d) Financial Statements. Copies of the following financial statements have been delivered to Lake Erie Swimming or have been made available to Lake Erie Swimming: (i) the reviewed balance sheets of Ohio Swimming as of August 31, 2023 and August 31, 2024, and the related reviewed statements of income and cash flows for the fiscal years then ended, together with the notes thereto; and (ii) the unaudited balance sheets of Ohio Swimming as of March 31, 2025, and the related unaudited statement of income for the 7-month period then ended (clauses (i)-(ii) collectively, the “**Ohio Swimming Financial Statements**”). The Ohio Swimming Financial Statements were derived from the books and records of Ohio Swimming.

(e) Legal Proceedings. As of the Execution Date, there are no legal proceedings, investigations or audits pending or, to the knowledge of a director of Ohio Swimming, threatened against Ohio Swimming that would reasonably be expected to be material to Ohio Swimming.

(f) Brokers or Finders. No broker, finder or similar agent has been employed by or on behalf of Ohio Swimming, and no person or entity with which Ohio Swimming has had any dealings or communications of any kind is entitled to any brokerage commission, finder’s fee or similar compensation in connection with this Agreement or the transactions contemplated hereby.

2.2 **Representations and Warranties of Lake Erie Swimming.** Lake Erie Swimming represents and warrants to Ohio Swimming as follows:

(a) Authority. Lake Erie Swimming is a non-profit corporation exempt from federal income tax and duly organized, validly existing and in good standing under the laws of the State of Ohio and has the requisite power and authority to execute and deliver this Agreement and all agreements and documents contemplated hereby to be executed and delivered by Lake Erie Swimming, and to consummate the transactions contemplated hereby and thereby, without obtaining any additional approvals (whether internal or third party) (other than approval by the House of Delegates). The execution and delivery of this Agreement and such other agreements and documents and the consummation of the transactions contemplated hereby and thereby, have been duly and validly authorized by all necessary action on the part of Lake Erie Swimming. This Agreement has been duly and validly executed and delivered by Lake Erie Swimming and constitutes the legal, valid and binding obligation of Lake Erie Swimming, enforceable against Lake Erie Swimming in accordance with this Agreement’s terms, except as limited by the General Enforceability Exceptions.

(b) No Conflicts. Except for the applicable House of Delegate Approval, neither the execution and delivery of this Agreement by Lake Erie Swimming, nor the consummation by Lake Erie Swimming of the transactions contemplated hereby, nor compliance by Lake Erie Swimming with any of the provisions hereof, will: (i) conflict with or result in a breach of any provisions of the articles of incorporation or regulations of Lake Erie Swimming; (ii) constitute or result in a breach, in any material respect, of any material contract that Lake Erie Swimming is a party to; or (iii) violate any law applicable to Lake Erie Swimming.

(c) **Compliance with Laws.** Lake Erie Swimming is in material compliance with all laws and orders applicable to its business; and has not received written notification or communication from any governmental authority or USA Swimming that has not yet been resolved (i) asserting that Lake Erie Swimming is not in compliance, in any material respect, with any law or (ii) threatening to revoke any material permit owned or held by Lake Erie Swimming.

(d) **Financial Statements.** Copies of the following financial statements have been delivered to Ohio Swimming or have been made available to Ohio Swimming: (i) the reviewed balance sheet of Lake Erie Swimming as of December 31, 2023 and December 31, 2024, and the related reviewed statements of income and cash flows for the calendar year then ended, together with the notes thereto; and (ii) the unaudited balance sheets of Lake Erie Swimming as of March 31, 2025, and the related unaudited statement of income for the 3-month period then ended (clauses (i), (ii), collectively, the “***Lake Erie Swimming Financial Statements***”). The Lake Erie Swimming Financial Statements were derived from the books and records of Lake Erie Swimming.

(e) **Legal Proceedings.** As of the Execution Date, there are no legal proceedings, investigations or audits pending or, to the knowledge of Lake Erie Swimming, threatened against Lake Erie Swimming that would reasonably be expected to be material to Lake Erie Swimming.

