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MERGER OR SHARE EXCHANGE**Barefoot Beach Property Owners Association, Inc.**

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ARTICLES OF MERGER

of

**BEACH GARDEN "H" ASSOCIATION, INC.,
a Florida Not-For-Profit Corporation,**

into/with

**BAREFOOT BEACH PROPERTY OWNERS ASSOCIATION, INC.,
a Florida Not-For-Profit Corporation,**

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ARTICLES OF MERGER between BEACH GARDEN "H" ASSOCIATION, INC., a Florida Not-for-Profit corporation ("Merging Corporation") and BAREFOOT BEACH PROPERTY OWNERS ASSOCIATION, INC., a Florida Not-for-Profit corporation ("Surviving Corporation").

Pursuant to Section 617.1105 of the Florida Not-for-Profit Corporation Act (the "Act") BEACH GARDEN "H" ASSOCIATION, INC. and BAREFOOT BEACH PROPERTY OWNERS ASSOCIATION, INC., adopt the following Articles of Merger.

1. The Plan of Merger is attached hereto as Exhibit "A" ("Plan of Merger").
2. The Plan of Merger was approved and adopted by sufficient votes of the respective membership of the Merging Corporation and the Surviving Corporation, as follows:

A. Barefoot Beach Property Owners Association, Inc. (Surviving Corporation)

Date of Members' Meeting at Which Plan of Merger was Approved: March 12, 2012

Number of Votes In Favor of Plan of Merger 99.04

Number of Votes In Opposition to Plan of Merger 0

B. Beach Garden "H" Association, Inc. (Merging Corporation)

The Plan of Merger was adopted by written consent of the members of the Merging Corporation and executed in accordance with Sec. 617.0701, Florida Statutes.

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

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IN WITNESS WHEREOF, the parties have set their hands on the date and year set forth below.

BEACH GARDEN "H" ASSOCIATION, INC. (SEAL)

Date: 3/21/12

By: Jane Dennis, Director Garden H.

Print Name: JANE DENNIS

Its: President

BAREFOOT BEACH PROPERTY OWNERS
ASSOCIATION, INC. (SEAL)

Date: 3-16-12

By: [Signature]

Print Name: GENE WINDFELD

Its: President

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PLAN OF MERGER

This Plan of Merger is between BAREFOOT BEACH PROPERTY OWNERS ASSOCIATION, INC. ("Surviving Corporation") and BEACH GARDEN "H" ASSOCIATION, INC. ("Merging Corporation"). This Plan of Merger is submitted in compliance with Section 617.1101, Florida Statutes.

1. Terms and Conditions of the Merger. The terms and conditions of the merger are set forth in the Agreement between the Surviving Corporation and the Merging Corporation attached hereto as Exhibit "A".

2. Articles of Incorporation. There are no changes in the Articles of Incorporation of the Surviving Corporation to be effected by the merger.

3. Supplemental Action. If at any time after the effective date of the merger, Surviving Corporation shall determine that any further conveyances, agreements, documents, instruments, and assurances or any further action is necessary or desirable to carry out the provisions of this Plan of Merger, the appropriate officers of the Surviving Corporation and/or the Merging Corporation, as the case may be, whether past or remaining in office, shall execute and deliver, on the request of Surviving Corporation, any and all proper conveyances, agreements, documents, instruments, and assurances and perform all necessary or proper acts, to vest, perfect, confirm, or record such title thereto in Surviving Corporation, or to otherwise carry out the provisions of this Plan of Merger.

4. Effective Date of Merger. The merger shall be effective on the date the Articles of Merger are filed with the Florida Department of State.

Exhibit "A"

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Exhibit "A"

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AGREEMENT

This Agreement is made and entered into by and between BAREFOOT BEACH PROPERTY OWNERS ASSOCIATION, INC., a Florida not-for-profit corporation (hereinafter the "POA"), and BEACH GARDEN "H" ASSOCIATION, INC., a Florida not-for-profit corporation (hereinafter the "BGA"), as of the last date that either party hereto signs the signature page below (hereinafter the "Effective Date").