(f) **Brokers or Finders.** No broker, finder or similar agent has been employed by or on behalf of Lake Erie Swimming, and no person or entity with which Lake Erie Swimming has had any dealings or communications of any kind is entitled to any brokerage commission, finder’s fee or similar compensation in connection with this Agreement or the transactions contemplated hereby.

ARTICLE 3: COVENANTS; MISCELLANEOUS

3.1 **Survival.** None of the representations or warranties contained in this Agreement (including the exhibits attached hereto and the certificates delivered pursuant hereto) will survive the Effective Time.

3.2 **Expenses.** Ohio Swimming agrees that, as the Surviving Corporation, it will 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 Party will bear its own costs and expenses.

3.3 **Waiver.** Failure to insist upon strict compliance with any of the terms, covenants or conditions hereof will not be deemed a waiver of such term, covenant or condition, nor will any waiver or relinquishment of any right or power hereunder at any time be deemed a waiver or relinquishment of such right or power at any other time or times.

3.4 **Further Assurances.** The Parties will execute such further instruments and take such further actions as may reasonably be necessary to carry out the intent of this Agreement. Each Party will cooperate affirmatively with the other Parties, to the extent reasonably requested by such other Parties, to enforce rights and obligations herein provided.

3.5 **Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the State of Ohio without regard to conflict of law principles.

3.6 **Construction.** The Parties have participated jointly in the negotiation and drafting of this Agreement. If an ambiguity or question of intent or interpretation arises, then this

Agreement will be construed as drafted jointly by the Parties and no presumption or burden of proof will arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Agreement. The words “include”, “including” and “or” mean without limitation by reason of enumeration. Any reference to the singular in this Agreement will also include the plural and vice versa. The headings of sections are included solely for convenience of reference only and do not form a part of this Agreement.

3.7 **Severability.** Any term or provision of this Agreement that is invalid or unenforceable in any jurisdiction will, as to that jurisdiction, be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining terms and provisions of this Agreement or affecting the validity or enforceability of any of the terms or provisions of this Agreement in any other jurisdiction. If any provision of this Agreement is so broad as to be unenforceable, then the provision will be interpreted to be only so broad as is enforceable.

3.8 **Successors and Assigns.** This Agreement will be binding on and inure to the benefit of the Parties and their respective successors and permitted assigns, but is not assignable by any Party without the prior written consent of the other Party. Each Party intends that this Agreement does not benefit or create any right or cause of action in or on behalf of any person or entity other than the Parties.

3.9 **Entire Agreement.** This Agreement and the other documents delivered by the Parties in connection herewith represent the entire agreement of the Parties and supersedes all other understandings or agreements with respect to the subject matter hereof. This Agreement may not be modified or amended except by an instrument in writing executed by each Party.

3.10 **Counterparts.** This Agreement may be executed in separate counterparts, each of which will be deemed an original but all of which will constitute but one instrument. Delivery of an executed signature page to this Agreement by facsimile or other electronic transmission (including in Adobe PDF format) will be effective as delivery of a manually executed counterpart to this Agreement.

3.11 **Termination.** This Agreement may be terminated and the Merger abandoned for cause related to the material breach of any representation, warranty or covenant contained in this Agreement by the non-breaching Party or the failure of the satisfaction of the conditions set forth in **Section 1.2(b)** by appropriate action by the respective Boards of Directors of either Ohio Swimming or Lake Erie Swimming at any time prior to the Effective Time.

3.12 **Copies.** This Agreement will be on file at an office of the Surviving Corporation located at 5020 B College Corner Pike, Oxford, Ohio 45056. Such office is the principal office of the Surviving Corporation.

3.13 **Updates.** Each Party agrees to provide to the other Party any updates, additions, changes or corrections to their respective representations and warranties in Section 2.1 or Sections 2.2 (as applicable) in order for such representations and warranties to be substantially complete, accurate and current through the Effective Time.

3.14 **Interim Operations and Audited Financials.**

(a) Each Party agrees that, during the period from the date of this Agreement to the Effective Time (except as otherwise specifically contemplated by the terms of this Agreement), it will carry on its business in the usual, regular and ordinary course in substantially the same

manner as previously conducted and will not enter into any material contracts or incur material financial obligations without notifying and receiving the consent of the other Party.

(b) Prior to the Effective Time, each Party will (i) cause an audit of its financial statements for fiscal year 2024 to be completed by an independent accounting firm and (ii) provide a copy of such audit to the other Party (each such audit, a “**2024 Audit**”).

3.15 **Amendments.** The Parties by mutual consent of the Board 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 Time as reasonably necessary to carry out the transaction contemplated by this Agreement, even though this Agreement may have received the House of Delegate Approval.

3.16 **Notices.** All notices, directives, instructions, requests, consents, and other communications under this Agreement shall be in writing and shall be deemed to have been given (a) if personally delivered, on the date of delivery, (b) if delivered by next-day courier service of national standing (with charges prepaid), on the business day following the date of delivery to such courier service for next day delivery, (c) if deposited in the United States mail, first class postage prepaid, on the fifth (5th) business day following the date of such deposit, or (d) if delivered by electronic mail, provided the relevant computer record indicates a full and successful transmission on the date of such transmission. Notices, demands and communications shall, unless another address is specified in writing pursuant to the provisions hereof, be sent to the address indicated below:

If to Ohio Swimming, to:

Ohio Swimming
5020 B College Corner Pike
Oxford, Ohio 45056
Attention: Erin L. Schwab
E-mail: office@swimohio.com

with copies (which shall not constitute notice) to:

Porter Wright Morris, & Arthur LLP
250 East Fifth Street., Suites 2200
Cincinnati, Ohio 45202-5118
Attention: Susan K. Cliffl
E-mail: scliffel@porterwright.com

If to Lake Erie Swimming, to:

Lake Erie Swimming
301 Rockledge Dr. Bay Village, OH 44140
Attention: Pam Cook.
E-mail: pamswim@aol.com

with copies (which shall not constitute notice) to:

Jones Day
North Point
901 Lakeside Avenue
Cleveland, OH 44114-1190

Attention: William Stewart, Jr.
E-mail: wrstewartjr@jonesday.com

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first above written.

LAKE ERIE SWIMMING:

LAKE ERIE SWIMMING, INC.

By: _____
Name: Vince Cowell
Title: Chairperson

By: _____
Name: Misty Caudill
Title: President

By: _____
Name: Jelani Watkins
Title: Secretary

OHIO SWIMMING:

OHIO SWIMMING, INC.

By: _____
Name: James Peterfish
Title: Chairperson

By: _____
Name: Denise Humphrey
Title: President

By: _____
Name: Christina Holmes
Title: Secretary

Exhibit A

Regulations

(See attached)

Exhibit B

(Directors)

Jim Peterfish
Eric Peterson
Denise Humphrey
Misty Caudill
Chip Carrigan
Vince Colwell
Erin Schwab
Sarah Tobin
Amy Saribalas
Anna Fialko
Julia Bohl
Claire Kemmere
Avery Crabtree
Jelani Watkins
Christi Holmes
Hiroshi Tanaka
Carolyn Strunk
Cindy Dial
Bernard Vrancken
Caroline Holmes
Sarah Ondrejka
Edgar Caraballo
Jennifer Butler
Rona Hughes
Zach Toothman

The address for the directors is set forth in **Section 3.12**.

Exhibit C

(Officers)

Jim Peterfish - General Chair
Vince Colwell - Program Development Vice Chair
Sarah Tobin - Program Operations Vice Chair
Denise Humphrey - Admin Vice Chair
Misty Caudill - Admin Vice Chair
Chip Carrigan - Finance Vice Chair
Hiroshi Tanaka - Treasurer
Jelani Watkins - Secretary
Christi Holmes – Secretary

The address for the officers is set forth in **Section 3.12**.