WITNESSETH:

The POA is the corporate entity charged with the maintenance, management, and operation of Barefoot Beach, Unit One (hereinafter "*Unit One*"), as more particularly described in the Declaration of Covenants thereof recorded in O.R. Book 766, Page 1773 et seq., and pursuant to the Amended and Restated Declaration of Protective Covenants for Barefoot Beach – Unit One and Barefoot Beach – Unit Two recorded in O.R. 4430, Pages 3692 et seq. of the Public Records of Collier County, Florida (hereinafter the "*Declaration*"), and as more particularly described in the Articles of Incorporation and By-Laws for the POA; and

WHEREAS, the BGA is the corporate entity charged with the maintenance, management and operation of that certain residential cluster within Unit One known as Beach Garden "H", as more particularly described in the Plat thereof filed in Plat Book 12, Pages 34-37 of the Public Records of Collier County, Florida; and

WHEREAS, the ten other beach garden associations originally established in Unit One merged into the POA in March, 2000, leaving the BGA as the sole remaining beach garden association; and

WHEREAS, the POA already owns legal title to Beach Garden "H" pursuant to that certain Warranty Deed from Lely Development Corporation, a Texas corporation, to the POA recorded on April 3, 2008 in O.R. 4345, Page 2751 et seq. of the Public Records of Collier County, Florida; and

WHEREAS, the only assets owned by the BGA are the outdoor furnishings, fixtures and equipment located in the Beach Garden "H" swimming pool area (hereinafter the "*Personal Property*") and the operating bank account of the BGA (hereinafter the "*BGA Remaining Funds*"); and

WHEREAS, the BGA has determined that it is in the best interests of its members to transfer ownership of the Personal Property to the POA pursuant to a merger of the BGA into the POA in similar fashion to the ten other beach garden associations and in furtherance of the broader purpose of effectuating the desires of the BGA to have the POA take over all maintenance, management and operational responsibilities of Beach Garden "H;" and

WHEREAS, the parties expect to address the merger of the BGA into the POA at their respective annual meetings of their members; and

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WHEREAS, since such annual meetings may not occur until early 2012, the BGA wishes to commence the transition of responsibilities for maintenance and management control over Beach Garden "H" to the POA, and the POA is willing to accept the same on the terms and conditions set forth in this Agreement; and

WHEREAS, the BGA will obtain the required approval of the BGA's respective membership and board of directors for entering into this Agreement, at duly noticed meetings or by Written Consent; and

WHEREAS, the POA has obtained the required approval of its board of directors for entering into this Agreement, at the November 30, 2011 POA Board meeting.

NOW THEREFORE, in consideration of Ten Dollars (\$10.00) and the mutual promises and covenants contained herein, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Recitals. The above recitations are true and correct, and incorporated herein by reference.

2. Assignment of Powers. Effective January 1, 2012, the BGA delegates and assigns to the POA all rights and powers vested in the BGA as may be set forth in the Declaration and the Articles of Incorporation and By-Laws of the BGA for the purpose of the POA implementing and enforcing this Agreement. Each owner of property adjacent to Beach Garden "H" (soon to be "former" BGA members and referred to herein as "*Garden "H" Lot Owners*") is already a member of the POA and, as such, is already subject to the powers of the POA. However, without limiting the generality of the foregoing, the BGA assigns to the POA the following:

a. The power to assess Garden "H" Lot Owners for the expenses of maintenance, management, and operation of Beach Garden "H" and to combine such assessments with the charge for common area assessments levied by the POA against its members, as more fully described in Section 5 below; and

b. The right to enforce all other terms and conditions of the Declaration against the Garden "H" Lot Owners in the same manner as may be enforced against all other members of the POA including, without limitation, the right to record and foreclose a claim of lien for delinquent assessments, costs of collection and attorneys' fees.

3. Transition of Maintenance Obligations to POA. Effective January 1, 2012, the POA will take over all maintenance, management and operational responsibilities of Beach Garden "H," notwithstanding that the formal merger of the BGA into the POA may not be finalized until the annual members meetings of both associations and the filing of the necessary merger documents with the Florida Secretary of State. The BGA will not renew its existing maintenance contracts nor will the BGA enter into any other separate maintenance contracts. Except as expressly provided in Section 4 below, the POA shall thereafter provide Beach Garden "H" with the same services as it provides for the other ten beach gardens, primarily through master maintenance contracts. Without limiting the generality of the foregoing, the POA shall perform the following functions:

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a. Provide routine maintenance of landscaping, the swimming pool and one pool heater for Beach Garden "H";

b. Provide general liability insurance, which would include coverage for the Beach Garden "H" swimming pool; and

c. Provide such other services as are necessary and appropriate to reasonably maintain, manage, and operate Beach Garden "H", as are currently being performed for the other ten beach gardens including, without limitation: mowing of grass; weeding; trimming of shrubs; trimming of palm trees; fertilization for sod, shrubs and trees; injection of palms for lethal yellow; pesticide applications; herbicide and fungicide applications; mulching of landscape beds; pressure washing of pool and boardwalks to the beach when necessary; repainting of pool deck areas when necessary; sealing of boardwalks to the beach when necessary; maintenance of landscape lighting; sprinkler system monitoring; and payment of water and electric utility charges for Beach Garden "H".

4. Exceptions to Transition of Maintenance Obligations to POA. Notwithstanding the general transition of obligations as set forth in Section 3 above, the following exceptions shall apply:

a. The POA shall pay for (i) gas or other energy costs to heat the swimming pool, (ii) the cost of flowers and other ornamental plantings that are requested by the Garden "H" Lot Owners over and above those provided to the other gardens, (iii) the cost of new pool furniture, and (iv) maintenance of the large permanent swing set, pool equipment building and retaining wall (hereinafter the "*Non-Conforming Improvements*"), it being understood that the POA shall not require the removal of the Non-Conforming Improvements; however, all costs borne by the POA under this Section 4(a) shall be charged back to the Garden "H" Lot Owners who shall promptly pay the same;

b. The POA shall not pay for (i) individual homeowner landscape costs, or (ii) the cost of maintenance of boardwalks or pavers from private homes to the pool or beach, as all such costs shall be paid by each Garden "H" Lot Owner directly to the vendor of their choice. The BGA has been historically handling such matters on behalf of its members and will continue to do so only until December 31, 2011;

c. The BGA shall replace all dead grass located in the Northeast quarter of Beach Garden "H" and also find and repair the cause of the damage, be it irrigation, bug infestation or otherwise.; and

d. The BGA will assume all costs of bringing the Beach Garden "H" swimming pool into compliance with applicable building and zoning codes including, without limitation, the requirements of the Collier County Health Department. The BGA will retain ownership of the BGA Remaining Funds after January 1, 2012 in order to assist the BGA in meeting the foregoing obligation.

5. Full Transition of Assessment Obligations to POA; Assessment Methodology. Effective January 1, 2012, the BGA shall no longer assess its members due to the transition of maintenance responsibilities to the POA, and in anticipation that the BGA will either be merged

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out of existence or dissolve, as more fully explained in Section 6 below. After January 1, 2012, each Garden "H" Lot Owner shall be assessed by the POA in the same manner as other POA members. Prior to the Effective Date of this Agreement, the BGA had assessed its members on a "per home" basis rather than on a "per lot" basis. The result of this methodology was a one-ninth (1/9) assessment per home for the costs being born by the BGA, since there are nine (9) homes adjacent to Beach Garden "H". However, there are thirteen (13) lots adjacent to Beach Garden "H" including eight (8) owners of 1.5 lots each, and one owner of a single lot/home. After January 1, 2012, each Garden "H" Lot Owner shall be assessed by the POA based upon the number of lots that they own, such that owners of 1.5 lots shall be assessed 1.5 x the per lot assessment imposed by the POA.

6. Completion of Merger; Dissolution Alternative. The BGA and POA shall endeavor to take such actions as may be legally necessary to merge the BGA into the POA within twelve (12) months from the Effective Date of this Agreement including, without limitation, the adoption of a Plan of Merger and filing of Articles of Merger with the Florida Secretary of State. However, if any obstacles arise with respect to the merger, the BGA shall dissolve as an entity and convey the Personal Property to the POA, since the merger is being pursued largely to be consistent with the manner in which the other ten beach garden associations addressed their transition into the POA (and not due to absolute legal necessity).

7. Release of Claims. The BGA hereby releases and waives any and all known and unknown claims it has, had or may have against POA, its officers and directors from the date of the BGA's existence until the Effective Date of this Agreement, arising from or related to operations of the POA with respect to the BGA or Beach Garden "H".

8. Adoption of Declaration Amendment. The Declaration currently contains several provisions that identify the BGA as the corporate entity responsible for the operations and maintenance of Beach Garden "H" and, accordingly, the Garden "H" Lot Owners are treated differently under the Declaration than the other POA members. In conjunction with the transition of powers to the POA as contemplated in this Agreement, the POA shall endeavor to adopt an amendment to the Declaration which will clarify that the BGA shall no longer continue to exist and that the Garden "H" Lot Owners shall be treated in the same manner as the other POA members.

9. Miscellaneous. This Agreement may be executed in counterparts, each of which shall be considered an original and all of which taken together shall be considered one and the same document. Signatures by facsimile or other electronic means shall be binding upon the parties.

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IN WITNESS WHEREOF, we set our hands on the date specified below.

Witnesses:

Barefoot Beach Property Owners Association,
Inc., a Florida corporation

Nancy Cooper
Name: NANCY COOPER

S H Eaton
Name: EDWIN EATON
Its: TREASURER

Date: 1/9/12

Walter Hale
Name: WALTER HALE

Beach Garden "H" Association, Inc.,
a Florida corporation

Nancy Cooper
Name: NANCY COOPER

Jane Dennis
Name: JANE DENNIS
Its: PRESIDENT BEACH GARDEN "H"

Date: 1/9/12

Walter Hale
Name: WALTER HALE

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